

**SUBMISSION ON TARGETED SANCTIONS FOR HUMAN RIGHTS ABUSES TO
Australian Parliamentary Joint Standing Committee
on Foreign Affairs , Defence and Trade Inquiry**

Date: 29 April 2020

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Summary*

Foreign Minister Payne is to be commended for referring this issue to the Committee. This submission strongly urges the Committee to recommend that Australia adopts Magnitsky-style measures to strengthen the international human rights system, and to combat impunity for human rights violations by requiring greater accountability of perpetrators.

Such measures would also ensure (a) that Australia’s Home Affairs visa requirements of human rights perpetrators are strictly administered, and (b) that recommendations calling for targeted sanctions of perpetrators made by bodies such as East Timor’s truth commission (CAVR) are acted on by Australia.

The legislation would be consistent with Australia’s oft-repeated commitment to the rule of law and, especially if well publicised, would signal its zero tolerance of human rights abuse and impunity. In particular, it would (c) offer some belated justice to East Timorese victims of crimes against humanity and war crimes; (d) enhance efforts by East Timor to pre-empt recurrence of its traumatic human rights experience in Indonesia or anywhere; (e) protect vulnerable minorities such as the people of Papua; and (e) contribute to the ‘reformasi’ project started in post-Suharto Indonesia.

This summary was mistakenly omitted from the original submission

1. The East Timor truth commission (CAVR)

The CAVR (*Comissão de Acolhimento, Verdade e Reconciliação*, Commission for Reception, Truth and Reconciliation), functioned 2001-2005. It was established while the UN (UNTAET) was the transitional administration in East Timor, was led by seven East Timorese commissioners, and was officially adopted and endorsed by the Timor-Leste government after full self-government in May 2002. Australia was a major donor to the Commission, along with most western countries.

The Commission’s mandate was fourfold:

- (1) to establish the truth impartially about human rights violations committed on all sides 1974-1999, including investigating the role of governments like Australia in relation to East Timor’s internationally recognised right to self-determination;
- (2) to facilitate reconciliation between perpetrators of less-serious crimes and victims;
- (3) to restore the dignity of victims of human rights violations;

- (4) to document the Commission's work and findings in a final report and to make recommendations designed to prevent a recurrence of the human rights violations documented in the report. This report, called *Chega!* (Portuguese for *no more!*), comprises five volumes. It has been published in four languages and distributed around the world, including in Indonesia, Australia and Timor-Leste.

The Commission has been hailed as one of the top five commissions in the world to date and as an impressive, rigorous and scrupulous exercise. Nobel Peace Laureate Jose Ramos-Horta stated that its report is 'an encyclopedia of our history, rich in both teachings and sufferings' and that its 'great teachings' must be utilised.

2. East Timor truth commission (CAVR) findings

Based on thousands of interviews, sworn testimony by key actors and experts, public hearings and research, including of de-classified diplomatic cables, the Commission concluded that Indonesia was responsible for crimes against humanity and war crimes in East Timor during its traumatic 24 year occupation. The Commission also concluded that the East Timorese Resistance committed some human rights violations and war crimes, particularly in the early part of the occupation, but that these offences did not amount to crimes against humanity and were committed on a far smaller scale than Indonesia.

The Commission also found 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 and significantly contributed to the violation of that right.

The Commission called on Australia (1) to distribute the CAVR report widely in Australia, (2) to apologise to the people of East Timor for failing to uphold internationally agreed fundamental rights and freedoms in East Timor during the Indonesian occupation, (3) to refuse a visa to any Indonesian military officer named in the CAVR report for either violations or command responsibility for troops accused of violations, and (4) to take other measures such as freezing bank accounts until that individual's innocence had been independently and credibly established.

3. East Timor truth commission (CAVR) recommendations

The Commission made 204 recommendations. The recommendations were generally framed with one priority objective, viz. to pre-empt a recurrence of the crimes documented in the report, especially in Timor-Leste but also in Indonesia and internationally. The recommendations were directed to several targets, including the international community, the Timor-Leste government and society, and Indonesia. Recommendations to Indonesia included cooperating with any international or Timor-Leste justice initiatives, fully opening up military records, facilitating the transfer to Timor-Leste of indictees living in Indonesia, and making reparations to the many thousands of victims of killing, rape, sexual violence, torture, detention, displacement, famine, arson, looting, and killing perpetrated during the period 1974-1999.

Mindful that crimes against humanity are not subject to statutes of limitations, the Commission also called on the international community to implement the following targeted sanctions:

- To ensure that persons responsible for crimes against humanity in Timor-Leste are not allowed to continue profitable careers regardless of their crimes;
- To establish a special board of investigation under UN auspices to document the extent, nature and location of assets held by indictees;
- To freeze the assets of the indictees in question, pending judicial hearing of cases;
- To place travel bans on the indictees in question;
- To encourage Indonesia to vet perpetrators working in, or seeking work in, the public service.

4. Fate of these recommendations on targeted sanctions

None of the above recommendations on targeted sanctions have been acted on by Australia.

