

By Emily Mitchell

Living in Montara's shadow

Reported impacts in East Nusa Tenggara, Indonesia

Blighted seaweed at Tablolong,
East Nusa Tenggara, Indonesia, August 2013.
Photo: Emily Mitchell

The Montara oil spill occurred in Australian waters in 2009. For four years, communities in East Nusa Tenggara, the closest Indonesian province to Australia, have continued to advocate for an independent investigation into the impacts sustained within Indonesia's exclusive economic zone (EEZ) and suffered by Indonesian coastal communities. To this day, the Australian government has not acted on claims of damage within Indonesian waters.

THE MONTARA SPILL

On 21 August 2009, the Montara wellhead exploded within Australian waters of the Timor Sea, spewing forth thousands of litres of oil. Oil gushed unabated for 74 days until 3 November 2009, and was carried further by currents. The sheen upon the ocean at various times affected an area as large as 90,000 square kilometres.¹ It was the largest offshore oil platform spill in Australia's history.

The Australian Maritime Safety Authority (AMSA) dispersed the oil, spraying 184,135 litres of dispersants on to the slick.² Of the seven dispersants used, only one, Slickgone, is approved for use in the United Kingdom.³ In the clean up, over 40,000 litres of dispersants Corexit 9527A and Corexit 9500 were used, which are held to be highly toxic to human and marine life, and linked to severe health consequences in the 2010 BP Deepwater Horizon spill in the Gulf of Mexico.⁴

In 2010, the Report of the Montara Commission of Inquiry (the Inquiry), established by the Australian government, found that the way in which the polluting company, PTTEP Australasia (PTTEP AA) operated the Montara oilfield 'did not come within a "bulls roar" of sensible oilfield practice. The blowout was not a reflection of one unfortunate incident, or of bad luck. What happened...was an accident waiting to happen.'⁵

The Inquiry noted that 'the evidence before the Inquiry indicated that hydrocarbons did enter Indonesian and Timor Leste waters to a significant degree'.⁶ The Inquiry also recognised that as early as September 2009, 'sheen and weathered oil was observed in Indonesia's EEZ, reaching to within 94km of [Rote Island]'.⁷ The island is essentially the gateway to East Nusa Tenggara.

Despite such findings, the Australian government appears to have made no further effort to investigate the claims of damage in Indonesian waters or to assist the Indonesian government to do so. While the company responsible was required to fund scientific investigation within Australian waters, no action regarding investigation of claims of

transboundary damage in Indonesia was required by the Australian government as a necessary precondition to the company's continued Australian operations. Furthermore, no compensation has been paid to communities that claim to have suffered significant losses since the spill.


In August 2013, the author (the Australian Lawyers Alliance (ALA)'s Legal & Policy Officer) travelled to Kupang, West Timor, to speak with affected communities about the reported impacts.

It was the first time that a delegation from Australia had met provincial leaders or local communities claiming to have been affected.

IMPACTS ON THE ENVIRONMENT AND LIVELIHOODS OF LOCAL COMMUNITIES

Closest to Australia, East Nusa Tenggara is perhaps Indonesia's forgotten province. With one of the lowest life expectancies in the Indonesian archipelago, many families live on subsistence from the sea, largely via fishing or seaweed farming, with the region supporting some 27,000 seaweed farmers. Others work in farming, retail and hospitality, local industry, construction, or in public services such as hospitals, universities and schools.

While the uninformed observer may not initially perceive any changes to the life of the local community, the effects of the spill on life in Kupang town have become increasingly apparent. >>



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“This is where the seaweed farms used to be: here, here and here,” points Ferdi Tanoni, Chairman of the West Timor Care Foundation (WTCF). “All along here, people used to have the farms set up.” Now, there is just blank, sparkling ocean.

Tablolong, perched on the coast in West Kupang, is a village of approximately 200 seaweed farmers, where the ropes of seaweed farms used to span over 40 hectares along the sandy shore. However, the village has experienced severe reductions in income since 2009. Once their ‘green gold’, the seaweed is now afflicted by an off-white, sediment-like disease that impedes the flourishing growth, quantity and quality of seaweed. Over 100 villagers, local police and navy officials gathered at a community consultation meeting to speak to the ALA representatives. “The seaweed is sick,” they say.

