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Wednesday, 21 February 2007

Joint Standing Committee on Treaties  
Department of House of Representatives  
PO Box 6021  
Parliament House  
Canberra ACT 2600

by email: [jsct@aph.gov.au](mailto:jsct@aph.gov.au)

Dear Committee Chair,

**Re: Lombok Treaty**

Please find attached the submission of the New South Wales Council for Civil Liberties ('NSWCCL') to the Committee's inquiry into the Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation ('Lombok Treaty').

NSWCCL thanks the Committee for this opportunity to make a written submission and hopes that this submission will prove useful to the Committee.

NSWCCL would be happy elaborate further on any of the points made in this submission.

NSWCCL hereby grants the Committee permission to reproduce this submission either in part or in full.

It is the intention of NSWCCL to publish this submission on our website within three days of the date of this letter, unless you raise a reasonable objection within that time.

Yours sincerely,

Michael Walton  
Committee Member  
NSW Council for Civil Liberties

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# Submission of the

NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES

to the

**Joint Standing Committee on Treaties'**

**Inquiry into the**

**'Lombok Treaty'**

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All references to 'the Treaty' or 'the Lombok Treaty' refer to the *Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation* (signed at Mataram, Lombok, on 13 November 2006) [\[2006\] ATNIF 25](#) (not yet in force).

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21 February 2007

## 1. executive summary

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1. The New South Wales Council for Civil Liberties ('NSWCCL') notes that the Lombok Treaty is a comprehensive treaty of cooperation between Australia and Indonesia, covering cooperation between defence, law enforcement, national security and counter-terrorism agencies.
2. The key three mechanisms Australia uses to cooperate with other countries in criminal and other matters are: mutual legal assistance, extradition and agency-to-agency assistance. The Committee has considerable experience with mutual legal assistance and extradition treaties. **The Lombok Treaty, however, is unique. It is the first comprehensive treaty dealing with agency-to-agency cooperation.** It is important that JSCOT scrutinize this Treaty very carefully, because it is likely to serve as a model for future bilateral regional cooperation treaties. Any flaws in the Treaty might be replicated in future treaties.
3. The most disturbing flaw in the Lombok Treaty is that it contains no recognition of individual rights or express human rights safeguards. Mutual legal assistance and extradition treaties have human rights safeguards. Without these safeguards, there is no mechanism in the Lombok Treaty to ensure that Australia does not participate, or become complicit, in Indonesian human rights abuses.
4. It is inadequate to argue that the use of such phrases in the Treaty as 'international obligations' provides for the recognition and protection of human rights. Such phrases are open to interpretation according to the policy of the Executive of the day. An express provision is required.
5. Since the era of *Reformasi*, Indonesia has made great strides towards recognising and protecting human rights. However, as the US State Department has noted, human rights abuses still occur – including torture. The Committee should be mindful of Indonesia's questionable human rights record.
6. The Committee should also be mindful of recent police-to-police cooperation between the Australian Federal Police and Indonesian National Police that have led to questionable human rights outcomes and allegations of Australian complicity in human rights abuses. NSWCCL points particularly to the Bali Nine case, in which several Australians have been sentenced to death, and the 'disruption' of people smuggling in Indonesia, which is alleged to have included the sabotage of boats and other activities risking human life.
7. NSWCCL is disappointed that the Treaty misses a valuable opportunity to provide a treaty-based guarantee that no one will be tortured as a result of cooperation under the Treaty. Such a provision does no more than expressly acknowledge that both Indonesia and Australia have ratified the Convention against Torture.

8. NSWCCCL is concerned that there is no guarantee that no one will be executed as a result of cooperation under the Treaty.
9. NSWCCCL is also concerned about the Treaty's implications for Australian and Indonesian advocates of independence movements within Indonesia – especially in West Papua. The Treaty has implications for freedom of expression, opinion and assembly in Australia.
10. **NSWCCL strongly recommends that, in order to allay the fears of the Australian and Indonesian public about the Treaty, the Committee recommend that the Lombok Treaty be amended to recognise and guarantee the human rights of everyone living in Australia and Indonesia.**
11. **NSWCCL strongly recommends the incorporation of three types of human rights safeguards into the Treaty:**
  - (i) a general guarantee that cooperation will not violate human rights, unless an express waiver is sought and obtained;
  - (ii) an absolute guarantee that no one will be tortured as a result of cooperation; and,
  - (iii) an absolute guarantee that no one will be executed as a result of cooperation.
12. These guarantees need to be inserted *at treaty level*. They should not be left to instruments with less than treaty status, such as memoranda of understanding. Such instruments are not legally binding or put through a rigorous scrutiny process. Increasingly, the text of such instruments is not publicly available. It is important that the public be reassured by an express mechanism *at treaty level* that the civil and political rights of all individuals living in Australia and Indonesia will be respected under the Lombok Treaty.
13. **NSWCCL also recommends that the Parties recognise the jurisdiction of the International Court of Justice to resolve intractable disputes under the Treaty.** Being able to refer a dispute to an independent arbiter could help to defuse any future disputes and contribute significantly to stemming any deterioration in bilateral relations.

