

SUBMISSION TO AUSTRALIAN JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

Australia's relations with Timor-Leste

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Subject: Australian support for victims of historic crimes in Timor-Leste and related matters

The submission is in three parts (1) Introduction (2) Background (3) Recommendations

1. Introduction

The passage to independence and statehood in Timor-Leste was particularly violent and costly in human and other terms. What was a fundamental human right in international law that should have been conceded non-violently and celebrated, as happened for example in Papua New Guinea and the Cocos Islands, was in fact contested militarily and bitterly at great cost to this small and vulnerable people. It left a severe deficit in economic, political, environmental, cultural, institutional and other forms that Australia is now seeking to redress in cooperation with the Timor-Leste Government and community and other donors of goodwill.

The purpose of this submission is to address the human legacy of Timor-Leste's traumatic decolonisation and to suggest ways in which Australia might contribute to the healing and dignity of the most vulnerable victims who survived this painful period particularly those who continue to suffer disadvantage as a consequence of their victimisation. This issue falls within the ambit of this Inquiry because, although the Inquiry is focussed on the current situation in Timor-Leste and its future, it is self-evident that the effects of their recent traumatic past continue to make themselves felt in the lives of many East Timorese and the dynamics of their society. The causes are historic, but the consequences are contemporary.

The issue also goes to the heart of the new society Timor-Leste is building and the priority it places on justice, rule of law, non-violence, reconciliation, inclusion and poverty reduction, objectives that Australia shares and supports. Australians need only refer to the recent, though belated, official apologies to the victims of the Stolen Generation and Forced Adoptions respectively to appreciate the deep long-term human impact of past violence in our own society, the truth that 'all history is contemporary history'¹, and the profound and lasting benefits to society when denial is rejected and difficult issues are honestly and sensitively addressed.

It can also be noted that the reports on historic crimes by the Comissao de Acolhimento, Verdade e Reconciliacao (CAVR) and the East Timor-Indonesia Commission for Truth and Friendship (CTF) were finalised after the Parliamentary inquiry in 2000 and therefore have not been considered by the Australian Parliament to this point.

2. Background

2.1 Impact on victims

The civilian impact of the conflict in Timor-Leste has been conclusively documented by at least five separate official inquiries². These inquiries all agreed that the evidence clearly demonstrates a pattern

¹ Benedetto Croce

² The inquiries in question were conducted by the Special Rapporteurs of the UN Commission on Human Rights (1999), the UN International Commission of Inquiry (2000), Indonesia's human rights commission (2000), the Timor-Leste Commission for Reception, Truth and Reconciliation (2005), and the joint Timor-Leste Indonesia Commission for Truth and Reconciliation (2008).

of serious violations of fundamental human rights and humanitarian law in Timor-Leste, both in 1999 and during the previous 24 years of the Indonesian occupation.

The most comprehensive of these inquiries was conducted by the Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR³), which functioned 2002-2005. This inquiry was undertaken by the CAVR with the generous financial support of the Australian Government and other donors⁴. The CAVR, which was based on a decision of the Timor-Leste Resistance⁵, also enjoyed unanimous support across Timor-Leste society and from the UN which governed Timor-Leste at the time the Commission was set up.

The evidence collected by CAVR from hundreds of victims, key actors and public hearings is contained in its 5 volume report entitled *Chega!* (Portuguese for 'enough, stop, no more'). *Chega!* is harrowing reading and has been described by Timor-Leste's former President and Nobel Laureate Jose Ramos-Horta as 'mind-boggling, heart-breaking, (a report that) brings anger, tears to anyone who is familiar with the history of the 24 years of occupation'.

