

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

Regarding

Human Rights Mechanisms and the Asia-Pacific

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This submission deals with the redress of gross human rights violations committed against the people of East Timor during their occupation by the Indonesian military. The occupation resulted in one of the largest death tolls relative to total population since the Holocaust. Any serious discussion of human rights in the Asia-Pacific must give considerable emphasis to this tragedy and to the importance of bringing the perpetrators to justice.

Background

In 1975, Indonesia illegally invaded East Timor, which had been declared a non-self-governing territory within the meaning of Chapter XI of the United Nations Charter¹. The seizure of the village of Batugade on 7th October 1975 triggered an international armed conflict to which the 1949 Geneva Conventions applied. This seizure was met with military resistance by the East Timorese people. On 7th December 1975, Indonesia mounted a full-scale invasion of East Timor. Subsequent conventional military operations continued to be met by organized military resistance. The occupation lasted for 24 years.

Crimes Against Humanity

In July 2001, the UN Transitional Authority in East Timor established the Commission for Reception, Truth and Reconciliation as an independent statutory authority. It was mandated to inquire into human rights abuses committed by all sides between April 1974 and October 1999². It was also mandated to facilitate reconciliation and justice for less serious offenses.

The Commission, known by its Portuguese initials, CAVR (A Comissão de Acolhimento, Verdade e Reconciliação), prepared a report known as *Chega!* ('Enough!'). This report is

¹ According to Article 73 of the UN Charter, this implies 'a sacred trust' to uphold 'the well-being of the inhabitants of these territories'.

² UNTAET Regulation 2001/10.

an authoritative analysis of what happened to the people of East Timor under the occupation.

The CAVR benefited from scientifically-defensible estimates of the number of East Timorese killed during the occupation. It received the assistance of Benetech, a California-based nonprofit organization devoted to using technology in the service of humanity. Benetech's Human Rights Data Analysis Group (HRDAG) built on a database of three independent sources: narrative statements, a retrospective mortality survey and a census of public graveyards³. The first source consisted of approximately 8,000 narrative testimonies in which patterns of abuses such as arbitrary detentions, torture, rape and massive property destruction were reported to the CAVR. In turn, the CAVR developed a Human Rights Violations Database, thus enabling it to perform the functions of community socialization and the promotion of truth-seeking, reconciliation and reception. The second source was a survey of 1,396 households that were randomly selected from East Timor's approximately 180,000 households. Each sampled household gave information about their residence pattern and household members and relatives who died during the occupation. While these mortality surveys are standard procedure in governmental statistics, no truth commission had previously conducted one. The third source was the graveyard census database, developed by visiting all public cemeteries in East Timor and recording the name, date of birth and date of death for every grave for which the information was available. The researchers established that there were approximately 319,000 graves in the sample, of which about half had complete name and date information. Once again, although this is standard procedure in the field of historical demography, no truth commission had previously conducted one.

The CAVR concluded that the 'minimum-bound for the number of conflict-related deaths was 102,800 (+/- 12,000)'. It 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.

Sarah Staveteig, a demographer at the University of California – Berkeley, applied standard demographic methods of indirect estimation and found that 'a reasonable upper bound on excess deaths during the period [was] 204,000 (\pm 51,000)'. Staveteig considered it 'likely that 204,000 is a conservative upper-bound estimate on excess mortality'⁴.

Chega! found widespread evidence of the following 'crimes against humanity': sexual violence, torture, enslavement, deportation or forcible transfer, arbitrary imprisonment, murder and extermination.

³ Report by the Benetech Human Rights Data Analysis Group to the CAVR, *The Profile of Human Rights Violations in Timor-Leste, 1974-1999*, R. Silva and P. Ball, 9 February 2006.

⁴ Sarah Staveteig, 'How Many Persons in East Timor Went 'Missing' During the Indonesian Occupation?: Results from Indirect Estimates', Interim Report IR-07-003, International Institute for Applied Systems Analysis (IIASA), Laxenburg, Austria.

Sexual violence

The CAVR received hundreds of direct testimonies that showed that rape, sexual torture and other acts of sexual violence were widespread and systematic. The CAVR found that the Indonesian authorities' 'institutional practices and formal or informal policy' encouraged such behaviour⁵.