## 2. Indonesia's human rights record

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14. Both Australia and Indonesia have ratified the *International Covenant on Civil and Political Rights* (ICCPR) and the *Convention Against Torture* (CAT).<sup>1</sup> Indonesia has a constitutional Bill of Rights.<sup>2</sup> Both nations are democracies.
15. Disappointingly, as is the case with all National Interest Assessments ('NIA'), the NIA relating to the Lombok Treaty fails to assess Indonesia's human rights record.<sup>3</sup> Specifically, there is no assessment of the use of capital punishment, the conduct of criminal trials, the use of torture, and the compliance (or otherwise) with international human rights standards.
16. While Indonesia's human rights record has improved dramatically since democratisation and *Reformasi*, there are still significant human rights abuses in the country.
17. The US State Department has observed that human rights abuses, including torture, continue even today. In its most recent assessment of Indonesia's human rights record, the US State Department notes that:<sup>4</sup>

Indonesia improved its human rights performance during the year, but significant problems remained and serious violations continued. Many of these violations were committed by security forces in areas of separatist conflict. Soldiers and police officers committed violations, including extrajudicial killings and torture, notably in Aceh before the peace agreement and in Papua. A weak and corrupt judicial system frequently failed to hold violators accountable. The military and the police took greater steps to punish human rights abusers within their ranks but, as with the civilian justice system, the punishment in many cases did not match the offense. Press freedom came under strain with orchestrated assaults on journalists and one disappearance. The Government often failed to uphold adequately the fundamental rights of children, women, peaceful protestors, persons with disabilities, religious minorities, and indigenous groups.

18. Of course, Indonesia retains the death penalty, which Australia has abolished. The Committee will be familiar with the problems this has caused in relation to police-to-police cooperation and the 'Bali Nine'.

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<sup>1</sup> Office of the UN High Commissioner for Human Rights, 'Ratifications and Reservations', <<http://www.ohchr.org/english/countries/ratification/index.htm>>. Entry into force: Australia, 13 November 1980; Indonesia, 23 May 2006.

<sup>2</sup> Fourth Amendment to the Indonesian *Constitution*, incorporating Chapter XA, <[http://www.indonesia-ottawa.org/indonesia/constitution/fourth\\_amendment\\_const.pdf](http://www.indonesia-ottawa.org/indonesia/constitution/fourth_amendment_const.pdf)>.

<sup>3</sup> [2006] ATNIA 43.

<sup>4</sup> US Bureau of Democracy, Human Rights and Labor, *Supporting Human Rights and Democracy: The U.S. Record 2005–2006* (April 2006), 83, <<http://www.state.gov/g/drl/rls/shrd/2005/63945.htm>>.

19. In 2004, a thorough investigation conducted by academics from Yale Law School concluded that 'the pattern of acts and omissions documented by this paper supports the conclusion that the Indonesian government has acted with the necessary intent to find that it has perpetrated genocide against the people of West Papua'.<sup>5</sup>
20. While Indonesia is to be congratulated for, and encouraged in, its improved human rights record, it nevertheless continues to violate rights. Australia must be very careful and very clear in any comprehensive treaty of cooperation with Indonesia about Australia's view of these abuses of individual rights. Australia must ensure that it will not participate, or become complicit, in such abuses.

### **3. express recognition of individual rights**

21. The Lombok Treaty is drafted as an agreement between two sovereign states. The Treaty does not recognise the rights of individuals. This is probably the root-cause of a lot of public concern about the Treaty.
22. At the very least there should be recital that acknowledges human rights, along the following lines:

Having ratified the International Covenant on Civil and Political Rights and the Convention Against Torture, both Parties *affirm* their commitment to recognise and protect the human rights of everyone living in Australia and Indonesia.
23. Given that both Indonesia and Australia have ratified the ICCPR and CAT, an express recognition of the civil and political rights of everyone living in Australia and Indonesia cannot offend either nation.
24. Such an express statement will go a long way to allaying the fears of the public about the Lombok Treaty.

