

This IS **PART A** of the Free West Papua Campaign (Melbourne) submission.  
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**FREE WEST PAPUA CAMPAIGN (Melbourne)**  
17/288 Brunswick St, Fitzroy 3065

Submission to the Joint Standing Committee on Treaties  
Regarding the  
*Agreement between Australian and the Republic of Indonesia  
on the framework for security cooperation*

23 February 2007

### **Executive summary**

The Free West Papua Campaign - Melbourne (FWPC) has serious concerns about the proposed Agreement between Australia and the Republic of Indonesia on the framework for security cooperation (*the Agreement*).

The Australian Government should be supporting the sections of Indonesian society that seek accountability for past and current human rights violations, rather than strengthening links with the perpetrators of the crimes.

- The Agreement overlooks widely held concerns about human rights abuses in West Papua.
- The Agreement should include clauses that ensure international media are allowed into West Papua.
- The Agreement should also contain safeguards against human rights abuses.

As it currently stands, the Agreement is not in Australia's long-term national interest.

### **Definitions**

Any reference to West Papua in this document refers to the region between the Birds Head Peninsula and the 141<sup>st</sup> Meridian and is not to be confused with the recent administrative changes and creation of a new province by the Indonesian Government.

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#### **About the Free West Papua Campaign (Melbourne)**

The FWPC is an independent, non-incorporated, network of people concerned about the longstanding problems faced in West Papua. While there is no official structure to the campaign, at fortnightly public meetings consensus is reached on the campaign's stances, strategies and activities.

The FWPC believes the people of West Papua have never had an adequate opportunity to exercise their right to self-determination. This issue is at the core of the FWPC's objectives – to assist in creating an environment in which the people of West Papua can shape their own future.

## Situation in Context

*The current political situation and the possible impact of this agreement should not be viewed in isolation. The long history of violence on Australia's doorstep not only needs to be acknowledged, but also addressed.*

During the 1950s, with assistance from its Dutch colonial government and the Australian government, West Papua was moving towards independence. By 1961 the colony had its own flag, the 'Morning Star', and Papuan government officials.

However in 1962, conflict erupted over West Papua between The Netherlands and Indonesia, and a United Nations agreement gave control of the colony to Indonesia for six years. This was to be followed by a referendum to determine the views of the population.

These six years of Indonesian control saw well-documented cases of violence and abuse by the military. Then in 1969, Indonesia conducted a sham referendum called the Act of Free Choice.

Only 1022 Papuans, representing a population of 800,000, were picked to vote. Under severe duress, including threats from senior ranking military officials to cut their tongues out, they voted to remain part of Indonesia.

Despite a critical report by a UN official who was present, citing serious violations, the UN shamefully sanctioned the vote and West Papua officially became a part of Indonesia.

Papuans call this referendum the "Act of No Choice".

Since that time, the people of West Papua have suffered at the hands of Indonesia's military regime. Since 1962 an estimated 100,000 people have been killed or disappeared by the brutal military regime. Thousands have been raped and tortured and entire villages, especially in the highlands, have been destroyed. During the mid-1990s the Indonesian military systematically destroyed village gardens, causing widespread famine.

Despite the democratic reforms in Indonesia following the fall of General Suharto in 1998, terrible human rights abuses have continued. In 2001, the elected leader of the Papuan Presidium Council (PDP), Mr Theys Eluay, was assassinated by the Indonesian military.

Peaceful protests including flag-raising and the singing of traditional songs continue to be repressed violently by Indonesia's security forces. The recently published Human Rights Watch report *Protest and Punishment: Political Prisoners in Papua (2007)* details a number of cases where the Indonesian security forces have arbitrarily arrested, tortured and disappeared peaceful protesters who have participated in demonstrations as a means of self-expression.

A military build up in West Papua has continued under Indonesian President Susilo Bambang Yudhoyono and a government ban on journalists traveling to West Papua severely limits the international community's ability to monitor the scale and impact of the human right abuses occurring in West Papua.

