



# **Justice and reconciliation in East Timor**

Australia and the CAVR

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The Australia-East Timor Association (AETA) campaigned for nearly three decades for the independence of Timor-Leste. Today its main role is to provide information in various media about Timor-Leste to its members, the public and educational institutions.

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# FOREWORD

*Chega!*, the final report of the Timor-Leste Reception, Truth and Reconciliation Commission (CAVR), is easily the most important document on crimes against humanity to have emerged since the Timor crisis began to unfold in 1975. Getting this Commission set up was itself no mean achievement. While several UN documents, such as Security Council Resolution 1392, recorded that those responsible for these grave humanitarian violations should be brought to justice, the UN's focus was initially on crimes committed in the last phase of East Timor's occupation, namely after 1 January 1999. I was one of those who kept reminding Sergio Vieira de Mello that incidents in the latter period were merely the tip of the iceberg, and that any investigation confined to it would be very incomplete, ignoring the culture behind these crimes. In effect the past had to be opened up in order so that the events of 1999 could be fully understood. This report opens up the past, revealing the shocking TNI (Indonesian military) culture of brutality and neglect that led to East Timor's population being decimated. It contains a mass of detail resulting from thousands of interviews and other sources. However, the results still need to be taken further, especially in relation to the functioning of the command structure that ordered, permitted or tolerated mass killings, summary executions, torture and rape over a quarter of a century.

I don't believe my CAVR friends would be offended at the suggestion that this report should be regarded as essentially a work in progress (though a marathon one at that) rather than a final statement on what transpired in the former Portuguese colony after the decolonization program began to collapse prior to the invasion. Unfortunately, since the UN interregnum, seeking justice for the East Timorese has proved to be no easier than it was back in 1975 when the weight of political opinion, both in Australia and abroad, was strongly against us. The CAVR report makes it clear beyond doubt that gross violations of crimes against humanity have occurred, but there are serious political hurdles obstructing the way ahead. I believe that the great majority of the East Timorese want justice to be done in the form of some kind of international tribunal, and have no faith in the bilateral commission setup by the Indonesian and Timor Leste governments. However, apparently most of the present generation of political leaders have little enthusiasm for any course of action that, in their view, would harm the reconciliation with Indonesia that has been going on since independence.

That leaves the initiative to the international community, but its response is mixed, with little enthusiasm for an international tribunal from Indonesia's traditional western friends, in particular, the United States, Japan and Australia. It is also unfortunate that Kofi Annan, who has in the past supported the quest for justice, will no longer be in office in three months time, and his successor's stand on the matter could turn out to be very different. What this report does is to give substance to the argument that the issue, involving as it does crimes against

humanity, should not be left to the present bilateral arrangement. It is likely to sweep under the carpet an ordeal that forms one of the elements of discontent behind the present crisis.

Those of us committed to the upholding of human rights can surely entertain few doubts as to the case for a tribunal. Many Indonesian human rights workers have themselves stressed its importance as a way of exposing the TNI's brutal culture to the nation's political establishment. The Yudhoyono government's human rights agenda is, in their view, too shallow – in the past week attracting the criticism that human rights reform in Indonesia has come to an end. The full exposure of what transpired in East Timor would surely boost the drive for human rights reform, bringing about radical changes of attitudes, for example, to the situation in West Papua, and in relation to religious and sectarian problems elsewhere. Our first consideration, however, must surely be that those responsible for the terrible ordeal inflicted on these people should not get away with it. Despite the obstacles it is a challenge we cannot walk away from.

James Dunn  
Canberra  
2 October 2006

I am writing a brief note to you – and also to Domingos Oliveira – to dissociate myself from the reports that Australia favours the integration of Timor into Indonesia. I do not wish to comment on this report or on whatever might be the policy of the Australian government on this question. But I wish to make it clear that, in my opinion, it is for the Timorese people to decide on what the future course of their country should be, without hindrance or pressure from any external quarter. On the question of integration with Indonesia I can only say that, at the time of my visit, I had the impression that very few of your people favoured this course as a solution to their destiny. If this situation were to change and the Timorese were to decide in favour of joining with Indonesia I would, of course, accept and welcome such a decision. Equally, should the Timorese decide in favour of independence, their decision would be very welcome to me personally and I would like to assist the emergence of the new state in any way possible. I would also respect the decision of your people to continue a relationship with Portugal, if that is what your people desire to do. The challenge is yours: it is for Australia not to coerce you into any direction against your natural and justly expressed wishes.

Letter from James Dunn to Jose Ramos-Horta (Fretilin) and Domingos Oliveira (UDT) on 18 September 1974<sup>1</sup>

# INTRODUCTION

This booklet has been produced to give Australians a better understanding of the final report of the Comissão de Acolhimento, Verdade e Reconciliação de Timor Leste (Commission for Reception, Truth and Reconciliation in Timor-Leste, CAVR), especially as it relates to Australia.<sup>2</sup>

The CAVR was one of four major transitional justice processes that have occurred in Timor-Leste and Indonesia following the violence that marked the end of the Indonesian occupation in 1999. The others are the Serious Crimes Process established under UNTAET Regulation 2000/15, to try those accused of war crimes and crimes against humanity committed in 1999; the ad hoc Human Rights Court in Jakarta, intended to try Indonesian citizens for the same crimes in the same period; and the Commission for Truth and Friendship with Indonesia, which is intended to establish the truth of events in 1999.<sup>3</sup>

*Chega!* (Portuguese for *Enough!*), the final report of the CAVR, is a documentation of the human rights violations which took place in the context of political conflicts in Timor-Leste between 25 April 1974 and 25 October 1999. The Commission was also mandated to provide recommendations that would prevent the recurrence of human rights violations, strengthen the rule of law, promote reconciliation, heal the wounds of the past and help this new and fragile democracy to develop.

Although *Chega!* was presented to the President of Timor-Leste on October 31 2005, because of the conflict that erupted in Dili in March 2006 it was only disseminated in the districts of Timor-Leste in the second half of 2006.

It was important for *Chega!* to also be released and disseminated in Australia for a number of reasons. Through AusAID, the Australian Government contributed to the cost of the CAVR;<sup>4</sup> and Australians held senior roles in the Commission.<sup>5</sup> More importantly, it is an important record of a brutal period in the recent history of one of Australia's nearest neighbours, in which Australia was often directly or indirectly involved.

Australia has a special relationship with the people of East Timor. The two nations are only four hundred kilometres apart, and Australia played an active part in the history of Timor-Leste in 1942, when East Timorese *creados* (guerillas) protected Australian diggers from the Japanese, paying a heavy price in the process and creating what many Australians came to regard as a historical debt.<sup>6</sup>

Australia began to play an ongoing active part in the affairs of Timor-Leste following the Portuguese withdrawal from its former colony in 1975. The

report is critical of much of Australia's involvement in Timor-Leste between 1975 and 1999. In particular, the Commission found that Australia failed to support, and in some cases actively worked against, the right of the East Timorese to self-determination; and that it violated the economic and social rights of the East Timorese by concluding the Timor Sea Treaty with Indonesia in 1989 "without consulting the people of Timor-Leste or paying due regard to their interests."<sup>7</sup>

However, the report also acknowledges the contribution of solidarity groups and advocates for a free Timor-Leste in Australia in the past to the struggle for self-determination, as well as the leading role that Australia played in restoring order following the referendum on 30 August 1999.

There are also a number of recommendations either directly or indirectly relevant to Australia, notably in respect of defence cooperation with Indonesia, the pursuit of justice for war crimes and crimes against humanity, and financial support for reparations programs for the victims of human rights violations.

The Australian launches of *Chega!* began in Sydney on 12 November 2006, the anniversary of the Santa Cruz massacre in Dili in 1991. Video footage of the massacre was smuggled out and shown on television around the world, and was instrumental in increasing public awareness of the brutality of the Indonesian occupation. The final launch was in Canberra on 28 November, the anniversary of Fretilin's proclamation of independence in 1975 and now celebrated as Timor-Leste's Independence Day. Both these anniversaries are significant in East Timorese history as symbols of the desire for freedom and the important role of the international community in helping Timor to develop democratic institutions and strive towards reconciliation.

This booklet is built around excerpts from *Chega!* and other CAVR publications, complemented wherever possible by other existing authoritative sources. The foreword is by James Dunn, the Australian Consul in Dili in 1962-64, who went on to become a vociferous critic of successive Australian governments in their dealings with Timor-Leste and Indonesia.<sup>8</sup> In 2000 he authored a report to the United Nations Transitional Authority in East Timor (UNTAET) on crimes against humanity, and in August 2006 returned to Dili in a private capacity to advise the new Prime Minister, Jose Ramos-Horta.

The booklet summarises *Chega!*'s overall findings and recommendations, detailing those that relate to Australia, and then outlines how *Chega!* has been received in Timor-Leste and internationally. It ends with a brief discussion of the ongoing issues of justice and reconciliation in Timor-Leste.

The "justice" in the title of this booklet refers not to criminal justice but to transitional justice – in other words, to the processes such as truth commissions, reparations and trials that have been invoked by nations attempting to recover from periods of conflict and oppression. In the case of Timor-Leste,

allegations of serious crimes were referred to the Serious Crimes Unit of UNTAET, while more minor crimes were dealt with through the Community Reconciliation Process.

Passages taken directly from CAVR publications (*Chega!*, the Executive Summary and Introducing *Chega!*) are referenced as C, ES and IC, respectively. Short passages from other sources are in quotation marks; longer ones are in indented blocks or text boxes: in all cases with endnotes.

In common with *Chega!*, “Timor-Leste” is usually preferred to “East Timor”, “Portuguese Timor”, “Timor Timur”, etc., even when discussing events prior to independence in 2002. Also as in *Chega!*, the people are referred to throughout as East Timorese.

Finally, thanks to Pat Walsh, Sr Susan Connelly, Dr Helen Hill, Peter Hosking SJ, Lia Kent, John Sinnott Veronika Jeffrey and Mary Bryant for their comments on drafts of this booklet, and to Minh Nguyen for help with the layout. Any errors remain the responsibility of the CAVR in the case of passages from its publications, and Uniya in other cases.

“If you want reconciliation to be effective, you also have to have a good justice system. Reconciliation means nothing if the justice system is obstructed.”

Male political prisoner, 30 years old, Dili<sup>9</sup>

“I think that all victims and the perpetrator should be called to conduct a gathering, and then the victims should be asked what way is best for them. It is not we who decide, but the victims themselves.”

Female teacher, 32 years old, Baucau

“Reconciliation should first start within the family, and then with other people within the surrounding environment, and finally as reconciliation with our enemies.”

Male political prisoner, 40 years old, Dili

“To effect reconciliation in this new country, victims and perpetrators have to give and take from each other and forgive each other. Before conducting the reconciliation between two societies, the leaders have to start the process and set an example.”

Female teacher, 32 years old, Baucau



# ABOUT CHEGA!

*Chega!* is the official Report of the Commission for Reception, Truth and Reconciliation in Timor-Leste (CAVR), an independent East Timorese institution. It is not a UN Report.

UNTAET Regulation 2001/10 required the CAVR to prepare a “comprehensive report which sets out the Commission's activities and findings, based on factual and objective information and evidence collected or received by it or placed at its disposal”.

The Report was written by national and international staff of the Commission working under the direction and supervision of the CAVR's seven East Timorese Commissioners. Technical assistance was provided by experts in statistics, human rights law and other disciplines. The Report is based mainly on original sources. These included statements by thousands of ordinary East Timorese, testimony at public hearings, hundreds of interviews with prominent East Timorese on all sides of the political conflict, debriefings of local communities, research in Indonesia and examination of a range of declassified government documents. The final draft was formally approved by Commissioners section by section and officially presented to the President of the Republic on 31 October 2005. (IC 4)

*Chega!* is Portuguese for “no more, stop, enough.” It was chosen as the title of the CAVR Report because it captures the main message given by victims to the CAVR. This was that the human rights violations they experienced must never be allowed to recur and that the best way to avoid repetition is not to allow impunity for offences and to undertake reforms and practical steps like those recommended in the Report.

*Chega!* is over 2500 pages long. Its contents cover the CAVR's creation, activities, victim support, community reconciliation work, truth-seeking about human rights violations between 25 April 1974 and 25 October 1999, findings and recommendations. It addresses the following human rights violations: self-determination, killings and disappearances, forced displacement and famine, detention and torture, violations of the laws of war, political trials, sexual violence, violations of the rights of the child, and violations of economic and social rights...

The CAVR was required to write the Report impartially and objectively. The Report is principally directed to those most deeply involved in building the new Timor-Leste: the people of Timor-Leste, the President of the Republic, the Government and its agencies, the Parliament, the international community and donors. (IC 3)

# FINDINGS AND RECOMMENDATIONS

## Summary of findings

### Death toll

An estimated 102,800-183,000 civilians died during the period 1974-1999 due to conflict-related causes; that about 18,600 of these were direct killings or disappearances mainly committed by the Indonesian security forces and the rest, at least 84,200 but possibly much higher, were due to hunger and illness, mainly in the years 1977-1979 at the time of intense Indonesian military operations.

### Self-determination

Most members of the UN failed to uphold East Timor's UN recognised right to self-determination for most of the Indonesian occupation and that some major powers provided military and other assistance to Indonesia during this period.

### Displacement

The people of Timor-Leste experienced repeated periods of displacement, often in substantial numbers, between 1975 and 1999, and that these displacements caused major disruption to those affected, including major loss of life.

### Sexual violence

The Indonesian security forces engaged in widespread and systematic rape and other forms of sexual violence throughout the entire period of the occupation, openly and with official compliance. Members of Fretilin, UDT and Falintil also committed similar offences but far fewer and not in a widespread or systematic manner.

### Detention

Arbitrary detention, often involving torture and ill-treatment, was the most common violation suffered by the East Timorese people between 1974 and 1999. Deprivation of liberty occurred throughout the entire conflict in all districts and was practiced on all sides but mostly by the Indonesian security forces.

### Political trials

The Indonesian trials of hundreds of East Timorese political opponents were not fair nor were they evidence of respect for human rights and the rule of law but often violated Indonesia's criminal code and international law and

were principally used to crush resistance to Indonesian rule in Timor-Leste.

