



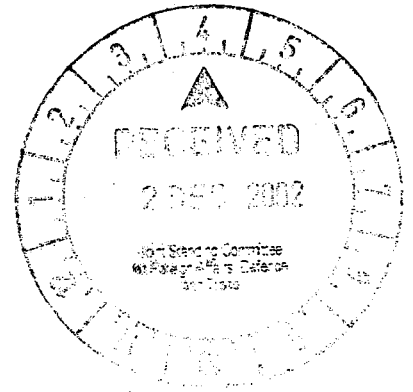
Submission No 60

Inquiry into Australia's Relations with Indonesia

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**Submission to the Joint Standing Committee on Foreign Affairs,
Defence and Trade Inquiry into Australia's relations with
Indonesia.**

Oxfam Community Aid Abroad

November 2002.

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30 November 2002

The Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade,
Parliament House
Canberra ACT 2600.

Dear Sir/Madam,

Oxfam Community Aid Abroad welcomes the opportunity to make a submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Australia's relations with Indonesia. This submission addresses the following terms of reference;

"The political, strategic, economic (including trade and investment), social and cultural aspects of the bilateral relationship, considering both the current nature of our relationship and opportunities for it to develop."

Oxfam Community Aid Abroad, is an independent, secular Australian organisation working in over 30 countries and in Indigenous Australia. Our vision is of a world in which people control their lives, their basic rights are respected and their environment is sustained. In working towards this vision, we use both our overseas projects and our advocacy programmes. Oxfam Community Aid Abroad was merged with Freedom from Hunger in 1992 and is the Australian affiliate of Oxfam International, as well as a member of the Australian Council for Overseas Aid (ACFOA).

This submission makes a total of 26 recommendations to the Australian Government on five specific issues in the context of the inquiry's terms of reference.

1. Indonesian debt.
2. Trade policy issues facing Australia and Indonesia.
3. The effect of Australia's asylum seeker policies on Indonesian fishers and perceptions of Australia within Indonesia.
4. Mining investment in Indonesia.
5. East Timor - Indonesia - Australia relations.

Yours sincerely,



James Ensor,
Director of Public Policy and Outreach.

Oxfam Community Aid Abroad submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Australia's relations with Indonesia. November 2002.

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Introduction.

The abhorrent acts of terrorism in Bali have challenged Australians most commonly held views on peace and security in our region and highlighted the importance of a sound bilateral relationship between Australia and Indonesia. But as UN Secretary General Kofi Annan said following last year's attacks in the United States, September 11 did not change the world. For the vast majority of impoverished Indonesians, the world today looks exactly the same as it did on October 11.

What has changed following the events in Bali is the political imperative for international action to address some of the underlying and chronic imbalances that continue to undermine the security of countries and peoples in our region. Some world leaders have rightly drawn connections between the recent acts of terrorism, the rise in violent extremism, and the global crisis of poverty, inequality and persistent humanitarian need.

While there clearly is not always a direct link between entrenched poverty, gross inequality and terrorism, the events of the last year have shown the world that widespread poverty and suffering can create an environment which breeds instability and violent extremism. A world with more than one billion people living with less than \$1 a day and 900 million illiterate people will never be a safe place for all. Achieving human security – focused on the achievement of the civil, political, economic cultural and social rights of people - is one critical element to achieving global security.

Nowhere is such action more important than in the so called arc of instability to Australia's immediate north. In this region many countries are undergoing a period of rapid social change. This change is characterised by increasing social and economic inequality, corruption, communal violence, ethnic tension, environmental degradation, the withdrawal of foreign direct investment and a steady decline in health and living standards.

The social and economic challenges confronting Indonesia are already enormous and now likely to be compounded by an economic downturn triggered by the Bali bombings. Prior to the 1997 economic crisis, 11% of Indonesian's lived below the poverty line. Now, just five years later, approximately 50% of the Indonesian population - 100 million people - live below the poverty line. The World Bank estimates that the real wages of Indonesian urban and rural workers have fallen by 40% and 34% respectively. The Asian Development Bank estimates that 39 million Indonesians have lost their jobs.

Indonesian debt now stands at more than \$150 billion. As a consequence, the Indonesian budget allocated 52% of State spending on debt service in 2001. Just 7% of spending was allocated to health and education services for Indonesian citizens. The human consequences of these budgetary distortions are enormous. Indonesian school enrolments have fallen by 5% in recent years, translating to more than 1.3million children without access to basic education. A deficiency in Vitamin A has re-emerged amongst Indonesian

children as has the incidence of Iron Deficiency Anemia - which affects the immune system and retards intellectual development.

There can be no sustainable long term regional security in the Asia Pacific without Australia playing a leading role in bringing about rapid and sustained action from the international community to assist Indonesia to meet the vast economic, political and social challenges now confronting that country.

Taking action to address these developmental challenges is not only a moral imperative; it is also in the security interests of the international community. Like the economic forces that drive globalisation, the anger and social tensions that accompany vast inequalities in wealth and opportunity will not respect national borders. The instability that they will generate threatens us all. In today's globalised world, our lives are more inextricably linked than ever before, and so is our prosperity.

1. Indonesian Debt.

Indonesia's heavy external debt burden is significantly hampering poverty reduction initiatives and contributing to increasing social and political instability within Indonesia. According to a November 2001 report by Indonesia's NGO peak body, INFID, Indonesia is a heavily indebted country by all accepted indicators including debt service ratios and debt to GDP ratios. In 2001 debt service on interest on foreign and domestic debt comprised approximately 35% of central government expenditure. Such onerous debt burdens prevent government expenditure on essential education, health and infrastructure spending.