In summary, CAVR concluded from its comprehensive investigation that:

- A minimum of 102,000 East Timorese civilians, and probably many more, died as a direct result of the conflict, principally from killings and war induced famine and illness⁶;
- Arbitrary detention, often involving torture and ill-treatment, was the most common violation;
- Sexual violence against women, including rape, was practiced widely and systematically by the Indonesian security forces during the entire period and officially condoned;
- Besides sexual violence, women also suffered, directly or indirectly, all the violations committed during the conflict including killing, torture, unfair trials, disappearance, displacement, deprivation and loss of economic and social rights;
- Communities were repeatedly displaced throughout the 25 year period causing major disruption and hardship;
- The special protections due to children under international law were routinely ignored, particularly by the Indonesian military through practices such as forced recruitment, arbitrary detention, and by separating children from their families and sending them to Indonesia where their cultural identity was not recognised;
- The distribution of Indonesia's substantial Government investment was dictated by military and security priorities rather than the economic, social and cultural rights of Timor-Leste which, at the end of the occupation, lagged behind most other countries and all the provinces of Indonesia itself;
- Indonesia under President Soeharto violated the right of the people of Timor-Leste to self-determination and, until 1999, most Western countries, including Australia, gave over-riding weight to their strategic and economic interests with Indonesia and paid only obeisance to the UN principle of self-determination;
- The Indonesian military systematically violated the Geneva Conventions (laws of war) through the indiscriminate targeting of civilians, forced recruitment of civilians, destruction and looting of civilian property, destruction of food sources, sexual enslavement and in other ways;
- East Timorese members of Fretilin, UDT and Falintil also committed violations particularly in the early years of the struggle but fewer than the Indonesian military and its militias and not in a

³ Comissao de Acolhimento, Verdade e Reconciliacao (CAVR)

⁴ Inter alia, Australia provided a grant of US\$364,000 to CAVR and paid the salaries of seven advisers.

⁵ At its congress in Dili in 2000, the resistance umbrella organisation (CNRT), headed by Xanana Gusmao, called for the establishment of a reconciliation mechanism to address divisions and trauma within the Timor-Leste community. The congress also called for the establishment of 'an international tribunal to bring Indonesian Generals to trial'. This latter call has not been acted on but remains an objective of sections of Timor-Leste civil society and organizations like Amnesty International.

⁶ This finding was based on original, independent research commissioned by CAVR from the US-based expert organisation Benetec/Human Rights Data Analysis Group (HRDAG). The figure is less than the 200,000 deaths that is commonly cited in the media. It represents the minimum of civilian deaths that Benetec was able to scientifically establish. CAVR/HRDAG Benetec did not estimate an upper bound limit though it did speculate that the death toll due to conflict-related hunger and illness could have been as high as 183,000.

widespread or systematic way.

2.2 CAVR recommendations

The 204 recommendations made by CAVR are directed to the international community, Indonesia, and to the Timor-Leste government and key institutions such as the security apparatus, political parties, church, civil society and parliament. Though it functioned differently to CAVR and addressed only human rights issues in 1999, the Commission for Truth and Friendship (CTF) which was led jointly by Timor-Leste and Indonesia, made similar recommendations to CAVR. These are that further documentation, reparations, human rights training, memorialisation and action on the missing be undertaken.

Several CAVR recommendations are relevant to Australia. In summary, CAVR recommended that:

1. The CAVR report be widely distributed and considered domestically and internationally;
2. Governments, Indonesian military, and institutions present in Timor-Leste during the war (such as the International Red Cross, US Catholic Relief Services, and the Vatican) make available their archives on the period 1974-1999;
3. Governments and corporations which benefited from the provision or sale of military equipment to Indonesia during its illegal occupation of Timor-Leste offer apologies to Timor-Leste victims and contribute to a reparations program;
4. Governments tighten access to visas and banking for those accused of human rights violations in the CAVR and other inquiries;
5. Individuals and institutions responsible for crimes against humanity and war crimes in Timor-Leste be held to account by Indonesia and Timor-Leste or, if necessary, the international community;
6. Timor-Leste adopt a system-wide human rights approach to governance and the building of a culture of human rights, non-violence and rule of law through training and education, cultural and sporting programs directed particularly to Timor-Leste's ballooning youth population;
7. A targeted reparations program be established for the most vulnerable victims;
8. A follow-up institution to CAVR be established to assist with the implementation of these recommendations.