## **Laws of war**

The Indonesian security forces violated the laws of war or Geneva Conventions in a systematic and widespread manner by, for example, failing to discriminate between civilian and military targets, executing prisoners, looting for personal gain, destroying food sources and by other violations of their international legal obligations; and that Fretilin/Falintil were also bound by the laws of war and committed some violations of these obligations but on a far smaller scale than the Indonesian security forces.

## **Children**

Children in Timor-Leste - despite their vulnerability and special status as minors - suffered the full range of human rights violations, including killings, sexual violence, displacement and detention; that they also suffered additional violations such as forced recruitment and abduction to Indonesia.

## **Economic and social rights**

Indonesia invested heavily and generated economic growth in Timor-Leste but that its priorities were distorted by security considerations and it failed to fulfill the rights of the majority of Timorese whose development at the end of the Indonesian occupation lagged behind most countries and all Indonesia's other provinces.

## **Victims**

Victims deserving of special consideration in a program of reparations or other services include individuals amongst rape survivors, young men in urban areas, disabled middle-aged men, ex-political prisoners and torture survivors, and victims and families of victims of violence by Fretilin/Falintil. (IC 5-9)

## **Summary of Recommendations**

The CAVR was required in law by UNTAET Regulation 2001/10 to make recommendations that would, prevent a repetition of the violations documented in the Report, and respond to the needs of victims of these violations.

The Report contains 204 recommendations that relate to the 25 and a half year period CAVR was required to report on, 25 April 1974 until 25 October 1999. Though not binding, these recommendations are the courses of action considered by CAVR to be the best and most appropriate ways of achieving the goals listed above and ensuring a future for the children of Timor-Leste free of

violence.

Most are directed to governments because governments and their agencies have the primary responsibility to uphold human rights. Foreign governments and bodies such as the UN are included because the conflict and related violations were international, not domestic, in character. The recommendations are also directed to members of the community because citizens and their organizations also have responsibilities to uphold human rights.

The Report recommends that the National Parliament takes primary responsibility for overseeing and monitoring the implementation of the recommendations.

## **International community**

The international community, where applicable, should:

- Ensure maximum distribution and discussion of the Report, including in the UN;
- Apologise to the people of Timor-Leste and support a targeted reparations program by the Timor-Leste Government;
- Open up classified information to assist the continued search for truth and return to Timor-Leste cultural property and documentation;
- Ensure perpetrators do not enjoy impunity and support a continuation of the Serious Crimes process and a widening of its terms of reference to include pre-1999 violations;
- Support, if necessary, the establishment of an international tribunal for Timor-Leste.

## **Indonesia**

The Government of Indonesia should:

- Acknowledge and apologise for violations and contribute to a Timor-Leste program of reparations;
- Ensure that official Indonesian accounts of the period 1974-1999 are historically accurate;
- Bring to justice those accused of human rights violations and cooperate with the justice process in Timor-Leste, including by providing full records of military operations that resulted in human rights violations;
- Help establish the whereabouts of the disappeared and clear the names of Timorese and others who were imprisoned or black-listed because of their activities in support of Timor-Leste;
- Ensure good relations between Timorese in East and West Timor, the rights of separated children, and the rights of Indonesian families to know the fate of relatives who died while serving in the Indonesian military in Timor-Leste.

## The Government and Citizens of Timor-Leste

The Government and citizens of Timor-Leste should:

- Promote and protect all rights for all including rights to life, personal security, peace and non-violence, participation, education, health and a sustainable environment;
- Promote and protect all rights for all, and especially the rights of the vulnerable, through the development of a universal human rights culture and an effective civil society, parliament, judiciary, public service, provedor [ombudsman], Church and faith communities;
- Give special attention to the development of the highest human rights standards and practice in the police service and defense forces;
- Totally eschew violence and intimidation in political life;
- Consider the establishment of a follow-on institution to CAVR.

## Reparations

A selective and focused program of reparations should be established in Timor-Leste that includes the following main features:

- Targets the most vulnerable victims of human rights violations such as victims of torture, sexual violence and communities severely disadvantaged by violence;
- Provides restorative justice through measures such as medical rehabilitation, memorials, and additional government services;
- Sources funding from the international community, particularly the governments and business enterprises identified in the CAVR Report;
- Is implemented by a body specifically established for the purpose by the Government of Timor-Leste. (IC 10-12)

“The independence we have gained is still merely lip service, for it doesn’t create peace and calm, but adds more conflict, because societies haven’t accepted one another. To develop our country into a good one, we must accept one another to create peace.”

Widow, 41 years old, Maliana<sup>10</sup>

“There are still many victims who have not participated in the process of reconciliation because they are still traumatized by what happened to them, and it is very hard for them to accept reconciliation.”

Midwife, 24 years old, Manatuto

“I think the main barrier to solving problems are the victims who do not accept the perpetrators.”

Female teacher, 49 years old, Baucau

“The biggest obstacle for reconciliation is the absence of justice.”

Women’s group member, 52 years old, Dili

# FINDINGS CONCERNING AUSTRALIA

This section details the four main findings in *Chega!* related to Australia. It begins with Part 3: The History of the Conflict concerning events in Timor-Leste between 1942 and 1999 in which Australia plays an important role.<sup>11</sup> This is followed by the two major findings of human rights violations against Australia made by the CAVR, concerning self-determination (Chapter 7.1) and economic and social rights (Chapter 7.9).<sup>12</sup> It ends with the section on Australia in Part 8: Responsibility and Accountability.

## 3 The History of the Conflict

### 1942

#### World War Two

23. After Japan attacked Pearl Harbor in December 1941, Australia anticipated that Japan would occupy Timor and use it as a base to launch attacks against Australia. Australian, British and Dutch troops landed in Dili on 17 December 1941 in what was claimed as a pre-emptive action. Governor de Carvalho protested about the violation of Portuguese neutrality. Japan invaded Timor on 19 February 1942. It remains an issue of historical conjecture whether the Allied violation of Portuguese neutrality was necessary to counter an imminent Japanese attack, or whether the Australian presence in Portuguese Timor drew the Japanese military to an area it would otherwise not have invaded.

24. The impact upon East Timorese society was devastating. Between 40,000 and 60,000 East Timorese are reported to have died. Many were tortured and killed by Japanese troops on suspicion of assisting Australian guerrilla fighters. Sexual slavery of East Timorese women by Japanese troops was widespread. In addition the territory was impoverished by the war, and divisions were sown between those seen to have supported the Japanese and those who supported the small Australian guerrilla force. The Commission heard testimony of the long-lasting effects of this conflict on East Timorese society in its national public hearing on the Internal Political Conflict of 1974-76. No international investigation was conducted for war crimes committed by either occupying country, and no war reparations have been paid to the East Timorese people.

### 1975

#### Indonesia and the international community

61. ...Australian policy on Portuguese Timor was built on a desire to redefine its foreign policy in general by giving it a more regional slant and to improve its relations with Indonesia in particular. The Australian Prime Minister, Gough Whitlam, shared Indonesia's view that an independent Timor-Leste would not be

viable and was advised that the annexation of Portuguese Timor was “settled” Indonesian policy. Whatever his true intentions, in his two meetings with President Soeharto in 1974-75 Whitlam gave President Soeharto the firm impression that he saw merit in an Indonesian takeover, even while recognising that it was necessary to affirm the principle of self-determination.

**The meetings between Soeharto and Whitlam, in Wonosobo, 6 September 1974, and Townsville, 4 April 1975**

126. Soeharto met the Australian Prime Minister Gough Whitlam twice during the period 1974-75. First in Wonosobo, near Yogyakarta on 6 September 1974 and later in Townsville, Queensland on 4 April 1975. Portuguese Timor was discussed at both meetings, and at both Whitlam is believed to have given Soeharto the green light to take over the territory, as indicated by the Australian minutes which are now on the public record... On both occasions Whitlam told Soeharto that his government believed that Portuguese Timor should become part of Indonesia for almost identical reasons to those stated by Soeharto, that it would be unviable as an independent state and would therefore become “the focus of attention” of more powerful countries. At their Wonosobo meeting Soeharto explicitly suggested that Indonesia and Australia had identical strategic interests in Portuguese Timor - an independent Timor-Leste would be prey to China or the Soviet Union and thus “a thorn in the eye of Australia and a thorn in the back of Indonesia”.

127. At the same time they agreed that integration should take place through a process that recognised the people of Timor-Leste’s right to self-determination, with the added caveat from Whitlam that it should be done “in a way that would not upset the Australian people” as he put it at Townsville. Neither made it clear which objective would be the overriding one if it proved impossible to reconcile the East Timorese desire for self-determination with the Indonesian desire for integration. At Townsville in April 1975, though still abjuring the use of force, Soeharto seemed to be close to making up his mind on this question by implying that an act of self-determination could not be relied on to reflect the true wishes of the East Timorese people. Whitlam was sympathetic, expressing the view that the ordinary East Timorese “had no sense of politics” and would need time “to recognise their ethnic kinship with their Indonesian neighbours”.

128. For all his reservations, there is evidence that the views Whitlam expressed at the Wonosobo meeting do seem to have strongly influenced the Indonesian decision that there was no alternative to incorporation. On 14 October 1974 the Australian ambassador to Portugal reported to Canberra a conversation with Ali Moertopo during the latter’s visit to Lisbon: “Ali (Moertopo) said that until Mr. Whitlam’s visit to Djakarta (sic) they had been undecided about Timor. However, the prime minister’s support for the idea of incorporation into Indonesia had helped them to crystallise their own thinking and they were now firmly convinced of the wisdom of this course”.

129. There is also evidence that in resolving the dilemma between incorporation and self-determination, Whitlam was inclined to favour the former. He expressed his views on this matter frankly in a secret cable that he sent to his foreign minister on 24 September 1974, two weeks after the Wonosobo meeting: "I am in favour of incorporation but obeisance has to be made to self-determination." Whitlam's ambassador in Jakarta, Richard Woolcott, also believed that it was the prime minister's view that incorporation was the overriding objective. It also seems to have been Woolcott's view that it should be the overriding objective of Australian policy simply because it was the overriding objective of Indonesian policy. In a cable to his foreign minister, Don Willesee, on 17 April 1975, shortly after the Townsville meeting, Woolcott contrasted his minister's thinking on the matter with the prime minister's:

[You] tend to place the main emphasis on a proper act of self-determination for Portuguese Timor... [I]t was clear in Townsville that the prime minister continues to believe that the logic of the situation is that Timor should become part of Indonesia and we would "welcome" such an outcome to an act of choice. While we support the principle of self-determination and while we certainly could not condone the use of force, the prime minister still does not want to encourage the emergence of an independent East Timor and he believes that continuing public emphasis on self-determination, at this stage, is likely to strengthen pressures for independence.

130. In his autobiography Woolcott quotes from another cable to explain the thinking behind this position:

Indonesia will proceed to incorporate Timor. While President Soeharto will want incorporation to be achieved in as presentionally [sic] acceptable a manner as possible, Indonesia will not be deterred from this fundamental policy objective. Indonesia regards this outcome as essential to its longer-term national interest and, indeed, as being in the interests of the region as a whole. Indonesia has held this attitude consistently since some months before I arrived at this post last March.

### **Fretilin fills the vacuum**

166. During October the Australian NGO ACFOA (Australian Council for Overseas Aid) sent a delegation, led by James Dunn, to attempt to bring Fretilin, UDT and the Portuguese administration together for talks. However these did not take place, partly due to Portuguese reluctance to engage with either Fretilin or UDT. Fretilin's last attempt to engage the Portuguese was on 25 October, nine days after Balibo fell to Indonesian forces. Fretilin issued an invitation to the Portuguese government on Ataúro to send a delegation to Dili to observe the situation on the ground.

### **Balibo: Indonesia increases intensity of military operations**

189. On 15 October Tim Susi and battalions from the ABRI 2nd Infantry Brigade launched an attack against Balibó, in which five international journalists were



killed. The journalists were covering the story of Indonesian military operation inside Portuguese Timor. Three Australians and two British journalists working for Australian television networks were shot or stabbed in circumstances that were covered up by Indonesian military officials at the time.\* One possible reason for the execution of the journalists was that they had witnessed the scale of the Indonesian operations around Balibo, which were much larger than the incursions that had preceded it.

\* Though this was known to the Australian government almost immediately, there was no international protest or call for an investigation. Indeed, the Australian government does not seem to have protested even quietly to the Indonesian government over these killings. This remained a sensitive issue between Indonesia and Australia throughout the years of Indonesian occupation, and was especially pursued by Australian civil society.

### **Wider international response**

218. Key actors in the international community had long been aware that an Indonesian military invasion of Portuguese Timor was likely. Australia had long accepted that incorporation was “settled” Indonesian policy (see section on Indonesia’s growing involvement in Portuguese Timor: destabilisation and diplomacy, above) and knew the extent of its military involvement in the territory. Numerous documents also show that the US knew of Indonesia’s plans to take over Timor-Leste by military means. Australia refused to recognise the new nation and viewed Fretilin’s action as “provocative and irresponsible”. The US confirmed its position of non-involvement.<sup>289</sup> The newly independent African nations of Angola, Cape Verde, Guinea-Bissau, Mozambique and San Tomé and Príncipe all recognised Timor-Leste’s independence but these nations were too small to have an impact on international politics. China and Vietnam, Fretilin’s most important supporters in Asia, extended their warm congratulations. China was the only permanent member of the UN Security Council to recognise the declaration of independence.

### **Information control: seeking to conceal ABRI involvement**

240. The only foreign journalist remaining in Timor-Leste, Australian Roger East, was taken from the Hotel Turismo on the morning of the landings and executed later that day on the waterfront by Indonesian troops. This brought to six the number of foreign journalists killed by the Indonesian military in less than two months, and ensured that the story of Indonesia’s invasion and subsequent operations were not reported in detail by the international media.