Recommendation 1

That the Australian Government advocate for significant debt relief for Indonesia from multilateral creditors in order for funds to be reallocated towards essential poverty reduction strategies consistent with Indonesia achieving the 2015 international development goals.

Recommendation 2

That the Australian Government provide bilateral debt relief to Indonesia on the \$1.6 billion Indonesian debt to Australia. The Australian Government should investigate innovative mechanisms for linking bilateral debt relief to poverty reduction outcomes such as the debt for poverty reduction swap recently agreed between the German Government and Indonesia.

2. Trade policy issues facing Australia and Indonesia.

The Australian Government's position with respect to trade is that Indonesia, and indeed developing countries in general, need to liberalise their trade regimes if economic development is to be achieved. As recently as 8 November 2002 Australian Trade Minister Vaile said:

"Developed and developing countries alike stand to gain a great deal from further trade liberalisation under WTO rules and disciplines..... Market access is an important part of the Doha development agenda. Without it, real sustainable economic growth will be that much harder. This is especially the case on agriculture, on which Australia shares much in common with developing countries".

Market access includes the opening up of developing country markets to imported agricultural goods.

This position has also been clearly and forcefully put in the recent position statements of the Cairns Group of agricultural exporting countries, which is lead by Australia. The Cairns Group Negotiating Proposal on Market Access, submitted to members on 6 September 2002, calls for significant opening up of the domestic agricultural markets of developing countries through dramatic reductions in tariffs. It calls for developing countries with tariffs on agricultural goods of between 0-50 percent to cut tariffs to a maximum of 25 percent, and tariffs of between 50 percent and 250 percent to be reduced by 50 percent. This is to be done over a phase-in period of nine years.

This proposal has been strongly resisted by the Indonesian Government, which is a member of the Cairns Group. During agricultural negotiations at the WTO in Geneva in September 2002, Indonesia refused to sign on to the proposal, saying that it could only support it if Indonesia's sensitive crops (rice, sugar, soya and corn) were excluded from further bound tariff reduction commitments.

The average bound tariff rate in agricultural products for Indonesia is already relatively low, at 47 percent, with the exception of several staple crops. The proposal would mean that the growers of those staple crops would have to compete with imports from other countries, many of which are cheaper than the domestic product.

2.1 Liberalisation of the Indonesian rice trade.

The growing of rice is a major social and economic activity in Indonesia, particularly on the island of Java which contains most of the country's population, and produces around 55 percent of its rice. Rice producers in Indonesia are predominantly low-income resource-poor farmers with small plots of a quarter of a hectare or less. Productivity is low as, in the current economic situation, most cannot afford fertilisers or pesticides.

Although agriculture constitutes less than 20 percent of Indonesia's GDP, it provides employment and an income for about half the total workforce. In 2000, 40.5 million people over the age of 15 worked in agriculture, with rice cultivation being the single largest employment generator in rural areas, particularly in Java where rice production is very labour intensive.

In 1984 Indonesia was self sufficient in rice, and from 1984 till 1988 it enjoyed an exportable surplus. But as a result of a number of factors it is now the largest importer of rice in Asia - which is ironic given the number of farmers in the country.

During the financial crisis of 1998 Indonesia experienced a rice deficit of some 3 million tonnes, which meant it had to import rice at a time of weakened ability to pay for it. As a result the government had to turn to the IMF, World Bank and other donors for assistance. The IMF agreed to a 'bail out' loan package on condition that Indonesia implemented a series of trade liberalisation measures, including the opening up of the rice market.

Up until this point the Indonesian government had been able to provide a guaranteed minimum price to rice farmers. But liberalisation and the influx of low-priced imported rice meant that it was no longer able to defend this floor price. In an attempt to regain control, the Indonesian government in January 2000 announced an import duty tariff of 430 rupiah per kg, or approximately 30 percent. This tariff rate is still maintained.

The imposition of this tariff led to a decline in rice imports, which by the year 2000 had shrunk to a mere 0.9 million metric tons. Rice imports now total 2.5 million metric tons per year or around 7.5 percent of the country's domestic milled rice production.

Most of this comes from Thailand (30%) and Vietnam (27%) with the rest coming from India (16%), Burma (10%) and through unofficial channels (smuggled). Rice imported from India is of particular concern as it is claimed that the low price at which it is sold constitutes 'dumping' on the Indonesian market. Imported rice is cheaper than local rice by anything up to 25 percent.

The nett result is that millions of rice farmers are finding that the price they are now able to obtain for their crop does not cover the cost of production, and that they can no longer sustain themselves and their families.

The Association of Indonesian Farmers (HKTI) has repeatedly urged the government to ban the importation of rice or to raise tariffs. The government has been somewhat divided on this. However, the Ministry of Agriculture is now calling for the import tariff on rice to be increased from 30 percent to 51 percent - a move that will almost certainly be opposed by the IMF.

There is an argument that says that an inefficient farm sector such as this is best replaced anyway by more efficient production that will make a more significant contribution to

GDP. In other words, those displaced by competition from the peasant rice sector should move to say the plantation sector or manufacturing for export that can generate valuable foreign exchange. In some countries this makes good sense, provided that those sectors can absorb the large numbers of displaced farmers without too much social upheaval, and that export industries and export earnings are healthy and secure enough for the country to be always able to buy food with its foreign exchange earnings.

