



*Emá hotu iha direitu no direitu ba emá hotu*

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**Submission to the UN Committee on the Rights of the Child  
For its consideration of the second and third periodic reports of Timor-Leste**

**The HAK Association and AJAR (Asia Justice and Rights)**

**3 February 2015**

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Between 1975 and 1999, Timor-Leste suffered under a brutal occupation by the Indonesian military, during which time horrendous crimes against humanity were inflicted on the Timorese people the effects of which are still felt today. Two practices, in particular, continue to have ongoing impacts on the children of Timor-Leste. Firstly, the practice of forcible removal of children from their families by various different means outlined below. These children were taken to Indonesia under a variety of guises, whereupon communication with their families was severed. Many of these children, who have now become adults, remain alive today but their whereabouts unknown. Secondly, the widespread practices of sexual abuse and sexual slavery that resulted in the birth of numerous Timorese children to Indonesian father. These children now suffer the indignity and discrimination of being unable to register their true identity in order to obtain formal identification documents as well as isolation and stigmatisation from their society.

Certainly the Timor-Leste Government cannot be held responsible for these initial violations of international law. However, under international law including the Convention on the Rights of the Child (CRC), the Government of Timor-Leste does bear significant responsibility for ensuring the ongoing impacts of these violations are addressed and further violations are not inflicted. With the submission we focus on the actions and omissions by the Government of Timor-Leste which continue to violate the rights of Timorese child victims of past conflicts.

## **Part I – Separated and Disappeared Children in Indonesia**

### **[1] Facts**

Of the 24 years of Indonesian military occupation, thousands of children were forcibly removed from their families, some with ostensible approval from their families, others through clear deception or kidnapping. So widespread was this practice, that in the end it became formal and systematic enough to involve military authorities, religious institutions and government authorities. Today many of these children are or are thought to be alive and living in Indonesia, often with new names, different families and little or no memory of the Tetun language and their culture.

There are two main references that provide official details as to the scope and nature of this practice: the report of the Commission for Reception, Truth and Reconciliation (known by its Portuguese acronym, CAVR) and the report of the Commission for Truth and Friendship (CTF). These two sources concluded that there are numerous cases of forcibly disappeared children which remain without clarity or resolution.

### **Findings of the Commission for Reception, Truth and Reconciliation's Chega! Report**

#### 7.8.4.1 The number of children sent to Indonesia

[355] "When the children who were removed in 1999 are included, the total estimated number of children taken to Indonesia clearly rises but the figures cited vary markedly. A study undertaken jointly by the International Refugee Council (IRC) and UNHCR with the Student Solidarity Council in late 2001, after many refugees had returned home, estimated that a total of 2,400 children had been sent to Indonesia during the years of the occupation. A UNHCR representative told a public hearing that between 1976 and 1999 as many as 4,534 children may have been removed from Timor-Leste.

[356] Based on these estimates, the Commission is confident that several thousand children were sent to Indonesia from Timor-Leste. However, it is important to recognise that the removals took place along a spectrum from unregulated transfers of young children without consent being sought, to coercion of children and parents, to informed consent.

[357] As well as the overall figures, the number of unresolved cases is also difficult to determine as different agencies use different criteria in deciding whether to keep a case open. A workshop organised by UNHCR, held in Dili in May 2003, identified 770 outstanding cases

from the entire period of the occupation. According to UNHCR, as of 29 February 2004, there were still 221 children in Indonesia separated from parents in Timor-Leste, down from 600 in June 2003. At the closure of UNHCR's reunification programme on 31 December 2004, there were still 107 cases pending; 72 children remain in Indonesia (Java and Sulawesi) and 27 children whose locations are unknown. However, the UNHCR's mandate is limited to 1999 separations, does not include cases where both parents and children are in Indonesia and considers any case closed once the child turns 18. The number of children removed who have not yet returned is therefore certainly much higher."<sup>1</sup>