### **The cost of full-scale invasion**

255. The Security Council resolution [3485, 12 December 1975] instructed the UN Secretary-General to send a special representative to Timor-Leste. The representative, Winspeare Guicciardi, visited Indonesian controlled areas of Timor-Leste in late January 1976. However his efforts to meet with Fretilin leaders were foiled. The Commission heard testimony of efforts to

coordinate

safe landing places on the south coast, through Fretilin radio broadcasts to a radio-set in Darwin. However, the potential landing sites were bombed by the Indonesian military and the Australian government shut down the Darwin radio frustrating efforts for further communication. Indonesia also threatened to sink a Portuguese corvette that was to be used to land Gucciardi on the south coast of Timor-Leste for these meetings.

## **1977**

### **US leads re-arming of the Indonesian military**

295. ...Also that year the UK announced its intention to supply Hawk ground attack jets, and Australia supplied helicopters and transport aircraft. This was a very clear signal to Indonesia that the West did not oppose its military operations in Timor-Leste.

## **1979**

### **A closed land**

337. In July 1979, Pat Walsh prepared a report on the humanitarian crisis in Timor-Leste for Action for World Development, an Australian Church-based NGO. He testified to the Commission that the report concluded that at this time: Indonesia's efforts at humanitarian relief were a much lower priority than its military operations and that independent agencies would not be permitted until Indonesia had achieved its military objectives.

338. Although Australian non-governmental organisations tried to internationalise the humanitarian crisis in Timor-Leste, the Australian government has defined this period as marking the commencement of its de jure recognition of Indonesian sovereignty over the territory. This position put it out of step with most member states of the United Nations.\*

\* The Australian government places 14 February 1979 as the date of the beginning of the process of Australia granting de jure recognition of Indonesian sovereignty over Timor-Leste. This date marked the commencement of negotiations between Australia and Indonesia over the Timor Sea oil reserves...

340. After reports about the humanitarian disaster were publicised, in September 1978 eleven foreign ambassadors and some journalists visited Timor-Leste escorted by the Indonesian Foreign Minister Dr Mochtar Kusumaatmaja. They represented the governments of Canada, USA, Australia, Japan, New Zealand, India, South Korea, Bangladesh, Egypt, Syria and Iraq. They were told that some 125,000 people had come down from the mountains with 20-30,000 of these in appalling, desperate condition. Four ambassadors (from Australia, Canada, Japan and USA) called for the urgent implementation of an international relief operation. Despite this urgency, a full year passed before the ICRC

and the American non- governmental organization CRS arrived in Timor-Leste to provide emergency relief...

## **1981**

### **Humanitarian consequences**

375. The operation [Operasi Keamanan (Operation Security), the “human fence”] took place over the planting season of 1981, and with large numbers of subsistence farmers forced to participate they were unable to plant their crops. In November 1981 Monsignor Lopes wrote to Australia with news of another impending famine, leading to international concern. In March 1982 former Australian Prime Minister Gough Whitlam visited Timor-Leste, meeting with Monsignor Lopes. Whitlam later publicly disputed Lopes’s claims. A visit several months later by a delegation from the World Council of Churches found differently:

It was clear that a large number of people have been resettled and there are still many malnourished children. Everywhere we went, people named food and housing as their major problems...our impression is that many people would like to return to their traditional homes and land in the hills.

## **1983**

### **Ceasefire undermined**

423. On 28 July an Australian parliamentary delegation arrived in Dili. It spent four days in Timor-Leste, out of a total of 10 in Indonesia. It did not seek to meet

with Fretilin. However near Baucau the delegation was stopped by four Falintil members. A short discussion ensued and the Falintil members gave the Parliamentarians a letter. This letter noted that:

Even now during the [peace] talks...they [ABRI] continued [sic] to kill the FRETILIN [sic] guerillas who wanted to come close to the camps so as to be able to get in touch with their people.

## **1984**

### **Consolidation and the beginnings of change: 1984-1991**

438. These changes to the Resistance movement also strengthened the external diplomatic front, the international diaspora of East Timorese and international civil society. In 1983, following a ban by the Australian government since the time of the Indonesian invasion, a delegation of Fretilin leaders made a successful visit to Australia and addressed a gathering of 1,500 people from all walks of life in Melbourne. This greatly encouraged East Timorese in exile in Australia, who until this time had struggled to make an impact with the Australian public without the direct support of key leaders. By the

1980s, East Timorese who had escaped Timor-Leste in the 1970s were more settled and able to manage conditions in new lands such as Portugal and Australia, and became more effective in the struggle for international recognition...

## **1990**

### **Jakarta opens East Timor**

466. In September 1990, Australian lawyer and trade unionist Robert Domm travelled into Timor-Leste and with the help of clandestine networks interviewed Xanana Gusmão in his mountain hideout. The interview was the first ever direct interview with the guerrilla leader. It was broadcast by the Australian Broadcasting Commission and significantly increased Xanana Gusmão's international profile and status. Indonesian military reprisals against those suspected of helping to organise this interview were harsh.

### **The Timor Gap treaty**

468. On 11 December 1989, the Australian and Indonesian governments signed a treaty on the exploitation of the Timor Gap natural resources. This was not a surprise to Xanana Gusmão, who had previously been roundly critical of the Australian government in messages since 1986, when he suggested that Australia was seeking a solution to the Timor-Leste question in order to secure the resources of the Timor Sea. Human Rights organisations, journalists and activists around the world criticised the treaty, and it became the source of a running dispute. The signing ceremony was conducted in an airplane over the Timor Sea, and the photo of the respective Foreign Ministers Gareth Evans and Ali Alatas became a favourite tool of the international solidarity movement in its efforts to highlight the injustices of the issue of Timor-Leste.

## **1991**

### **The international impact of Santa Cruz**

486. Some governments, notably Australia, worked to support the Indonesian explanation that [the massacre at Santa Cruz] was an uncharacteristic action by "rogue elements" within the military. Despite this, the massacre and the focus it brought to the wider issue of Indonesia's occupation of Timor-Leste was a public relations disaster for Indonesia. The 12th of November became a rallying day for East Timorese in the diaspora and human rights activists in countries throughout the world right up to 1999, with anniversaries being marked by demonstrations and vigils.

### **The International Court of Justice case: Portugal v Australia, 1991-95**

499. In 1991 Portugal took Australia to the International Court of Justice over the so-called Timor Gap treaty signed with Indonesia in 1989. It could not take Indonesia to this court, as Indonesia had not accepted the Court's jurisdiction.

The decision was handed down in 1995, and although while the case did not result in overturning of the treaty, it provided an important statement in support of Timor-Leste's continuing right to self-determination.

500. Portugal argued that Australia was violating international law by contracting with Indonesia to divide up the natural wealth belonging to the people of Timor-Leste. Portugal said that this violated its right as the administering power of the non-self-governing territory, and also the right of the people of Timor-Leste.

501. Due to a technicality most judges said that they could not hear the case. The issues of the case all revolved around the legality of what Indonesia had done and was continuing to do in Timor-Leste, and so they said they could not hear the case if Indonesia was not a party. However, two judges did not agree with this view and they gave strong dissenting opinions. They examined the merits of the case and gave important findings on the obligations of States in relation to the right of self-determination in the Timor-Leste context. Judge Weeramantry and Judge Skubiszewski both recognised the East Timorese people's continuing right to self-determination. They also cautioned that States entering such a treaty had a duty to consult the peoples of Timor-Leste and the administering power (Judge Skubiszewski), and that such a treaty may be in breach of obligations imposed upon them by general principles of international law (Judge Weeramantry)

## **1998**

### **Negotiations on the autonomy package**

544. On 19 December 1998 Australian Prime Minister John Howard wrote a letter to President Habibie, a document that has been viewed as having significant impact on the President's thinking. While Prime Minister Howard reaffirmed Australia's preference that Timor-Leste remain part of Indonesia, he drew a parallel with the Matignon Accords of French New Caledonia and suggested that Indonesia consider implementing the special autonomy with a "review mechanism" that would effectively be a referendum some years into the future:

It might be worth considering, therefore, a means of addressing the East Timorese desire for an act of self-determination in a manner that avoids an early and final decision on the future of the province.

545. This suggestion of avoiding a quick, final solution to Timor-Leste was in step with the UN, which advocated a five- to seven-year period of autonomy. However, this was seen by Indonesia as a major policy change by their most staunch international supporter, a change that recognised the East Timorese right to self-determination. When the story of Australia's letter became public, Australian Foreign Minister Alexander Downer explained on 12 January that "our preference would be for an arrangement where East Timor would have a high degree of autonomy but remain legally part of Indonesia."

1999

### **The 5 May Agreements**

557. In view of the deteriorating security situation the UN-sponsored talks between Portugal and Indonesia on 22 April discussed security issues for disarming the militia, reducing TNI numbers, confining Falintil to cantons and the provision of civilian police. But Foreign Minister Alatas refused to agree to specifics. Both the US and Australia advised the Special Representative of the Secretary-General, Jamsheed Marker, not to endanger the negotiations by too strong an emphasis on security.

### **Growing international pressure**

643. East Timorese leaders outside the territory conducted frantic diplomatic activity to seek international intervention. Xanana Gusmão was finally released from imprisonment by Indonesia on 7 September, and handed over to UNAMET in Jakarta. To forestall any assassination attempt, he was shuttled to the British Embassy in Jakarta, and from there to Darwin, Australia. Bishop Belo had been evacuated to Baucau after his Dili residence was attacked and from there by UN airplane to Darwin on 6 September. He travelled to Rome and Lisbon to seek support. José Ramos-Horta and others travelled to Auckland, in New Zealand, where regional and world leaders had gathered for the annual APEC summit. Worldwide, and especially in Australia and Portugal, mass protests, driven by the non-governmental solidarity movement and by the East Timorese diaspora, called for international intervention. Combined with the poignant but limited images from the UNAMET compound in Dili, and the messages of journalists and others in the compound, the story dominated international news and kept up pressure on Indonesia and world leaders to intervene.

645. Before the ballot, and again on 1 September, Portugal had been calling for the mobilisation of an international peacekeeping force. Australia had been making quiet preparations in the event of the need for military intervention since late 1998, and had troops in readiness. New Zealand was also preparing. However, no state was prepared to intervene militarily without Indonesia's consent. On 4 September the Australian Foreign Affairs Minister, Alexander Downer, publicly declared Australia's willingness to lead an international force into Timor-Leste, if Indonesia agreed and if it received a UN Security Council mandate. Kofi Annan and the Australian Prime Minister John Howard were in constant contact about these efforts, seeking Indonesian agreement to an international force and gathering a coalition to form a force which could be rapidly deployed.

627. With the TNI demonstrating that it would not bring the violence under control and with a Security Council team on the ground in Dili and Jakarta, Indonesian President Habibie consented to an international force on 12 September. A week later the commander of the International Force for East

Timor (INTERFET), Australian Major-General Peter Cosgrove, arrived in Dili followed a day later by his troops. As the TNI departed Timor-Leste, it destroyed 70% of major infrastructure, houses, and buildings, it razed entire villages and it looted the possessions of the East Timorese.

It is the task now of the Timorese people to choose and to install the structural systems they need for a stable society, to gain the education needed to become participative citizens. It is the responsibility of international players to assist East Timorese people to grow towards the democracy they have chosen. It is essential that the history of East Timor be widely known so that those willing to assist can understand the past, the influences of the present and the effects of violent colonisation, otherwise well-meaning people can expect too much too soon. When the length of time it has taken other nations to evolve into democracies is compared with East Timor's time at the helm some perspective is gained...

We need to give practical support to reconciliation processes, particularly those which already exist within Timorese society. Some success in developing and using existing processes is described in the CAVR report, but lack of finance and support has limited the possibilities. Those who aspire to comment on recent Timorese deficiencies in government and organisations would do better to put their energies into working with Timorese people to build on the sound community systems which already exist but which require support in the light of the battering which the society has endured over decades.

Susan Connelly RSJ 2006<sup>13</sup>

## 7.1 The Right to Self-determination

### 2.4 Australia

100. Australia was not a party principal to the Timor-Leste conflict, but successive Australian Governments took a close interest in the issue and Australia was viewed as a key player by Portugal and Indonesia, and also by the East Timorese Resistance. Australia's proximity to Timor and middle power status in the region, combined with active civil society, parliamentary and media interest in Timor-Leste's situation, made involvement unavoidable despite attempts by government at various times to distance itself from the issue.

101. The major Western powers also expected Australia to play a key role. Following the Second World War, the US and Britain pressed Australia to take more responsibility for regional affairs, including Portuguese Timor after it became an international issue in 1960. Cabinet discussions in 1963 on the future of the territory made reference to "proposals by the United States Administration to the effect that Australia should take more defence and diplomatic initiative in South-East Asia, thus sharing responsibility more, rather than, as at present, limiting itself to the support of leads of the United States or Britain".

102. After Portugal's decision in 1974 to decolonise the territory, Western governments looked to Canberra for intelligence and policy advice on the issue. Aware of its European neighbour's influential role, the Soeharto Government paid special attention to its relationship with Australia and kept Australian officials closely informed about Indonesia's developing position. This included discussions on the issue between President Soeharto and Australian Prime Minister, Gough Whitlam, on two occasions in 1974 and 1975. The importance of Australia's role to both Indonesia and Western governments is well illustrated by the impact of Australia's decision to vote against Indonesia on the question at the UN General Assembly in December 1975. At the time, Harry Tjan, a key advisor on Timor to President Soeharto, angrily informed the Australian government that its vote was damaging because so many countries had looked to Australia for a lead. The Americans, he said, had already told the Indonesian Government that Australia's voting intentions had played a large part in their own consideration of how they should vote. Indonesia had also learnt that the Nine (including Britain) had been similarly influenced by Australia. No doubt there were many others. Australia's general approach in the United Nations on this issue had been "extremely harmful" to Indonesia.

#### 2.4.1 Australian policy to 1974

103. The main features of Australia's policy on the question were developed in the 1960s after Portuguese Timor was listed by the UN as a non-self-governing territory. The policy emerged not as a response to Timor's newly acknowledged right, but out of concern that Portugal and Indonesia were on a



collision course over the issue and this might lead to conflict in Australia's near north. Policymakers in Canberra believed that Salazar's refusal to cooperate with the United Nations and to make even minimal concessions to Third World sentiment would provoke Sukarno to take military action against the Portuguese similar to his response to the British over the formation of Malaysia and the Dutch over West Irian. The Australian Prime Minister, R G Menzies, wrote to the Portuguese Prime Minister, Dr Antonio de Oliveira Salazar, several times between 1961 and 1964 in a bid to head off this predicted crisis.