3. Recommendations to this Joint Committee

Based on the proposals that CAVR advanced to address the rights and needs of victims, the Joint Committee is urged to recommend the following steps:

3.1 Apology to victims

That Australia extends an official apology to victims in Timor-Leste for failing to adequately uphold their right to self-determination and other internationally agreed fundamental rights and freedoms until 1999.

Australia's role vis-à-vis the Timor-Leste question and accountability is documented in the CAVR report.⁷ CAVR found that Australia, as a respected middle power and member of the UN, was considered a key player by Portugal, Indonesia, the Timor-Leste resistance and major Western powers such as the UK and US who looked to it for intelligence and policy advice on the issue. However, though well-placed, Australia chose not to be an honest broker and to use its international influence to try to block the invasion and spare Timor-Leste its predictable humanitarian consequences. Instead, it gave Timor-Leste's right to self-determination only nominal recognition and failed to uphold it in practice, favoured incorporation into Indonesia, failed to restrain Indonesia from military intervention and aggression, generally voted against Timor-Leste at the UN, gave de jure recognition to Indonesia's illegal military takeover in the context of a bid for oil and gas resources, provided Indonesia with economic and military assistance and worked hard to win over Australian public

⁷ Chega! 7.1 Self-determination pars 100-145; 8.6.3 Responsibility and accountability.

opinion and the international community to support for Indonesia.

An apology is a powerful gesture. In its dealings on the Timor-Leste issue, Australia subverted international law and demeaned itself at the expense of many victims. It is better to acknowledge this through an apology rather than ignoring it or absolving Australia of any responsibility by remaining silent. An apology will demonstrate and strengthen Australia's commitment to the rule of law, human rights and the principles and systems of the UN that have been established to advance peace and human rights. It will earn the respect of victims and strengthen and deepen Australia's relationship with Timor-Leste. As the first to make a gesture of this kind, Australia will also send a positive signal to the post-Soeharto generation in Indonesia and to others, not least States and corporations that gave military support to the Indonesian military and benefited from that trade.

Some may feel that an apology is superfluous in view of the positive contribution Australia made to Timor-Leste in 1999 and since independence through its aid, peace-keeping and other in-puts. Welcome as these contributions have been, they do not amount to an admission of responsibility, an acknowledgement that immense suffering occurred in Timor-Leste and that the Australian people, through its government, sincerely regret what was done in their name and, to some extent, despite their opposition.

Others may argue that it is too late for an apology. History and human experience shows that it is never too late to apologise and that even a late apology does wonders for relationships. The Catholic Church did not apologise until 2000 for persecution of the Jews by Catholics over the centuries. Australia's official apology to the Stolen Generations was not made until 2008, roughly 100 years after the practice of removing Aboriginal children from their parents began. The Netherlands apology for the massacre of over 400 Javanese in 1947 was offered in 2011, six decades after the atrocity. The Indonesian human rights NGO Kontras commented at the time: 'The Dutch have taught our government that the State should be responsible for any human rights violations it has committed in the past'. El Salvador's apology for the assassination of Archbishop Oscar Romero in 1980 was made in 2010, on the thirtieth anniversary of the event.

3.2 Justice

That, in keeping with calls for justice made by the Australian Government following the Indonesian occupation⁸, Australia acknowledges that justice for crimes in Timor-Leste remains unfinished business and that Australia remains committed to ending impunity, to advancing the rule of law and human rights, particularly those of victims, by seeing that perpetrators of human rights violations in Timor-Leste and elsewhere are prosecuted.