### 11.2 Separated children

Many East Timorese children were separated from their families during the Indonesian occupation of Timor-Leste, including some 4,500 in 1999. Many in the pre-1999 category are now adults and include some who are looking for their families but may not know where they come from. Most of those who became separated from their families during the violence of 1999 have either been reunited with their families or have continued to stay with caretakers. Responsibility for this category rests with the Governments of Indonesia and Timor-Leste following the signing in December 2004 of a "Memorandum of Understanding Concerning Cooperation to Protect the Rights of Separated and Refugee Children", facilitated by UNHCR.<sup>2</sup>

### **Findings of the Commission of Truth and Friendship (CTF) Report**

Although the CTF focused on events in 1999 and made no quantitative findings, it did find that gross human rights violations were committed and that Indonesia bore institutional responsibility for the commission of these crimes, both by pro-Autonomy militia and Indonesian military forces (TNI):

"Statistics concerning the exact numbers of violations are subject to dispute, and much further research would be required in order to obtain precise and reliable quantification. However, the CTF process shows conclusively that every district, and even every sub-district, experienced multiple human rights violations. For example, the SCU opened over 1400 murder investigations. Evidence also revealed that tens of thousands of people were forcibly transferred, or deported, and a majority of public buildings and private homes in East Timor were destroyed."<sup>3</sup>

Subsequent research<sup>4</sup> has revealed that, although children were removed in a wide variety of ways, each disappearance differing from the next, there was some pattern to the *modus operandi* of disappearances. Generally children were removed in one of the following contexts:

- **Transferred for adoption** – these cases tended to involve soldiers adopting Timorese children and removing them to Indonesia when their deployment in Timor-Leste was finished. These children were often either the young children, mainly boys, used as TBOs (Tenaga Bantuan Operasi, Operations Assistants) by Indonesian soldiers; found wandering alone or separated from their family; or selected from a group about to be killed. Often these 'adoptions' occurred with the apparent consent of the parents, however, more often the parents were coerced or deceived believing they had no other option, or due to poverty inflicted by the conflict they believed their child's life would be better in Indonesia. It has been reported that nearly every military boat that departed Timor-Leste had on-board 20-30 Timorese children.
- **Transferred by institutions linked to the state** – these transfers of children accounted for almost half the disappearances. There were two main ways these transfers took place: (1) President Suharto, through his charity foundations, undertook to care for and educate orphaned Timorese children; or (2) programs were established offering opportunities and scholarships to study, train or work in Indonesia,

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<sup>1</sup> CAVR Report, Chapter 7.8: Violations of the Rights of the Child, p. 78.

<sup>2</sup> CAVR Report, Part 11: Recommendations, p. 34-35.

<sup>3</sup> Final Report of the Commission on Truth and Friendship (CTF) Indonesia-Timor-Leste, page 209.

<sup>4</sup> Helene van Klinken, *Making them Indonesians: Child Transfers out of East Timor* (2012, Monash University Publishing).

with the objective of building Timorese support for integration through immersion in the language, culture and ideology of Indonesia.

- **Transferred by religious institutions** – the Indonesian Catholic Church as well as Islamic institutions would send Timorese children to Indonesia to be educated, believing they were helping the ‘poor and backward’ Timorese, but with the actual aim of proselytising the Islamic faith in Timor-Leste after their education.