The same individuals responsible for the arming and training of militias in East Timor have an active role in policing and militarism in West Papua. Figures such as Maj-Gen Zamroni (former deputy commander of Kopassus under Prabowo Subianto, and in charge of counter-insurgency operations in East Timor) has now been made the Commander of the TNI in West Papua. Other notable indicted war criminals posted to West Papua include Mahidin Simbolon and Timbul Silaen, who both remain in West Papua despite being officially retired. FWPC is genuinely concerned that the presence of these individuals signals a major campaign of planning and operations against civilians similar to their previous exploits in East Timor up to 1999.

Every day West Papuans suffer discrimination and fear in their own land. While huge profits are extracted from the resource rich province, the local people experience little benefit. Many West Papuans feel the Indonesians are only interested in West Papua for the land and resources, not for the people or culture.

The Indonesian Military's economic structure encourages it to be involved in illegal business activities including illegal logging (*The Last Frontier, EIA/Telapak 2005*), protection rackets, prostitution, drug and illegal arms trading (*Paying For Protection, Global Witness 2005*), and documented cross border incursions and business activity, including the pursuit of refugees deep into Papua New Guinea (*Caught in the Crossfire, Paul Daley, The Bulletin, 23 Aug 2006*).

While an increasing number of people around the world are taking action to prompt discussions about the future of West Papua, our political leaders are failing to show the leadership required and expected of them to resolve the underlying causes of the current situation.

### Security Agreement in Context

Underpinning even the most basic notion of democracy are broad values such as free speech, freedom of movement, recourse to justice and an equitable share of natural resources.

Sadly, such principles have been given inadequate attention in the proposed Agreement. It would not be unreasonable to suggest that in some instances these inalienable rights have been treated as tradable commodities.

The Agreement is designed to provide a strong legal framework for encouraging bilateral dialogue exchanges and implementation of cooperative activities. However, the Agreement is too broad in its wording, absent of definitions and therefore creates a vast platform from which more specific laws, obligations and agreements can be made with less scrutiny.

The Agreement creates amorphous concepts of traditional and non-traditional security threats and no limits on, or clear definition of, what constitutes a traditional and/or non-traditional security threat are provided.

For example, whilst "terrorism" and "extremism" are given much weighting in the wording of the Agreement, there is no attempt to clearly define the limits under which the relevant clauses may be applied.

The decision to formulate the Agreement was due to strong protests from the Indonesian Government over Australia's decision to grant asylum to 43 refugees from West Papua. It seems apparent that certain elements of the treaty were drafted to placate the Indonesian Government, without regard to ethical or legal considerations.

**Completely lacking from this document are provisions to ensure that reasonable checks and balances exist to protect organisations such as FWPC and the rights of the people of West Papua.**

## **Analysis of the Security Agreement**

While the Agreement explicitly states that it preserves the existing rights and obligations of each party under international law, the Agreement also creates new legal obligations for Australia which are supported by the international treaty laws. Bilateral treaties may constitute particular law for the purposes of examining Australia's international obligations. Further, regional state practices can create rules of international law, binding those states which recognise those rules. Regional customary rules may be complementary or supersede more general rules of international law, thereby limiting the application of international law to regional activities.

The obligations of both parties under international law will be affected by the Agreement because the Agreement will create bilateral legal obligations. While such obligations may not be inconsistent with broad international law, the Agreement may refine and limit the application of certain international laws.

### **Specific issues in need of further consideration relative to the aforementioned context:**

1. The Agreement creates vast base from which both positive and negative steps, agreements and binding obligations can be created. The Australian Parliament should refine and limit the broad scope of the Agreement to better protect against inappropriate use of the Agreement by future administrations.  
  