Losses have been so significant that annual harvests of 500 tonnes before the spill dropped in 2010 to 10 tonnes; in 2011 to 5 tonnes and, in 2012, to a meagre 3 tonnes. This amounts to less than 1 per cent of previous harvests. Given the loss in quality, any seaweed that can grow now sells for roughly 70 cents per kilo, down from AU\$1.20. Along the beach, ropes of seaweed that have been abandoned by villagers lie coiled, dried in the sun. The community’s livelihood has been devastated.

Similar experiences have been reported in Semau Island, which had an industry three times the size of Tablolong, and in villages in West Timor, Rote Island, and as far away as Lembata Island, 190 kilometres north of Kupang.

After living his whole life in Lembata, seaweed farmer Victor* travelled to Kupang to seek work. Victor previously earned around AU\$36,720 per year harvesting seaweed on 100 ropes. However, since 2009, Victor has tried to grow different varieties of seaweed, always with the same outcome: the seaweed dies.

Thousands of people like Victor are migrating away from their home villages in order to attempt to find income: seaweed farmers and fishermen alike.

In the fishing village of Oesapa, nestled into the side of Kupang, a third of the village has migrated to other provinces in the attempt to find alternative work. For the past few years, fish catches have decreased dramatically.

The fishermen who stayed in Oesapa now travel two days to reach alternative fishing grounds east of East Timor. The issue of diminished fish stocks, already a major national issue for Indonesia, is particularly problematic in East Nusa Tenggara.

In 2012, a team led by Dr Mukhtasor, Director of Indonesia’s Centre for Energy and Environmental Studies in Jakarta, produced an interim report on the damage

Assessing damage to the local economy, social fabric and health of local communities is difficult given the region’s geographical remoteness, widespread poverty and migration since the spill.

attributable to the Montara oil spill, following nine months of research. The report found that the oil and chemical dispersants used are still affecting marine ecosystems and costing coastal communities more than AU\$1.5 billion per year in lost earnings.⁸

Across the province, children are being withdrawn from school, from primary to secondary level, because their families can no longer afford the modest schooling costs: registration fees, uniforms and textbooks.

In Oesapa, Adan* can no longer afford to send his two children, 12-year-old daughter Mariam* and 7-year-old-son, Fajar*, to school. Mariam stopped attending school three years ago and is trying to teach herself at home. Fajar has only ever attended kindergarten and is trying to learn from his sister.

By contrast, before the spill, one of Adan’s friends in the village, Michael*, was able to send his two children to university in Jakarta, where his son studies medicine.

In Tablolong, villagers speak of trying to catch a few fish to sell in the town to raise money for the schoolchildren. Others speak passionately about their lost hopes for the next generation:

“When the seaweed was the green gold for fishermen in Tablolong, we were able to send our sons and daughters to pursue higher education. Now, all hope has vanished, along with the destruction of green gold seaweed along the beach of Tablolong,” said Gustav Lay, a 34-year-old seaweed farmer.⁹

In addition to the losses of seaweed and fish, reports abound of effects on other marine life. The dolphins, which used to swim in pods along the shores of Kupang, are gone. On the oceanfloor near Kupang, the seagrass has yellowed and died.

ILLNESS AND DEATH

Significant health impacts in local communities were reported to the WTCF immediately following the spill, and in the years since. These include incidents of severe food poisoning after eating locally sourced seafood, pus-filled sores on the fishermen’s necks, skin rashes, bruising after exposure to the ocean, and even deaths.

In the village of Oesapa, a 47-year-old fisherman, Walter*, developed extensive bruising and a large cyst-like sore on his upper leg after going fishing. He could not afford medical treatment, and subsequently died, leaving behind a wife and three children. Walter’s children no longer attend school.