## [2] Efforts by Indonesia and Timor-Leste

Date	Government Initiative	Result or Recommendation
1975 to Sept. 1999	Indonesia invaded and occupied Timor-Leste for 24 years.	
Oct. 1999	Timor-Leste won its independence from Indonesia	
Sept. 1999 - Jan. 2000	Indonesian National Human Rights Commission (Komnas HAM) established the Commission for Human Rights Violations in East Timor (KPP-HAM), which investigated and delivered a report on the human rights violations that occurred during 1999 in Timor-Leste.	KPP-HAM recommended to the Government of Indonesia to: <ul style="list-style-type: none"> <li>• Establish a Human Rights Court.</li> <li>• Provide rehabilitation and compensation to victims and their families.</li> <li>• Facilitate and erase all restrictions and pressure that will hamper the return of refugees who want to return home</li> </ul>
2001 – 2005	The Timor-Leste Government established the Commission on Reception, Truth and Reconciliation (CAVR)	<ul style="list-style-type: none"> <li>• 4.2.7 - East Timorese children who were taken to Indonesia and remain separated from their parents and families are given <b>the opportunity for family contact and reunion, including the option of freely returning to Timor-Leste</b>, in keeping with Articles 9 and 10 of the CRC.<sup>5</sup></li> <li>• 11.2.1. <b>The implementation of the 2004 MOU between the Governments of Timor-Leste and the Indonesia be monitored by NGOs</b> in both countries to ensure that the rights of separated children, particularly any whose cases have not been resolved and those in the custody of caregivers, are protected – including their right to unhindered access to identify and nationality procedures.</li> <li>• 11.2.2. The Governments of Timor-Leste and Indonesia ensure that <b>regular and free communication is maintained between the child and parents</b> while the child remains with the caretaker or with an institution and that separated children are able to make informed decisions about their future free of intimidation or fear.</li> <li>• 11.2.3. <b>Assistance be provided, particularly for those in remote, poor areas</b>, so that parents and adult separated children can trace each other, communicate and meet.<sup>6</sup></li> </ul>
2005 – 2008	The Governments of Indonesia and Timor-Leste established the Commission on Truth and Friendship (CTF)	<ul style="list-style-type: none"> <li>• <b>Recommendation for a Commission for Disappeared Persons:</b> The Commission recommends that the governments of Indonesia and Timor-Leste work together to acquire information/form a commission about disappeared people and cooperate to gather data and provide information. This Commission shall also be tasked to identify the whereabouts of all Timor Leste children who were separated from their parents and to notify their families.</li> <li>• CTF also recommended the continuation of programs previously undertaken to ensure protection of displaced children’s rights, primarily for those whose cases are unresolved and those still in the hands of their Indonesian wardens, including the rights of those children to freely access identification and citizenship procedures.</li> <li>• Priority must be given to education and scholarship programs for these children who were victims of the violence.</li> </ul>
July 2009	Timor-Leste submitted a short proposal to Indonesia regarding the establishment of a working group specifically on the issue of disappearances.	

<sup>5</sup> CAVR Report, Part 11: Recommendations, p. 14.

<sup>6</sup> CAVR Report, Part 11: Recommendations, p. 35.

2009 – 2010 2011 – 2012 2013 – 2014	The Timor-Leste Ombudsman for Human Rights and Justice (PDHJ – <i>Portuguese acronym</i> ) and Indonesia equivalent body, Komnas HAM, established an agreement between them to work towards building a commission on disappearances. They have extended this agreement twice.	Although the objective of this MOU is stated as being to facilitate the search, identification and reunifications for missing children with their families, the entire content of this MOU is directed to ‘capacity-building’ of the PDHJ institution – i.e. opportunity for staff travel.  From the Timor-Leste side, recently the PDHJ began distributing forms to Village Chiefs so they could identify all the families who are missing relatives. However, until late 2014, nothing was done to follow up these efforts.  In late 2014, staff from PDHJ travelled to Jakarta to meet with partners from Komnas HAM. They were taken to a number of institutions around Java that are known to have looked after Timorese children. Only one child, related to a PDHJ staff member, was reunified.
October 2011	The Indonesian President issued Decree No. 72/2011 on the Action Plan for the Implementation of the recommendations of the CTF, and a Working Group Monitoring Implementation of the Plan of Action was established.	The Timor-Leste Government has made no known effort to request or assist in the implementation of this decree.
Early April 2013	The regular Senior Official Meeting (SOM) between the Indonesian and Timorese Ministers of Foreign Affairs took place in Bali, Indonesia.	At this particular meeting, the two States agreed to develop a Terms of Reference (TOR) with the intention of establishing a task force to establish a commission to implement the recommendations of CTF, particularly with regards the issue of disappearances.
April 2014	The regular Senior Official Meeting (SOM) between the Indonesian and Timorese Ministers of Foreign Affairs took place in Bali, Indonesia.	At this meeting, there was no discussion of the Commission on Enforced Disappearances, which is the stated purpose of holding this meeting with Indonesian officials, instead the discussion focussed on assets, acquisition of land to establish an Indonesian Cultural Centre of Understanding in Dili, and access to burial sites of the Indonesian soldiers in Timor-Leste.

