



Submission No 7+

Inquiry into Australia's Relationship with Timor-Leste

Name: HAK Association

Joint Standing Committee on Foreign Affairs, Defence and Trade
Foreign Affairs Sub-Committee



*Emá hotu iha direitu no direitu ba emá hotu
(everybody has rights and rights are for all)*

**Joint Standing Committee on Foreign Affairs, Defence and Trade
Inquiry into Australia's relationship with Timor-Leste**

Submission from the HAK Association

The HAK Association very much appreciates that the Government of Australia has given us this opportunity to make a submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade. HAK considers this a very good opportunity for us to submit some suggestions related to the actual situation which many Timorese face, particularly with regards to the condition of victims of past human rights violations, inflicted during both the Japanese and Indonesian military occupations. The content of this submission reflects HAK's experiences gained through the direct assistance we provide to victims and our ongoing advocacy for cases of these human rights violations, the impact of which has left deep scars on the many widows and orphans. We have waited a long time for an opportunity such as this one, in order that we may ask the Australian Government to fulfil its obligations, in part as a member of the international community but also as a friend of Timor-Leste.

In this regard, we see this issue as particularly relevant to three aspects of the Inquiry's terms of reference, namely:

1. Bilateral relations at the parliamentary and government levels;
2. Aid, including support with governance issues; and
3. Those aspects of regional security that affect Timor-Leste.

However, more than this, the reality of life for victims of past human rights violations is directly relevant to each one of AusAID's key strategic goals for Timor-Leste¹:

- ⇒ Saving lives;
- ⇒ Promotion of opportunity for all;
- ⇒ Sustainable economic development; and
- ⇒ Effective governance.

Who are we and what do we do?

The HAK Association² was established in 1996, during the Indonesian military occupation. At that time HAK was unique, being the only organisation which existed to defend the rights

¹ AusAid Website, Timor-Leste Country Page – www.ausaid.gov.au/countries/eastasia/timor-leste/Pages/default.aspx

of political prisoners that had been captured and detained by the Indonesian military. For the 17 years since, HAK has worked to defend all people who find their human rights violated in many different contexts.

Since independence, HAK has continued to exist as a non-government organisation which works in the area of human rights and justice for serious crimes arising from the Indonesian occupation. We lead the local ANTI network (the National Alliance for an International Tribunal) and have played a key role in the establishment of Victims' Associations in all 13 districts, which provide socioeconomic assistance to vulnerable victims and provide a forum for the victims to be heard. Aside from this, HAK has also conducted advocacy around issues arising from the Japanese military occupation during World War II (1942-45), particularly the issue of sexual slavery; the practise whereby Japanese Troops used Timorese women as "comfort women" (Jugun Ianfu).

On both these issues, our advocacy has focused on trying to ensure the State recognises and looks after victims who remain very vulnerable and we continue to demand formal accountability for the perpetrators who committed these grave violations of human rights. Specifically we have three key objectives for our past crimes program:

1. Improve the lives of victims through greater recognition of their situation and increased access to both social and economic means of support;
2. Ensure the establishment of a mechanism to discover the whereabouts of victims of enforced disappearances and the creation of a Timor-Leste in which enforced disappearances only exist as a problem of the past
3. Ensure the perpetrators of gross human rights violations are brought to justice and account for their crimes against the people of Timor-Leste

In addition to our focus on past crimes, HAK has two other programs. The first focuses on strengthening the institutions of the State to ensure they follow the principle of the rule of law and they respect human rights values. Through this program, HAK carries out regular monitoring of the human rights situation in Timor-Leste, particularly with respect to the roles of the Police and the Military, as well as to the police cells and prisons to ensure detainees and prisoners are treated in accordance with the law and have access to their lawyers and families. Our other program area focuses on the issue of economic, social and cultural rights, particularly rights to land as well as overcoming and preventing land conflict, something which is becoming a very serious problem within communities here in Timor-Leste.

We certainly consider these other issues to be very important and highly relevant to Australia's relationship with Timor-Leste, and the shared objectives of these two countries. However, we wish to use this opportunity to focus on the issues of past crimes; fundamentally because this is an issue, which people often neglect but which we must not

² HAK stands for "Hukum, Hak Asasi manusia dan Keadilan" which translates from Indonesian into English as Association for Law, Human Rights and Justice. We are better known in Timor-Leste as Yayasan HAK or Asosiasaun HAK.

overlook because this leads to impunity for those who commit these violations and perpetuates the suffering of the victims.

Background to the issue

We certainly know that it is nothing new for the Australian Government to be informed of the extreme and brutal human rights violations inflicted on the People of Timor-Leste by three colonial regimes; namely Portugal, followed by Japan, and, lastly, Indonesia. The impact, however, from colonisation until today, has left many Timorese people in extremely vulnerable situations. Worse still, the Government of Timor-Leste and our leaders have begun to ignore the continual cries from these victims' that their rights to truth and justice be fulfilled.