Soon after the spill, 12 men from the island of Alor went fishing. The fish they caught was cooked and 11 men ate it. Shortly afterwards, they developed severe poisoning. Villagers attempted to calm their stomachs by boiling palm leaves for them to drink. The local head of the village organised a boat to take the men to the nearest hospital. Five men died on the

boat before they even reached shore.

Such anecdotal reports may point to a darker and larger story. Following the BP Deepwater Horizon spill, reports emerged of breathing problems, coughing, headaches, memory loss, fatigue, rashes and gastrointestinal problems afflicting local residents and clean-up workers. While it is difficult if not impossible to establish causation without appropriate research, 'such reports appeared to link the symptoms of blood toxicity, neurotoxicity, adverse effects on the nervous and respiratory systems and skin irritations with exposure to the chemicals found in the dispersant, Corexit'.¹⁰

No such research has been undertaken in East Nusa Tenggara.

While the long-term health impacts of exposure to oil and dispersants remain to be seen, including any increase in cancers, the social impact of environmental damage and widespread withdrawal of children from education will reverberate around the province for years to come. Already, anecdotal reports have been made to the WTCF of minors working in red light areas in Kupang in order to generate income for their families.

UNKNOWN MAGNITUDE

Tragically, the full extent of these tragedies remains scattered, anecdotal and piecemeal across the region. It is difficult to ascertain the scale of the damage to the local economy, social fabric and health of local communities, especially given their geographical remoteness, widespread poverty and the migration of families during the aftermath of the spill.

The local mayors of the region and traditional leaders maintain concerns regarding the social and economic extent of damage within their jurisdictions. Mr Ferdi Tanoni, well-known for his advocacy for communities through the WTCF, has been appointed legal agent and granted power of attorney to act on behalf of five local governments with respect to any compensation claims regarding the spill. Mr Tanoni continues to call tirelessly for the Australian government to ensure that the company responsible for the Montara oil spill funds an independent study into its effects within Indonesian waters.¹¹

In 2013, the ALA joined Mr Tanoni in this call to action. Acknowledging his powerful contribution to raising awareness of the issue internationally, Mr Tanoni was in October 2013 awarded the ALA's prestigious Civil Justice Award at its national conference in Canberra.¹²

For, despite the findings of its own Inquiry, no further action has been taken by the Australian government to follow the trail of oil to Indonesia. To date, no compensation has been paid to communities, and no investigation has been conducted by an Australian organisation within Indonesian waters.

PTTEP AA has commissioned a range of environmental studies in the Australian waters of the Timor Sea, and issued glossy reports of their findings.¹³ Studies based on oil spill trajectory modelling and satellite images have been used to emphatically deny that the oil reached the Indonesian coastline.¹⁴

However, in Kupang, within days of the spill, Indonesian fishermen formally reported the presence of a 'lake of milky

oil' in their fishing grounds to Antralamor, the Timor Sea Tradisional Fishermen's Alliance.

THE AFTERMATH

During the aftermath of the spill, PTTEP AA developed a 'Montara Action Plan', which detailed the changes that needed to occur for the company to meet industry best practice standards. The Plan focused on short-, medium- and long-term actions across four key areas: governance; organisation and capability; technical systems; safety, security, health and environmental culture and management.¹⁵

The Plan was submitted to the Inquiry 'very late in the Inquiry's process'¹⁶ and 'well after the close of the public hearing'.¹⁷

The Inquiry recommended that the Minister should give *consideration* to the cancellation of title, via issuing a 'show cause' notice to the company responsible under s276 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (OPGGGS Act). The Inquiry cited seven reasons for this recommendation, including the company's provision of 'palpably false and misleading information to the Inquiry';¹⁸ the 'self-justifying and deflection position adopted by the company throughout most of this Inquiry';¹⁹ and 'failure to properly investigate the circumstances and likely causes of the blowout'.²⁰

The Australian Network of Environmental Defender's Offices (ANEDO) went further, recommending in its

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submission that the Minister should cancel the company's Montara production licence, or suspend the licence until the requisite remedial action had been taken. ANEDO also suggested cancelling all other production licences held by PTTEP AA to send a message to other oilfield operators.²¹ This did not happen.