### [3] Legal Analysis of Government Actions

#### Right to identity (Art 8), truth (Art 38) and reunification (Art 11,38)

Under Article 8 of the Convention on the Rights of the Child (CRC), every child has the right to preserve his or her identify, including their nationality, name and family relations, and it is the obligation of the State to provide appropriate assistance and protection to those illegally deprived of this right. Moreover, under Article 11, all States must take measures to prevent the non-return of children illegally transferred abroad and, to this end, shall promote international agreements to address said objective.

This obligation to search for missing children is further emphasised by Article 38 of CRC which requires all State Parties ensure respect for the rights of children enshrined in International Humanitarian Law – which includes the right of families to know the fate of their relatives and the obligation on parties to a conflict (including Timor-Leste) to search for missing persons following the cessation of hostilities (Articles 32 and 33 respectively from Additional Protocol I to the Geneva Conventions).

Based on our experiences with the limited number of reunifications carried out so far, almost invariably, these children have had their name changed and they have been deprived of all knowledge of and contact with their family. Many may not even realise that they are in fact East Timorese. Even upon reunification, they no longer speak the national language of Tetum, or their local dialect, so communication with their families upon reunification can be challenging. Moreover, as they are now considered Indonesian citizens, they are unable to acquire Timorese nationality without forfeiting their Indonesian citizenship (which they usually wish to retain as they are often more comfortable living in Indonesia due to language challenges and their well-established lives).

Unfortunately, the Government of Timor-Leste has on numerous occasions failed to demonstrate any seriousness in pursuing or supporting the reunification of these missing children. No concrete action has been taken to implement any of the recommendations of the CAVR or the CTF, particularly in regards to the Commission on Disappeared/Missing Persons recommended by the CTF. While bilateral agreements have been pursued, Government officials prefer to talk at the political level, take advantage of the travel opportunities and leave concrete actions to civil society. This inaction is partly driven by the lack of clarity as to who is responsible for this work because both have undertaken responsibility. As a result, when communicating with

the Ministry of Foreign Affairs, they frequently deem certain issues to be within the remit of the Ombudsman (PDHJ), while the Ombudsman regularly assigns responsibility to Ministry of Foreign Affairs. Moreover, the regular Senior Official Meeting (SOM) between the Indonesian and Timorese officials, which takes place in Bali, Indonesia, has yet to produce any result that is having a direct impact on families or the missing children.

However, in addition to a lack of any concrete political efforts, there are also no efforts to support civil society in our grassroots efforts to identify, search and reunify families. AJAR and HAK are the only civil society organisations working in this area in Timor-Leste but our funding sources are extremely limited and the cost of each reunification incredibly burdensome once all travel costs and the demands of traditional ceremonies are accounted for. The logistical challenges also create impediments, with visas in particular an unnecessary cost. Without the support of Government

#### Recommendations:

- The Government of Timor-Leste must take tangible steps to actually establish the bilateral Commission on Disappeared/Missing Persons.
- The Immigration Department should waive visa requirements for Timorese children returning to Timor-Leste for reunification or visits with their families.
- The Ministry of Foreign Affairs and the Ombudsman for Human Rights and Justice (PDHJ) must develop a clear policy for identification, search and reunification of missing children, which clearly outlines areas of responsibility and concrete actions that must be taken.
- The Ombudsman for Human Rights and Justice must increase transparency and accountability for the work they undertake in respect of missing children, in particular they should make public their 2014 report on this issue, which was presented to National Parliament in late 2014.
- If the Government is not able to pursue this work directly, it should provide funding support to civil society organisations to enable them to increase their resources and the number of reunifications.

#### **Rights under International Humanitarian Law (IHL) to truth, justice and accountability**

The UN Principles and Guidelines on the Right to a Remedy and Reparation,<sup>7</sup> recognise Article 39 of the CRC, which refers to the self-respect and dignity of victims, as conferring a right to remedy on victims of gross violations of human rights and humanitarian law. It is well known that enforced disappearances constitute a crime against humanity and, as such, victims are entitled to a remedy. Moreover, it is well understood that recognition of suffering and accountability for those responsible is often a crucial element in restoring dignity to victims of such heinous crimes.