But in Indonesia this is not the case. Alternative sources of cash income for farming families are not apparent - or at least none that could absorb displaced farmers in such large numbers. Commercial agriculture is not doing well as the world price of most of the commodities that Indonesia produces are at record low levels. The manufacturing sector is in recession and investment is starting to move away to other lower cost countries such as Vietnam and China.

A 2001 study commissioned by Oxfam of the effect of rice trade liberalisation on food security in Indonesia's rice growing areas came to the following conclusion:

"It is clear from Indonesia's experience that rice trade liberalisation as a long-term policy response to a crisis has been damaging to millions of rice farmers in the country. Prices have dropped, profit levels have declined, and food security is threatened. Targeted imports to meet short terms needs have clearly been beneficial, but the fact is that the liberalisation policies of the IMF and the WTO threaten to convert Indonesia into a long-term importer. Millions of small rice farmers across the country are seeing their livelihoods eroded due to a combination of inappropriate government policies and trade liberalisation".

Australia's role in this, particularly as leader of the Cairns Group, is that it is part of a group of foreign governments and international institutions who have a view on what is best for Indonesia and its peasant farmers (namely to liberalise agriculture as fast as possible) and are using their considerable influence to ensure that the Indonesian Government follows their advice. However in doing so, it is not clear that the Australian Government has taken full account of the dramatic effect this advice will have in the short term on millions of peasant rice farmers and on rural society in Indonesia.

This does not necessarily mean that Indonesia should seek food self-sufficiency, but rather that it needs to seek 'food security', which means people being secure in their ability to obtain enough to eat. The undermining of rural livelihoods in a situation in which alternative sources of livelihood are not apparent works against food security. The availability of cheaper food, in the form of imported rice, does not help if people in rural areas do not have the means of purchasing it. Food security is not solely about food availability; it is also about ensuring adequate purchasing power at the household level.

There is also the question of purchasing power at the national level. Given the current state of Indonesia's export industries and their uncertain prospects, it is not clear that the country will always have the foreign exchange needed to purchase the food that it increasingly will need to import. For a poor or indebted country, dependence on imported

food that has to be bought with foreign exchange works against food security.

There is an argument for allowing Indonesia and other developing countries enough flexibility within the WTO Agreement on Agriculture to properly manage their rural development and food security objectives. Amongst other things this means that developing countries should not be forced to liberalise their agricultural sectors unless and until there are other economic opportunities available in sufficient numbers for those who will be displaced.

Recommendations:

The WTO's Doha Declaration puts development at the heart of the trade agenda. It was agreed that the Agreement on Agriculture should enable developing countries to "take account of their development needs, including food security and rural development". To that end, the Australian Government should support the following measures:

Recommendation 3.

The Agreement on Agriculture should be accompanied by an interpretative note, which establishes that it does not prevent developing countries such as Indonesia from taking measures to protect the right to sustainable livelihoods and food security of all their citizens. Such a note could be based on the Doha Declaration on the TRIPS Agreement and Public Health.

Recommendation 4.

The Australian Government should not advocate rapid liberalisation of Indonesia rice trade given the dramatic effect this advice will have on millions of peasant rice farmers and on rural society in Indonesia.

Recommendation 5.

Basic food security crops in developing countries (such as rice in Indonesia) should be exempt from reduction in tariffs.

Recommendation 6.

Developing country governments such as Indonesia should have the right to re-negotiate tariffs of food security crops that were bound at too low levels under the Uruguay Round.

Recommendation 7.

All developing countries should have access to a new Special Safeguard Mechanism to respond to import surges.

Recommendation 8.

All domestic support measures taken by developing countries such as Indonesia for food security, rural development, rural employment and poverty alleviation should be exempted from tariff reduction commitments.

2.2 The Coffee Crisis.

In earlier centuries, Indonesia was the world's leading producer of coffee (often referred to as 'java') until rust wiped out the industry. These days Indonesia is the fourth largest exporter of coffee beans in the world, after Brazil, Vietnam and Colombia.

About 85 percent of Indonesia's crop is Robusta coffee and 15 percent Arabica coffee. It produces around five million bags of Robusta per year (1 bag = 60 kg). The main producing areas are in the southern parts of the island of Sumatra, but it is also grown in Aceh in northern Sumatra and on the islands of Java and Sulawesi.

Like all other major producers of coffee beans, Indonesia is suffering from the effect of the collapse in the world price since 1997.

One of the reasons for the collapse is that the coffee industry is in the process of a radical and, for many, extremely painful overhaul. It has been transformed from a managed market, in which governments played an active role both nationally and internationally, to a free-market system, in which anyone can participate and in which the market itself sets the coffee price.

In the last few years Vietnam has made a dramatic entry into the market and Brazil has increased its already substantial production. The result is that more coffee is now being produced and more lower-quality coffee traded. Eight per cent more coffee is currently being produced than consumed. The current growth rate of 1 to 1.5 percent per year in demand is easily outstripped by a more than 2 percent increase in supply.

The result is a dramatic drop in price and loss of revenue for coffee producers. In the Asia Pacific region between 1996-97 and 2000-2001 the coffee producing countries increased the volume of their exports from 16,500 to 25,500 bags per year. But the value of these exports fell by almost a half, from US\$ 1.9 billion to US\$ 1.0 billion, due to a decrease in the price per bag.

