Australian military vehicle responsible for elderly woman's death in East Timor

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The death of Gracinda da Costa, a 65-year-old mother of nine, in an apparent road accident involving an Australian military vehicle has highlighted the extraordinary privileges enjoyed by the intervention force in East Timor, including effective blanket immunity from the country's criminal jurisdiction.

Da Costa was killed on December 18 after being struck near her home as she was crossing the road in the capital, Dili. According to the Department of Defence, Australian personnel serving with the International Stabilisation Force (ISF) administered first aid at the scene before the woman, suffering from severe head injuries, was taken to hospital in an East Timorese ambulance. Doctors operated for three hours but were unable to save her life. Among da Costa's orphaned children are two teenage girls, now reportedly living with other families.

The Australian military reportedly only learned of da Costa's death on January 1, 14 days later. The Defence Department waited another three weeks before making the information public with a perfunctory statement titled "Motor vehicle accident in East Timor". In a further demonstration of contempt for the victim and her family, it did not use da Costa's name, but referred only to a "female East Timorese pedestrian".

The statement explained that an Australian medical officer had visited Dili hospital immediately after the incident and was told that da Costa "had sustained a broken leg and lacerations". During a "routine visit" to the hospital a fortnight later, "the ISF Medical Officer enquired into the woman's health and was advised that she had died on the evening of admission".

Many questions are raised by this account. Why did the Defence Department statement refer only to a "broken leg and lacerations", when da Costa's family and hospital staff reported that she suffered heavy blood loss through a 10-centimetre head wound? Why did no-one from the Australian military subsequently monitor the elderly woman's condition? Why did the Defence Department, after learning of da Costa's death, wait another three weeks before making the information public?

The Australian response has all the hallmarks of a cover up. The military has already changed its story with regard to one important detail. It initially insisted that the medical officer who visited Dili Hospital shortly after da Costa was admitted had provided her family with compensation forms. After family members publicly denied this, a defence spokesperson told Fairfax Media on February 8 that the department was "retracting" its initial position.

No-one from the Australian military has contacted da Costa's family. No explanation, apology, or offer of compensation has been forthcoming. Under the terms of the 2006 intervention, any compensation for "damage, injury or death in Timor-Leste to third parties" caused by the intervention forces is to be paid by the Timorese government, not Australian authorities.

The entire affair reveals the contemptuous attitude of the Australian government and military toward the East Timorese population. After ignoring the case for weeks, the main concern of the military and civilian authorities has been to prevent outrage over the incident from increasing public hostility among ordinary East Timorese toward the Australian military.

The military is now in damage control mode. In Canberra on Wednesday, Australian Defence Force Chief Angus Houston told a parliamentary committee that the failure to monitor da Costa's condition in hospital was a "lapse". Liberal Senator Russell Trood warned the incident could undermine Australia's continued presence in East Timor.

Contrary to the official pretext that the most recent Australian military intervention in 2006 was to help the East Timorese, its real purpose was to secure Canberra's stake in the impoverished state's oil and gas resources

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and to enhance its regional geo-strategic standing against rival European and Asian powers.

These predatory calculations drove the initial preoccupation with ensuring Australian troops could operate with impunity in East Timor. In May 2006, the former government of Prime Minister John Howard adamantly rejected calls for Australian forces to operate under a UN command structure. The present Labor government has maintained this position.

Similarly, Australian troops continue to operate with legal immunity. Even if it were established that the Australian soldiers involved in Gracinda da Costa's death were speeding, under the influence of alcohol or drugs, or criminally negligent in another way, they could not be charged or detained by Timorese or UN police.

The elderly woman's death is not the first case involving Timorese civilians killed by Australian soldiers. In February 2007, for example, Australian forces shot dead two people who were among a group of internally displaced people protesting their eviction from a camp outside Dili airport. In August 2007 a local man was killed when his motorcycle collided with an Australian army truck; investigating UN police concluded the Australian driver "bore the greater responsibility for the accident as he was speeding". In neither case did the Australian troops face criminal charges, or even, it appears, disciplinary reprimands.

The 2006 Status of Forces Agreement, which outlines the roles, responsibilities and legal position of the Australian-led intervention force, is an extraordinary document. It states that "visiting personnel"—which covers Australian military, police, government employees and private contractors—are accorded the status of diplomatic administrative and technical staff under the 1961 Vienna Convention on Diplomatic Relations.

Those covered by convention "enjoy immunity from the criminal jurisdiction of the receiving State". The immunity is absolute, except where the Australian government issues an express waiver. In addition, intervention force personnel are subject to Timor's civil and administrative jurisdiction only in relation to acts performed outside their official duties. Moreover, they are "not be liable to any form of arrest or detention" nor are they "obliged to give evidence as a witness". Their private residences "enjoy the same inviolability and protection as the premises of the mission [i.e., the Australian embassy]"; their "papers, correspondence, and property shall likewise enjoy inviolability".

These sweeping measures enjoyed by Australian forces in East Timor surpass those in many comparable interventions. The legal documents underpinning the Australian-led Regional Assistance Mission to Solomon Islands (RAMSI), for example, do not include reference to the Vienna Convention on Diplomatic Relations.

Inclusion of the convention in other Status of Forces Agreements (SOFAs) has been a contentious issue internationally. Washington insisted on having its forces in Afghanistan covered by the diplomatic treaty, but was unable to have it incorporated into the 2008 US-Iraq SOFA. In 2006, Australia utilised the US precedent in Afghanistan to insist on the Vienna Convention being included in the East Timor SOFA. International law expert Professor Roger S. Clark of Rutgers Law School described the US-Timor agreement as "heavy handed [and] unlike any SOFA I have ever actually seen".

The East Timor SOFA outlines other privileges. Australian soldiers, police, government officials and private contractors working with the intervention force do not require visas or passports to enter and leave the country. They are granted "access to and allowed use of, at no cost, public utilities for electricity, gas or water" as required for their duties. They may seize any weapons from the population, irrespective of whether they are legally owned or not. They can freely operate aircraft and vehicles—Timorese authorities are required to "accept as valid, without test or fee, a permit or licence held by Visiting Personnel".

Like the official indifference toward the death of Gracinda da Costa, these measures underscore the neo-colonial character of the Australian operation in East Timor. More than a decade after the initial Australian military intervention in 1999, the "independence" of the impoverished territory remains a sham.

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