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<sup>5</sup> Allard K. Lowenstein International Human Rights Clinic at Yale Law School, *Indonesian Human Rights Abuses in West Papua: Application of the Law of Genocide to the History of Indonesian Control* (2004), 5, <<http://www.law.yale.edu/documents/pdf/westpauahrights.pdf>>.

## 4. treaty-based guarantees protecting rights

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25. The key three mechanisms Australia uses to cooperate with other countries in criminal and other matters are: mutual legal assistance, extradition and agency-to-agency assistance.<sup>6</sup> JSCOT has considerable experience with mutual legal assistance and extradition treaties. **The Lombok Treaty, however, is unique.<sup>7</sup> It is the first comprehensive treaty dealing with agency-to-agency cooperation.** It is important that JSCOT scrutinize this Treaty very carefully, because it will serve as a model for future bilateral regional cooperation treaties.
26. One of the most obvious flaws in the Lombok Treaty is that it provides no explicit human rights safeguards. Mutual legal assistance treaties have human rights safeguards. Extradition treaties have human rights safeguards. It is imperative, and only logical, that agency-to-agency cooperation treaties also have human rights safeguards if Australia is serious about its international obligations.
27. Unlike extradition or mutual legal assistance treaties, there is no mechanism in the Lombok Treaty to ensure that Australia does not participate, or become complicit, in Indonesian human rights abuses.
28. To remedy this deficiency, NSWCCCL recommends the incorporation of three types of guarantees into the Treaty:
- (i) a general guarantee that cooperation will not violate human rights, unless an express waiver is sought and obtained;
  - (ii) an absolute guarantee that no one will be tortured as a result of cooperation; and,
  - (iii) an absolute guarantee that no one will be executed as a result of cooperation.
29. These guarantees need to be inserted *at treaty level*. They should not be left to instruments with less than treaty status, such as memoranda of understanding. Such instruments are not legally binding or put through a rigorous scrutiny process.<sup>8</sup> Increasingly, the text of such instruments is not publicly available. For example, NSWCCCL has tried on several occasions to obtain copies of police-to-police memoranda of understanding – without success.<sup>9</sup> It is important that the public be reassured by an express mechanism *at treaty level* that the civil and political rights of all individuals living in Australia and Indonesia will be respected under the Lombok Treaty.

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<sup>6</sup> Attorney-General's Department, *A better mutual assistance system* (2006), 18.

<sup>7</sup> the NIA notes that "there are no treaties of the same type with other countries": NIA, n 3.

<sup>8</sup> DFAT, 'Review of the Treaty-Making Process' (1999), *Australia International Treaty Making Information Kit* (2002) [7.15] <<http://www.austlii.edu.au/au/other/dfat/infokit.html>>.

<sup>9</sup> we are told that the text is confidential as between the parties.

#### **4.1 a general guarantee protecting rights**

30. CCL strongly believes that all cooperation provided to foreign agencies should be made conditional on a guarantee that such cooperation will not result in the violation of anyone's human rights. This is simply an expression of Australia's sovereign right to ensure that its resources are not used to abuse human rights.
31. Such a guarantee is usually provided on a case-by-case basis. This causes several operational problems in agency-to-agency cooperation. For example, it can take months for a country to provide a guarantee that no one will be executed. It is often not operationally practical for police to wait for months, particularly in cases of an imminent act of extreme violence (such as a terrorist attack). A treaty-based guarantee is an ideal way to solve these problems.
32. CCL recommends that a comprehensive treaty on cooperation should reverse the onus on the provision of guarantees. If Indonesia wishes to violate someone's human rights with Australian cooperation, then they should have to Australia for a waiver of this treaty-based guarantee or accept that Australia can decline to cooperate. All such applications should be to the Attorney-General and a declassified summary of the application tabled in Parliament as soon as practicable. This is justifiable because any abrogation of individual rights should be fully accountable and transparent.

**NSWCCL recommends that the Lombok Treaty be amended to include a guarantee that any information or assistance provided to either Party will not be used to violate anyone's human rights, unless an express waiver is obtained from the other Party.**

#### **4.2 an absolute guarantee prohibiting torture**

33. Both Indonesia and Australia have ratified the *Convention against Torture*, which prohibits torture in either country. There are no grounds, therefore, for either country to object to a treaty-based guarantee that no one will be tortured as a result of cooperation under the Treaty.