If the price per bag had not fallen during this period, the 25,500 bags produced in 2000-2001 would have generated an income of around US\$3 billion instead of US\$1 billion. This loss of around US\$ 2 billion is equivalent to double the total annual Australian aid budget to the region.

In Indonesia small-holder coffee growers are suffering financial hardship, and the government has been forced to provide some US\$ 40 million to purchase beans from local growers for stock-piling. In July 2002 the Indonesian government announced that it was having official talks with the Vietnam government over production levels and their

effect on prices.

The province of Lampung in South Sumatra is one of Indonesia's main coffee growing area, supplying more than 65 percent of the nation's production. 126,000 coffee growing families in the province produce around 63,000 tons of beans per year on 135,000 hectares. The 2002 crop in Lampung is likely to be well down on previous years, with traders talking about a 40 to 50 percent decline. Analysts have blamed the poor harvest mostly on bad weather, but also on low global coffee prices that have led many farmers to abandon trees and use less fertilizer, thus reducing productivity.

The fall in the price of coffee beans from 3,000 Rupiah per kilogram in January this year to 2,000 Rupiah per kilogram, had a disastrous effect on coffee growers in the Province. Jama'in, a 52-year-old coffee farmer on Panggung Island in Lampung, told The Jakarta Post recently that the sharp drop in coffee prices have forced thousands of coffee farmers in the province to eat tiwul (a dried cassava snack) as an alternative food to rice. According to him, coffee growers have had to cut down on eating rice from three times to twice or even once a day because, as coffee prices have gone down, rice prices have soared to between 3,500 and 4,000 rupiah per kilogram.

The situation is becoming a development disaster whose impacts will be felt for a long time. Families dependent on the money generated by coffee beans are pulling their children, especially girls, out of school. Many can no longer afford basic medicines, and are cutting back on food. Coffee traders are going out of business, national economies are suffering and government funds are being squeezed, potentially putting pressure on education and health services and forcing governments further into debt.

The obvious move out of coffee and into another commodity is fraught with problems. It requires money that most coffee farmers do not have and an alternative crop that can offer better prospects. For a farmer to turn his or her back on the four years spent waiting for coffee trees to start bearing fruit is a highly risky strategy.

Until now, rich consumer countries and the coffee companies based in these countries have responded to the crisis with complacency. Existing market-based solutions, such as 'Fair Trade' and the development of specialty coffees, are important, but only for some farmers. A systemic rather than a niche solution is needed.

There is a need for an industry-wide Coffee Rescue Plan, supported by governments, to make the coffee market work for the poor as well as the rich. Among other things, this needs to improve prices by helping bring supply back into line with demand.

At its annual meeting in London earlier this year, the International Coffee Organisation (ICO), the intergovernmental body representing coffee exporting countries, approved the implementation of a Coffee Quality-Improvement Program, which will see the removal of low-grade beans from the international market, so as to alleviate the problem of over-supply that is helping to drive down prices.

Recommendations:

In view of the depth and seriousness of the current coffee crisis and its potential negative effects in Indonesia and our region, the Australian Government should provide political and financial support to international measures designed to tackle oversupply, including:

Recommendation 9

Support and offer financial contributions to the ICO's Coffee Quality-Improvement Program, including monitoring the quality of coffee entering the Australian markets from each producer nation.

Recommendation 10

Support and offer financial contributions for the destruction of the lowest-quality coffee stocks.

Recommendation 11.

Increase AusAID funding for rural development and livelihoods in coffee growing areas of Indonesia, with particular attention to addressing the immediate needs of coffee farmers for extension services including technical and marketing information, credit schemes and debt management services. AusAID should also consider providing assistance to Indonesian farmers wishing to diversify away from coffee and support for Indonesian farmers who have to leave the coffee market, including attention to women left on family farms.

3. The effect of Australian asylum seeker policies on Indonesian fishers and perceptions of Australia within Indonesia.

3.1 Australian Government Policy.

Fishers from Eastern Indonesia, including Makassans, Bugis, Bajo (sea gypsies) and Rotinese, have been fishing in Australian waters since the 18th century. During the 20th century their traditional rights have been eroded for a variety of reasons: protection of the environment, depletion of fishing stocks in Australian waters and, in more recent times, desire for border protection from people smugglers. Whilst acknowledging that the management of these issues is complex, Oxfam Community Aid Abroad considers a more humane solution can be found to these issues than focusing on long jail sentences for Indonesian fishers who are detected in Australian waters.

Over the years, there have been a number of changes to Australian government policies on the handling of fishers. In 1968 the Australian Fishing Zone (AFZ) was extended to 12 nautical miles around the Australian coast. As a recognition of the long tradition of fishing in Australian waters, Indonesian fishers were permitted to continue fishing, provided that this activity was (i) confined to subsistence level and (ii) carried out within

the territorial water adjacent to Ashmore and Cartier Islands, Seringapatam Reef, Scott Reef, Browse Island and Adele Island.

The 1974 Memorandum of Understanding (MoU) with Indonesia gave 'traditional' fishers continued access to the areas within the AFZ. However, the Australian and the Indonesian government define the word 'traditional' differently. The Australian Government states that traditional fishers are those who have operated within the waters 'over decades of time' and are still using traditional technology, which Australia defines as 'sail only'. Yet in Indonesia there has been a campaign to motorise traditional boats, with these modified boats still being regarded as traditional. In addition, Australia defines 'traditional' fishing as non-commercial, whereas the fishing regarded as customary by Indonesian fishers was, in fact, commercial. Campbell and Wilson (1993: 86) argue that 'traditional' should be used not to describe the type of boats used, but to describe the history of fishing and hence the rights to fish in a particular region.