104. The clash did not eventuate, but in response to the prospect a number of key policy positions were developed. In one or other form, these policies and concerns, which were taken before the advent of the Soeharto Government or the establishment of Fretilin, were to characterise Australia's handling of the Timor problem throughout the conflict.

105. As formulated by the Minister for External Affairs, Garfield Barwick, they included the following:

- Australia supports the principle of self-determination.
- Timor has no future under Portugal.
- The territory is not capable of political independence.
- Australia would accept incorporation by Indonesia provided it was peaceful and in accordance with the freely expressed wishes of the Timorese people.
- Australia would oppose Indonesian military aggression in the territory and support action by the UN in response.
- Australian public opinion would not accept violence by Indonesia against Timor.
- Any Australian initiative on the issue must take into account the importance of good relations between Australia and Indonesia. The 1963 Cabinet Minutes referred to above stated:

Cabinet indicated that (it would not) wish to take initiatives which might lead to the point where Australia came to be seen by Indonesia or other countries as a standing adversary. The objective in relations with Indonesia must be to achieve the greatest available degree of mutual understanding.

106. Barwick ruled out a proposal advanced by US Assistant Secretary of State Harriman that Portugal be assisted to establish a ten-year development programme which would culminate in a Timorese act of self-determination.

107. The fate of Portuguese Timor was not an issue during the early years of the New Order. The Soeharto Government showed little interest in the territory and Australia shut down its consulate in Dili in 1971. Australia welcomed the New Order and was highly appreciative of its emphasis on stability, anti-communism, economic growth, domestic issues and positive regional relations which, in its view, contrasted sharply with the aggressive foreign policy and domestic turbulence of the Sukarno Government. Strengthening and broadening Australia's

relationship with Indonesia became a priority objective. The Australian Embassy reported in 1973:

President Soeharto...is very well disposed towards Australia...This provides a unique opportunity for Australia, with its own national interests to the forefront, to develop closer relations with a country in which we have a great stake.

108. During this period, Australian officials continued to counsel in favour of the incorporation of Timor into Indonesia. In 1970, the Australian Prime Minister, William McMahon was informed:

There is no early prospect that Indonesia would seek to take over Portuguese Timor...(but) in the long term the sensible disposal of the colony would be by incorporation in Indonesia.

109. In 1973, the Australian Prime Minister, Gough Whitlam, was informed:

The people of Portuguese Timor would probably be marginally better off under Indonesian rule than under any other conceivable dispensation (the Indonesian half of the island is better run than the Portuguese colony and its prospects as a separate entity would be poor).

#### **2.4.2 Australian policy, 1974-75**

110. Australian policy on Timor after the Carnation Revolution in Portugal was chiefly determined by the Australian Prime Minister, Gough Whitlam (1972-75). His Labor Government, the first after more than two decades, introduced a range of important domestic reforms, but also gave paramount importance to Australia's place in Asia and its relationship with Indonesia.

111. Mr Whitlam's policy on Timor was similar to that inherited from the Menzies Government, with one notable difference. It placed a higher priority on cooperation with Indonesia and particularly with President Soeharto himself whose replacement of Sukarno and positive attitude towards Australia were welcome new factors. Mr Whitlam decided the policy without discussion in Cabinet. However, the broad thrust of the policy was shared by leaders on both sides of politics. The Secretary of the Department of Foreign Affairs, Alan Renouf, told Malaysian officials in October 1975:

The Prime Minister (Whitlam), most of the Cabinet, as well as Mr Fraser (Leader of the Opposition) and Mr Peacock(Shadow Foreign Minister), sympathise with Indonesia's integrationist aspirations.

112. Mr Whitlam discussed Timor policy face-to-face with President Soeharto on two occasions: on 5-8 September 1974 in Yogyakarta, Indonesia, and on 4 April 1975 in Townsville, Australia. President Soeharto made it clear that he gave the first meeting special status and expected to hear an authoritative statement on Timor from the Australian Prime Minister.

113. In summary, Mr Whitlam made three main points to the Indonesian President:

1. He reduced the three options available to the Timorese people under international law to one, namely incorporation into Indonesia, provided that this was freely chosen by the Timorese people. According to the official record of the meeting:

The Prime Minister said that he felt two things were basic to his own thinking on Portuguese Timor. First, he believed that Portuguese Timor should become part of Indonesia. Second, this should happen in accordance with the properly expressed wishes of the people of Portuguese Timor.

2. Independence was not an option. He told the President:

Portuguese Timor was too small to be independent. It was economically unviable. Independence would be unwelcome to Indonesia, to Australia and to other countries in the region, because an independent Portuguese Timor would inevitably become the focus of attention of others outside the region.

He told the President that Australia would support Indonesia's position in Lisbon:

Our own objective in Lisbon would be to put to the Portuguese Government the view that Portuguese Timor was part of the Indonesian world.

3. He emphasised the importance of protecting bilateral relations and not alienating Australian public opinion:

He hoped that the President would keep in mind the need for support from among the Australian public for the incorporation into Indonesia of Portuguese Timor, based on respect for democratic expression of the wishes of the people.

He repeated this point at a second meeting with the President the same day.

114. President Soeharto expressed essentially the same position. Major-General Ali Moertopo, the head of the covert Special Operations project for Timor, told the Australian Ambassador to Portugal on 14 October that the meeting had confirmed Indonesia's commitment to integration:

Ali said that until Mr Whitlam's visit to Djakarta, they had been undecided about Timor. However the Prime Minister's support for the idea of incorporation into Indonesia had helped them to crystallise their own thinking and they were now firmly convinced of the wisdom of this course.

115. Mr Whitlam's policy formulation reversed the priorities set out in the briefing on self-determination approved by the Minister for Foreign Affairs,

Senator Willesee, before the Whitlam-Soeharto meeting. This emphasised a process of self-determination open to each of the three options available rather than the outcome of the process. It also did not rule out independence on economic grounds. The Foreign Minister and the Secretary of his department, Alan Renouf, shared Mr Whitlam's belief that ultimate integration with Indonesia was the best outcome, but believed that priority should be given to Timorese self-determination. In their view, this would be more acceptable to Australian public opinion and would ensure that unacceptable features of the "Act of Free Choice" in West Irian were not repeated in Timor. In November 1991, Mr Willesee acknowledged his disagreement with Mr Whitlam:

I believed we ought not to play God, but let the Timorese decide.

116. Mr Whitlam repeated his position at a further meeting with President Soeharto in Townsville on 4 April 1975. In reply, President Soeharto said he was aware of speculation in Australia about the possibility of an Indonesian invasion of Portuguese Timor but that "Indonesia would never contemplate such a course of action".

117. Following the outbreak of the civil war in August, the Australian Ambassador to Indonesia, Mr Richard Woolcott, advised that the Prime Minister should not write another letter on Timor to President Soeharto. He wrote;

Soeharto will be looking to Australia for understanding of what he, after very careful consideration, decides to do rather than what he might regard as a lecture or even a friendly caution...From here I would suggest that our policies should be based on disengaging ourselves as far as possible from the Timor question; getting Australians presently there out of Timor; leave events to take their course; and if and when Indonesia does intervene act in away which would be designed to minimize the public impact in Australia and show privately understanding to Indonesia of their problems.

118. The Ambassador suggested that the gap in Australia's Timor Sea border could be more easily finalised with Indonesia than with Portugal or independent Timor-Leste and concluded:

I know that I am recommending a pragmatic rather than a principled stand but this is what national interest and foreign policy is all about.

119. Following this advice, Mr Whitlam told the Australian Parliament on 26 August 1975 that Australia was not a party principal in Portuguese Timor:

We have no national obligations or interest in getting reinvolved in colonial or postcolonial affairs in Portuguese Timor...We continue to hold that the future of the territory is a matter for resolution by Portugal and the Timorese people themselves with Indonesia also occupying an important place because of its predominant interest.

120. Indonesia made known to Mr Whitlam its appreciation of his assistance and understanding:

General Moerdani said that he, the President and others owed Mr Whitlam a great debt for the understanding he had shown of Indonesia's position and for the helpful position he had adopted. The President greatly valued this. But he also appreciated the difficulties the Government faced. If the Australian Government could not support Indonesia publicly in the months ahead, then he hoped that we would adopt the third option and keep quiet.

121. Australia did not formally protest Operasi Flamboyan, the Indonesian incursion into Portuguese Timor which resulted in the deaths of five Australian-based newsmen on 16 October 1975. Mr Woolcott had advised from Jakarta:

Although we know it is not true, the formal public position of the Indonesian Government is still that there is no Indonesian military intervention in East Timor. If the Minister (Senator Willesee) said or implied in public the Indonesian Government was lying we would invite a hurt and angry reaction.

122. Mr Whitlam was replaced as Prime Minister on 11 November 1975, but his successor, Malcolm Fraser, continued the same policy line.\* At Mr Fraser's request, Ambassador Woolcott met secretly with President Soeharto at his residence on 25 November 1975 to reassure him that the caretaker Australian leader placed the same high importance on Australia's relations with Indonesia and personal ties with the President as Mr Whitlam had, that he would be "seeking to build up further those relations" and would not receive José Ramos-Horta or any Fretilin representatives should they come to Australia.

123. Mr Fraser also asked the Ambassador to tell the President "that he recognises the need for Indonesia to have an appropriate solution for the problem of Portuguese Timor". Mr Woolcott reported that the President was very pleased to know of Australia's understanding and that when he asked the Ambassador to clarify the Prime Minister's meaning, Mr Woolcott had replied:

I would assume that by appropriate solution the Prime Minister would have in mind a solution which accommodated Indonesia's policy interests.

124. Neither the Prime Minister nor the President made any direct reference to the use of force.

The President made no reference to direct Indonesian involvement although I assume he must be aware that I know of it.

125. Out of office Mr Whitlam campaigned privately on behalf of Indonesia. Following a visit to Timor-Leste in 1982, on which he reported directly to President Soeharto, he was instrumental in having Dom Martinho da

Costa Lopes removed as the head of the Catholic Church in Timor and later that year he appeared before the UN Special Committee on Decolonisation and petitioned it to have the question of Timor-Leste removed from the UN agenda.

126. Throughout the 1970s Australian Governments followed a policy of 'business as usual' in dealings with Indonesia, including defence co-operation. The Whitlam Government initiated a defence co-operation program with Indonesia in July 1972 worth A\$20m which included provision of 16 Sabre jets, training and intelligence cooperation. This was renewed in 1975 and increased by the Fraser Government. The aid was provided on the proviso that it could not be used in Timor-Leste or for internal repression.

#### **2.4.3 Australian policy 1975-98**

127. Australia's two-pronged policy created a political dilemma when Timor-Leste was debated at the UN General Assembly in response to the Indonesian invasion. Australia elected to uphold the right of the East Timorese people to self-determination, consistent with UN principles and Indonesia's own position, but tried to have references to Indonesia deleted from the resolution. This failed and the resolution adopted on 12 December 1975 deplored Indonesia's military intervention and called for the immediate withdrawal of its troops. To Indonesia's annoyance, Australia was its only neighbour to vote in support of the resolution.

128. Australia continued to acknowledge Timor's right of self-determination and to note its disapproval of the way in which Indonesia incorporated the territory. It declined an invitation from Indonesia to attend the People's Representative Assembly in Dili on 31 May 1976 and did not recognise the assembly as a valid act of self-determination. This policy was continued throughout the conflict. In its official account of the issue, the Government states:

Through to 30 August 1999, Australia's position was that the people of East Timor had yet to exercise their right to self-determination.

129. However Australia did not uphold the right in practice. It did not support succeeding resolutions in favour of self-determination at the UN General Assembly between 1976 and 1981 and voted against the mild 1982 General Assembly Resolution which did not reaffirm the right and instituted talks under UN auspices to resolve the conflict. Australia also indirectly suppressed the right. In January 1978 Australia gave de facto recognition to Indonesian control over Timor-Leste. This was extended to de jure recognition from 14 February 1979 when Australia began negotiations with Indonesia over the seabed boundary with Timor-Leste. These policies and the programme of co-operation with Indonesia which followed, including military co-operation, had the effect of consolidating and legitimising Indonesia's sovereignty in Timor-Leste.

130. This policy of recognition, given first by the conservative Fraser Government, was continued by the Labor Government. On 17 August 1985 - Indonesia's national day - the Australian Labor Prime Minister, Bob Hawke, confirmed unequivocally that Australia recognised the sovereign authority of Indonesia in Timor-Leste and considered the people of Timor-Leste to be citizens of Indonesia. On 11 December 1989 his Foreign Minister, Senator Gareth Evans, and the Indonesian Foreign Minister, Ali Alatas, signed the Timor Gap Zone of Co-operation Treaty despite objections by Portugal that it violated the right of the Timorese people to self-determination.

131. The Labor Government led by Prime Minister Paul Keating from December 1991 maintained and developed the policies of the Hawke Government. Following a visit to Indonesia, Mr Keating told the Australian Parliament:

I deliberately chose Indonesia for my first overseas visit to demonstrate that it is at the forefront of our priorities.

132. He recommended that human rights abuses in Timor-Leste be addressed through long-term reconciliation.

133. Since 1975 sections of the Australian Labor Party (ALP) had been critical of the party leadership for either ignoring party policy which supported self-determination for Timor-Leste or diluting that policy. In opposition, the ALP Foreign Affairs spokesperson, Laurie Brereton, conducted a review of party policy on Timor-Leste in the context of the emergence of an indigenous democracy movement in Indonesia and other developments, including the UN-sponsored talks, Portugal's advocacy on the issue and strengthening public concern in Australia. His policy paper concluded that "no lasting solution to the conflict in East Timor is likely in the absence of negotiation through which the people of East Timor can exercise their right of self-determination". The revised policy was adopted at the 1998 ALP National Conference and within the Federal Caucus. Mr Brereton used the policy to challenge the status quo policy of the Howard Government, which came to power in March 1996, at every opportunity.