With this mind, Australia is urged (a) to encourage and support the Timor-Leste Prosecutor General to prosecute outstanding cases referred to it by the UN Serious Crimes Investigation Team (SCIT) and the CAVR; and (b) as a current member of the UN Security Council, Australia is also urged to support the continuation or restoration of the SCIT or a similar mechanism so that investigations of crimes committed in 1999 can be completed and crimes committed before 1999 can also be investigated.⁹

Only a small number of serious crimes from Timor-Leste have been prosecuted and these relate only to offences from 1999 committed by East Timorese who stayed in or returned to Timor-Leste after the vote for independence. Many Timorese accused of crimes in 1999 remain beyond the law in Indonesia. No Indonesian officers have been found guilty. No pre-1999 crimes have been prosecuted.

⁸ Examples can be found in Australia's support for the UN International Commission of Inquiry on East Timor (2000); Foreign Minister Alexander Downer's statement on the eve of East Timor's independence (15 May 2002); Australian Government response to East Timor, Final Report of the Senate Foreign Affairs, Defence and Trade Committee (December 2000) which stated: 'The Australian Government is committed to providing assistance to ensure perpetrators of human rights abuses committed in East Timor in 1999 are brought to justice'.

⁹ *Chega!* Section 11, 7.1.6; 11, 7.1.1-4

Though recommended by UN initiated inquiries, no international tribunal has been established.¹⁰

CAVR stated that Timor-Leste could not be expected ‘to bear the brunt of pursuing the daunting task of justice on its own... justice will hinge critically on the commitment of the international community, in particular the United Nations’.¹¹ Accordingly CAVR recommended that the UN backed Serious Crimes process be extended and resourced to try cases from throughout the period 1975-1999. This recommendation has not been taken up. However, it was agreed that a UN Serious Crimes Investigation Team (SCIT) be appointed to undertake further investigation of cases from 1999. Because it had no power to prosecute SCIT has referred cases to the Timor-Leste Prosecutor General. SCIT had not finalised its investigations before UNMIT terminated its mission at the end of 2012.

CAVR also recommended that the list of alleged perpetrators (referred to by code in the *Chega!* report) submitted to the President of Timor-Leste by the Commission be referred to the Office of the General Prosecutor for further investigation and action.

3.3 Capacity building of the justice sector and civil society in Timor-Leste and Indonesia

That Australia continue its support for the capacity building of the justice and human rights sectors in Indonesia and Timor-Leste, in both official institutions and civil society.

Institution strengthening and training in these sectors will make a long-term but substantial contribution to building capacity and political will in both Indonesia and Timor-Leste to respond to historic crimes that are not subject to statutes of limitation and have violated international standards now embraced by both societies.¹²

The best prospects for some form of justice from the Indonesian side rest with the post-Suharto and future generations of Indonesians. As they come to learn the truth of what happened in Timor-Leste¹³ and to appreciate its connection to analogous excesses and victimisation by the Suharto regime in Indonesia proper, it is to be expected they will demand redress in much the same way that Indonesians now actively object to corruption. Pro-active educational initiatives from NGOs, academics and publishers will contribute to this change of attitude.

3.4 Tighten administration of visa entry

That Australia reviews its entry visa policy to ensure that answers to questions on human rights in its tourist/business application forms can be verified and appropriate action taken. with a view to ending impunity by halting visits to Australia by those indicted or accused of crimes against humanity and war crimes in Timor-Leste; also that Australia publicises this provision.

CAVR recommends that administrative measures such as restrictions on travel and banking be used by states like Australia to demonstrate that they are serious about ending impunity. Applicants for

¹⁰ For reasons of national interest, Timor-Leste leaders oppose an international tribunal and holding individual Indonesian military to account. Many Timor-Leste NGOs, including the National Victims Association, and organizations like Amnesty International do not share this view

¹¹ *Chega!* Section 11, 7 (Justice and truth)

¹² In Timor-Leste, for example, AusAid has contributed to the Justice Facility and the Judicial System Monitoring Programme. The Australia Indonesia Partnership for Justice Program (AIPJ) has operated for 10 years and works with key Indonesian justice institutions and civil society.