In 1979 Australia expanded its borders by 200 nautical miles, to include the sea around the Ashmore Reef. Ashmore Reef is about 75 miles from Roti and 200 miles from Australia. Under the 1974 MoU Indonesian fishers are only allowed in this area if using 'traditional' boats, that is only boats without engines, using a simple compass and no radio and fishing using 'traditional' methods. Whilst most of the Rotinese from Papela have complied with this, an estimated 140 fishers have drowned in Australia's northern waters since 1988 (Elliott, 1996). Even those fishers who do understand the regulatory regime can unintentionally drift into Australian waters with unexpected currents and winds because of their lack of sophisticated navigation methods or engines.

The 1993 Joint Standing Committee on Foreign Affairs and Trade inquiry into Australia's Relations with Indonesia examined the issue of illegal fishing, recommending in part the need for a thorough examination of Indonesian fishing in Australian waters through renegotiation of the 1974 Memorandum of Understanding, defining 'traditional' fishers in a more appropriate way and arriving at more effective arrangements for fishers of both countries in the Arafura Sea.

The Committee also recommended that action be taken urgently to permit carriage of solar powered radios, which can receive weather warnings on vessels which would otherwise be classified as 'traditional', and that this be included in the examination of such fishers (Australia, 1993: 130-133).

Recommendation 12.

The Australian Government should revisit the above recommendations of the 1993 Joint Standing Committee on Foreign Affairs and Trade inquiry into Australia's Relations with Indonesia.

A redefinition of 'traditional' fishing is necessary, defining this as those who have a history of fishing in the region, rather than use of motorised boats. Fishers should be allowed to use motors, diving equipment and radios, which would allow them to have

warnings of cyclones and hopefully decrease the amount of deaths in Australian waters. Low-cost fishing licenses could be issued through local Indonesian authorities to fishers who qualified under such a definition of 'traditional', to enable coast guards to identify those fishers who originated from these areas. This request was advanced from the people of Papela to the Australian Ambassador in 1993 (Watson, 1998).

As recommended by the 1993 JSCFAT inquiry, standardisation of treatment of illegal Indonesian fishers by different states is needed. In addition, fines for trespass (and the jail sentences to which they are invariably converted) should be made less draconian and more in accordance with the income of the fishers and their ability to pay. (See United Nations Convention on the Law of the Sea, Article 73.)

3.2 Imprisonment of fishers.

Australian coast guards and customs officials still catch fishers who have strayed into Australian waters, trespassing a border-line that the fishers cannot see. The fishers are detained and tried in Australian courts with no or inadequate representation. For a first offence they are fined \$27,000 and larger fines are imposed for additional trespassing in Australian waters. Unable to pay, the fishers are incarcerated for long periods in Australian gaols and their boats burned. Any money they earn in jail, that they save is taken from them before they return home.

In Papela (Roti), the local government then imposes a twelve-month fishing ban on them on their return home. Fishers who do not own their own boats frequently incur debts to boat owners prior to fishing voyagers. These have to be repaid, whether or not the voyage is successful. The confiscation of prison wages for the fishers makes the situation even more desperate for the fishers as they return home to unpaid debts (they must pay for the boats, which have been burned by Australian customs officials) and loans for the unsuccessful voyage. Their families, left without a breadwinner, frequently incur further debts while their husband/father is in gaol. Many fishers are locked in a cycle of poverty, driven to take more dangerous voyages to paying off debts.

The Australian government has spent large sums in the apprehension, detention and repatriation of Indonesian fishers. Whilst exact figures are unknown, Stacy (1999) estimated that in 1996 the costs of apprehension, detention, prosecution and repatriation of forty-nine vessels and their crews must have cost about half a million dollars. Between 1997-1998, it is estimated that the Australian Fisheries Management Authority (AFMA) would have spent about \$3,500,000 on the apprehension of 124 foreign fishing vessels, of which 113 were Indonesian.

3.3 People Smuggling.

A recent documentary, *Troubled Waters* (Balint, 2001) showed a development in the

activities of fishers, revealing that fishers from Roti were turning to people smuggling to survive, as they received \$100 per passenger, before the boat set out. In this way, they were able to leave money behind for their wives and children, whereas if caught fishing, they had no income for the voyage.

Unfortunately, it is often those at the bottom of the people smuggling rings who have been caught and punished, rather than those at the top. One such example was Kengi Kahar who was caught attempting to smuggle 359 people into Australia. He stated that he had been paid Rp 1.5 million (A\$285). Kengi Kahar was sentenced to eight years' gaol in Broome. His defence lawyer, Paul Chapman stated that Kengi Kahar was a poor person, who had been tempted by the sum of money (Gatra, 2002).

Currently, it appears that people smuggling has declined, particularly with less refugees coming from Afghanistan. OCAA commends the co-hosting by Australia and Indonesia of an international conference on people-smuggling in Bali on 27-28 February 2002, as it believes that the issues of people-smuggling must be approached in a cooperative manner with other nations in the region.