#### **2.4.4 Australia's policy shift**

134. The political demise of President Soeharto was immediately recognised by the Australian Government as an opportunity for progress on the question of Timor-Leste but within the framework of continuing Indonesian sovereignty.

135. Following President Habibie's offer of autonomy on 9 June 1998, the Australian Foreign Minister, Alexander Downer, held talks in Jakarta on the issue and, in a sharp break with past practice, authorised direct consultations with the East Timorese. These included visits to Timor-Leste by Ambassador John McCarthy, meetings with the gaolled Resistance leader Xanana Gusmão and a call for his release, and, based on a suggestion by the UN envoy Jamsheed Marker, a survey of East Timorese opinion both inside and outside Timor-Leste.

Australia's Ambassador to the UN, Penny Wensley, and Ambassador McCarthy became key members of core groups established by Jamsheed Marker in New York and Jakarta to take the issue forward.

136. The survey of East Timorese opinion was conducted in July-August 1998 and was instrumental in redirecting Australian policy. It covered all sides of the political debate and found that most Timorese respondents were in agreement that the status quo was not acceptable, that any solution, including autonomy, should ultimately receive the people's endorsement, either through a referendum or some other consultative process, and some international guarantee, and that Xanana Gusmão was essential to a resolution. Australia shared the results with the Indonesian Government.

137. On 19 December 1998 the Australian Prime Minister, John Howard, wrote to President Habibie and emphasised the urgency of talking directly to the East Timorese to secure their support for autonomy within Indonesia. He also noted the growing support in Timor-Leste and internationally for self-determination and suggested that an act of self-determination might be held following a substantial period of autonomy, similar to the approach agreed to in New Caledonia.

138. President Habibie took offence at the suggestion that Indonesia's presence in Timor-Leste was comparable to France's colonisation of New Caledonia, but acknowledged Australia's proposal of self-determination. At a Cabinet meeting on 1 January 1999, it was agreed that Indonesia would consult the people of Timor-Leste about their future and allow them to become independent if they rejected the offer of special autonomy.

139. Prime Minister Howard's intervention was intended to promote reconciliation and to confirm Timor-Leste as part of Indonesia through the free consent of the people. The initiative had the opposite effect. It became a trigger for independence and the end of the integrationist policy which had been the central plank of Australian policy on Timor throughout the decolonisation process. The Deputy Secretary of the Department of Foreign Affairs and Trade, John Dauth, told an Australian Senate Committee on 6 December 1999 that the Government only finally abandoned its declared preference for Timor-Leste to remain as an autonomous territory within Indonesia when the people of Timor-Leste voted for independence:

We made clear always to the Indonesian government throughout the course of this year that we respected their sovereignty until such time as the processes which President Habibie put in train delivered a different outcome.

140. The Australian Government and its diplomats played a leading role in promoting and backing the act of self-determination politically, financially and organisationally. Following the ballot on 30 August 1999 and the eruption of violence, Australia organised and led the Security Council mandated



International Force in East Timor (Interfet) which assisted in bringing the UN process back on track and ensured that the decision of the people for independence was respected and implemented.

#### **2.4.5 Conclusion**

141. The people of Timor-Leste had high expectations of Australia based on its proximity, its presence during the Second World War, its relationship with Indonesia and its reputation as a good and influential international citizen.

142. These expectations were not fulfilled until 1999. Australia gave nominal support to the principle of self-determination throughout the decolonisation process, but did not uphold it for most of this period. It favoured only one option, that of integration with Indonesia, even though the weight of evidence from 1974 was that an act of self-determination would oppose integration. Mr Whitlam's comment to Foreign Affairs officers in 1974 that "I am in favour of incorporation but obeisance is to be made to self-determination" was true for each of the five Australian governments that held office during the Soeharto era.

143. Australia made it known to Indonesia at the highest levels that it opposed the use of force in Timor-Leste but once this decision was made in mid-1975 it knew and accepted it. It was quick to acknowledge the Indonesian military's occupation of Timor-Leste and to offer legitimacy through de jure recognition of Indonesian sovereignty. Apart from one occasion, Australia voted against Timor-Leste at the United Nations, was dismissive of Portugal's responsibility as administering power, and by its stance and actions undermined international support for Timor-Leste.

144. The former Australian foreign affairs official, Dr Kenneth Chan, testified to the Commission:

While I have sought to give a balanced account of the developments of Australian policy towards East Timor, my overall assessment of that policy during the 25 years under consideration is that it was mostly a failure. There was failure to support an underlying principle of the United Nations and of international law and justice: the right of all people to self-determination. And there was failure to work to restrain Indonesia from the path of military intervention and aggression in 1975, especially after Fretilin took control of East Timor and made its unilateral declaration of independence.

145. The people of Timor-Leste welcomed and benefited from Australia's strong practical support for a genuine act of self-determination in 1999.

## 7.9 Economic and social rights

### The Timor Sea

52. The most significant economic asset at stake in East Timor was the petroleum-rich oceanic trough between Timor and Australia. Not explored until the early 1970s, these resources have yet to make a major contribution to Timor-Leste's economy.\* Yet the rich deposits of oil and natural gas in the Timor Sea have played a central role in the struggle over Timorese sovereignty. The Australian and Portuguese positions on the right of the people of East Timor to self-determination and the Indonesian occupation were deeply influenced by their economic interests in the Timor Sea... The oil and gas fields in the Timor Sea are mentioned here because they illustrate how economic interests in the exploitation of these valuable natural resources have shaped both the positions of international actors regarding the right of the people of East Timor to self-determination and the economic conditions of the East Timorese and their ability to provide for themselves.

53. The 1989 treaty between Australia and Indonesia divided the Timor Sea into Indonesian and Australian exclusive zones and a Joint Petroleum Development Area. It also provided for production of the fields to be split between Australia and Indonesia on terms that were unusually favourable to Australia. Political considerations almost certainly influenced this outcome: Australia was thought to have reaped the rewards of having been one of the few countries to give de jure recognition to the Indonesian annexation of East Timor...

### The right to an adequate standard of living

#### Rights over natural resources

140. In a further breach of the people of Timor-Leste's right to dispose of its natural resources, the Commission finds that Indonesia and Australia concluded the Timor Sea Treaty in 1989 without consulting the people of Timor-Leste or paying due regard to their interests.

It is painful and often stressful to remember a horrendous past. For some people, it may seem better to leave the past untouched. But the past does not go away and, if untreated, may eat away at these people and maybe even destroy them. Remembering is not easy, but forgetting may be impossible, as some of our people have said... They want reconciliation, but reconciliation with justice.

Isabel Amaral Guterres, 2002<sup>14</sup>

### 8.6.3 Responsibility of the State of Australia

The Commission finds that Australia contributed significantly to denying the people of Timor-Leste their right to self-determination before and during the Indonesian occupation. Australia was well-placed to influence the course of events in Timor-Leste. Rather than playing the role of honest broker, between April 1974 and December 1975 it tilted sharply in favour of the Indonesian stance on Timor-Leste, justifying this position by the need to maintain good relations with Indonesia, whose “settled policy” it understood to be the incorporation of the territory by any means. It took this position even though it violated Australia’s obligations under international law to support the right of the East Timorese people to self-determination.

After the Carnation Revolution the Government of Gough Whitlam made it clear to President Soeharto that it shared the Indonesian Government’s preference that Timor-Leste be incorporated into Indonesia. In his conversations with President Soeharto Whitlam said that Australian policy towards Timor was guided by two principles: its belief that Timor should become part of Indonesia; and its desire that this should happen with the consent of the people of the territory. When it became apparent that these two components of its policy were at odds with each other, the second was sacrificed to the first. Although its contacts with officials in Jakarta and intelligence gathered on the ground in Timor-Leste both made it clear that, if necessary, Indonesia intended to take control of the territory forcibly, Australia raised no objection. Its appeasement of the Soeharto Government extended to a muted response to the deaths of its own nationals in Balibo (Bobonaro) on 16 October 1975 and in Dili on 8 December 1975.

The Commission finds that Australian policy towards Indonesia and Timor-Leste during this period was influenced not only by an interest in maintaining good relations with Indonesia, but also by an assessment that it would achieve a more favourable outcome to the negotiations on the maritime boundary in the Timor if it was dealing with Indonesia rather than with Portugal or an independent Timor-Leste on the issue.

The Commission also finds from its examination of the documentary record that that Australia’s presentation of its stance confirmed the Indonesian Government in its resolve to take over the territory of Timor-Leste. Australia’s indifference to Indonesia’s actions in pursuit of its goals, including its incursions into the territory, almost certainly had a similar effect. Conversely had Australia given greater weight to the right of the East Timorese to self-determination and to the inviolability of its sovereign territory in its dealings with Indonesia, it may have been able to avert the Indonesian use of force. The Commission finds that during the Indonesian occupation successive Australian governments not only failed to respect the right of the East Timorese people to self-determination, but actively contributed to the violation of that right. After supporting the first resolution in

1975 it abstained from or voted against subsequent General Assembly resolutions recognising the right of the East Timorese people to self-determination. It refused to receive José Ramos-Horta or other Fretilin representatives, and even banned their entry to Australia for a number of years. In 1978 it recognised de facto Indonesian control over Timor-Leste, and implicitly gave de jure recognition in 1979 when it began negotiations with Indonesia for the delimitation of the maritime boundary between Australia and Timor-Leste. In 1985 it unequivocally gave de jure recognition to the integration of Timor-Leste into Indonesia, and in 1989 concluded the Timor Gap Zone of Cooperation Treaty with Indonesia. Australia also provided economic and military assistance to Indonesia during this period and worked as an advocate for the Indonesian position in international fora.

Australia played a leading role in the INTERFET force that ultimately ended the violence surrounding the ballot in 1999, and has consequently tended to portray itself as a liberator of Timor-Leste. However the Commission finds that even when President Habibie was moving towards his decision to offer the East Timorese a choice between remaining part of Indonesia and independence, the Australian Foreign Minister, Alexander Downer made it clear that his Government believed that it should be several years before the East Timorese exercised their right to make that choice and that it would be preferable from an Australian point of view if Timor-Leste remained legally part of Indonesia. The actions of the Government of Australia in supporting Indonesia's attempted forcible integration of Timor-Leste was in violation of its duties, under the general principles of international law, to support and refrain from undermining the legitimate right of the East Timorese people to self-determination and to take positive action to facilitate the realisation of this right. According to the Human Rights Committee:

States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination.

Australia's actions during the period of Indonesia's illegal military occupation of Timor-Leste did, in fact, adversely affect the East Timorese people's ability to exercise their right to self-determination.

# RECOMMENDATIONS RELEVANT TO AUSTRALIA

## 1. Timor Leste and the International Community

- 1.1 This Report is given the widest possible distribution at all levels in the international community through the media, internet and other networks and particularly within the United Nations and those individual nations and institutions that are highlighted in the Report, viz. Australia, China, Britain, France, Indonesia, Japan, Portugal, Russia, US, the Catholic Church, as well as the East Timorese diaspora and international civil society organisations.
- 1.6 The states that had military cooperation programmes with the Indonesian Government during the Commission's mandate period, whether or not this assistance was used directly in Timor-Leste, apologise to the people of Timor-Leste for failing to adequately uphold internationally agreed fundamental rights and freedoms in Timor-Leste during the Indonesian occupation.
- 1.8 Business corporations which profited from the sale of weapons to Indonesia during the occupation of Timor-Leste and particularly those whose material was used in Timor-Leste contribute to the reparations programme for victims of human rights violations.
- 1.9 All UN member states refuse a visa to any Indonesian military officer who is named in this Report for either violations or command responsibility for troops accused of violations and take other measures such as freezing bank accounts until that individual's innocence has been independently and credibly established.
- 1.10 States regulate military sales and cooperation with Indonesia more effectively and make such support totally conditional on progress towards full democratisation, the subordination of the military to the rule of law and civilian government, and strict adherence with international human rights, including respect for the right of self-determination.
- 1.11 The governments of Australia, Britain and New Zealand undertake a joint initiative to establish the truth about the deaths of the six foreign journalists in Timor-Leste in 1975 so that the facts and accountability are finally established.

- 1.13 The documents and any other material relating to the events of 1999 and militia activity that were allegedly removed to Australia for safe-keeping after the arrival of INTERFET in 1999 be returned to Timor-Leste by the Government of Australia. (ES 158-159)

## **5. Effective Institutions**

- 5.1.4 Government and donors continue to provide financial assistance, training and other forms of support for civil society in Timor-Leste to ensure it has the capacity to take its seat at the table and fulfill its role constructively and effectively. (ES 173)
- 5.3.6 The United Nations and international community continue to support the development and strengthening of the legal and judicial system in Timor-Leste to ensure accountability before the law. (ES 176)

## **6. Security Services**

- 6.2.7 Specialised and ongoing training is provided on the gathering of evidence, forensic practice and appropriate methods of interrogation in order to lessen the risk that members of the police will seek to gather evidence from confessions obtained under duress.
- 6.3.6 On-going training in international human rights, humanitarian law and civic education is provided to the members of the Defence Forces, including senior leadership. (ES 180-181)

## **7. Justice and truth**

### **7.1 Justice for past atrocities**

- 7.1.9 The international community urges and supports Indonesia to declassify information held by the Indonesian security forces so that it is available for judicial processes.
- 7.1.12 The international community demonstrates its commitment to justice and the Serious Crimes process by, inter alia:
- ensuring that their law enforcement authorities are enabled to transfer those indicted to the Serious Crimes regime established by the UN, to try those indicted themselves or to extradite them to a jurisdiction genuinely interested in trying them
  - ensuring that persons responsible for the crimes described in this report are not allowed to continue profitable careers regardless of their crimes

- establishing a special board of investigation under the auspices of the United Nations to establish the extent, nature and location of assets held by those indicted for crimes against humanity in Timor-Leste
- freezing the assets of all those indicted for crimes against humanity in Timor-Leste, subject to national and international laws and pending hearing of cases before the relevant tribunal
- placing travel bans on those indicted for crimes against humanity in Timor-Leste
- linking international aid and cooperation to specific steps by Indonesia towards accountability, such as cooperation with the Serious Crimes process, the vetting of perpetrators who continue their careers in the public sector, and the scrutinising of Indonesian members of peacekeeping missions and training courses to ensure that alleged perpetrators of violations are not included. (ES 186-187)

## **7.4 Dissemination of the Final Report in Timor-Leste**

7.4.3 The Government of Timor-Leste and international donor partners support the reproduction of the Final Report and related materials to enable this continuing education programme... [i.e.,] curricula and other educational resources related to human rights, reconciliation, history, law, gender studies and other relevant disciplines. (ES 188)

## **12. Reparations**

### **12.7 Reparations programme**

The main aim of this reparations scheme is to assist vulnerable victims of gross human rights violations, within the scope of the mandate of the Commission, by repairing, as far as possible, the damage to their lives caused by the violations through the delivery of social services and symbolic and collective measures.

