

# Leahy Conditions on Restrictions of Military Assistance for Indonesia Have Not Been Met

The Bush Administration argues that now is the proper time to lift legislative restrictions on U.S. military assistance for Indonesia. Seven conditions, known as the “Leahy Conditions,” must be met before restrictions can be withdrawn. Below is the text of the legislation. Beneath each condition is an examination of Indonesia’s shortcomings in compliance.

H.R. 2506, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002, Section 572: (a) *Funds appropriated by this Act under the headings “International Military Education and Training” and “Foreign Military Financing Program” may be made available for assistance for Indonesian military personnel only if the President determines and submits a report to the appropriate congressional committees that the Government of Indonesia and the Indonesian Armed Forces are –*

*(1) taking effective measures to bring to justice members of the armed forces and militia groups against whom there is credible evidence of human rights violations in East Timor and Indonesia*

**Reality:** The government of Indonesia and Indonesian armed forces have not made progress in this area. Rather, their actions make clear their intent to maintain the culture of impunity that has for decades enabled and encouraged Indonesian security forces to systematically commit widespread violations of human rights.

- Judicial proceedings underway in Jakarta to address crimes against humanity committed by the Indonesian military (TNI) and by militia organized, supported, and directed by the TNI in East Timor operate under constraints so limiting as to render the process a travesty. The court’s mandate is limited to events occurring in only three of East Timor’s thirteen districts during April and September 1999, excluding crimes that transpired in all districts during the period extending from the December 1975 invasion to the organized atrocities of September 1999. Moreover, most senior TNI officials identified by an Indonesian government commission as involved in the 1999 atrocities were dropped as official suspects, and some have since been promoted.
- As reported in May 2002 by the International Crisis Group (ICG), indictments and presentations by the prosecution at the trials in Jakarta are very weak, portraying the scorched-earth campaign in East Timor as a civil war-like conflict between equal adversaries in which the TNI’s shortcoming was to not do enough to prevent violence, despite overwhelming evidence to the contrary. According to the ICG, “There is a failure to address the way in which the military’s creation and use of militia forces contributed to human rights violations: the military role is presented as failing to prevent violence rather than actively orchestrating it; and...though purporting to identify crimes against humanity, the indictments as drafted suggest little more than criminal negligence on the part of the accused.”
- Despite its wide regard as the best documented case, with independent Dutch and UN investigations producing hard evidence related to specific perpetrators, the case of the murder of Dutch journalist Sander Thoenes in East Timor in September 1999 was recently closed by the Indonesian government.
- Despite substantial evidence of Kopassus involvement in the brutal November 2001 assassination of the leading political independence figure in West Papua Theys Eluay and the likely political nature of

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the killing, military authorities and an investigation by a special commission appointed by President Megawati have classified the assassination as an ordinary crime, enabling the military to pursue the case in a military court. By evading a civilian trial or a human rights tribunal under Indonesian Law No. 26/2000, the armed forces have succeeded in precluding any revelation of involvement of more senior officers, which is widely suspected by independent observers.

- No senior and very few mid-ranking military officers have ever been held accountable for widespread rights violations in Aceh or West Papua. Last year alone, the death toll in Aceh reached 1700, most of the victims being civilian.
- The TNI ignored and/or rejected summons by Indonesia's National Human Rights Commission in investigations into the killing of students in 1998 and 1999, some of which entailed sniper fire shooting of unarmed students on campus grounds.
- There has been no accounting for the mass rape of Chinese women that occurred in May 1998.

*(2) taking effective measures to bring to justice members of the armed forces against whom there is credible evidence of aiding and abetting illegal militia groups in East Timor and Indonesia.*

**Reality:** Rather than bringing to justice military officers who aided and abetted militia groups, the TNI has formed East Timor-style militia in several regions of Indonesia. It is also widely believed that the General Wiranto faction within the army, as well as factions in the police and navy, provide the Islamic fundamentalist militia Laskar Jihad with critical support. Recruitment and training of these fighters has been well-publicized. A June 29 New York Times article noted that TNI officers have assisted in their training.

- Mahidin Simbolon, who as a military colonel played a key role in organizing, training, arming, and directing East Timor militia, was promoted to General after the East Timor mayhem and assigned to head the command of military forces in West Papua. His reputation is such that one of the most notorious militia in East Timor named themselves "Mahidi" in his honor. Since 1999, the TNI has organized militia groups in West Papua paralleling those in East Timor. Simbolon now oversees the development of these militia groups.
- In addition to facilitating an unsuccessful attempt to insert Laskar Jihad units in Aceh, TNI forces are reportedly establishing militia units in Aceh which are being used to intimidate the civilian population through terror. There is broad expectation that, under military pressure, the Indonesian government will declare a state of emergency or martial law in Aceh in the very near future, giving the military an even freer hand.
- As with senior military personnel, militia leaders responsible for gross human rights violations in East Timor have evaded justice. The trial of the most notorious militia leader Eurico Guterres for his central role in the East Timor violence, which finally began in late June, focuses on his supposed "failure to control his armed personnel" when in fact he led at least several attacks in 1999 that killed numerous East Timorese and was indeed recorded on film on the day of a deadly attack ordering thousands of militia followers to "capture and kill if you need" independence supporters who had "betrayed integration" with Indonesia.
- Laskar Jihad
  - In 2000, several thousand Laskar Jihad militants sailed to Maluku from bases in Java with no interference from Indonesian security forces despite orders from then President Wahid to prevent such a transfer. The Jihad members then significantly exacerbated communal fighting in the province.
  - Laskar Jihad units have expanded their operations in West Papua where they work with TNI forces in the latter's efforts to repress growing, largely peaceful West Papuan demands for an end to human rights abuses and racial discrimination, as well as support by many for independence.
  - Laskar Jihad militia elements operate freely in Central Sulawesi, where they have exacerbated communal fighting.

