

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

## Regarding

### Human Rights Mechanisms and the Asia-Pacific

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It is gratifying to see the Committee inquiring into “international and regional mechanisms currently in place to prevent and redress human rights violations” even though there is no overwhelming governmental pressure in the region for such an initiative. As I stated to the Committee on 7<sup>th</sup> April 2009, “Governments come last. It is up to civil society groups and parliamentarians to put pressure on governments or to advocate and lobby in order for governments to do the right thing.”

It is in this spirit that I list briefly the legal consensus regarding an international tribunal for East Timor.

#### ***Indonesia’s National Commission on Human Rights***

As Indonesian forces were leaving East Timor, Indonesia’s National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia*, or Komnas HAM) established a special team known as the National Commission of Inquiry on Human Rights Violations in East Timor (*Komisi Penyelidik Pelanggaran HAM di Timor Timur*, or KPP-HAM). KPP-HAM was required to submit its findings to Komnas HAM, which would provide them to Indonesia’s Attorney-General for further investigation.

The KPP-HAM team was composed of leading Indonesian figures such as Marzuki Darusman, Albert Hasibuan, Asmara Nababan, Kusparmono Irsan, HS Dillon, Munir, Todung Mulya Lubis, Nursyahbani Katjasungkana and Zoemrotin K Susilo.

It paid special attention to gross violations of human rights such as genocide, massacre, torture, enforced displacement, crimes against women and children and scorched earth policies. It was empowered to investigate whether and to what extent the apparatus of State and/or other bodies, national and international, were involved in these crimes. It examined only the last nine months from January 1999 until the departure of Indonesian forces in September that year, not the 24 year occupation.

KPP-HAM commenced its investigation on 23 September 1999. It completed its report on 31 January 2000. It found “evidence of crimes that could be classified as crimes of universal jurisdiction including systematic and mass murder; extensive destruction, enslavement, forced deportations and displacement and other inhumane acts committed against the civilian population.” The report urged the parliament and the government to “form a Human Rights Court with the authority to try the perpetrators of human rights violations and crimes against humanity” that occurred “in the past as well as those that have occurred in East Timor to the present.” It urged the “Government and the Attorney General” to ensure that crimes against humanity were investigated and punished “whoever is the perpetrator”, in a free and independent manner “without any interference whatsoever.”<sup>1</sup>

A subsequent study by an international Commission of Experts appointed by the UN Secretary General found that the KPP-HAM report was a “genuine and impartial effort to inquire into serious human rights violations, reflecting the firm commitment of its members to establish the facts.” The Commission said that its inquiry procedures “conformed to international standards relating to *pro justitia* inquiries.”<sup>2</sup>

### ***The International Commission on Inquiry into East Timor***

On 27 September 1999, the UN Commission on Human Rights condemned the “widespread, systematic and gross violations of human rights and international humanitarian law in East Timor” and called upon the UN Secretary-General to establish an international commission of inquiry into the events of 1999. Accordingly, on 15 October 1999 the High Commissioner for Human Rights appointed an International Commission of Inquiry on East Timor. The Commission was mandated to “gather and compile systematically information on possible violations of human rights and acts which might constitute breaches of international humanitarian law committed in East Timor” since 1999.<sup>3</sup>

This Commission reported that its members “were confronted with testimonies surpassing their imagination.” It concluded that there had been “gross violations of human rights and breaches of humanitarian law”, and that the Indonesian army and related militias had been involved in the violations. It recommended that the UN “should establish an international human rights tribunal” to bring perpetrators of serious violations to justice.<sup>4</sup>

### ***Thematic Special Rapporteurs from the United Nations***

From 4-10 November 1999, three United Nations thematic Special Rapporteurs visited East Timor. They were Asma Jahangir, special rapporteur on extrajudicial, summary or

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<sup>1</sup> Report of the Indonesian Commission of Investigation into Human Rights Violations, <http://www.jsmp.minihub.org/Resources/2000/KPP%20Ham%20%28e%29.htm>

<sup>2</sup> UN Doc. S/2005/458, May 26, 2005.

<sup>3</sup> Commission on Human Rights Resolution 1999/S-4/1 of 27 September 1999.

<sup>4</sup> Para 34, Report of the International Commission of Inquiry on East Timor, 6 January 2000.

arbitrary executions; Nigel Rodley, special rapporteur on torture; and Radhika Coomaraswamy, special rapporteur on violence against women. Their visit was an unprecedented move, undertaken because of increasing reports of widespread violence and serious human rights violations in East Timor.