There are numerous individuals and institutions directly responsible for this systematic policy of forcible removal of Timorese children. Unfortunately, little has been done by the Timor-Leste Government to pursue accountability for those responsible and many of these organisations continue to function.

#### Recommendations:

- The Timor-Leste Government should pursue accountability from the Indonesian Government and all the institutions responsible for the illegal transfer of Timorese children, including the Dharmais Foundation, Hati Foundation, Cinta Damai Foundation, Lemorai and Al-Anshar Foundations, individuals associated with the Protestant Church and Indonesian Catholic Church, as well as Islamic institutions such as Yakin.

#### **Obligation to promote physical and psychological recovery and social reintegration**

In addition to the right to remedy, Article 39 explicitly confers on States an obligation to “take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of ... abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts.”

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<sup>7</sup> *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005 at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

Due the relatively small numbers of reunifications that have actually taken place and the lack of research in this area, the full psychosocial impact of reunifications is yet to be understood. Anecdotally, victims report surprise at the situation in which they find their families. One former missing child, who now actively works to reunify other missing children, said he anticipated reunion with his family would provide stability and economic security because he imagined they may have been veterans. In fact, they were not and, although incredibly happy to have been reunified, he now carries with him the burden of wanting and needing to provide for his family.

Despite the unknown need, what is certain is that Timor-Leste lacks sufficient mental health services to adequately respond to any need that may arise. At present, one civil society organisation, Pradet, is providing psychological counselling services. At AJAR and HAK, we do our best to follow up with families and children, and provide ongoing communication, however, our staff are not qualified to provide the type of care often required.

Recommendations:

- The Government of Timor-Leste should prioritise the development of in-country psychosocial support services, in particular human resources, so that families and the missing children, whether reunified or not, can access appropriate mental health services.
- The Government of Timor-Leste should increase the availability of funding as well as social security support to enable families and missing children to access these services.

## **Part II – Children of Indonesian Soldiers**

### **[1] Facts**

The number of children born to Indonesian soldiers is unknown, but given many women gave birth to two or more children while in sexual slavery, it is likely there are more than 1000 children born to Indonesian soldiers.

#### **Findings of CAVR:**

The Commission received evidence of “a significant number of cases that can be categorised as sexual slavery. Many of the cases included practices that were striking in their similarity... three main patterns of sexual slavery were identified by the Commission.... One common practice was for Indonesian officers to keep Timorese women in conditions of sexual slavery in military installations. ... A second form... did not require the physical detention of the women on the military base, but they were summoned as required by members of the military for sexual purposes. ... The third pattern of sexual slavery involved a member of security forces establishing ownership of a woman in a domestic setting, usually her house.”<sup>8</sup>

“[337] Victims of sexual slavery experienced the most extreme forms of social isolation. ... the community perception of women who were subjected to sexual slavery, particularly domestic sexual slavery, was coloured by popular belief which did not distinguish between consensual and non-consensual extra-martial sexual relations... not only the victims but also their immediate family members were subjugated to shame and ridicule.”

“[346] Women who became pregnant and bore children from non-consensual sexual relationships faced multiple layers of discrimination. ... Their children were often discriminated against, as they were seen as illegitimate children born out of wedlock. This branding of women and their children not only resulted in social isolation, but also often resulted in severe psychological problems within the family.... In many cases where the biological father was an Indonesian soldier, mother and child (or children) were abandoned at the end of the soldier’s tour of duty. The struggle for daily survival, without support from the community and extended family was extremely difficult, a situation that continues for many women today.”

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<sup>8</sup> CAVR Report, Chapter 7.7: Sexual Violence, p. 45-46.

There “are strong reasons for under-reporting and the fact that 853 cases of rape and sexual slavery, along with evidence from another 200 interviews were recorded, lead(s) the Commission to the finding that the total number of sexual violations is likely to be several times higher than the number of cases reported. The Commission estimates that the number of women who were subject to serious sexual violations by members of the Indonesian security forces numbers in the thousands, rather than hundreds.”<sup>9</sup>

## [2] Legal Analysis of Government Policies

Now, 10 years after this report was written, the situation for many of these families remains unchanged. Aside from the ongoing social stigmatisation, there are two particular policies of Government that continue to discriminate against children of these circumstances.