Frequently reported examples⁶ of sexual violence occurring inside official Indonesian military installations include:

- mutilation of women's sexual organs, including insertion of batteries into vaginas and burning nipples and genitals with cigarettes
- use of electric shocks applied to the genitals, breasts and mouths
- gang rape by members of the security forces
- forcing of detainees to engage in sexual acts with each other, while watched and ridiculed by members of the security forces
- rape of detainees following periods of prolonged sexual torture
- rape of women who had their hands and feet handcuffed and who were blindfolded.
- forceful plucking of pubic hairs in the presence of male soldiers
- rape of pregnant women
- forcing of victims to be nude, or to be sexually violated in front of strangers, friends and family members.
- women raped in the presence of fellow prisoners as a means of terrorising both the victims and the other prisoners
- placing women in tanks of water for prolonged periods, including submerging their heads, before being raped
- the use of a snake to instill terror during sexual torture
- threats issued to women that their children would be killed or tortured if the women resisted or complained about being raped
- repeated rape by a multitude of (unknown) members of the security forces
- forced oral sex
- urinating into the mouth of victims
- rape and sexual violence indiscriminately inflicted upon married women, unmarried women, and young teenagers still children by law.
- keeping lists of local women who could be routinely forced to come to the military post or headquarters so that soldiers could rape them. Lists were traded between military units.

Torture

The CAVR concluded that the Indonesian military committed widespread and systematic torture against the people of East Timor.

⁵ Chega! Executive Summary p 118.

⁶ Chega! Executive Summary p 118-9.

The following acts of torture were common⁷:

- Beating with fists or with implements such as a wooden club or a branch, an iron bar, a rifle butt, chains, a hammer, a belt, electric cables
- Kicking, usually while wearing military or police boots, including around the head and face
- Punching and slapping
- Whipping
- Cutting with a knife
- Cutting with a razor blade
- Placing the victim's toes under the leg of a chair or table and then having one or more people sit on it
- Burning the victims flesh, including the victim's genitalia with cigarettes or a gas lighter
- Applying electric shocks to different parts of the victim's body, including the victim's genitalia
- Firmly tying someone's hands and feet or tying the victim and hanging him or her from a tree or roof
- Using water in various ways, including holding a person's head under water; keeping a victim in a water tank for a prolonged period, sometimes up to three days; soaking and softening a victim's skin in water before beating the victim; placing the victim in a drum filled with water and rolling it; pouring very hot or very cold water over the victim; pouring very dirty water or sewage over the victim
- Sexual harassment, sexual forms of torture and ill-treatment or rape.
- Cutting off a victim's ear to mark the victim
- Tying the victim behind a car and forcing him or her to run behind it or be dragged across the ground
- Placing lizards with sharp teeth and claws (*lafaek rai maran*) in the water tank with the victim and then goading it to bite the softened skin on different parts of the victim's body including the victim's genitalia
- Pulling out of fingernails and toenails with pliers
- Running over a victim with a motor-bike
- Forcing a victim to drink a soldier's urine or eat non-food items such as live small lizards or a pair of socks
- Leaving the victim in the hot sun for extended periods
- Humiliating detainees in front of their communities, for example by making them stand or walk through the town naked
- Threatening the victim or the victim's family with death or harming a member of the victim's family in front of them

⁷ Chega! Executive Summary p 104-5.

Enslavement

The CAVR concluded that Indonesian security forces committed numerous acts of enslavement, including against children.

Thousands of East Timorese were used as forced labour, including several thousand children. Children used as forced labour received no salary for their services. In some cases, soldiers treated these children as if they had rights of ownership over them, passing them on to other soldiers after their tour of duty ended. This treatment was a grave breach of Geneva Convention IV, Article 147 (willfully causing great suffering or serious injury to body or health). It was also a grave breach of Article 51 of Geneva Convention IV, which requires that an Occupying Power is obliged to pay a fair wage and ensure that the work is 'proportionate to their physical and intellectual capacities'.

The CAVR concluded that the enslavement of children by individual soldiers was known about at the highest levels of the Indonesian military structure⁸.

Deportation or forcible transfer

The CAVR concluded that Indonesian security forces subjected the population to repeated periods of displacement, often in massive numbers, between 1975 and 1999.

This crime was so widely perpetrated that 55.5% of surveyed households reported one or more displacement events⁹. Most individual East Timorese alive today have experienced at least one period of displacement. Many have experienced several periods. The Indonesian military forced tens of thousands of people into resettlement camps in the 1970s and early 1980s. There, they were subject to a range of other crimes against humanity, including unlawful imprisonment, torture, murder, sexual violence and enslavement. People were displaced in a widespread and systematic manner, with food being used as a weapon of war. International humanitarian agencies were barred from entering East Timor until there were famines of 'catastrophic proportions'¹⁰.