As many of you will know, because of these violations and the cries of the people, during the independence phase, post-1999, our leaders established the Commission for Reception, Truth and Reconciliation in Timor-Leste (commonly referred to as CAVR, its Portuguese acronym) in order to create reconciliation between Timorese so they may forgive each other for the more minor cases which happened during the conflict. CAVR was established during the mandate of UNTAET (UN Transitional Administration for East Timor) in 2001 and the Commission finished its work in 2005. After CAVR terminated its mandate, the Commission of Truth and Friendship (CTF) was created. CTF carried out its mandate for three years, from 2005 to 2008. Both these Commissions gave consideration to war crimes and crimes against humanity that took place before and after the referendum of 1999.

In its findings, CAVR found that, at minimum, 102,800 people died during the Indonesia occupation as a result of unlawful deliberate killings, starvation and enforced disappearances. However, some estimations are much higher than the total mentioned in this report. In addition, more than 250,000 people were forcibly deported to Indonesian territory, mainly West Timor, including more than 4,000 children that were removed by the military and whose families still have no information about their whereabouts. Moreover, to this day, the whereabouts of approximately 800 people enforceably disappeared remain unknown.

The present-day condition of the victims and their families

"Because of the war I was used like a horse by the Indonesian soldiers who took me in turns and made me bear so many children. But now I no longer have the strength to push my children towards a better future." – from CAVR Interview with OL, Lifau (Laleia, Manatuto), 19 March 2003³

It's true that, during the Indonesian military occupation, many people became victims of human rights violations and, as CAVR found, many now live in extreme poverty, with disabilities, and some are even marginalised, isolated and discriminated against by their own

³ *Chega! The Report of the Commission for Reception, Truth and Reconciliation Timor Leste*, Executive Summary, Page 200.

communities. All Timorese people were victims but their predisposition and therefore their condition now are not the same. We must recognise this reality and reach out to these especially vulnerable victims.

More specifically, HAK notes that many families who have lost members now live in especially vulnerable conditions, in every way - economically, socially, psychologically and spiritually. Not only have they lost their family, but they also have lost their hope for life. In many cases this is because the younger generation that was supposed to sustain the family now and in the future is gone without even a shadow of their whereabouts. Many times and consistently, the families of victims give their hope to the State authorities but the leaders do not prioritise or value their demands. For more than ten years, the families of victims cry and demand that the perpetrators be brought to justice but they have yet to find a solution that satisfies the internal pain and suffering of the victims and their families. Instead, this situation creates further feelings of frustration. It is especially important to note, that the majority of the women who suffered sexual violations, today suffer from psychological tension, with depression. This is because they suffer social stigmatisation as a "feto aat" (dirty woman), therefore they are discriminated against by society and this environment infects their families. HAK has witnessed that some victims are abhorred within their families or are excluded from their families because of this dirty stigma from society. As such, there are some families which refuse to recognise their daughters and their daughter's children as members of the family. After ten years, these women simply cannot continue to live their lives like this, many have given up their hope for life and their lives are at risk.

How to address this situation

The international community, which turned its back on the atrocities that were occurring and left Timor-Leste to fend for itself, must bear some of the responsibility for what happened. To link this to the recommendations of CAVR, HAK notes the following observation from the full report:

*"therefore the Commission believes that the definitive approach to achieve justice for the crimes committed in Timor-Leste should hinge critically on the commitment of the international community, in particular the United Nations. They should provide unqualified support for strong institutions of justice, able to act independently of the political situation within and outside Timor-Leste."*⁴

In other words, if there is no commitment from the international community, particularly the United Nations, it will be very difficult to end the impunity for the main perpetrators. However, HAK also recognises that the issue of justice for past crimes requires support not only from the United Nations, but also from those nations with influence in the region and with capacity to help the justice process in any manner. In this way, finally no longer will

⁴ *Chega! The Report of the Commission for Reception, Truth and Reconciliation Timor Leste*, Section 11: Recommendations, pg 24.

perpetrators enjoy their liberty. HAK sees that any form of justice for the victims, must be based on international law in order to guarantee a just process.

HAK also believes that justice for past crimes is fundamental to the ongoing development and sustainability of a democracy which respects the values of human rights. Only in this way will the State of Timor-Leste be able to guarantee that it *promotes opportunity for all* and in doing so create *sustainable economic development*, an environment for *effective governance*, and permanent peace and harmony for the Timorese people. Likewise, Australia must consider the issue of past crimes, the situation of victims and the ongoing impunity if it wishes to achieve its development objectives for Timor-Leste.