On 4 February 2011, the then Minister for Resources and Energy, the Hon Martin Ferguson AM MP, announced that he would not be issuing a 'show cause' notice to the company, which may have led to the cancellation of its petroleum titles at the time.²²

In August 2012, PTTEP AA pleaded guilty to four charges under the OPGGS Act and subsequently received a 25 per cent discount on its fines, receiving a fine totalling \$510,000. In his oral judgment, magistrate Dr Lowndes noted that, 'clearly the offending, both individually and collectively, is of a very serious nature. It is indeed fortunate that no one lost their lives or was injured.'²³ Initially, the media reported that the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) was 'considering options for appeal against the level of the fines'.²⁴ However, at the time of writing, it does not seem likely that any further action will be taken.

On 4 June 2013, production commenced at the Montara oilfield, with a capacity to initially produce 21,000 barrels of oil per day.²⁵ In addition, PTTEP AA is planning to expand its activities in the Timor Sea. Three new groups of gas fields are currently awaiting approval from the Australian government, which may produce Liquefied Natural Gas and Floating Liquefied Natural Gas. PTTEP AA anticipates that between 11 and 21 production wells will be required across the three groups of fields.²⁶

This contrasts starkly with the way in which BP has been held to account in the US for the 2010 BP Deepwater Horizon spill in the Gulf of Mexico. Thousands of plaintiffs are part of class actions still before the courts,²⁷ and BP has also already incurred more than \$42 billion of charges for clean-up costs, fines and compensation related to the spill.²⁸

REPORTS OF PEOPLE-SMUGGLING

In Kupang, local police asserted that there has been a growth in people-smuggling activities in the area since the oil spill. The significant economic losses sustained by communities may potentially have influenced individuals into knowingly, or unknowingly, crewing boats transporting asylum-seekers to Australia in order to make ends meet for their families. From 2009 until December 2013, 564 Indonesians were charged with crew-related offences of people-smuggling.²⁹ Further data regarding an individual's place of origin is confined to individual client files and are not available on a systemic basis in departmental systems.³⁰ The claims raised in Kupang are therefore difficult to verify.

Australia's treatment of Indonesians within our justice system has been fraught with injustice and heavy-handedness. In 2012, the Australian Human Rights Commission (AHRC) investigated claims that between late 2008 and late 2011, Indonesian minors were being charged in Australian courts as adults with people-smuggling offences.

Their ages determined by a now discredited wrist X-ray age-determination procedure, Indonesian crew members were imprisoned for years alongside adults, in breach of Article 37 of the *UN Convention on the Rights of the Child*. In Appendix 1 of the AHRC report, four out of the five case studies listed identified minors as being from East Nusa Tenggara province, who were apprehended in the months following the Montara oil spill. Lawyers acting for the minors involved are currently pursuing a test case for compensation for their unlawful detention.

Early in 2014, reports emerged of the Australian Navy turning back boats of asylum-seekers to Indonesia in late 2013. These boats washed up on the shores of Rote Island.³¹ It may be the 'forgotten province', but East Nusa Tenggara would increasingly appear to epitomise the tensions and injustices in the relationship between Australia and Indonesia. Specifically, the charges of illegal foreign fishing levelled against Indonesian fishermen by Australian authorities; the destruction of fishermen's boats without compensation; the former imprisonment of Indonesian minors on charges of people-smuggling; and the policy of turning back boats carrying asylum-seekers, all reflect Australia's aggressive and uncompromising policing of its maritime boundaries. Meanwhile, in another development illustrating escalating boundary tensions in the region, Timor Leste has recently lodged a complaint against Australia in the International Court of Justice over a treaty governing oil and gas deposits in the Timor Sea.³²

NEXT STEPS

The ALA has prioritised the need to raise awareness about the Montara oil spill issue in the media and with the federal government. We support the WTCF in its call for the company responsible to fund a full and comprehensive study of the extent of damage in East Nusa Tenggara and surrounding Indonesian waters, with the mutual agreement and consultation of all affected parties and their legal agents. ■

