

## **Opening remarks to the Joint Standing Committee on Foreign Affairs, Defence and Trade's Human Rights Subcommittee, Tuesday, 7 April 2009.**

Thank you for the opportunity to appear before you. I am a senior lecturer at the University of New South Wales. Before that, I spent about thirteen years as an officer in the Australian Regular Army.

My core proposition is that the most relevant regional human rights mechanism is an international tribunal for the war crimes and crimes against humanity perpetrated by the Indonesian military against the people of East Timor. Without an international tribunal for East Timor, any other discussion of regional human rights is a pretty hollow exercise.

As an historical event, the Holocaust stands out on its own as an unparalleled crime. Yet, it may be said with confidence and accuracy that the East Timorese people suffered one of the largest death tolls relative to total population since the Holocaust. My submission sets out the evidence for the death tolls in East Timor.

For those East Timorese men and women who survived, but especially the women, the crimes were immense. My submission sets out this horrendous record of crimes: rape, torture, enslavement, arbitrary arrests, destruction of property and forcible relocation. My submission explains how women and children suffered specific crimes and were particularly vulnerable.

On the weekend, some newspapers (like the Age and the Sydney Morning Herald) reported that many Catholic churches around Australia had a 1 minute silence and prayers of the faithful on the tenth anniversary of a massacre in a church in East Timor. Churches in East Timor had similar ceremonies, and yesterday East Timor's National Parliament also had a 1 minute silence.

These crimes were perpetrated against a people who sheltered and protected our Australian commandos during World War II. They occurred on our doorstep, and our government was a strong supporter of the Indonesian dictatorship during this period.

The perpetrators of these crimes have not faced justice. They have not been held accountable.

Despite Australia's intervention in 1999 and subsequent assistance, our government has remained silent about the crucial issues. As for the government of East Timor, its situation is akin to that of a bullied child in a schoolyard; without allies willing to stick up for it, it is forced to make peace with its tormentor.

But I would argue that just as the newly-formed state of Israel did not have to prosecute Nazi defendants at Nuremberg, so also the newly-formed state of East Timor should not have to carry the burden of justice on its own.

Without an international tribunal, we will only strengthen the politics of impunity.

Prosecutions are the most effective guarantee against future crimes against humanity.

A human rights mechanism without an international tribunal for East Timor would be as if Shakespeare wrote about the Prince of Denmark without mentioning Hamlet.

An international tribunal requires political will, but so have other tribunals. Other tribunals, too, have had their prospects dismissed at first and then come into existence. For example, New York University's Professor of Law, Theodor Meron, once wrote in *Foreign Affairs* magazine that a Yugoslavia tribunal "will not be very effective". Less than a decade later, he was president of that tribunal.

The Security Council resolution establishing the tribunal for Rwanda had only one opposing vote – that of the government of Rwanda, which at one point even threatened to prevent tribunal officials from entering its territory. Yet that tribunal also began functioning, and indeed some of its jurisprudence has made its way into the High Court of Australia.

But our government has remained silent about justice. We might well ask why. Policymakers put great weight on relations with Indonesia, especially with the Indonesian military. These military links are highly valued. We can see that in the signing of a Statement of Military Cooperation between the Chiefs of the defence forces of Australia and Indonesia in 2009.

Our special forces (the SAS Regiment) have had a close relationship with some of the worst abusers in the Indonesian special forces.

Vested interests have sought to represent their interests as the national interest. Yet what is required is an international tribunal for those Indonesian military personnel who committed war crimes and crimes against humanity in East Timor. This would be the most meaningful human rights mechanism in the Asia-Pacific region.

Terms of reference for the inquiry:

To inquire into and report on International and regional mechanisms currently in place to prevent and redress human rights violations, with a view to providing options on possible models that may be suitable for the Asia-Pacific region, with a focus on: the United Nations human rights system; regional mechanisms; and roles for parliaments.