**NSWCCL recommends that the Lombok Treaty be amended to include a guarantee that any information or assistance provided to either Party will not be used to torture anyone.**

34. This recommendation differs from the general guarantee that no one's human rights will be violated. This guarantee is absolute. It is absolute because Article 2(2) of the Convention against Torture states that 'No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification for torture'. There is no room for ministerial intervention or the exercise of any executive discretion.
35. With respect to terrorism investigations, the question of whether torture can be justified in such investigations was recently addressed by a



Canadian Commission of Inquiry.<sup>10</sup> Commissioner O'Connor criticised existing procedures of the Royal Canadian Mounted Police (RCMP). It is worth quoting at some length from his Honour's analysis and recommendations:<sup>11</sup>

#### **Recommendation 14**

**...Information should never be provided to a foreign country where there is a credible risk that it will cause or contribute to the use of torture.**

...The need to investigate terrorism and the need to comply with international conventions relating to terrorism do not in themselves justify the violation of human rights. ...international conventions [relating to terrorism]...do not authorize departures from human rights standards protected under various other international instruments Canada has agreed to abide by, such as the [ICCPR] and the United Nations Convention against Torture...

...the prohibition against torture in the Convention against Torture is absolute. Canada should not inflict torture, nor should it be complicit in the infliction of torture by others.

...There should be no blanket exception for terrorism-related investigations.

### **4.3 an absolute guarantee prohibiting executions**

36. Indonesia retains the death penalty for a wide range of offences, including drug-related and terrorism offences. The ICCPR does not prohibit capital punishment, but it strongly suggests that abolition is desirable.<sup>12</sup>

Indonesia, unlike Australia, has not ratified the Second Optional Protocol to the ICCPR abolishing the death penalty.

37. However, NSWCCCL notes that both the mutual legal assistance and extradition treaties with Indonesia expressly acknowledge that Australia can refuse to cooperate when the death penalty might apply.<sup>13</sup> This sets a precedent in our treaty negotiations with Indonesia for a recognition of Australia's abolitionist principles. Australia should insist that the Lombok Treaty contain a similar provision.

**NSWCCCL recommends that the Lombok Treaty be amended to include a guarantee that any information or assistance provided to either Party will not be used to execute anyone.**

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<sup>10</sup> Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (2006).

<sup>11</sup> Arar Commission, *Analysis and Recommendations*, n 10, 345-7.

<sup>12</sup> see 3<sup>rd</sup> recital to the Second Optional Protocol to the ICCPR.

<sup>13</sup> *Treaty between Australia and the Republic of Indonesia on Mutual Assistance in Criminal Matters* [1999] ATS 10, article 4(2)(d); *Extradition Treaty between Australia and the Republic of Indonesia* [1995] ATS 7, article 7.

38. Without such an express treaty-based guarantee, Australia is destined to repeat the mistakes that led to the imposition of death sentences on members of the Bali Nine. Protection of the fundamental human rights to life and to be free from cruel, inhuman or degrading punishment should not be left to instruments with less than treaty status, or to ministerial or police discretion.
39. A treaty-based guarantee is also more efficient than a case-by-case guarantee. On a case-by-case basis, it can take months to obtain a guarantee that someone will not be executed. It is not always operationally practical to wait for months, particularly where cooperation could prevent an imminent act of extreme violence. A treaty-based guarantee is *instantly* effective in such situations.

#### **4.4 accountability of Australian officials operating in Indonesia**

40. NSWCCCL believes that treaty-based guarantees, such as the ones mentioned above, will help to ensure that Australian officials operating overseas will not participate, or become complicit, in torture or other human rights abuses in Indonesia.
41. Over the years, the conduct of Australian officials overseas, especially AFP officers, has been a cause of great concern to Parliament, NSWCCCL and the public at large. The cases of the Bali Nine and the disruption of people smuggling in Indonesia are examples.
42. The Committee will be familiar with the case of the Bali Nine and the role the AFP played in an investigation that led to death sentences for several young Australians. Nothing in the Lombok Treaty prevents a repeat of this case.
43. The Committee will also be familiar with the disturbing allegations canvassed by the Senate Select Committee on A Certain Maritime Incident, relating to on-the-ground cooperation between AFP and Indonesian officials in the 'disruption' of people-smuggling to Australia.<sup>14</sup> Senator Faulkner questioned whether there was any accountability to ensure that the actions of the AFP did not endanger the lives of asylum seekers or break Australian laws.<sup>15</sup> The allegations involved Indonesian officials in such activities as sabotaging boats.<sup>16</sup> The AFP Commissioner denied any knowledge of this activity, though he could not rule out that it did not happen.<sup>17</sup> To date there has been no inquiry into these allegations.