#### **Rehabilitation**

The rehabilitation of victims should include medical and psychosocial care. Where this is already being provided to the general community by the Government and civil society, the programme should support victims to access these services, give service providers additional resources to reach beneficiaries and ensure quality service delivery by monitoring and providing feedback to service providers.

#### **Collective measures**

The programme should also ensure that rehabilitation takes place in a community context. This means that collective measures be developed to ensure that rehabilitation of victims of human rights violations takes place in

context and together with their communities. A special window should be developed through which communities or groups of victims can apply for such assistance. These measures should be determined in consultation with the victims and can take the form of symbolic recognition, as described below, and/or material support for activities or items identified by victims together.

### **Symbolic measures**

Symbolic measures, developed in consultation with victims, might include memorialisation, commemoration ceremonies, exhumations and reburials or marking and honouring of mass graves. Symbolic measures honour victims of past atrocities, strengthen the social commitment to oppose repetition of such acts, are educative and promote reconciliation. (ES 205)

## **12.10 Financing**

Member states of the international community, and business corporations who supported the illegal occupation of Timor-Leste and thus indirectly allowed violations to take place, are obliged to provide reparations to victims based on the principle of international responsibility recognised in the international customary law of torts. In the spirit of reconciliation, the Commission recommends that this undertaking to take care of members of the Resistance is extended to include victims of human rights violations committed by all sides. If Indonesia is slow to respond, Timor-Leste and the international community should make their contributions while pressing Indonesia to fulfil its responsibilities. Many of the victims cannot afford to wait. Contributions from governments who provided military assistance, including weapons sales and training, to the Indonesian Government during the occupation and business corporations who benefited from the sale of weapons to Indonesia. Contributions from governments, international agencies, foundations and other civil society organisations, including special funds for victims of human rights violations, such as the United Nations Fund for Victims of Torture. The Commission recommends that a trust fund be established to receive and manage the contributions and that this fund be regularly audited. (ES 208)

The report yet again turns the spotlight on Australia. First, it lays bare our official record of duplicity and cowardice in relation to East Timor. Secondly, it raises important questions about the past forty years of Australian diplomacy towards the Soeharto regime, and about our future relations with Indonesia. Thirdly, it is a devastating indictment of the politicians, diplomats, journalists and intellectuals who are generally known as the 'Jakarta lobby'.

Mark Aarons, 2006<sup>15</sup>



# RESPONSES TO *CHEGA!*

## Timor-Leste Government

On 31 October 2005, *Chega!* was presented to President Xanana Gusmão. On 28 November, the President tabled the report at a special sitting of the National Parliament. He commended the work of the CAVR and most of the findings in *Chega!*, noting that

There are many valuable recommendations that deserve to be studied in depth by the Timorese society and, particularly, by the political forces of our Nation... Once we all adhere to these principles, we can then be certain that we will never have to face again the nightmares and sacrifices of the 24 years of struggle we have had to endure.<sup>16</sup>

However, he disputed the finding that the absence of justice is a fundamental obstacle in the process of building a democratic society. The true risk to a state based on the rule of law, he stated, was “ill-practised justice”. He also distanced himself from the report’s recommendations, which he described as possessing “grandiose idealism.”<sup>17</sup>

In particular, he rejected the recommended revival of the Special Panels for Serious Crimes on the basis that “this recommendation does not take into account the situation of political anarchy and social chaos that could easily erupt if we decide to bring to court every crime committed since 1975 or even 1974.” Additionally, Mr. Gusmão expressed concern that by further highlighting past crimes, the East Timorese would be portrayed as brutal, violent and bloodthirsty people.”<sup>18</sup>

The President established the Post-CAVR Technical Secretariat on 20 December 2005 to disseminate *Chega!*, amongst other duties. As part of this mandate, the Secretariat first provided the report to selected heads of government, donors and some others. Its plan to disseminate the report to the community in Timor-Leste were disrupted by the crisis but have been implemented in the second half of 2006.

On 20 January 2006 President Gusmão handed the report to UNSG Kofi Annan, as required under UNTAET Regulation 2001/10 (as amended by the Parliament of Timor-Leste). He spoke at length about the CAVR in his speech to the Security Council on 23 January. He once again praised the “valuable recommendations that deserve in-depth study”, but also reiterated that “true justice for the East Timorese was the recognition by the international community of the right of the people of Timor-Leste to self-determination and independence”.<sup>19</sup>

In an interview in March 2006, then Foreign Minister Jose Ramos-Horta outlined his response to *Chega!* In particular he rejected the idea of paying compensation to the victims of violence and human rights abuses.<sup>20</sup>

However, the crisis that erupted in Dili in 2006 resulted in President Gusmão and Prime Minister Ramos-Horta making much more positive statements about *Chega!* and the work of the CAVR. In his televised address on 20 June 2006, just prior to the forced resignation of Prime Minister Alkatiri, President Gusmão referred more than once to *Chega!* At the press conference after the swearing in of the new Ramos-Horta government, the President said that “Reconciliation cannot be achieved without the truth and the truth would be meaningless without justice.” Likewise, in his inauguration address on 10 July Prime Minister Ramos-Horta said, “The extensive CAVR Report is an encyclopedia of our history, both rich in teachings and suffering. We must utilise its great teachings to better understand today’s crisis and to help prevent future crises.”<sup>21</sup>

*Chega!* is yet to be formally discussed by the Parliament of Timor-Leste. There is no record of former Prime minister Alkatiri having ever commented in public on the report. However, other MPs have spoken about it.<sup>22</sup>

## United Nations

President Gusmão presented *Chega!* to UNSG Annan on 20 January 2006. Mr Annan’s report to the Security Council on *Chega!* and the 2005 Commission of Experts report was delayed by the need for the UN to respond to the crisis in Dili, and was finally released on 25 July. In his report, Justice and reconciliation for Timor-Leste, he stated that

...the CAVR report constitutes an important milestone in the search for justice, truth and reconciliation in Timor-Leste. The report serves not only as a record of past human rights violations but also as a powerful testimony to the Timorese people’s resilience in the face of adversity...I have taken note of the position taken by the Timorese Government in regard to the CAVR report and encourage it to make every effort to ensure follow-up action on the report, consistent with the needs and expectations of the Timorese people. In order to succeed, it is important that efforts made towards promoting justice, truth and reconciliation involve the full participation of the Timorese people so that they have ownership of their history...it is my sincere hope that the report of CAVR will be an enduring contribution to building the Timorese nation and will help to prevent the occurrence of such tragic events in Timor-Leste and elsewhere.<sup>23</sup>

He went on to recommend the establishment of a United Nations solidarity fund to collect voluntary contributions from member states for the purpose of funding a community restoration program and a justice program in Timor-Leste, as well as the completion of outstanding cases under the previously abandoned Serious Crimes process. These recommendations were adopted by the Security Council in Resolution 1704 on 25 August 2006.<sup>24</sup>

## Indonesian Government

On 19 January 2006 Indonesia's State Secretary dismissed the CAVR report, charging that Western countries colonised Asia and Africa in an even worse manner.<sup>25</sup> President Yudhoyono immediately cancelled a planned visit to Jakarta by President Gusmão on his way back from the UN.

Indonesia has dubbed the report as discouraging because it was viewed as taking up the "old wounds" between the two nations after the East Timorese referendum in 1999, the solution of which Dili and Jakarta had agreed to solve through the mechanism of a joint Commission of Truth and Friendship (CTF)...

"We are unhappy with the report because it contains an untrue and questionable allegation. We also have no idea why the old wounds had to be re-opened," [Presidential Spokesman Dino Patti Djalal] said.<sup>26</sup>

According to the spokesman for Indonesia's Foreign Ministry Yuri Thamrin, "the recommendations (of the report) are unreal, impractical, because they are purely formulated... by those who do not live in East Timor". Indonesia's State Secretary Yusril Ihza Mahendra added that it is time to "look at the future".<sup>27</sup>

## Australian Government

According to a report in *The Sunday Age* on 12 February 2006,

A spokesman for Foreign Minister Alexander Downer said human rights issues raised in the report were "essentially issues for East Timor to work through". He said references in the report to Australia's diplomatic role leading to independence in 1999 were inaccurate and undermined the report's credibility.<sup>28</sup>

On 9 February 2006, Senator Stott Despoja moved that the Senate (a) notes the report and (b) calls on the Australian Government to:

- (i) acknowledge its role in denying the people of Timor-Leste their right to self-determination and prolonging their suffering at the hands of Indonesian forces,
- (ii) offer reparations to the Government of Timor-Leste in accordance with the recommendations made in the report,
- (iii) encourage the Indonesian Government to ensure the delivery of reparations to the people of Timor-Leste, and
- (iv) recognise the importance of reparations in assisting Timor-Leste to heal the wounds of occupation and rebuild a stable, democratic and well-functioning civil society.<sup>29</sup>

The motion was supported by Australian Democrats and Greens senators but was opposed by senators representing the Government parties and the ALP, and was defeated by 48 votes to 8.

On 16 May 2006, supporters of the Australian Coalition for Transitional Justice in East Timor (ACTJET) wrote to the Prime Minister and Foreign Minister requesting a formal Australian Government response to *Chega!*. An undated letter, signed by a official of the Department of Foreign Affairs and Trade (DFAT), was received in July. It stated in part:

The Australian Government was disappointed by the inaccuracies of the Report. In particular in its description of Australian policy towards East Timor; including that Australia lobbied to delay Timorese independence. Australia's policy position at the time was clearly articulated by our Foreign Minister and others that reconciliation in Timor-Leste would best be served by the holding of an act of self determination. The East Timorese Government rejected many of the recommendations in the report and noted the role of the international community since 1999, in particular Australia's instrumental role in INTERFET. The CAVR report also acknowledges Australia's significant role in support of East Timor's emergence as an independent country.

Australia has invested considerable resources in rebuilding East Timor and is widely recognised as a major development assistance partner. Australia remains committed to East Timor and its future as a strong and independent democracy.<sup>30</sup>

## United Kingdom Government

When President Gusmão addressed the UN Security Council on 23 January 2006, the UK Ambassador to the UN gave *Chega!* a brief and positive but non-committal mention.<sup>31</sup>

In his written response to a parliamentary question on 5 June 2006, Foreign and Commonwealth Office Minister Ian McCartney, MP stated:

We have had no discussions in the UN about the Report of East Timor's Commission for Reception, Truth and Reconciliation (CAVR). It is for the UN Secretary-General to decide whether to disseminate the report within the UN for discussion in the Security Council.

The UK has consistently expressed concern about impunity for those responsible for the human rights abuses in East Timor, particularly in 1999. We helped support the CAVR and the Special Panels processes, and we also helped fund the Commission of Experts' report.

We note the decision of the Government of East Timor to pursue these issues with Indonesia through their bilateral Commission for Truth and Friendship (CTF). We have encouraged both Governments to make the CTF a process that enjoys the confidence of the victims and the international community.<sup>32</sup>

In his written response to a parliamentary question on 3 July 2006, Mr McCartney indicated that the government did not intend to make a formal response to

*Chega!*<sup>33</sup> In a 7 August letter to Ann Clwyd MP he stated that “It is for the UN Secretary-General to decide whether to disseminate the Commission's report within the UN for the recommendations to be considered.”<sup>34</sup>

A cross-party Early Day Motion initiated by Bath MP Don Foster supportive of *Chega!* was tabled on 26 October 2006. It received seven signatures.

## United States Government

In a report accompanying the Foreign Operations Appropriations Bill, the House Appropriations Committee noted on 5 June 2006:

The Committee welcomes the report of East Timor's Commission for Reception, Truth and Reconciliation and urges the Governments of Indonesia, East Timor, and other interested nations to examine, consider and respond to recommendations made in the report.<sup>35</sup>

## Catholic Church in Timor-Leste

The Catholic Church in Timor-Leste has been a strong supporter of the need to achieve justice for serious crimes committed during the Indonesian occupation. Thus, in a letter sent to UNSG Annan on 5 December 2005, the Bishop of Dili, Dom Alberto Ricardo da Silva, expressed his concern that there were still outstanding justice issues surrounding past crimes committed in Timor-Leste. He urged Mr Annan to establish an international tribunal to investigate crimes committed during the Indonesian occupation of East Timor.<sup>36</sup>

In a telephone interview published by *AsiaNews* on 21 January 2006, Baucau's Bishop Basilio do Nascimento stated that

"Peace, forgiveness, and reconciliation are important principles... but we cannot forget what people suffered; they must be included in the government's initiative."

"Talking about friendship between nations in theoretical terms does not work for those who saw [what] their beloved endured in those years," he explained. "Those who govern us must view the population as a necessary party to the issue".<sup>37</sup>

## NGOs

The following non-governmental organisations responded in public to *Chega!* – in some cases even before it was released on the website of the International Center for Transitional Justice (ICTJ), in order to pressure President Gusmão to release it publicly: Timor-Leste National Alliance for an International Tribunal,<sup>38</sup> La'o Hamutuk,<sup>39</sup> ICTJ,<sup>40</sup> Amnesty International,<sup>41</sup> East Timor Action Network,<sup>42</sup> TAPOL,<sup>43</sup> Progressio,<sup>44</sup> Mary MacKillop East Timor,<sup>45</sup> the New Zealand

Human Rights Committee,<sup>46</sup> and the International Crisis Group.<sup>47</sup> They were universally supportive of the report's findings and recommendations. However, some were critical of President Gusmão for not authorising the early public release of the report. The Timor-Leste Government and the international community were also criticised for not supporting an international tribunal.