### Issuing of Birth Certificates

Under Article 7 of CRC, all children shall be immediately registered and have the right to a name and to acquire nationality, and all State Parties shall ensure implementation of this rights. As such, under the Constitution of Timor-Leste, Article 3 all children born in Timor-Leste to an East Timorese mother *or* father shall be considered an original citizen and under article 18(3) these rights shall apply to all children born in *or* out of wedlock.

However, the Ministry of Justice, which is responsible for issuing birth certificates, has an administrative policy that requires a person to produce the electoral or identity card of both their parents as well as all their grandparents in order to obtain a birth certificate. However, many do not know or have no contact with their birth father. Without a birth certificate, it is not possible to obtain an electoral card. Without an electoral card, a person cannot vote in elections and they cannot a Timor-Leste passport.

Despite the Government acknowledging the discriminative nature of this policy in international forums, this policy still remains in force. This policy has a number of implications. In order to obtain a birth certificate, many children of Indonesian soldiers are forced to fake their identity by saying that someone else is their father and borrowing their identity card. Others have difficult accessing higher education, passports and scholarships because they are unable to produce an identity card required for registration. This denial of their identity and rights can cause depression and further social isolation and stigmatisation.

Recommendation:

- The Ministry of Justice must change their policy of requiring citizens to produce evidence of identity for their mother and father in order to obtain a birth certificate.

### Access to social security and education support (“bolsu da familia”) from the Ministry of Social Solidarity

Article 26 of the CRC recognises the right of every child to benefit from social security. This right is recognised under Article 56 of the Constitution of Timor-Leste, and again recognises this right for children born out of wedlock (Article 18(3)).

However, the Ministry of Social Solidarity, which provides social assistance for education and social security for the children of widows, requires a person to produce evidence of their father’s death, namely a death certificate, in order to access these funds. However, children of Indonesia soldiers are unable to do so and yet live in the same conditions, if not worse due to the social stigmatisation of being the child of a non-consensual relationship.

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<sup>9</sup> CAVR Report, Chapter 7.7: Sexual Violence, p. 108.



Inability to access this support from the Government, means many of these children do not have access to educational opportunities, further reinforcing the discrimination they suffer due to circumstances beyond their control.

Recommendation:

- The Ministry of Social Solidarity should extend their education and social security support to single mothers and their children, who are not able to produce evidence of their father's death due to his being an Indonesian soldier. Any proof required should be carefully considered so as not to increase the stigmatisation.

## **Part III – About Us**

### **[1] AJAR (Asia Justice and Rights)**

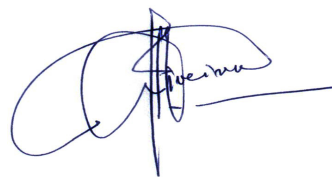
Asia Justice and Rights (AJAR) is a non-profit organization based in Jakarta, Indonesia, working to strengthen accountability and respect for human rights in the Asia Pacific region. AJAR focuses its work in countries attempting to build a stable democratic base following prolonged conflict, dictatorships and authoritarian regimes. AJAR believes that peace and democracy can only be sustained if impunity, corruption, and human rights violations are addressed. We seek to empower those working to end human rights violations and impunity by increasing the skills, knowledge and resources they need to be successful

### **[2] HAK Association**

HAK (which stands for “Law, Human Rights and Justice” in Bahasa Indonesian) was established in 1996 as a legal aid office for political prisoners under the Indonesian occupation. Since independence our program of work has diversified dramatically but focuses primarily on human rights monitoring and advocacy of the situation in respect to the security sector, access to health, education and an adequate standard of living, and the rights of victims of past crimes to truth, justice and to live with dignity. HAK was a key actor in the establishment of the Victims’ Associations which have chapters in each of the 13 districts of Timor-Leste. In January 2015, HAK received a grant of funding, through our regional partners AFAD (Asian Federation Against Involuntary Disappearances), to work with our Indonesian partners, Ikohi and KontraS, to conduct a major awareness raising campaign to push for and encourage reunifications of missing Timorese children.



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**Jose Luis de Oliveira**  
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