¹³ Yusuf Wanandi, formerly a key adviser to Soeharto and an Australian informant, now acknowledges that the military’s East Timor campaign was a disaster. In *Shades of Grey: a Political Memoir of Modern Indonesia 1965-1998* (2012), Wanandi writes: ‘Instead of giving the people of East Timor rights and a decent life when we “liberated” them from “Portuguese colonialism”, we made them our colonial subjects for over 20 years and imposed on them so much misery and abuse’. (p. 218)

Australian tourist (Form 1419) and business (Form 1415) visas are required to answer the following questions: 'Have you, or has any member of your family unit included in this application, ever committed, or been involved in the commission of, war crimes or crimes against humanity or human rights?' and '... served in a military force or state sponsored/private militia...' Whether Australia maintains a 'black list' of indicted perpetrators from Indonesia and Timor-Leste is not known and what happens if an applicant answers yes or falsifies an answer is also not known. Giving advance notice of this provision by making it more public and that it applies globally and encouraging other governments, including Timor-Leste, to institute similarly constructive measures, will also contribute to ending impunity.¹⁴

3.5 Review aid program

That Australia reviews whether its aid program to Timor-Leste is addressing the needs of the most vulnerable victims identified in the CAVR report, particularly survivors of torture and sexual violence and also communities that suffered the most serious forms of collective violence during the Indonesian occupation. Following are some specific proposals for the allocation of victim-friendly aid.

3.6 Contribute to future reparations program

That Australia offers to make a voluntary contribution to the program of reparations for the most vulnerable victims in Timor-Leste when it is established.

In response to the CAVR recommendation on reparations, the Timor-Leste Parliament has drafted legislation that proposes that a targeted reparations program be established for the benefit of the most vulnerable victims who suffered human rights violations 1975-1999.

The right of victims to reparations for the harm they have suffered is based on international law and the Timor-Leste Constitution.

The proposed program would be funded principally by the Timor-Leste government¹⁵ and administered by the Institute of Memory in collaboration with the government. Remedial measures would comprise material and symbolic initiatives in the form of a national program of commemoration, an individual program of reparations (e.g. for victims of torture, permanent disability, sexual violence, spouses and children of those disappeared or killed), and a collective reparations program (such as livelihood and infrastructure projects for affected communities). Besides assisting those in need, the reparations program would also serve to recall significant events during the conflict, reconciliation and civic education on human rights.

Parliamentary consideration of the draft law commenced in 2009 but had not concluded before the

¹⁴ Names of accused or suspected perpetrators, both East Timorese and Indonesians, are readily available in numerous credible reports. The CAVR report lists those indicted by the Serious Crimes Panels for crimes in 1999 and also contains in code form references to many East Timorese accused of violations prior to 1999. Notable Indonesian cases include Prabowo Subianto, the former head of Kopassus and son-in-law of President Suharto, who is likely to contest the Indonesian presidency in 2014. Prabowo is banned from the USA because of credible claims he was responsible for rape and torture in Indonesia in 1998. He served in Timor-Leste on a least 4 occasions during Indonesia's illegal military occupation and established militia groups responsible for extreme violence particularly in 1999. The former head of the Indonesian military in 1999, retired General Wiranto, is also likely to be a presidential candidate in 2014. He is on a US visa watch list and was indicted by the UN-sponsored Serious Crimes Panels for crimes against humanity in Timor-Leste in 1999.

¹⁵ As victims of human rights violations are entitled to reparations in international law, provision was made to establish a Trust Fund for Victims in the regulation which authorised the Serious Crimes process in Timor-Leste. This has not been activated but it is understood to have been incorporated into Timorese law. This Fund could also receive voluntary grants from foreign sources.