***Pseudonyms have been used to protect the villagers' identities.**

Notes: **1** Report of the Montara Commission of Inquiry (June 2010), at 5. Accessed at <http://www.ret.gov.au/Department/Documents/MIR/Montara-Report.pdf>. Note, that this was the accumulative size across the 74-day incident, and not the size of the slick at any given time. **2** Parliament of Australia, Rural and Regional Affairs and Transport Legislation Committee, *Answers to Questions on Notice, Budget Estimates May 2010, Infrastructure and Transport, Hansard* at 125 (26/05/10). Accessed at http://www.aph.gov.au/~media/Estimates/Live/rrat_ctte/estimates/bud_1011/infra/amsa.ashx. **3** See Marine Management Organisation, 'Oil spill treatments approved for use in the United Kingdom,' (last updated 28 August 2013). Accessed at http://www.marinemanagement.org.uk/protecting/pollution/documents/approval_approved_products.pdf. **4** See Earthjustice & Toxipedia, *The Chaos of Clean-Up: Analysis of Potential Health and Environmental Impacts of Chemicals in Dispersant Products*, (August 2011), at 11. Accessed at <http://earthjustice.org/features/the-chaos-of-clean-up>; see also *60 Minutes*, 'Crude Solution', Thursday August 15, 2013. Accessed at <http://sixtyminutes.ninensn.com.au/article.aspx?id=8706910>. **5** Report of the Montara Commission of Inquiry, above note 1, at 11.

6 *Ibid.*, 26. 7 *Ibid.*, 302. 8 *ABC News*, 'Australian oil disaster costing Indonesians billions', Thursday, 26 July 2012. Accessed at <http://www.abc.net.au/news/2012-07-26/australian-oil-disaster-costing-indonesians-billions/4155474>. 9 'Kuala Hukum, 'Yptb Investigasi Dugaan Pencemaran', 15 August 2013. Accessed at http://www.iyaa.com/berita/nasional/umum/2889604_1124.html. 10 Earthjustice & Toxipedia, above note 4, at 12. 11 For example, see Ferdi Tanoni's extensive profile in *The Jakarta Post*: <http://www.thejakartapost.com/profile/ferdi-tanoni>; 'Indonesian fishermen still suffering from oil spill', *ABC AM*, 12 November 2010, at <http://www.abc.net.au/am/content/2010/s3063829.htm>. 12 Australian Lawyers Alliance, 'Ferdinand Tanoni receives Civil Justice Award'. Accessed at <http://lawyersalliance.com.au/law-reform/international-obligations/ferdi-tanoni-receives-2013-civil-justice-award/>. See extract of Mr Tanoni's acceptance speech at Ferdi Tanoni, 'We Will Not Give Up', *New Matilda*, 30 October 2013. Accessed at <https://newmatilda.com/2013/10/30/we-will-not-give>. 13 For example, see PTTEP AA, *Montara Environmental Monitoring Program: Report of Research, A new body of world class research in the Timor Sea, Edition 2*, (September 2013); and PTTEP AA, *Montara Environmental Monitoring Program, Creating a new body of world class research in the Timor Sea, Edition 1*, (August 2012). 14 See overview of Asia-Pacific ASA, 'Oil fate and effects assessment – spill trajectory analysis', in PTTEP AA, *Montara Environmental Monitoring Program: Report of Research, A new body of world class research in the Timor Sea, Edition 2*, (September 2013), at 86. 15 PTTEP AA, *Montara Action Plan*. Accessed at <http://www.au.pttep.com/our-response-to-montara/montara-action-plan>. 16 Report of the Montara Commission of Inquiry, above note 1, at 320. 17 *Ibid.*, 319. 18 *Ibid.*, 320. 19 *Ibid.*. 20 *Ibid.*. 21 Australian Network of Environmental Defender's Offices, *Submission on the Draft Government Response to the Report of the Montara Commission of Inquiry* (25 February 2011), at 2. Accessed at <http://industry.gov.au/AboutUs/CorporatePublications/MontaraInquiryResponse/ResponseToTheReport/Pages/Submissions.aspx>. 22 Statement by the Minister for Resources and Energy, the Hon. Martin Ferguson AM MP, 'The Report of the Independent Review of the PTTEP Australasia (Ashmore-Cartier) Pty Ltd Montara Action Plan', (4 November 2011), at 4. Accessed at <http://industry.gov.au/AboutUs/CorporatePublications/MontaraInquiryResponse/Documents/Noetic-Review-ministerial-statement.doc>. 23 'PTTEP fined \$510,000 over Montara', *Australian Financial Review*, 31 August 2012. Accessed at http://www.afr.com/p/business/companies/pttep_fined_over_montara_