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<sup>14</sup> Senate Select Committee on A Certain Maritime Incident, *Report* (2002), <[http://www.apf.gov.au/senate/committee/maritime\\_incident\\_ctte/report/index.htm](http://www.apf.gov.au/senate/committee/maritime_incident_ctte/report/index.htm)>.

<sup>15</sup> Senate Select Committee on A Certain Maritime Incident, n 14, 458-60 (additional comments of Senator Faulkner).

<sup>16</sup> David Marr & Marian Wilkinson, *Dark Victory* (2003) 42-3.

<sup>17</sup> Evidence to Senate Select Committee on A Certain Maritime Incident, Senate, Canberra, 111 July 2002, 1980-2 (AFP Commissioner Mick Keelty).

44. NSWCCCL is concerned that **there is nothing in the Lombok Treaty to prevent AFP officers from assisting Indonesian officials in any efforts to stop West Papuan refugees from fleeing persecution** – all in the name of the prevention of ‘people smuggling’.
45. These treaty-based guarantees will increase the accountability of Australian officials working in Indonesia. They will help to ensure that Australian officials will not participate in activities which, while they might be lawful in Indonesia, are not lawful in Australia or not consistent with our international obligations.

## 5. what are Australia's 'international obligations'?

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46. The Lombok Treaty provides 'opt out' conditions which a Party can invoke when cooperation conflicts with domestic law or a Party's 'international obligations'. Over the years, NSWCCCL has become increasingly concerned by the federal Attorney-General's Department's interpretation of Australia's 'international obligations'.
47. For example, NSWCCCL has been seeking through freedom of information to obtain the legal advice the Attorney-General has received on Australia's obligations with respect to capital punishment under the *International Covenant on Civil and Political Rights* and the *Second Optional Protocol* attached thereto.<sup>18</sup> To date we have been unsuccessful.
48. However it appears, from those documents we have been able to obtain,<sup>19</sup> that government lawyers from the Office of International Law ('OIL') within the AG's Department, have advised the Attorney-General that Australia's legal obligations only apply, in the words of Article 2(1) of the ICCPR, to "individuals within [Australia's] territory and subject to its jurisdiction". In other words, that as far as the death penalty goes, Australia's international human rights obligations end at our borders – that Australian officials overseas do not need to comply with those obligations.
49. This legal advice is extremely relevant in the context of cooperation under the Lombok Treaty.
50. **The legal advice should be released publicly so that members of the Committee and distinguished legal experts can examine it.** The advice, ultimately, amounts to Australia's understanding of its international human rights obligations. The release of such advice cannot in any way be said to threaten national security. Surely the Committee, and the general public, have a right to know what our government understands to be our 'international obligations'.

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<sup>18</sup> specifically: advices dated 12 November 2002 and 14 November 2002, provided to the Criminal Justice Division ('CJD') by the Office of International Law ('OIL'); and another advice from 1991 provided by the Australian Government Solicitor.

<sup>19</sup> see <<http://www.nswccl.org.au/docs/pdf/dbfoi.pdf>>.

## 6. West Papua and other internal struggles

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51. Significant public attention has been focused on Article 2(3) of the Lombok Treaty, which provides that:

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The Parties, consistent with their respective domestic laws and international obligations, shall not in any manner support or participate in activities by any person or entity which constitutes a threat to the stability, sovereignty or territorial integrity of the other Party, including by those who seek to use its territory for encouraging or committing such activities, including separatism, in the territory of the other Party;

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52. NSWCCCL is of the view that this provision could indirectly affect the rights of Australians fighting for West Papuan independence, and the rights of West Papuans living in Australia. In addition, the provision may undermine the objectivity of refugee determinations, where the refugee in question is a West Papuan.