2012 elections. Issues to be resolved included the eligibility of pro-autonomy victims, the priority entitlements of veterans, and concerns about reparations in the form of cash hand-outs and the overall cost of the program. The President of the new Parliament has urged MPs to address the issue early in its term. If this is not possible in the short-term, it is hoped that the Parliament will legislate on the Institute of Memory so that some of its work for victims can commence without further delay.

3.7 Assist proposed Institute of Memory

That Australia offer to assist the establishment of the proposed Institute of Memory financially and offer to support the provision of Australian and international expertise in the fields of memorialisation, archival development, and research.

In response to the proposal for a CAVR follow-up body, the Timor-Leste Parliament has proposed that an Institute of Memory be established. To avoid duplication, the Institute will also implement recommendations held in common with the Commission for Truth and Friendship. Further debate on the proposed Institute is pending in the Timor-Leste Parliament.

The Institute will engage in five areas of work:

- Documentation (including further statement-taking from victims, archival security and development, research, and publications);
- Education (resourcing curriculum development and educators in areas such as history, civic education, human rights, legal studies, international relations).
- Memorialisation (policy advice, liaison with interest groups, tourism bodies, information on best practice, and advocacy to ensure that the period, places, and people from 1974-1999 are remembered positively, creatively and educationally and that memorialisation contributes to reconciliation and a culture of human rights and non-violence);
- The missing (policy advice, data collection, referral, and coordination undertaken for humanitarian purposes to assist families to locate, identify and, where possible, re-bury loved ones);
- Reparations (targeted to the most vulnerable and delivered through services, symbolic actions and community projects, not cash hand-outs).

It should be noted that the above Terms of Reference do not include justice. The issue of formal justice for historic crimes is a matter for existing judicial mechanisms, not the institution in question.

It is envisaged the Institute will be an independent statutory authority, funded by the government, governed by a board and staffed by a Timorese director and personnel. International and/or national advisers with relevant technical expertise will provide specialist assistance as required. The Institute will also have active relationships with relevant Government ministries and agencies (e.g. Timor-Leste Red Cross, forensic agencies) and with like-minded bodies in the region including Indonesia and Australia and in other countries such as Germany, Ireland, the US and Latin America.

3.8 Assist archival development

That Australia, consistent with its support in the UN for the Right to the Truth Concerning Gross Human Rights Violations and for the Dignity of Victims, makes public the documents identified in the CHART (Clearing House for Archival Records on Timor) submission to this inquiry and considers ways of facilitating bi-lateral institutional archival links with Timor-Leste.

3.9 Assist proposed Forensic Institute

That Australia, consistent with the Right to the Truth referred to above, offers to assist the work of the forensic institute in Timor-Leste proposed by the Victorian Institute of Forensic Medicine to help identify the remains of the missing from the Timor conflict, develop local expertise and facilitate relationships between professionals from both countries.

3.10 Promote English version of *Chega!*

That the Parliament of Australia, consistent with the Right to the Truth referred to above, hosts a launch of the English book version of the CAVR report entitled *Chega!* when it is published in the coming months and tables this edited final form of the report in the Parliament.¹⁶

ENDS

Pat Walsh has been involved with Timor-Leste and its people for over 30 years. He accompanied Australia's delegation led by Tim Fischer MP to observe the 1999 ballot. He worked in Timor-Leste for 10 years assisting the CAVR truth commission and the Post-CAVR Secretariat. He co-founded *Inside Indonesia* magazine and is the author of *At the Scene of the Crime: Essays, Reflections and Poetry on East Timor 1999-2010* (Mosaic Press). He has received several awards for his work for human rights in the region, including an Ordem de Timor-Leste (2009) and AM (2012). Website <www.patwalsh.net>

¹⁶ An advance, unedited CD version of the CAVR report was tabled in the Australian Senate on 29 November 2006 by Australian Democrat Senator Natasha Stott-Despoja.