If a war commences in Iraq, it is possible that people smuggling may increase. Yet, even if the flow of people smuggling does not increase, thus providing less opportunities to tempt Indonesian fishers, a livelihood still has to be obtained, and it is therefore possible that illegal fishing will continue or increase unless this problem is dealt with at its source. Given that these fishing communities are impoverished, assisting the communities with increasing a sustainable livelihood, could result in a more humane solution with less cost to the Australian taxpayer.

Recommendation 13

Australia should accept a quota of asylum seekers who have undergone processing by the International Organization for Migration (IOM) in Indonesia. Such a measure may reduce the numbers of potential illegal immigrants arriving by boat in Australian waters. Many of those who have undergone the voyage by boat have already undergone processing in Indonesia, but are waiting for a country to accept them. New Zealand has already set an example in this respect.

3.4 Aid.

The 1993 JSCFAT inquiry also recommended the broadening of the scope of the Fisheries Cooperation Agreement with Indonesia and to consider the relevance of aquaculture research projects and the joint management of maritime resources.

Oxfam Community Aid Abroad commends the aid projects which have been funded by the Australian government to date, and which benefit fishing communities in Eastern Indonesia.

Aid has also taken the form of much-needed research. In 1998 AusAID commented that '[o]f additional concern to both the Indonesian and Australian Governments, is illegal fishing in Australian waters, and the need to assist fishing communities in the eastern islands of Indonesia to find alternative sources of income.' (AusAID, 1998). Oxfam Community Aid Abroad also believes that is of vital importance that the Australian government continue to fund both research and aid into these important areas, to increase the ability of fishers from Eastern Indonesia to maintain sustainable livelihoods, whether this be through fishing or related activities suited to the area.

Recommendation 14

Australian aid programs assisting communities in Eastern Indonesia should be continued and furthered. These programs should focus on community education on sustainability of fishing, funding of further research and establishment of fisheries, trochus re-seeding projects, health and education services for fishing communities and community small loans schemes to reduce dependence on private moneylenders.

3.5 Effects of Australia's Treatment of Indonesian Fishers.

Australia's imprisonment of poor, often illiterate fishers has damaged Australia's reputation in Indonesia and other overseas countries, with widespread criticism over Australia's imprisonment of Indonesian fishers, and treatment of asylum seekers. Amien Rais, the speaker of the People's Consultative Assembly commented that the ways sure that four Indonesian fishers involved with the Tampa episode did not know Australian immigration laws. He asked that they be treated in a just and human fashion, so that it did not damage Australian-Indonesian relations (Kompas, 2001b). Australia needs to reconsider its policies as its reputation can affect bilateral relations and co-operation.

There is no one 'quick fix' solution for the problems faced by Indonesian fishers, which lead them to engaging in 'illegal' fishing or people smuggling. It is therefore important that the Australian government approach the issue on a number of fronts, in addition to working cooperatively with the Indonesian government.

Over-fishing of Indonesian waters and the subsequent depletion of stock is one of main reasons that Indonesian fishers have had to cross maritime boundaries. Re-stocking of fish within the Indonesian waters is unlikely to occur without the protection of Indonesian waters by the Indonesian government, through the banning of foreign fishing.

The current Minister of Fisheries and Maritime Affairs, Rokmin Dahuri is well qualified and sympathetic to the conservation of fishing resources for Indonesian fishers. He has stated that he wishes to bring fishing by foreign ships under control, increase the resources of small islands, increase the welfare of fishers and sailors and ensure the sustainability of the ecosystem in the sea, small islands and waterways. He has already lobbied banks and the Ministry of Finance for special credit programs for sailors/fishers.

Recommendation 15.

The Australian government should support Indonesian endeavours to further the sustainability of fisheries and work together in a cooperative fashion with Indonesian authorities at both national and local levels to assist in whatever way possible. This could include offering technical assistance, legislative drafting, coast guard training or support in regional negotiations.

4. Mining Investment in Indonesia.

Indonesia is blessed with rich mineral deposits which until recently have attracted significant exploration and mining investment from the mining industry. In 1996 the mining industry spent \$US160 million exploring for new resources in Indonesia. However according to the Indonesian Mining Association, exploration expenditure in 2002 is "practically nil" and many of the 38 operating mines in Indonesia are nearing the end of their lives. According to the Indonesian Mining Association it is likely that if current trends continue as few as three or four operating mines will exist in Indonesia in ten years time.

Many factors are reported to have contributed to this downturn in mining investment in Indonesia. These include political instability associated with the fall of the Soeharto regime in 1998, changes to regulatory regimes including the devolution of administrative powers over mining from the central government to provincial governments and a ban on mining in areas deemed protected forests in 1999. Other factors include conflict between mining companies and local small scale miners and greater empowerment of traditional landowners to control the use of their lands throughout Indonesia.

Oxfam Community Aid Abroad believes that mining can bring benefits to communities including the generation of employment opportunities and the provision of services and infrastructure. However, poorly designed mining projects can have devastating negative consequences for communities when implemented in such a way that they do not respect the basic rights of communities.

In the last decade the Australian mining industry has significantly expanded its global operations. In doing so, the mining industry is increasingly operating amongst poor and vulnerable communities that live in remote areas. These are the same types of communities amongst whom Oxfam Community Aid Abroad has been working for the last 40 years. Australian mining companies have invested in a number of projects in Indonesia which have had significant negative environmental and social outcomes for Indonesian communities. These include the Aurora Gold owned Indo Muro and Rio Tinto owned Kelian gold mines in Kalimantan.