### 6.1 Australians involved in West Papuan Affairs

53. Shortly after the signing of the Lombok Treaty, Australia's Foreign Minister, Mr Alexander Downer, appeared on ABC Radio National's AM programme. He noted that Australia would not provide logistical or financial support to 'secessionist movements':<sup>20</sup>

We haven't been aiding and abetting secessionist movements, but I think this will provide the greater confidence to people, in particular in Indonesia, who might be concerned that the Australian Government might do that.

54. Clearly, the government's position is that it does not wish to directly assist Australian residents in promoting West Papuan independence. NSWCCCL's primary concern is that this will extend unduly to the infringement of the rights, otherwise enjoyed under Australian law, of people living in Australia. For example:
- by disallowing charity status for tax purposes to community organisations that are not lobby or political groups but are related to West Papua; or
  - by disallowing community radio or television networks directed to West Papuan independence specifically or to West Papua generally.
55. These activities, while clearly within the realm of normal political activity, appear to fall foul of the Australian federal government's policy as it relates to the Lombok Treaty.
56. It is not clear whether the constitutional guarantee of freedom of political communication will protect all activities in Australia of opponents of the Indonesian occupation of West Papua. In *Lange v ABC*, the High Court confirmed that the implied constitutional freedom of political

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<sup>20</sup> ABC Radio National, 'Australia, Indonesia sign security pact', *AM* (14 November 2006), <<http://www.abc.net.au/am/content/2006/s1787869.htm>>.

communication is restricted to 'communication about government or political matters'.<sup>21</sup> Furthermore, as McHugh J points out in *Levy*, this right prohibits government interference with communication between Australians 'on political government matters relating to the Commonwealth'.<sup>22</sup> While criticism by Australian citizens of Australian foreign policy relating to Indonesia and West Papua is most likely protected by the Constitution, it is unclear whether this protection extends to such criticism by non-citizens (including people on protection visas) and criticism by *anybody* (Australian citizen or non-citizen) of Indonesian foreign or domestic policies.

57. The right to protest and to express one's opinions are fundamental tenets of democracy. NSWCCCL recognises the difficulties of international diplomacy. However, the Australian federal government should ensure that Australian residents retain the right to comment critically and publicly about the actions of other governments.

## **6.2 West Papuan asylum seekers**

58. NSWCCCL expresses concern that Article 2(3) may be interpreted in a way that affects Australian refugee determinations. Specifically, in relation to matters involving Ministerial discretion, NSWCCCL wishes to reiterate that Australia's obligations under international human rights instruments should not be affected by the pressures of short-term international diplomacy.

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<sup>21</sup> *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 567 (*per curiam*).

<sup>22</sup> *Levy v Victoria* (1997) 189 CLR 579, 623 (McHugh J).

## 7. recognising the jurisdiction of the ICJ

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59. Article 8 of the Lombok Treaty does not include an effective dispute resolution clause. Any disputes are to be resolved 'by mutual consultation or negotiation between the Parties'.
60. Given the potential for disputes to arise under the Treaty, intractable disputes should be made referable to the International Court of Justice for resolution.
61. All members of the United Nations are automatically parties to the *Statute of the International Court of Justice* ('ICJ Statute').<sup>23</sup> Both Australia and Indonesia are members of the United Nations. Furthermore, Australia has made a declaration under the ICJ Statute to the effect that it recognises the compulsory jurisdiction of the ICJ in all disputes including the interpretation of treaties.<sup>24</sup> Indonesia has not.
62. NSWCCCL recommends that a new resolution clause be drafted. Such a clause could preserve the spirit of the existing clause by preserving mutual consultation as the primary mechanism for dispute resolution, but permitting a treaty party to remove the dispute to the ICJ if an intractable problem arises.

**NSWCCCL recommends that the Lombok Treaty recognise the jurisdiction of the International Court of Justice to settle intractable disputes under the Treaty.**

63. Without such a clause, there would be no international remedy for Australians subject to Indonesian violations as a consequence of Australian cooperation. Being able to refer a dispute to an independent arbiter could help to defuse any future disputes between Australia and Indonesia under the Treaty. Without access to an independent arbiter, bilateral relations could deteriorate more than they need to, in the face of an intractable dispute.

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<sup>23</sup> [Charter of the United Nations](#) [1945] ATS 1, Article 93(1). See also: [Statute of the International Court of Justice](#) [1975] ATS 50.

<sup>24</sup> [Declaration under the Statute of the International Court of Justice concerning Australia's acceptance of the jurisdiction of the International Court of Justice](#) [2002] ATS 5 (22 March 2002).