In addition, on 24 March 2006, a coalition of NGOs wrote to UN Secretary-General Annan, urging him to

... take into account the relevant recommendations of the CAVR. These include the recommendation that if the government of Indonesia does not comprehensively review prosecutions and Serious Crime Unit indictments and initiate credible judicial processes, an international criminal tribunal should be established for the prosecution of high-level perpetrators. We further ask you to refer to the Security Council the fact that Indonesia has never formally answered the findings in the report, and such a response should be pursued.<sup>48</sup>

"Reconciliation is not a new issue and I believe that our people are ready to forgive. Part of the reconciliation is to explain to both sides that those who committed violations of human rights should face trial as a gesture of repentance. But to answer your question: Yes, we are ready...As a political issue, reconciliation is not just about putting people to jail. Reconciliation - from my point of view - must direct our societies towards healing. Healing - to heal the wounds. We have to start looking into the future. Of course it will be often difficult, but we have to decide if our goal is to heal the trauma or to constantly revive the pain. It is very difficult question. But in general I believe that the people will forgive and will try to forget the past."<sup>49</sup>

"Some people say justice must be first—before reconciliation. Maybe in other countries. But in our country, reconciliation must be the first step. After people forgive each other, we can be sure that the justice that we do will be without any sentiments of revenge or hatred. It is why we are taking very seriously the problem of reconciliation and justice in order to build a new mentality, a new generation, a new society—because we don't want [this to happen again] in five years."<sup>50</sup>

President Xanana Gusmao

## THE FUTURE

In his speech about *Chega!* to the UN Security Council in January 2006, President Gusmão was optimistic about how well the people of Timor-Leste had recovered from the violence of the past. He spoke of “the profound consciousness of our people of the need never, ever again to allow any space in Timor-Leste for political violence”, and suggested that this “is why we are living in an environment of political stability and social harmony.”<sup>51</sup>

With the benefit of hindsight, events in Dili only months later made his optimism appear unfounded. The 2006 crisis had a number of causes – some of them obvious (the strike by soldiers and their subsequent dismissal), others underlying and systemic (poverty, unemployment and weak state institutions). What it is also clear that in some ways the past is not past for the people of Timor-Leste. The reactions of the East Timorese in 2006 were those of a people still suffering the effects of unresolved mass trauma. With the nascent justice system not yet strong enough to prevent the creation of a culture of impunity from prosecution, powerful ingredients remain for long-term instability.

Events in 2006 have emphasised why the findings and recommendations in *Chega!* should not go unheeded. At the time of writing there was no formal commitment within Timor-Leste to a follow-on institution to the CAVR, or even to discuss the report in Parliament. More hopefully, though, in his report on justice and reconciliation UNSG Annan made a number of recommendations that are either similar to, or draw on, the recommendations in *Chega!* For instance, the solidarity fund he proposed is similar to the reparations program recommended in *Chega!*, without requiring that contributing governments admit liability for their past mistakes in relation to Timor-Leste. The recommendation to complete investigations into serious crimes committed in 1999 (also recommended in *Chega!*) is another welcome step, although it is unlikely to lead in the short term to the prosecution of Indonesian citizens.

The political leaders of Timor-Leste are right to be sensitive to the need to maintain a positive relationship with Indonesia. They have focused on economic prosperity, social justice and building a strong democracy, while encouraging an attitude of forgiveness for past human rights abuses, as the best way forward for the nation. However, in the absence of meaningful justice processes by Indonesia, and in light of the fact that the CTF is limited to 1999 and will not result in prosecutions,<sup>52</sup> calls continue for former General Wiranto and others indicted by the Serious Crimes process to face an international tribunal.

Given the current lack of international political support for such a mechanism, the East Timorese are forced to find other, more local and individual, ways to reconcile themselves with their past.<sup>53</sup> Events in 2006 emphasised that this is not always as easy as practicing forgiveness and getting on with life.

## APPENDIX 1: ANALYSES OF THE CAVR

There have been a number of reports, articles and theses analysing the progress and outcomes of the CAVR in general, and the CRP in particular. There is general recognition of the value of the CAVR, in particular because the CRP had more local ownership and involvement than the other transitional justice processes in Timor-Leste and Indonesia. On the other hand, it has been repeatedly argued that the CRP should have been only one of a range of justice measures, and that it heightened expectations of the justice system that were not fulfilled.<sup>54</sup> Other common criticisms are that the CRP should have been more victim-oriented, and that the mental health system in Timor-Leste was not adequately resourced to monitor the mental health and wellbeing of those who participated in the CRP.

Patrick Burgess, "Justice and Reconciliation in East Timor: The Relationship between the Commission for Reception, Truth and Reconciliation and the Courts", *Criminal Law Forum* 15, 2005, 135-158.<sup>55</sup>

Damian Grenfell, "When Remembering Isn't Enough", *Arena Magazine* 80, December-January 2005-06, 32-35.<sup>56</sup>

La'o Hamutuk, "Reviewing the East Timor Commission for Reception, Truth and Reconciliation (CAVR)", *La'u Hamutuk Bulletin* 4,5, 2003.<sup>57</sup>

Tania Jaervinen, "Human Rights and Post-Conflict Transitional Justice in East Timor", *UPI Working Papers* 47, Finnish Institute of International Affairs, 2004.

Lia Kent, *Unfulfilled Expectations: Community Views on CAVR's Community Reconciliation Process*, Dili, Judicial System Monitoring Programme, 2004.<sup>58</sup>

Jeffrey Kingston, "Balancing Justice and Reconciliation in East Timor", *Critical Asian Studies*, 38, 3, 2006, 271-302.

Wendy Lambourne, "Unfinished Business: Reconciliation and Justice in East Timor: An Evaluation of the Commission for Reception, Truth & Reconciliation", Conference paper, Peace, Justice and Reconciliation in the Asia-Pacific Region 2005, Australian Centre for Peace and Conflict Studies.<sup>59</sup>

Piers Pigou, *Crying Without Tears: In Pursuit of Justice and Reconciliation in Timor-Leste: Community Perspectives and Expectations*, International Centre for Transitional Justice, 2003.<sup>60</sup>

\_\_\_\_\_ The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation, UN Development Programme, 2004.<sup>61</sup>

Monika Schlicher, *East Timor Faces up to its Past. The work of the Commission for Reception, Truth and Reconciliation*, Missio, Germany, 2005.

Derrick Silove, Anthony Zwi and Dominique Le Trouze, "Do Truth Commissions Heal? The East Timor Experience", *The Lancet*, April 15-April 21 2006, 367, 122-124.<sup>62</sup>



Fausto Belo Ximenes, *The Unique Contribution of the Community-Based Reconciliation Process in East Timor*, Judicial System Monitoring Programme, 2004.<sup>63</sup>

Spencer Zifcak, *Restorative Justice in East Timor: An Evaluation of the Community Reconciliation Process of the CAVR*, Asia Foundation, 2004.<sup>64</sup>

“The greatest obstacle to reconciliation is the lack of justice” (52-year old woman from Dili). Justice would appear to be beyond the reach of victims in East Timor. Exemption from punishment - even after decades - always generates a social demand for criminal prosecution which cannot simply be pushed to one side by those in power. Cases in Africa, Europe and South America show that it is politically unwise to leave the past untouched and to try and draw a line. Keeping silent about the past does not suppress the need to come to terms with it: it merely delays the process. Things can change rapidly in politics and new opportunities will arise for victims to exercise their rights. Truth and reconciliation commissions cannot therefore be regarded either as a substitute for a criminal appraisal of past injustice nor as a second-best option, if the legal system fails. Criminal prosecution and truth commissions supplement and support each other. Together they make sure that account is taken of the popular need for justice, truth and reconciliation.

East Timor has faced up to its past, but the process will by no means be over when the Truth Commission concludes its work, particularly since the policy of forgive and forget pursued by the present government of East Timor is failing to do justice to the demands of the victims and their families. A discontinuation of the prosecution of those who committed serious crimes in East Timor will have an impact primarily on the victims but also on the offenders. The latter will be deprived of the opportunity to come to terms with the past, recover their identity and re-establish relations with their victims and society. The importance of reintegration into society has been underlined by the reconciliation processes of the Truth Commission for less serious crimes. On the one hand, a failure to provide punishment for criminal offences calls into question the basic security that derives from the validity and application of the rule of law. On the other hand, the message being sent out by the government is that violence can indeed be an effective means of asserting individual interests.

The Truth Commission linked social and legal aspects in its appraisal of the past and confirmed the population in its rights. Its work contributed in a major way to the development of a sense of history in this young nation. It penetrated deep into the country's conflict-ridden past. To ensure that victims are not victimised a second time the church and civil society organisations are working to counteract the process of forgetting and are advocating a culture of remembrance instead. Hugo Fernandez, the Head of the Truth Seeking Unit, sees the next great difficulty in the implementation by the government of the recommendations made by the Truth Commission. If the recommendations are not put into practice at all - or only to a limited extent - the significance of the crimes will be diminished. East Timor has a long and stony road ahead of it and its people will require ongoing support and solidarity as they travel down it.

Monika Schlicher, 2005<sup>65</sup>

## APPENDIX 2: TIMELINES AND GLOSSARY

### Timor-Leste and Australia

1942	Up to 60,000 East Timorese die after protecting small Australian guerrilla force from Japanese invaders
1945	<i>Portugal regains colonial authority over Timor-Leste</i>
1960	<i>UN declares East Timor a non-self governing territory</i>
1974	<i>Portugal's "Carnation Revolution" leads to decolonisation Fretilin and UDT founded</i>
<i>August-September 1975</i>	<i>Internal conflict between UDT and Fretilin</i>
16 October 1975	"Balibo Five" journalists killed by Indonesian troops
28 November 1975	<i>Fretilin declares independent República Democrática de Timor-Leste</i>
7 December 1975	<i>Indonesia launches invasion</i>
17 July 1976	<i>Timor-Timur declared 27<sup>th</sup> province of Indonesia</i>
11 October 1976	Prime Minister Fraser recognises Indonesian annexation in speech to Indonesian Parliament
14 February 1979	Commencement of negotiations between Australia and Indonesia over Timor Sea oil and gas reserves
11 December 1989	Timor Gap Zone of Co-operation Treaty signed
12 November 1991	<i>271 killed, 382 wounded and 250 disappeared in Santa Cruz (Dili) massacre</i>
9 August 1994	High Court rejects plaintiff's claim in <i>Horta v Commonwealth</i> that legislation relating to Timor Gap Treaty is invalid
30 June 1995	ICJ delivers judgement in <i>Portugal v Australia</i> over Timor Gap Treaty (no jurisdiction)
30 August 1999	<i>East Timorese vote for independence from Indonesia</i>
20 September 1999	First INTERFET forces arrive in Dili
25 October 1999	<i>UNTAET created</i>
30 October 1999	<i>Last TNI troops leave Dili, ending Indonesian occupation</i>
20 May 2002	<i>Timor-Leste declared an independent nation</i>
27 September 2002	<i>Timor-Leste becomes newest member of UN</i>
January 2006	Australia and Timor-Leste sign Treaty on Certain Maritime Arrangements (CMATS)
16 March 2006	<i>Timor-Leste Government dismisses 591 soldiers for deserting barracks</i>
25 May 2006	Troops from Australia, New Zealand, Portugal and Malaysia arrive in Dili following civil unrest
26 June 2006	<i>Forced resignation of Prime Minister Alkatiri</i>
8 July 2006	<i>Jose Ramos-Horta appointed new Prime Minister</i>
25 August 2006	<i>UNMIT established by UNSC Resolution 1704</i>

*Entries in italics refer to major events in Timor-Leste not involving Australia*

## CAVR

August 2000	CNRT National Congress endorses idea of truth and reconciliation commission
13 July 2001	UNTAET Regulation 2001/10 establishes CAVR
21 January 2002	CAVR Commissioners appointed
August 2003	Date of first CRP
June 2003	Launch of statistical inquiry into deaths
March 2004	Date of last of 1371 CRPs
March 2004	Final public hearing
31 October 2005	Last date of extension of mandate <i>Chega!</i> presented to President Gusmão
28 November 2005	President Gusmão presents <i>Chega!</i> to Parliament
20 December 2005	STP-CAVR (Post-CAVR Technical Secretariat) established
20 January 2006	President Gusmão presents <i>Chega!</i> to UNSG Annan
30 January 2006	ICTJ releases near-final version of <i>Chega!</i> on its website
8 February 2006	President Gusmão sends copies of <i>Chega!</i> to foreign embassies, international institutions and human rights NGOs
26 July 2006	UNSG's report on justice and reconciliation in Timor-Leste
August-October 2006	<i>Chega!</i> disseminated in the districts of Timor Leste

## Glossary

CAVR	Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste (Commission for Reception, Truth and Reconciliation in Timor-Leste)
COE	Commission of Experts (UN, 2005)
CTF	Commission of Truth and Friendship Indonesia Timor-Leste
CRP	Community Reconciliation Process (part of CAVR)
Falantil	Military wing of Fretilin
Fretilin	Frente Revolucionária de Timor-Leste Independente (Revolutionary Front for an Independent East Timor)
	Former resistance movement, now governing political party
ICTJ	International Center for Transitional Justice
INTERFET	International Force in East Timor
SC	UN Security Council
SG	UN Secretary-General
TL	Timor-Leste
TNI/ABRI	Tentara Nasional Indonesia (formerly Angkatan Bersenjata Republik Indonesia)
	Indonesian military
UDT	União Democrática Timorense (Timor Democratic Union)
UN	United Nations
UNAMET	UN Mission in East Timor (1999)
UNMISSET	UN Mission in Support of East Timor (2002-2005)
UNMIT	UN Integrated Mission in Timor-Leste (2006-)
UNOTIL	UN Office in Timor-Leste (2005-2006)
UNTAET	UN Transitional Authority in East Timor (1999-2002)