In recent years Oxfam community Aid Abroad has received an increasing number of requests for assistance from communities in Indonesia and Papua New Guinea reporting significant negative impacts of mining operations on their basic rights. In nearly all of

these cases the root problem can be traced back to a denial of some basic economic, social, cultural, political or civil rights of the affected groups or individuals. This is particularly so in countries where government at various levels does not adequately respect or protect these rights.

In February 2000 Oxfam Community Aid Abroad established its own Mining Ombudsman. The aims of the Oxfam Community Aid Abroad Mining Ombudsman are to:

- Assist communities whose basic rights are being threatened, or have been infringed or violated by the operations of Australian based mining companies, by raising their cases directly with the companies concerned within Australia.
- Assist communities who are, or might be, affected by a mining operation to understand their rights established by international human rights instruments and industry best practice.
- Ensure that the Australian mining industry operates in such a way that the basic rights of landowners and affected communities are better protected.
- Encourage the Australian mining industry, in conjunction with the Australian Government, to establish an official complaints mechanism within Australia.
- Encourage the Australian government to extend regulated controls and sanctions to the activities of Australian mining companies when operating overseas that require these companies to meet standards at least equivalent to those required of them in Australia.

The role of the Mining Ombudsman is not to adjudicate on cases, but rather to seek to ensure that the process by which companies deal with local communities and claimants is a fair and equitable one, which respects the fundamental rights of landowners and affected communities.

A number of the cases currently before the Mining Ombudsman concern Australian mining companies that have invested in Indonesia. Although each case is unique, the grievances of landowners and affected communities can be loosely grouped into four areas of negative impact:

- Loss of land without proper compensation;
- Loss of sustainable livelihoods;
- Degradation of waterways and other natural resources upon which people depend;
and
- Human rights abuses by the police or security personnel acting in the interests of the company.

Many of these problems could be avoided if Australian mining companies operating in Indonesia would commit to the principle of obtaining the prior, free and informed consent of landowners and affected communities as a precondition for their exploration and mining activities. This would require a recognition and upholding of the rights of

legitimate landowners (irrespective of whether they hold formal title), and ensuring that affected groups and individuals are fully informed of the proposed use of their land and all the likely environmental and social impacts.

Oxfam Community Aid Abroad also believes that internationally accepted environmental, human rights and labour standards should be imposed on Australian businesses operating in developing countries such as Indonesia. One potential example of such standards is the Corporate Code of Conduct Bill 2000, introduced into the Senate in September 2000 by the Australian Democrats. The Bill aimed to impose health and safety, environment, employment and human rights standards on Australian corporations that employ more than 100 persons in a foreign country.

Recommendation 16

The Australian Government should enact extraterritorial legislation to compel Australian companies operating in developing countries such as Indonesia to comply with internationally accepted health and safety, environment, employment and human rights standards.

Recommendation 17.

Through engagement with the Minerals Council of Australia and relevant Chambers of Mines, the Australian Government should take steps to ensure that no Indonesian community shall be socially, economically or environmentally worse off as a result of Australian exploration and mining activities. This requires companies to obtain the free, prior and informed consent of landowners to exploration and mining activities irrespective of their rights under formal regulatory regimes.

Recommendation 18.

The Australian Government should compel the Australian mining industry to adopt a rigorous, independent complaints mechanism or Ombudsman.

5. East Timor - Indonesia - Australian relations.

From 1966 until 1998 successive Australian governments have rightly sought to develop a strong bi-lateral relationship with Indonesia. This however has repeatedly been pursued at the expense of the interests of East Timor. For more than three decades the issues of human rights, development and self determination for East Timor were effectively ignored in the interests of pursuing closer bilateral relations with Indonesia.

From 1998 onwards Australian policy began a largely bi-partisan shift. This was a major factor in establishing the processes that lead to the establishment of an act of self determination for the East Timorese.

In working with Indonesia to bring those responsible for the Bali bombings to justice Australia should learn from its past foreign policy failures on East Timor by not subjugating human rights and governance issues to the re-establishment of military and security ties with the TNI.

The resumption of military co-operation with Indonesia – suspended in 1999 - should be approached with great caution and not subsume addressing concerns associated with alleged TNI links to human rights abuses in East Timor and other provinces of Indonesia. Australia should not once again give priority to rebuilding military and security relations with Indonesia in a manner which undermines growing civil society pressure for the accountability of security and military forces within Indonesia.

Oxfam Community Aid Abroad believes there are three areas of major concern to East Timor's future prospects which have major implications for Indonesia and within which Australia should continue to proactively engage with a view to building longer term trust between our three nations. These issues include human rights and justice, an equitable resolution of the outstanding issues surrounding the Timor Sea Treaty and border security.

Active Australian engagement on these issues is essential for East Timorese economic viability and social stability. Australian foreign policy in the region should proceed on the principle that a strong and viable state in East Timor is in the national interests of both Australia and Indonesia.

5.1 Human Rights and Justice.

It is essential that Australia continues to support the establishment a credible mechanism for dealing with the perpetrators of gross human rights violations by members of the Indonesian military and civilian militias in many areas of Indonesia including East Timor during Indonesian occupation and withdrawal following the ballot on Independence in September 1999. Oxfam Community Aid Abroad believes that the current ad hoc tribunal is restricted by a limited mandate and the ineffective drawing up and presentation of cases by the prosecution. Its proceedings to date have undermined its credibility as means of fair and impartial adjudication.