The Special Rapporteurs recommended that the Security Council should consider the establishment of an international criminal tribunal in order to bring the perpetrators to justice. They called for prosecutions of those responsible “both directly and by virtue of command responsibility, however high the level of responsibility.”<sup>5</sup> They stated that an international criminal tribunal should be done preferably with the consent of the Indonesian government, but such consent should not be a prerequisite. Such a tribunal, they recommended, should have jurisdiction over all crimes under international law committed by any party in the Territory since the departure of the Portuguese in 1975.

### ***The Commission of Experts***

In January 2005 UN Secretary-General Kofi Annan appointed a three-person Commission of Experts to investigate the issue of trials of those accused of atrocities in East Timor.

The Commission of Experts’ 160-page report recommended that the UN Security Council should establish an international criminal tribunal if the Indonesian government did not take serious steps within six months.<sup>6</sup>

### ***The Commission on Truth and Friendship***

In March 2005, the Indonesian authorities attempted to evade an international tribunal, forming a Commission on Truth and Friendship (CTF) with the government of East Timor.

Human rights organizations and other civil society groups in Indonesia, as well as those in East Timor, objected to this Commission. Its proceedings quickly descended into farce, with senior Indonesian leaders and officials claiming that the atrocities were everyone else's fault but their own. On one occasion, the behaviour of Indonesian co-chairman Benjamin Mangkoedilaga resulted in all East Timorese commission members remaining silent in protest.

The United Nations boycotted the CTF’s proceedings altogether, saying it did not condone amnesties regarding war crimes, crimes against humanity and genocide. UN Secretary General Ban Ki-Moon stated that the UN “cannot endorse or condone amnesties for genocide, crimes against humanity, war crimes or gross violations of

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<sup>5</sup> Situation of Human Rights in East Timor, 10<sup>th</sup> December 1999,

[http://www.jsmp.minihub.org/Resources/1999/special%20rapp%20report\(e\).pdf](http://www.jsmp.minihub.org/Resources/1999/special%20rapp%20report(e).pdf)

<sup>6</sup> Report to the UN Secretary-General, 26 May 2005, <http://www.etan.org/etanpdf/pdf3/N0542617.pdf>

human rights, nor should it do anything that might foster them. Unless the terms of reference are revised to comply with international standards, officials of the United Nations will, therefore, not testify at its proceedings or take any other steps that would support the work of the CTF and thereby further the possible grant of amnesties in respect of such acts.”<sup>7</sup>

In Dili, several East Timorese participants in the commission informed me that in the absence of international allies supporting a war crimes tribunal they felt obliged to go along with the charade.

The international criticism received by the Commission led it to reject any amnesties. It found that the Indonesian military, the Indonesian civilian government and anti-independence militias bore institutional responsibility for thousands of “gross human rights violations in the form of crimes against humanity” including “murder, rape, and other forms of sexual violence, torture, illegal detention and forcible transfer and deportation” against the East Timorese civilian population.

### ***The Joint NGO Statement of June 2008***

The justice agenda has received help from an unexpected quarter. Every major Indonesian human rights group has come out in support of justice for East Timor.<sup>8</sup> These campaigners consider the military officers who presided over carnage in East Timor are a continuing threat to their own country's democratic transition. After all, these officers have gone on to commit atrocities elsewhere in Indonesia.

### ***The US position (April 2008)***

The U.S. Ambassador in Dili, Mr Hans Klemm, stated the formal US position in April 2008 in an interview with the Lusa news agency.

“There has to be justice,” he said. “There has to be some sort of responsibility for the acts which occurred in 1999, and before.”<sup>9</sup> While agreeing that this would take time and proceed along with Indonesia’s own democratic transition, it represents a clear and unambiguous statement in favour of justice for East Timor.

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<sup>7</sup> A. Khalik, *UN boycotts Timor truth body*, Jakarta Post, 28 July 2007. See also Press Release by UN Secretary-General SG/SM/11101, 26 July 2007.

<sup>8</sup> See the Joint NGO Statement on the Handover of the Report, June 2008, [http://www.ictj.org/static/Asia/Indonesia/080715\\_Joint%20NGO%20on%20CTF%20Report.pdf](http://www.ictj.org/static/Asia/Indonesia/080715_Joint%20NGO%20on%20CTF%20Report.pdf)

<sup>9</sup> P. Mendes, *Timor-Leste: Justiça para vítimas de 1999 "vai levar talvez uma geração"* - Embaixador EUA, LUSA, 9 April 2008.