# ENDNOTES

- <sup>1</sup> Quoted in *Chegal*, Chapter 7.1: Self-determination, 100, para 447.
- <sup>2</sup> The full text of *Chegal* can be found at <http://www.etan.org/news/2006/cavr.htm>.
- <sup>3</sup> The first two of these processes are generally regarded as abject failures, while the third is intended to establish the truth at the expense of granting amnesty to the perpetrators of human rights abuses in exchange for their testimonies. The CAVR, by contrast, is generally regarded as a qualified success (see section on Analyses of the CAVR).
- <sup>4</sup> According to *Chegal*, AusAID contributed US\$363,341.42 (about 5% of the total budget) plus 7 Advisors through ABV, AVI, AYAD, CBF and equipment to the CAVR (Annexe 4, Acknowledgements, 3).
- <sup>5</sup> Especially Pat Walsh, Special Advisor, and Patrick Burgess, Principal Legal Advisor.
- <sup>6</sup> See, eg, Australian War Memorial, "Fighting in East Timor," 2006: <http://www.awm.gov.au/atwar/timor.htm>.
- <sup>7</sup> Executive Summary, *Chegal*, 143.
- <sup>8</sup> See especially James Dunn, *Timor: A People Betrayed*, Sydney, ABC Books, 1983, 1996 rev.
- <sup>9</sup> All quotes in this text box from Piers Pigou, "Crying Without Tears: In Pursuit of Justice and Reconciliation in Timor-Leste: Community Perspectives and Expectations," ICTJ Occasional Papers, 2003, iv, 38: <http://www.ictj.org/images/content/0/9/096.pdf>.
- <sup>10</sup> All quotes from *ibid*, iv, 40.
- <sup>11</sup> Incidental references to Australian governments, institutions, events or people are not detailed herein.
- <sup>12</sup> See *Chegal*, Chapter 7.1: Self-determination, paras 429-526.
- <sup>13</sup> Susan Connelly RSJ, "Freedom is Not Easy", *Ba Ami Nia Belun Sira Newsletter*, Mary MacKillop East Timor, 13, 3, October 2006, 2: [www.mmets.org.au](http://www.mmets.org.au).
- <sup>14</sup> Quoted in Wendy Lambourne, "Unfinished Business: Reconciliation and Justice in East Timor: An Evaluation of the Commission for Reception, Truth and Reconciliation," Conference paper, Peace, Justice and Reconciliation in the Asia-Pacific Region 2005, Australian Centre for Peace and Conflict Studies, Sydney, 1.
- <sup>15</sup> Mark Aarons, "Truth, Death and Diplomacy in East Timor", *The Monthly*, April 2006, 24-32.
- <sup>16</sup> Speech of His Excellency President Kay Rala Xanana Gusmão on the Occasion of the Handing Over of the Final Report of the CAVR to the National Parliament, 28 November 2005: <http://www.unmiset.org/UNMISetWebSite.nsf/e4899f58093d136749256f0a003f1073/2ca1c85976cca654492570c9003245f3?OpenDocument>.
- <sup>17</sup> *Ibid*.
- <sup>18</sup> Honourable Justice Shane Marshall, *UN: Justice or Appeasement - Human Rights in East Timor*, 2006: <http://www.etan.org/et2006/july/08/08un.htm>.
- <sup>19</sup> Minutes of UNSC 5351st meeting, 23 January 2006, 5.
- <sup>20</sup> "Interview with Jose Ramos-Horta", *Asia Source*, 20 March 2006: [http://www.asiasource.org/news/special\\_reports/horta2.cfm](http://www.asiasource.org/news/special_reports/horta2.cfm).
- <sup>21</sup> Dr Jose Ramos-Horta at his swearing-in as Prime Minister of Timor-Leste, 10 July 2006.
- <sup>22</sup> See, eg, Joao Mendes Gonçalves MP: "CAVR Work Pertinent", *UNOTIL Daily Media Review*, 14 December 2005: <http://www.etan.org/et2005/december/10/dailym14.htm>.
- <sup>23</sup> Kofi Annan, Report of the Secretary General on Justice and Reconciliation for East Timor, 2006, S/2006/580: <http://www.actjet.org - Documents>.
- <sup>24</sup> See press release, "Security Council establishes new, expanded UN mission in Timor-Leste for initial period of six months, unanimously adopting resolution 1704 (2006)": <http://www.actjet.org - News>.
- <sup>25</sup> Suzana Grego, "Timorese Truth Commission Report Reveals Shocking Brutality, Calls for End to Impunity," 20 January 2006: <http://www.ictj.org/en/news/press/release/773.html>.
- <sup>26</sup> *ANTARA News*, "President Called on to Ask Clarification from Xanana," 27 January 2006: <http://www.etan.org/et2006/january/21/27pres.htm>.
- <sup>27</sup> "Reconciliation without justice meaningless : Baucau bishop," *AsiaNews*, 21 January 2006: [http://asia-pacific-action.org/southeastasia/easttimor/netnews/2006/end\\_01v5.htm#Reconciliation%20without%20justice%20meaningless:%20Baucau%20bishop](http://asia-pacific-action.org/southeastasia/easttimor/netnews/2006/end_01v5.htm#Reconciliation%20without%20justice%20meaningless:%20Baucau%20bishop). For more information about the CTF, see <http://www.ctf-ri-tl.org/ctf1/index.php>.
- <sup>28</sup> Tom Hyland and Lindsay Murdoch, "We were put in crates," *The Sunday Age*, 12 February 2006: <http://www.theage.com.au/news/world/we-were-put-in-crates/2006/02/11/1139542445484.html>.
- <sup>29</sup> Hansard, Journals of the Senate, No. 71, 9 February 2006, 7: [http://www.aph.gov.au/senate/work/journals/jnlp\\_071.pdf](http://www.aph.gov.au/senate/work/journals/jnlp_071.pdf).
- <sup>30</sup> Miles Armitage, undated letter from Australian Government to Dr Mark Byrne, received July 2006: <http://www.actjet.org - Documents>.
- <sup>31</sup> Minutes of UNSC 5351st meeting, 23 January 2006, 16, <http://www.unmiset.org/UNMISetWebSite.nsf/UNDocuments.htm?OpenPage>.
- <sup>32</sup> From House of Commons Hansard Written Answers for 5 June 2006: <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060605/text/60605w0667.htm#06060712000017>
- <sup>33</sup> From House of Commons Hansard Written Answers for 3 July 2006: <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060703/text/60703w1352.htm#06070415000026>
- <sup>34</sup> Personal correspondence from Paul Barber, TAPOL.

- <sup>35</sup> “Rights Group Calls for Restrictions on Military Assistance to Indonesia to Promote Reform and Accountability”, ETAN press release, 25 May 2006: <http://etan.org/news/2006/05app.htm>.
- <sup>36</sup> Bishop Ricardo to UN Secretary-General on Justice: <http://www.etan.org/et2005/december/03/05ricardo.htm>
- <sup>37</sup> “Reconciliation without justice meaningless: Baucau Bishop,” op cit.
- <sup>38</sup> Timor-Leste National Alliance for an International Tribunal, Letter to UN Secretary-General, 19 January 2006: <http://etan.org/news/2006/01ngo.htm>.
- <sup>39</sup> “CAVR Recommendations Deserve Attention,” *La’o Hamutuk Bulletin*, Editorial, April 2006: <http://www.laohamutuk.org/Bulletin/2006/Apr/bulletinv7n1.html#Editorial>.
- <sup>40</sup> Suzana Grego, “Timorese Parliament Should Release Truth Commission Report Immediately,” 28 November 2005: <http://www.ictj.org/en/news/press/release/250.html>.
- <sup>41</sup> Amnesty International News and Features, “Timor-Leste: Denial of Justice?”, 29 November 2005: [http://www.amnesty.org.au/news\\_features/news/ap/timor-leste\\_denial\\_of\\_justice](http://www.amnesty.org.au/news_features/news/ap/timor-leste_denial_of_justice).
- <sup>42</sup> John Miller, “ETAN Calls for Broad International Discussion of Timor Truth Commission Report,” 20 January 2006: <http://www.etan.org/news/2006/01un.htm>.
- <sup>43</sup> “Response to Timor-Leste’s Truth and Reconciliation report,” 3 February 2006: <http://tapol.gn.apc.org/news/files/let060203.htm>.
- <sup>44</sup> “East Timor: CAVR report sees light of day,” 3 August 2006: [http://www.progressio.co.uk/progressio/internal/93131/east\\_timor\\_cavr\\_report\\_sees\\_light\\_of\\_day](http://www.progressio.co.uk/progressio/internal/93131/east_timor_cavr_report_sees_light_of_day).
- <sup>45</sup> Susan Connelly RSJ, “Freedom is Not Easy”, *Ba Ami Nia Belun Sira* (Newsletter for Friends and Benefactors), Mary Mackillop East Timor, 13, 3, October 2006.
- <sup>46</sup> Indonesia Human Rights Committee, “CAVR calls for reparations – New Zealand must apologise for its sins and pay up,” Media Release, 3 February 2006: [http://www.asia-pacific-action.org/statements/2006/ihrc\\_nzmustapologise4itssins\\_030206.htm](http://www.asia-pacific-action.org/statements/2006/ihrc_nzmustapologise4itssins_030206.htm).
- <sup>47</sup> International Crisis Group, *Resolving Timor-Leste’s Crisis*, Asia Report No 120, 10 October 2006, 22: <http://www.crisisgroup.org/home/index.cfm?id=4438&l=1>.
- <sup>48</sup> The letter was signed by spokespeople for 13 NGOs: see Letter to Secretary-General Kofi Annan Regarding Referral of CAVR Report to UN Security Council: <http://hrw.org/english/docs/2006/04/06/eastti13129.htm>.
- <sup>49</sup> Andre Vitcheck, “Interview with Xanana Gusmão”, 12 April 2002: [http://www.zmag.org/content/interviews/vitcheck\\_easttimor.cfm](http://www.zmag.org/content/interviews/vitcheck_easttimor.cfm).
- <sup>50</sup> Rachel Taylor, “Interview with East Timorese President Xanana Gusmão”, 1 October 2002: <http://www.worldpress.org/Asia/743.cfm>.
- <sup>51</sup> Minutes of 5351st meeting of UN Security Council, 23 January 2006, 5: <http://www.unmiset.org/UNMISSETWebSite.nsf/UNDocuments.htm?OpenPage>.
- <sup>52</sup> The CTF has been roundly criticised by human rights groups as an attempt to deflect calls for an international tribunal: see, e.g., “East Timor: Truth Commission appointed to settle events of 1999”, press release, Judicial System Monitoring Programme, 21 March 2005: [http://www.jsmp.minihub.org/News/March%202005/21mar05\\_cjir\\_easttimor\\_eng.htm](http://www.jsmp.minihub.org/News/March%202005/21mar05_cjir_easttimor_eng.htm).
- <sup>53</sup> See, e.g., Annette Marie Field, *Places of suffering and pathways to healing: post-conflict life in Bidau, East Timor*. PhD thesis, James Cook University, 2004: <http://eprints.jcu.edu.au/1103>.
- <sup>54</sup> This is, of course, not the fault of the CAVR, although Fr Frank Brennan, for one, argued in 2000-2001 that such a commission should not proceed until a competent justice sector was in place in Timor-Leste: see Frank Brennan, “Knowing your Place”, *Eureka Street*, January-February 2001.
- <sup>55</sup> Patrick Burgess, “Justice and Reconciliation in East Timor: The Relationship Between The Commission For Reception, Truth And Reconciliation and the Courts”, *Criminal Law Forum* 15, 2005, 135-158.
- <sup>56</sup> Damian Grenfell, “When Remembering Isn’t Enough”, *Arena Magazine* 80, December 2005-January 2006, 32-35.
- <sup>57</sup> *La’u Hamutuk Bulletin* 4,5, 2003: <http://www.laohamutuk.org/Bulletin/2003/Nov/bulletinv4n5.html>.
- <sup>58</sup> Lia Kent, *Unfulfilled Expectations: Community Views on CAVR’s Community Reconciliation Process*, Dili, Judicial System Monitoring Programme, 2004, 45: [http://www.jsmp.minihub.org/Reports/Other%20Reports/CAVR\\_%20LIA/cavr\\_evaluation\(e\).pdf](http://www.jsmp.minihub.org/Reports/Other%20Reports/CAVR_%20LIA/cavr_evaluation(e).pdf).
- <sup>59</sup> Wendy Lambourne, op cit.
- <sup>60</sup> Pigou had already authored a report for the ICTJ, published in 2003, which intended to shed light on how ordinary East Timorese thought about “the interrelated transitional justice objectives of securing justice, peace, truth, and reconciliation” (Piers Pigou, *Crying Without Tears: In Pursuit of Justice and Reconciliation in Timor-Leste: Community Perspectives and Expectations*, ICTJ Occasional Papers, 2003, iv): <http://www.ictj.org/images/content/0/9/096.pdf>.
- <sup>61</sup> Piers Pigou, *The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation*, United Nations Development Programme, 2004, 12: [http://www.jsmp.minihub.org/Reports/otherresources/UNDP\\_ReportOnCRP\[1\].pdf](http://www.jsmp.minihub.org/Reports/otherresources/UNDP_ReportOnCRP[1].pdf).
- <sup>62</sup> Derrick Silove, Anthony Zwi and Dominique Le Trouze, “Do Truth Commissions Heal? The East Timor Experience,” *The Lancet*, April 15-21 April 2006, 367, 122-124: <http://www.thelancet.com/journals/lancet/article/PIIS014067360668519X/fulltext>.
- <sup>63</sup> Fausto Belo Ximenes, “The Unique Contribution of the Community-Based Reconciliation Process in East Timor, Judicial System Monitoring Programme,” 2004: <http://www.easttimor-reconciliation.org/jsmpReport-prk-summary.html>.
- <sup>64</sup> Spencer Zifcak, *Restorative Justice in East Timor: An Evaluation of the Community Reconciliation Process Of the CAVR*, Asia Foundation, 2004, 4.
- <sup>65</sup> Monika Schlicher, East Timor Faces up to its Past. The work of the Commission for Reception, Truth and Reconciliation, Missio, Germany, 2005, 77-78.