Imprisonment (Arbitrary Arrest and Detention)

The CAVR concluded that Indonesian security forces were found to have 'committed, encouraged and condoned widespread and systematic arbitrary arrest and detention'¹¹. Tens of thousands of East Timorese were detained arbitrarily over the course of the occupation. The Indonesian authorities arrested people in every district, although the

⁸ Chega! Executive Summary p 127.

⁹ Chega! Executive Summary p 44.

¹⁰ Chega! Executive Summary p 74.

¹¹ Chega! Executive Summary p 96.

highest numbers of detentions occurred in the capital of Dili, which had the largest state prisons and the main interrogation centres¹².

Murder and enforced disappearance

The CAVR concluded that ‘Indonesian military commanders ordered, supported and condoned systematic and widespread unlawful killings and enforced disappearances of thousands of civilians’¹³.

The CAVR pointed to the ‘vast number of these crimes, their coordinated nature across the territory of East Timor, the efforts of domestic and international non-government and domestic effort to inform the military and civilian authorities in Jakarta that these atrocities were happening, [and] the systematic failure of the Indonesian military and civilian leadership to prevent and stop these acts which they must have known about’. It must be emphasized that this is an ongoing crime against humanity because – without providing information to the relatives of the disappeared – the Indonesian authorities continue to conceal the disappeared persons.

Redressing Crimes Against Humanity

I submit that the Joint Standing Committee on Foreign Affairs, Defence and Trade should do all within its power to give effect to Recommendation 7.2 of Chega!, which reads as follows:

The Commission recommends that: The United Nations and its relevant organs, in particular the Security Council, remains seized of the matter of justice for crimes against humanity in Timor-Leste for as long as necessary, and be prepared to institute an International Tribunal pursuant to Chapter VII of the UN Charter should other measures be deemed to have failed to deliver a sufficient measure of justice and Indonesia persists in the obstruction of justice.

I further submit that the Committee should recommend the implementation of the Commission’s recommendations which are relevant to Australia:

(Recommendation 1.1). This Report is given the widest possible distribution at all levels in the international community through the media, internet and other networks and particularly within the United Nations and those individual nations and institutions that are highlighted in the Report, viz. Australia, China, Britain, France, Indonesia, Japan, Portugal, Russia, US, the Catholic Church, as well as the East Timorese diaspora and international civil society organisations.

¹² Chega! Executive Summary p 97.

¹³ Chega! Executive Summary p 71.

(Recommendation 1.6). The states that had military cooperation programmes with the Indonesian Government during the Commission's mandate period, whether or not this assistance was used directly in Timor-Leste, apologise to the people of Timor-Leste for failing to adequately uphold internationally agreed fundamental rights and freedoms in Timor-Leste during the Indonesian occupation.

(Recommendation 1.8) Business corporations which profited from the sale of weapons to Indonesia during the occupation of Timor-Leste and particularly those whose material was used in Timor-Leste contribute to the reparations programme for victims of human rights violations.

(Recommendation 1.9) All UN member states refuse a visa to any Indonesian military officer who is named in this Report for either violations or command responsibility for troops accused of violations and take other measures such as freezing bank accounts until that individual's innocence has been independently and credibly established.

(Recommendation 1.10) States regulate military sales and cooperation with Indonesia more effectively and make such support totally conditional on progress towards full democratisation, the subordination of the military to the rule of law and civilian government, and strict adherence with international human rights, including respect for the right of self-determination.

(Recommendation 1.11). The governments of Australia, Britain and New Zealand undertake a joint initiative to establish the truth about the deaths of the six foreign journalists in Timor-Leste in 1975 so that the facts and accountability are finally established.

(Recommendation 1.13). The documents and any other material relating to the events of 1999 and militia activity that were allegedly removed to Australia for safe-keeping after the arrival of Interfet in 1999 be returned to Timor-Leste by the Government of Australia.

(Recommendation 1.15) Support, both practical and financial, be given ... to assist key East Timorese figures and others to document their histories and experiences in order to build up the limited stock of East Timorese-generated literature for future generations.

I am able to appear before the Committee to discuss the above submission and related matters.