Reparations and restoration of human dignity

Both CAVR and CTF found that a system of reparations was required to ensure the restoration of human dignity to the victims and to enable them to participate meaningfully in our new democracy. CAVR set out a detailed explanation for how this system might work, which HAK supports. While the CTF found that, despite no specific mention of reparations in their terms of reference, reparations were both consistent with their mandate to make recommendations to the Governments of Indonesia and Timor-Leste that were aimed at healing the wounds of the past and restoring human dignity, as well as necessary to promote truth and reconciliation between our countries.⁵

Recognising this, in 2009, the National Parliament of Timor-Leste approved a resolution to implement the final report of CAVR, known as *Chega!*, and its recommendations. At the same time, civil society, including HAK, together with the UNMIT (United Nations Integrated Mission in Timor-Leste) developed and submitted two draft laws to the National Parliament. The first, to create a Memorial Institution to ensure the recommendations of CAVR are followed up and implemented. The second, to establish a National Reparations Program that would include symbolic and material measures, outlined in Article 2, to:

- a) *Recognise, honour and remember those who lost their lives and those who would otherwise have suffered, in the context of the conflicts that occurred in Timor-Leste between 25 April 1974 and 25 October 1999;*
- b) *Rehabilitate and empower vulnerable victims and communities severely affected by the conflict;*
- c) *Recall significant events related to the conflict;*
- d) *Promote civic education on human rights.*⁶

After their submission to the National Parliament, the Plenary of the National Parliament voted generally to accept these laws. However, from 2010 until now, both these draft laws have remained in the desks of parliamentarians awaiting the article-by-article debate so that it might be passed by Parliament and presented to the President for final approval.

⁵ *Final Report of The Commission on Truth and Friendship (CTF), Indonesia – Timor-Leste*, pg 12.

⁶ Draft Law No. 19/11: National Reparations Framework, available in English at <http://www.laohamutuk.org/Justice/Reparations/ReparMay2010En.pdf>

We need to move this process forward. CAVR found that the Government of Indonesia bears the greatest responsibility for what happened and to repair the damage. However, the Government of Timor-Leste has both a legal and moral responsibility to act now to ensure the victims' situation is addressed. HAK believes that our Government, as a member of the United Nations, also has an obligation to fulfil the rights of our people, including the victims' right to truth under the Geneva Conventions⁷ and our peoples' economic and social rights as found under many international conventions to which Timor-Leste is a signatory.

More relevantly, CAVR found that the international community must also assist to provide reparations, specifically that:

"Member states of the international community who supported the illegal occupation of Timor-Leste and thus indirectly allowed violations to take place, are obliged to provide reparations to victims based on the principle of international responsibility recognised in the international customary law of torts."⁸

HAK believes that it is not fair or just for the victims of this occupation, as human beings and as people who are themselves part of the international community, that they must wait only for our Government to act. Not only because our Government is young and therefore relatively weak and inexperienced but also because it is the moral responsibility of everybody to do what they can to assist, and the legal responsibility, under Common Article 1 of the Geneva Conventions, of all those in the international community who turned their backs on us or who directly recognised and supported the illegal occupation by Indonesia.⁹ How are we to distinguish our situation today from the past, if the international community continues to close its eyes to the suffering and ongoing impunity.

We appeal for Australia to assist in this process.

Establishment of a bilateral Commission on Disappeared Persons

In 2008, when the CTF handed down its report, one of the key recommendations to both Governments was that they work together to establish a bilateral commission to gather data and provide information about disappeared persons and the approximately 4500 children separated from their families during the occupation.¹⁰ This followed the recommendation of

⁷ Article 32, Additional Protocol I to the Geneva Conventions (1977).

⁸⁸ *Chega! The Report of the Commission for Reception, Truth and Reconciliation Timor Leste*, Executive Summary, Page 208.

⁹ Common Article 1, The Geneva Conventions: "*The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.*"

¹⁰ *Final Report of The Commission on Truth and Friendship (CTF), Indonesia – Timor-Leste*, pg 12. pg. xx

CAVR that assistance be provided to parents, especially those in poor and remote areas, to trace, communicate and meet with their children who were separated.¹¹

Both countries have made a political commitment to follow up this issue. As part of this, they have established a regular yearly meeting called the Senior Official Meeting (SOM), where senior officials discuss two key issues: 1) the disputed borders between Timor-Leste and West Timor, and 2) to decide on the right mechanism to establish a Commission on Separated Children.

Establishment of this bilateral commission on disappeared persons is fundamental to the fulfilment of the families' right to know the whereabouts of their relatives, as well as being vital for the families to be able to move forward with their lives; as our culture believes that a person's spirit cannot move on until they have been properly laid to rest. It is also the obligation of both Timor-Leste and Indonesia to do everything they can to search for, identify and recover the missing and the dead.¹² But so far we have seen little more than half-hearted action, with no serious political will and no concrete implementation from either Government. HAK believes that without collaboration and drive from the international community it will be difficult to bring the truth to the families of the disappeared.