*(3) allowing displaced persons and refugees to return home to East Timor, including providing safe passage for refugees returning from West Timor and demonstrating a commitment to preventing incursions into East Timor by members of militia groups in West Timor;*

**Reality:**

- Militia threats and misinformation continue to hamper the safe repatriation of many of the 50,000 East Timorese refugees in Indonesia. Known rapists and murderers live freely among the refugees without fear of arrest.
- The UN Secretary General has reported that hard-line militia may still pose a long-term threat to East Timor's peace and security.
- The taking of more than 1500 East Timorese children from their parents during and after the forced evacuation of East Timor in 1999 has yet to be adequately addressed by Indonesian authorities; the vast majority have not been reunited with their families. Many were placed in Indonesian orphanages under the control of pro-Indonesian East Timorese leaders.
- Well-equipped militia teams dispatched into East Timor in 1999 and 2000 to destabilize the UN administration could not have operated without the knowledge and support of the TNI, which maintained a strong position at the East-West Timor border.

*(4) demonstrating a commitment to accountability by cooperating with investigations and prosecutions of members of the armed forces and militia groups responsible for human rights violations in East Timor and Indonesia;*

**Reality:** A May 2002 Amnesty International report assesses the general problem of impunity as follows, "Resistance by the authorities to bringing perpetrators of human rights violations to justice continued to prevail and the vast majority of allegations of human rights violations were not investigated. The cases that were investigated did not result in trials. Thousands of cases of past violations remained unresolved."

- Indonesia has refused all extradition requests by East Timor's Serious Crimes Investigation Unit, including requests for East Timorese militia leaders currently residing in Indonesia, despite an agreement between Indonesia and East Timorese authorities. At the ad hoc tribunal on East Timor in Jakarta, high-ranking military personnel regularly pack the court to intimidate judicial staff.
- Investigations into the 1984 massacre of civilians at Tanjung Priok, which is supposed to be the basis of the second ad hoc human rights tribunal established under the same law that provided for the Jakarta court on East Timor, have been severely hampered by a complete lack of cooperation by the TNI.
- The investigation of the brutal torture and murder of well-known Acehnese human rights lawyer and permanent U.S. resident Jafar Siddiq Hamzah in August 2001 has gone nowhere. Indonesian authorities have even refused to release autopsy results to Jafar's family.

*(5) demonstrating a commitment to civilian control of the armed forces by reporting to civilian authorities audits of receipts and expenditures of the armed forces;*

**Reality:** The International Crisis Group in a May 2002 report observed, "Better military training will not alter the fact that there is a fundamental lack of political will on the part of the Indonesian national civilian and military authorities to exert control over private armies, punish abusive soldiers, end military corruption or proceed with long-promised reforms."

- The Indonesian military continues to draw between two-thirds to three-quarters of its income from off-line budgeting and an extensive network of legal, semi-legal, and illegal activities that include illegal logging (notably in West Papua); sale of fishing licenses to foreign fishing vessels including some which employ highly-destructive drag nets; prostitution; illegal drug activities (notably Aceh-grown marijuana); and outright extortion (which target minority businesses, notably Chinese).

Numerous “foundations” purportedly assist enlisted personnel and retirees. In reality, these operations collude with the highly corrupt Indonesian business community to assure cash flow to active duty and retired senior officers. In reference to the 250 financing units operated by the military, former Minister of Defense Juwono Sudarsono recently said that the “TNI should make those resources accountable.”

- Indonesia was ranked 88<sup>th</sup> out of 91 in the 2001 Corruption Perceptions Index published by Transparency International.

*(6) allowing United Nations and other international humanitarian organizations and representatives of recognized human rights organizations access to West Timor, Aceh, West Papua, and Maluku: and*

**Reality:**

- West Timor, still considered too dangerous for a permanent UN presence, remains at the highest UN security classification. Negotiations to lower the security status of part of West Timor (furthest from the border with East Timor) via a memorandum of understanding have floundered; lowering the status of the particular area most populated by refugees has not even been under consideration. In the meantime, humanitarian conditions in West Timor continue to deteriorate.
- In February 2002, an Amnesty International delegation was forced to leave West Papua while on a mission to assess the human rights situation in the province.
- Despite repeated requests since 1993, the Indonesian government has refused to invite the UN special rapporteur on torture. In general, Indonesia has been markedly reluctant to cooperate with UN human rights mechanisms.
- Notwithstanding pleas by peaceful civil society groups in Aceh, West Papua, and Maluku, the Indonesian government and TNI have strongly resisted the involvement of other international humanitarian groups and representatives of recognized human rights organizations in these areas.

*(7) releasing political detainees.*

**Reality:** The administration of President Megawati has continued the practice of political imprisonment, sometimes through the utilization of the “Hate-sowing Articles” of the Criminal Code.

- According to the Department of State’s 2001 Country Report on Human Rights Practices in Indonesia, “...there is ample evidence that arbitrary arrests and detention without trial are employed systematically in Aceh.” Acehese NGO activist Muhammad Nazar served ten months in prison for “spreading hatred.”
- At least four political prisoners, and possibly several times that number, have been charged and sentenced to multi-year prison terms for violence in 2000 in Wamena, West Papua, despite a clear lack of evidence connecting them to any wrong-doing there.
- Labor activists, political activists, and human rights defenders throughout Indonesia have been imprisoned for non-violent activities and views.