



**AUSTRALIAN COUNCIL FOR
INTERNATIONAL DEVELOPMENT**

SUBMISSION TO THE JSCT ON

**THE AGREEMENT BETWEEN AUSTRALIA AND
INDONESIA ON SECURITY COOPERATION**

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Summary

Without clarification of the meaning of three important and ambiguous terms in the Lombok Treaty, it is very likely that differing interpretations of those terms by Indonesia and Australia will lead, over time, to the removal of effective, poverty–focussed assistance to West Papuan communities by professional Australian nonprofit agencies. ACFID urges the Committee to recommend, as a minimum, that the terms “support”, “participate” and “threat” be defined.

Introduction

ACFID appreciates the opportunity provided by the Joint Standing Committee on Treaties to offer comment on this important Treaty with Australia’s largest neighbour. This submission relates solely to a concern about unintended and detrimental implications of the Treaty on the West Papuan communities with which Australian nonprofit development agencies have been constructively involved for many years.

ACFID represents 72 nonprofit agencies. All are required to meet the strict audit standards of ACFID’s Code of Conduct. Failure to meet the standards leads automatically to loss of signatory status. One of those standards is that Code signatories are proscribed from engaging in any evangelical or political activities in their aid and development work. Currently 36 Code signatory agencies are active across Indonesia and some of these receive partial funding from the Federal government through AusAID.

Under AusAID guidelines, any Australian nonprofit agency in receipt of AusAID funding must adhere to a rigorous approval process to be allowed to undertake activities in West Papua. These unique guidelines reflect the Australian government’s aim to address the Indonesian government’s sensitivities about West Papua. The guidelines require an initial approval from AusAID for a proposed development activity to be explored, and then formal approval from local Indonesian authorities before the proposal can be considered for possible AusAID funding.

Assessment

Ideally, we would not see significant differences of opinion between Indonesia and Australia based on differing interpretations of the Lombok Treaty. However, we do not live in an ideal world and the

drafting of the Treaty clearly opens the door for such disagreement over the meaning of at least three key and undefined terms. These are the terms “support”, “participate” and “threat” in Principle 3 of Article 2.

In a benign political context, such a lack of clarity would be relatively unimportant. However, the situation in the province of West Papua is not benign or neutral. This is clear from a series of international reports, including those of Human Rights Watch and the International Crisis Group¹. Together with credible academic and media reports, these assessments leave little doubt that the terms “support”, “participate” and “threat” in the Lombok Treaty are likely to be interpreted quite differently in some cases to the evident intentions of the Australian government at the time of negotiating the Treaty.

A direct consequence of the expected differing interpretations of these three key terms is that local authorities will be disinclined to approve proposed nonprofit agency activity, even where there has been a strong track record in such fields as health, nutrition or water. Without such approval, AusAID’s part funding could not proceed.

Taking account of the historical evidence regarding the access of foreigners to West Papua, the Treaty is also likely to have the unintended effect of facilitating the gradual expulsion of respected Australian nonprofit agencies from West Papua against the wishes of their counterpart communities. This would inevitably curtail a range of basic poverty relief and education programs by those Australian nonprofit agencies that have established community relationships in West Papua. It is reasonable to predict that local officials would, as a result of the Treaty, be more inclined to claim that non-political activities were a “threat to stability”.

One aspect of the educational work of many ACFID member agencies in 130 countries involves a simple introduction for communities to the notion of basic human rights. The obligations by signatories to the ACFID Code of Conduct audit process mean that such activity does not develop into any form of political interference in domestic affairs. However, the lack of clarity in the Lombok Treaty over the three definitions mentioned above and the special political context make it likely that, unlike in every other country, Australian agencies would terminate such basic educational activity in West Papua.

¹ Human Rights Watch Report: Protest and Punishment. Volume 19, No 4 C; February 2007 and International Crisis Group report: Papua – the dangers of shutting down dialogue; Asia briefing No 47, 23 March 2006.

A further consequence is likely to be that Australian development agencies would no longer act as active promoters of improved governance practices in nonprofit agencies including the churches or in promoting improved dialogue between Indonesia government agencies and these agencies. Given the strength of bipartisan support in Australia for Indonesia's transition to democracy, such unintended consequences would represent a retrograde step in the eyes of most Australians, as much as they would for many West Papuans.

Hypothetically, a West Papuan community that is being supported by an Australian agency may contain individuals who support separatist or terrorist activities. This can, of course, occur in any international development relationship. Regrettably, the terms of the Treaty enable Indonesian officials to claim that the provision of any assistance to such a community is actually the provision of "support" to a separatist/terrorist individual or group.

In relation to the Treaty's use of the term "threat", it is conceivable that it could be applied to mean, "in any way affected". In the unique political circumstances of West Papua, it is not hard to see how this term would come to be interpreted as "the *potential* to carry out an action". At the least, there is a potential slippery slope and risk of significant consequences.

While ACFID accepts that different Treaty parties will have some different interpretations of terms used in a Treaty, the potential for major differences on the terms "support" and a "threat" cannot be under-estimated. It is also possible that these differences could damage Australia's proud international reputation as an advocate of human rights norms and democratic principles.

Ideally, the application of the Treaty in coming years will not damage Australia's reputation or lead on a de facto basis to the removal of poverty-focussed assistance by Australian nonprofit agencies. However, the combination of significant ambiguity and lack of definition of key terms and the unique political context suggests that the Australian government's good intentions in the matter are likely to be undermined in the face of intense bilateral exigencies.

In such cases, the Joint Standing Committee has a vital role to play. In addition to considering the concerns raised above, it would be prudent to assume that the Treaty will be operating from time to time in a more adverse situation for the bilateral relationship than is the case in 2007. The Lombok Treaty needs to survive successive changes of governments on both sides.

ACFID urges the Committee to look beyond the inevitable short-term pressures upon government to manage its relationship with an incumbent Indonesian President. Australia's relationship with Indonesia is too important over the medium term for the Lombok Treaty to be constrained by such immediate pressures. This crucial bilateral relationship is likely to be made more volatile without clarification of the key Treaty terms. Making such improvements to the Treaty is also likely to avoid tainting Australia's international human rights reputation in the years to come.

ACFID would be happy to meet with the Committee should you so wish. We wish you well in these important deliberations.