This is to say that the Agreement should not necessarily be halted as a concept. This is to say that Parliament should place greater restriction on its use and include safeguards for the protection of Australian people and monitoring and access requirements in relation to the situation in West Papua and elsewhere in Indonesia.
2. It is particularly important to ensure that appropriate time is taken to ensure adequate safeguards and responsibilities are included given the touting of the Agreement as a benchmark for further treaties in the Asia-Pacific region. It would be prudent and responsible to insist on human rights reporting and monitoring of obligations under the Agreement.
3. With regard to the statement, "*Ministers also agreed that there would be value in the Agreement providing a treaty-based expression of strong support for each country's sovereignty and territorial integrity, including Indonesia's sovereignty over West Papua*", clearly missing from Australia's eagerness to recognise Indonesia's sovereignty over Papua is a caveat that such recognition begets adherence to international law, transparency and accountability. The purpose of international law is to respect nation state territorial integrity while requiring nation state's to adhere to certain fundamental and international laws and norms. The Agreement currently before the committee is silent on these broader humanitarian international obligations.
4. The current obligations and representations contained in the Agreement places Australia and its citizens (corporate and natural) at risk of being complicit in human rights violations in the absence of independent observers and/or monitoring.
5. The emphasis on territorial integrity and the legal status of the Agreement, coupled with the Australian Government's continued excision of territory from the migration zone is an affront to the spirit and content of Australia's international obligations under the *Convention Relating to the Status of Refugees 1951*.
6. Although the Agreement promotes its adherence to the Charter of the United Nations. In noticeable contrast the Agreement is silent on a number of key customary international legal norms and UN Declarations and Conventions.

7. The Agreement covers counter terrorism activities and provides that the parties shall do “*everything possible individually and jointly to eradicate terrorism and extremism...*”. No definition of extremism is provided. What constitutes ‘extremism’ may therefore hinge on the conservative views of a given administration at the time. The Agreement again creates a broad base from which the civil liberties and freedoms of Australians and Indonesians may be eroded with no express safeguards and very little scrutiny. Further the Treaty (Article 3 (12)) provides for the Indonesian Government to exert pressure on the Australian government to cooperate and share information in relation to Australian citizens, particularly those considered to be terrorists or ‘extremists’ by the Indonesian Government.

**A key concern held by FWPC is that as it currently stands the Security Agreement provides a platform for exploitation of the definition of extremism for the benefit of political power.**

**Specific articles of concern relative to the aforementioned context:**

**Article 2:3**

The concern is that this bilateral agreement will enshrine the concept of *makar* which constitutes Indonesia’s Criminal Code under the heading *Crimes Against the Security of the State*. Any Indonesian-isation of the Australian legal system requires the assent of the Australian people, which has never been asked of them and would likely never be given.

This threatens the freedom of expression that is currently enjoyed by the Australian population. This underlying principle is perhaps the most menacing as it represents the Australian Government’s willingness to shut out the participation of its own constituents from regional debate.

**Article 3:8**

‘Doing everything possible individually and jointly to eradicate international terrorism and extremism and its roots and causes .....’ is a broad statement without any definitions. It also fails to recognise that significant sections of the Indonesian military have a current and historical involvement with armed extremism, and internationally recognised terrorist organisations (*International Crisis Group, 8 August 2002. Al-Qaeda in Southeast Asia- The case of the Ngruki Network; and several other ICG publications*). Failing to understand the realities of Indonesian state involvement in terrorism provides a platform for exploitation of the definitions of extremism for the benefit of political power.

**Article 3: 12 Intelligence Cooperation**

We agree with Civil Liberties Australia that the sharing of information with the Indonesian intelligence agencies which may result in the death penalty is an unacceptable scenario.

**Article 3: 13 Maritime Security**

Any turning over of potential asylum seekers contrary to Australian law and international obligations to the Indonesian Navy is of great concern.

**Article 3:15 Aviation Safety and Security**

The potential presence of Indonesian military on civilian aircraft who have been involved in human rights abuses and/or corrupt activities compromise aviation safety and security.

Concerns regarding the well-documented historical use of Indonesia’s national airline for the attempted and actual assassination of human rights and political activists should raise alarm.



### **Article 3: 17 Proliferation of Weapons of Mass Destruction**

Given the context we have set earlier in this document and the current politics of the Australian Government, the inclusion of any clause that facilitates the development and sharing of nuclear technology is irresponsible, short-sighted and disrespectful.

Such an inclusion at this time can only be viewed with great cynicism and will foster distrust and resentment amongst people who already feel their rights and land have been sold out in the larger geopolitical arena.

