



“Commission of Truth and Friendship” Seeks to End the Search for Justice whilst “Commission of Experts” Keeps it Alive

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The model for the proposed **Commission of Truth & Friendship (“CTF”)** between Indonesia and Timor Leste was settled on 9 March 2005 when the respective governments signed its Terms of Reference (“ToR”). This comes less than 3 months after both governments agreed on the concept of the CTF as a means to “resolve once and for all the events of 1999” (according to Timor Leste’s Minister for Foreign Affairs and Cooperation). The ToR appear to confirm earlier suspicions that the principal role of the CTF is to prevent all future investigations and prosecution of senior Indonesian officials alleged to bear primary responsibility for the crimes against humanity committed in Timor Leste before and during 1999. According to the principal clauses of the ToR:

- The objective of the CTF will be to establish “the conclusive truth” as to what occurred in Timor Leste in 1999 and to prevent a recurrence of similar events;
- The mandate of the CTF will be confined to “the period leading up to and immediately following” the Referendum in 1999. Consequently, ***none of the crimes committed during Indonesian occupation prior to 1999 will be investigated;***
- According to one of its foundational principles, “***the CTF process will not lead to prosecution***”. Furthermore, offenders who “cooperate fully in revealing the truth” could be granted amnesty, that is, guaranteed immunity from future prosecution irrespective of the nature of their crimes;
- Persons “wrongly accused” of human rights violations are to be “rehabilitated”. What constitutes a false accusation is not clear but it potentially means that persons who have been accused of committing offences but have not been tried in court are entitled to rehabilitation (the meaning of which is also unclear);
- CTF investigations will neither prejudice the work of the Special Panels for Serious Crimes nor recommend the establishment of any other judicial body. In other words, ***following the termination of the Special Panels in May, there will be no further judicial investigation of offences committed during Indonesian occupation.***

In JSMP’s view it is clear that the CTF is designed to shield from prosecution those who bear primary responsibility for crimes committed in Timor Leste under the guise of a truth and reconciliation function whose fulfilment is uncertain. Even this very limited mandate is potentially under threat, depending as it does on in-depth and impartial investigations and full access to sensitive military and governmental records which the ToR do not necessarily guarantee.

Agreement on the ToR comes at a time when the UN has established a **Commission of Experts** with the function of assessing the progress made in bringing to justice those responsible for the serious violations of international humanitarian law and human rights in Timor Leste in 1999. ,

According to its own ToR, the primary role of the Commission will be:

- to assess whether the trials conducted by the Special Panels for Serious Crimes in Dili and the Jakarta Ad Hoc Tribunal were impartial and in accordance with “international standards of justice and due process of law” and
- to “evaluate the extent to which they have been able to achieve justice and accountability for the crimes committed in Timor Leste”.

The Commission is empowered to then recommend to the Secretary-General measures to ensure accountability of perpetrators and justice for victims.

This mandate potentially conflicts with that of the CTF. The governments of Indonesia and Timor Leste have repeatedly indicated that the CTF will be the **final** investigation of all crimes committed during and immediately after Indonesian occupation and it is clear that they will not allow it to be influenced or obstructed by the findings of the Commission. In other words, the governments intend the CTF to be the “final say” on the subject.

Under its ToR the Commission is authorised to present its evidence and its findings to the CTF, however, whether it does so and whether it will be taken into account by the CTF remains to be seen.

If the Commission finds that the trials fall short of international standards the international community is obliged to ensure that the perpetrators are tried before a tribunal which does accord with international standards – irrespective of the findings of the CTF. Crimes committed against **humanity** are a matter of concern for the entire international community: they cannot be ignored or disposed of as a matter of bilateral political expediency. The continued dialogue and improved relations with Indonesia is a positive, significant development for Timor Leste’s future. However, improved bilateral relations should not be promoted at the expense of justice for the many victims of crimes committed during Indonesian occupation.