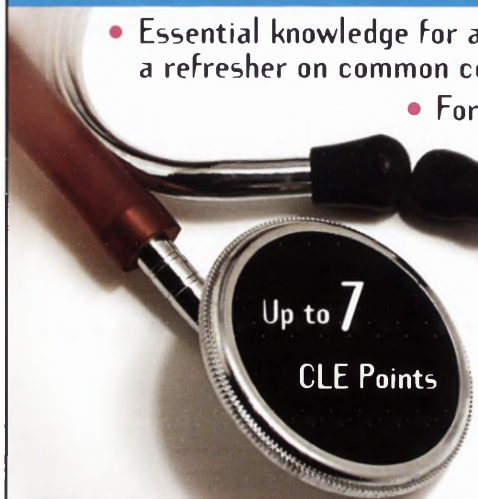
ggEVJtD8ZX7rTUSBSOiyMI. 24 See NOPSEMA, 'Successful prosecution over Montara platform blowout', *Media release*, 31 August 2012. Accessed at <http://www.nopsema.gov.au/assets/media/Media-Release-31-August-2012-Successful-prosecution-over-Montara-platform-blowout.pdf>. 25 PTTEP AA, *Annual Compliance Report 2012-2013*, at 3. Accessed at <http://www.au.pttep.com/media/24296/montara%20field%20epbc%20approval%20-%20annual%20compliance%20report%202012-2013.pdf>. 26 PTTEP AA, 'Proposed Projects – Cash Maple Development'. Accessed at <http://www.au.pttep.com/projects/proposed>. 27 See, for example, *In Re: Oil Spill by the Oil Rig 'Deepwater Horizon' in the Gulf of Mexico*. 28 'BP welcomes US Court of Appeal ruling on Gulf of Mexico payouts', *The Guardian*, 3 October 2013. Accessed at <http://www.theguardian.com/business/2013/oct/03/bp-us-court-appeal-ruling-deepwater-horizon-oil-spill>. BP set up a \$20 billion trust fund for victims, under the direction of President Barack Obama. In addition, President Obama announced that a moratorium on all deepwater offshore drilling on the US Outer Continental Shelf would be extended to six months while the government investigated the disaster: 'Obama extends moratorium on drilling', *CBS News*, May 27 2010. Accessed at <http://www.cbsnews.com/news/obama-extends-moratorium-on-offshore-drilling/>. 29 Information was released by the Australian Federal Police in response to ALA request. In 2008, 4 individuals were charged; in 2009 – 76; in 2010 – 197; in 2011 – 229; in 2012 – 52; and in 2013 – 10. (Statistics are for the calendar year.) 30 The ALA applied under freedom of information laws to the Department of Immigration and Border Protection for the release of information regarding the place of origin of persons charged with people-smuggling. This response was received in private correspondence dated 25 November 2013. 31 George Roberts, 'Indonesia says Australian Navy "pushed back" asylum seeker boat that ran aground', *ABC News*, 7 January 2014. Accessed at <http://www.abc.net.au/news/2014-01-07/indonesia-says-australian-navy-towed-back-asylum-seeker-boat/5187232>. 32 Tom Allard, 'East Timor to take Australia to International Court of Justice', *Sydney Morning Herald*, 20 December 2013. Accessed at <http://www.smh.com.au/federal-politics/political-news/east-timor-to-take-australia-to-international-court-of-justice-20131219-2zo19.html>.

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