5. Case study

Australia's Department of Home Affairs requires visitors to Australia to complete a comprehensive visa application form that includes a series of questions on human rights to which the applicant must answer yes/no. Both Form 1208 (Work and Holiday Visa) and Form 1419 (Tourist Visa) include the following questions that relate specifically to the matter before this Parliamentary Inquiry:

- Have you been charged with, or indicted for: genocide, war crimes, crimes against humanity, torture, slavery, or any other crime that is otherwise of a serious international concern?
- Have you been associated with a person, group or organisation that has been/is involved in criminal conduct?
- Have you been associated with an organisation engaged in violence or engaged in acts of violence (including war, insurgency, freedom fighting, terrorism, protest) either overseas or in Australia?
- Have you served in a military force, police force, state sponsored/private militia or intelligence agency (including secret police)?
- Have you been removed, deported or excluded from any country (including Australia)?

Given how germane this border control process is to the matter being examined by the Joint Standing Committee, it is recommended that the Committee examines the functioning of this system as part of its inquiry, including its efficacy as a deterrent of human rights abuses and, if wanting, to recommend what measures should be taken to enhance its effectiveness.

My concern about the efficacy of this system is based on my CAVR experience with an indictee, Lt. General (retired) Kiki Syahnakri, one of the senior Indonesian military to whom CAVR directed its targeted sanctions recommendations.

In February 2003, Lt. General Syahnakri was indicted by the UN Serious Crimes Unit in East Timor for crimes against humanity. According to the indictment, Syahnakri bears both command and individual responsibility for crimes committed in 1999, particularly for supporting the creation of militias in Timor-Leste and the distribution of weapons to these militias (i.e. approving violence against pro-independence civilians). According to the CAVR report, he was a member of a 'planners' group. The provision of weapons and allowance of their use by militia was contrary to Indonesian law and in breach of the 1999 5 May Agreements signed in New York by Indonesia. The weapons were used to commit grave

violations of human rights. Senior military officers like Lt.General Syahnakri failed to end militia access to these weapons or take action against their users.

I interviewed Lt. General Syahnakri in Jakarta in 2014, some years after Indonesia's withdrawal from East Timor. At the time he was chair of a former military bank. He dismissed the indictment as a violation of his rights. It had prevented him from travelling to Europe and the US. He also said, however, that he had been allowed enter Australia three times. His first two visits were to see his children who were at university in Melbourne. On the first occasion, he was interviewed for an hour by officials at Melbourne airport. On the second occasion, there were also questions. The third occasion (September 2014) was to attend a conference on INTERFET to which he had been invited by ANU academics. He told the organisers that he would not come if he would be interrogated again and was assured access would be given. On arrival in Melbourne, his passport was referred to another official who made a phone call, following which he was allowed through. His talk at the conference justified Indonesia's intervention in East Timor and argued that the Indonesian military had been stigmatised. Unlike with other inputs, conference organisers did not allow participants to question the Lt.General following his talk or to challenge his version of events. This pre-empted the opportunity to ask his reaction to the five separate, independent reports on events in East Timor in 1999 (two of them by Indonesian commissions) each of which had concluded that the Indonesian military was responsible for crimes against humanity and war crimes in Timor-Leste that year.

6. Conclusions from case study

1. The case demonstrates that the Australian government's vetting system was operational at the time of the Lt.General's visit. It also suggests that it is open to outside intervention, even politicisation.
2. It also begs questions about immigration procedures on cases like this. What database is used by Immigration officials at Australia's airports and other points of entrance to check a claimant's record against? How well informed are officials handling these sorts of cases? Does the alert list contain the names of those indicted in Timor-Leste? What discretion do officials have? For how many years is screening practiced? How well publicised is the screening?
3. More effective screening, and publicity about the existence of screening, would send a clear message that Australia has zero tolerance for human rights violations. It would also reinforce other targeted sanctions that might be adopted and remind both offenders and potential offenders that there is a price to pay for inhumanity even if formal justice is avoided.
4. In the interests of effectively deterring further abuse, Australia should publicise on a website and through the media the names of those being sanctioned, plus what sanctions were given and the reasons for them.
5. Failure to require due process and hold to account undermines the international rule of law that the world community, including Australia, built in the 20th century to, inter alia, protect the vulnerable from human rights violations. Despite many cracks in the system today, Australia rightly insists that the rule of law is fundamental to the conduct of international relations. Introducing, or strengthening, targeted sanctions for human rights violations is consistent with this policy.

6. In particular, failure on the part of Indonesia and the international community to require accountability for human rights violations in East Timor:
- signals that even crimes against humanity and war crimes are transactional and subject, indeed subordinate, to other interests;
 - fosters a culture of impunity that can impact negatively on vulnerable communities such as the West Papuans and that can allow perpetrators to maintain positions of influence in Indonesian society and even hold high office in the parliament and the national government;
 - corrupts the truth and Indonesian public understanding of what actually their military did in East Timor, mitigates against lessons learned, keeps the electorate ignorant of the background of some candidates, and absolves Indonesia from its obligation in international law to make reparations to tens of thousands of victims.

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