In this context it is worth noting that there is evidence that the Indonesian military have been intimately involved in gross human rights abuses both within East Timor and across the country. Sections of the Indonesian military continue to act with impunity.

Building respect for human rights in Indonesia by dealing with a history of violations in East Timor as well as West Papua, Aceh and Ambon is pivotal to reconciliation in East Timor. Just as importantly it is essential to the development of civil society and good governance in Indonesia.

Recommendation 19

Australia should actively encourage the establishment of a tribunal capable of delivering credible and effective justice for crimes committed in East Timor and other areas of Indonesia.

Recommendation 20.

Australia should withhold co-operation and support for the TNI until real progress is made on ending impunity for military human rights violations.

5.2 Equitable Resolution of Timor Sea Treaty.

Oxfam Community Aid Abroad notes and supports the recommendation of the Joint Standing Committee on Treaties (JSCOT) that Australia should proceed to ratify the Timor Sea Treaty.

However, Oxfam Community Aid Abroad remains concerned that the Australian Government has not acted in good faith in the conduct of negotiations over the Timor Sea Treaty through withdrawing from the dispute settlement mechanisms under the International Tribunal on the Law of the Sea (ITLOS) and making no specific commitment to the renegotiation of maritime boundaries between Australia and East Timor as requested by the East Timorese Government.

Furthermore, it is inappropriate for the Australian Government to apply undue pressure to East Timor to link ratification of the treaty to the completion of unitisation negotiations on the Greater Sunrise field as recommended by JSCOT. Both of these concerns potentially undermine sound bilateral relations between Australia and Indonesia.

To the extent that this has implications for Indonesia – Australian maritime boundaries, Australia should seek to address any Indonesian maritime boundary issues separately but in the context that an economically secure East Timor is also important for Indonesian regional security.

Recommendation 21.

Australia should recognise the right of East Timor to settle its maritime boundaries with its international neighbours as the basis for the allocation of petroleum resources and revenues. Australia's ratification of the Timor Sea Treaty should be contingent on fulfilment of the following conditions:

- Declare the centrality of the Treaty's "without prejudice" clauses and acknowledge that the Treaty's arrangements are of a provisional nature only.
- Declare that the Treaty in no way inhibits the extent of East Timor's maritime claims.
- Declare that Australia recognises its international legal obligation to engage with East Timor in "good faith" towards the achievement of permanent maritime boundaries.
- Establish a definitive time frame, not to exceed 5 years, in which boundaries will be

settled, with or without a joint development agreement, or otherwise referred to an impartial independent arbitration.

- Declare that Australia will promptly engage with Indonesia, consistent with its international legal obligations, to adjust Points A16 and A17 of the 1972 seabed boundaries in the event that East Timor negotiates lines more favourable than those reflected in the co-ordinates of the JPDA.

Recommendation 22.

Australia should recognise that the current Timor Sea Treaty fails to provide East Timor with adequate guarantees for participation in all aspects of petroleum development in the Timor Sea, both upstream and downstream. Accordingly, Australia should;

- Confirm that as a participant in the Treaty's administrative functions, and consistent with Article 11 of the Treaty, Australia will prioritise "training and employment opportunities for East Timorese nationals and residents".
- Undertake to ensure that Production Sharing Contracts include provisions that prioritise East Timorese interests, in particular with respect to capacity building.
- Ensure that all efforts are made to assess the viability of bringing Greater Sunrise gas onshore in East Timor.
- Declare that Australia will not use the Treaty's Ministerial Council to override or unfairly impede decisions of the Joint Commission or the Designated Authority.
- Undertake not to use the provision of development aid, nor funds held in trust or escrow, as a leverage for more favourable outcomes in Timor Sea negotiations.

Recommendation 23.

Australia should suspend the current 31 December 2002 deadline for the conclusion of an international unitisation agreement (IUA) for Greater Sunrise and in doing so recognise that a negotiated boundary between East Timor and Indonesia is the only reliable indicator as to the accuracy of the eastern lateral boundary of the JPDA. Australia should also undertake to adjust the unitisation formula in Annex E to reflect the proportion of Greater Sunrise either side of a new JPDA lateral boundary or permanent boundary line delimiting the East Timor-Australia continental shelf.

Recommendation 24.

Australia should immediately reinstate Australia's adherence to the dispute settlement mechanisms of the ICJ and ITLOS. Australia's withdrawal in March from the compulsory jurisdiction of dispute settlement mechanisms under UNCLOS and the Statute of the ICJ has severely limited East Timor's options in seeking an objective, third party resolution of the maritime boundary dispute and also damages Australia's international reputation.

Recommendation 25.

Australia should excise the Timor Gap from Australia's submission to the United Nations Commission on the Continental Shelf (UNCCS). Inclusion of a continental shelf claim extending to the Timor Trough in Australia's 2004 submission to the UNCCS will further

complicate and delay progress towards a boundary settlement with East Timor.

5.3 Border Security.

A central component of confidence building between Indonesia and East Timor is the resolution of territory and the establishment of clearly defined and fair borders. These borders include the West/East Timor boundary and the establishment of a safe passage between East Timor and the Ambeno enclave.

Recommendation 26.

Australia should maintain its commitment to maintain troops under UN auspices on the border with East Timor until the current mandate expires in May 2004. In the longer term Australia should actively seek to broaden international involvement in the provision of border security beyond 2004. Australia should also encourage Indonesia to create conditions in which such a presence would be no longer necessary

ENDS.