## **Key Recommendations**

The only article in the Agreement that would appear to have some potential to address concerns held by FWPC is:

Article 3: 21 Community Understanding and People-to-People Cooperation:

*Endeavouring to foster contacts and interaction between their respective institutions and communities with a view to improving mutual understanding of security challenges and responses to them.*

However, as it currently stands this clause is completely inadequate. In its current form the Security Agreement makes no real attempt to foster people-to-people cooperation or community understanding. The wording of this article should be based on already established international principles, such as:

Article 1 of the UN Charter:2:

*To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.*

**The treaty should promote and fortify, and not potentially distance or separate, the parties' responsibilities and obligations under international human rights and humanitarian instruments.**

Given the small chance of this happening, two key recommendations that FWPC believe must be included in any security agreement:

### **i.) Open access to International Journalists and Media**

Despite the democratic reforms in Indonesia following the fall of General Suharto, terrible human rights abuses continue to this day. Under President Yudhoyono a government ban on journalists travelling to West Papua severely limits the International Community's ability to monitor the scale and impact of the human rights abuses still occurring.

This denial of a free media is the denial of democracy. A free media forms the foundation for a healthy democracy. The unrestricted movement of journalists ensures that dialogue is balanced, ideas exchanged and light is shone on issues our political leaders would prefer to ignore.

**The very fact that 43 West Papuans felt compelled to flee their homeland in order to escape the intimidation of the Indonesian Military demonstrates the importance of the international media in highlighting the grievances and concerns of an oppressed people.**

The Australian Government should use this opportunity to push for provisions that ensure there is free and unrestricted access to International Journalists and Media in West Papua. This would be a positive step towards improving mutual community understanding.

## ■ ii.) Human rights monitoring

The Agreement overlooks widely held concerns about human rights abuses in West Papua. The Australian Government should be helping the sections of Indonesian society that want accountability for past and current human rights violations, rather than supporting the perpetrators of the crimes.

The Agreement needs to contain provisions for the monitoring of human rights. At present, International NGOs operating in Papua must be approved by the central government. The neglect and denial of West Papuan people's human rights is well-documented. The rising HIV/AIDS crisis, malnutrition, disappearances, rape, torture, murder of independence leaders and village massacres are facts of life in West Papua.

Despite perpetual assurances of reform, the corruption of the Indonesian Military remains endemic. There is still grossly lacking civilian control. An average soldier receives 30% of their wages from the government and the rest is made up from both legitimate and illegitimate business activities.

Whilst this submission will not attempt to analyse specific military considerations in detail, it is important to recognise that the problems faced in West Papua stem significantly from militarism.

**The FWPC believes that the logic in increasing cooperation with the Indonesian Military as the main solution to resolving underlying regional security issues is fundamentally flawed. Further, when this approach is considered in conjunction with an Agreement that fails to set adequate checks and balances to proactively address human rights concerns, the long term implications of this denial of justice are ominous.**

The Australian Government should use this opportunity to push for unrestricted access for human rights observers and the highest standards of accountability for violators.

## ■ Public Opinion and Conclusion

Newspolls commissioned in April last year determined that 77% of Australians support self-determination for the West Papuan people.

The FWPC is well positioned to measure the tide of public opinion in Australia. The general feeling on the street is that any Australian complicity in human rights violations against the West Papuan people is unacceptable. People from both sides of the political and professional spectrum agree that Australia should be doing more to prevent the tragedy unfolding. The tacit support of Indonesia's military by both the Liberal and Labor parties is a stance not shared by their constituents.

The attached 1110 signed form letters ([PART B of this submission](#)) were gathered in the space of three weekends and gives a strong indication that Australian people believe that any regional security treaty that neglects human rights is fundamentally flawed.

The underlying issues that brought about this treaty, highlighted by the arrival of the 43, will continue to simmer for as long as both governments deny the West Papuan people their right to self-determination.

The potential for future tensions could be greatly lessened through bilateral agreements that demonstrate a strong commitment to addressing the root causes of regional instability; poverty, inequality and the continued denial of justice.

The Indonesian and Australian Governments should start to take seriously the need to give the

people of West Papua their right to self determination.



***It's time to stand up for West Papua and defend human rights in our region.***