HAK also calls for the establishment of a centre with autonomy from government interference, where the people feel free to deliver information and can also access information about their relatives. Such a centre must be responsive to the needs of the people and not dictated by the political will of government. It must also be sufficiently linked into the bilateral process so as to ensure it is actually effective and efficient in carrying out its work of identifying missing family members and children.

What can Australia do? HAK's recommendations to the Government of Australia

Past history demonstrates the Australian Government has shown its commitment to help the Timorese people, in both 1999 and 2006-7, as the leader of the International Stabilisation Force (ISF), whose mandate was to create stability during periods of conflict. The facts show that the Government of Australia was very successful in this and we believe the Australian people are also proud of their effort which brought peace, in terms of security, to the Timorese people. For this contribution and support, the people of Timor-Leste are extremely grateful to the Australian Government because we are now living in peace. We hope that this peaceful environment can continue to exist but this will only happen with ongoing effort to ensure sustainable peace that includes the victims.

To ensure this continues, we believe Australia has an important role to play, as a country with great influence in the South-East Asian region and as a member of the United Nations

¹¹ *Chega! The Report of the Commission for Reception, Truth and Reconciliation Timor Leste*, Section 11: Recommendations, pg 34.x

¹² Article 33, Additional Protocol I to the Geneva Conventions (1977) available at: <http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=B9AC1957F13CFC98C12563CD0051DA78>

Security Council. The reality is that Australia has real power in South-East Asia because of its strong relationships, firms ties to the world's big powers (particularly the US and Europe) and its strong economy. Therefore, Australia has the potential to use its influence to encourage other countries to pay attention and accelerate the process of finding truth, justice and accountability. As a member of the UN Security Council, Australia has credibility for the role it played in securing peace and stability in our country but we ask Australia to continue leading by example by encouraging the world to uphold the principles of international humanitarian law that address vital post-conflict requirements, namely reparations and accountability. Without this, conflicts such as the one we have suffered are bound to continue.

Therefore HAK appeals to the Australian Government to, through its strong bilateral relations with both Timor-Leste and the Government of Indonesia, as well as through its aid and regional security programs, help ensure the people of Timor-Leste, especially the victims of human rights violations, get justice for their suffering and are able to restore their human dignity by pursuing the following:

1. Through the Australian Embassy in Timor-Leste, Australian Government Ministries and their staff when they visit Timor-Leste, as well as Members of the Australian Federal Parliament through their links to Members of our National Parliament, we ask Australia to push and encourage our National Parliament to pass the two draft laws on reparations and the Memorial Institution as soon as possible. We ask Australia to exercise its influence on this issue through both formal bureaucratic channels as well as through legal channels, such as the Security Council. The victims cannot wait much longer.
2. Through these same relationships, we appeal to Australia to support both countries, Timor-Leste and Indonesia, to accelerate the process of establishing a bilateral commission on disappeared persons, and encourage the creation of a centre of information where families of missing persons can easily deliver and access information related to the whereabouts of their relatives.
3. Through Australia's aid and support programs, we call on the Australian Government to give particular consideration to the situation of victims of past crimes, and especially give consideration to female victims who are, today, still extremely vulnerable.

HAK especially appeals to the Australian Government to pay special attention to the programs that provide rehabilitation support to the victims who experienced sexual violations and who are today still vulnerable in their communities, as an affirmative action to dignify their experience and their humanity. HAK's request is based on the general principles of international law that every country has an obligation to give reparations to the victims who suffered gross violations of their human rights, with the objective to reduce their suffering and give them justice to relieve them from that

same suffering. The reparations must be based on what the necessity of the victim and reparations must be proportional with severity of the crime and seek to address the norms restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, as laid out in UN General Assembly Resolution 60/147.¹³

4. Lastly, HAK appeals to the Australian Government that you refuse a visa and/or free passage to Australia for any of those accused of perpetrating of crimes against humanity and war crimes in Timor-Leste during the Indonesian military occupation, especially those indicted by the Special Panels Unit¹⁴ and those named in the CAVR report.

We say thank you, once again, to the Australian Parliament for this opportunity. We hope that, in receiving this submission, HAK has been able to share with the Commission the experiences of the victims, so that you might understand what a rare and incredible opportunity this is for the victims, but that with this comes a precious hope. We trust that the Australian Government will take it upon itself to act on this.

Dili, Timor-Leste
Monday, 10 June 2013



Sisto dos Santos
Program Manager - Advocacy
Asosiasaun HAK



Manuel Monteiro Fernandes
Acting Executive Director
Asosiasaun HAK

¹³ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005

¹⁴ The Special Panels Unit was a hybrid court, established by the United Nations in Dili, Timor-Leste in 2003.