

The Lolotoe Case

Limited Progress in the work of the Special Panel for Serious Crimes

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(Also in Bahasa and Portugues)

As the serious crimes process finishes investigation in September this year and trials finish in May 2005, detailed evaluation of cases before the Special Panel for Serious Crimes are crucial to determine whether this process has achieved justice and accountability. Accordingly, JSMP is releasing its report 'The Lolotoe Case: A Small Step Forward', a detailed analysis of the trial's compliance with international fair trial standards and an in-depth discussion of areas of concern arising from the case.

The Lolotoe case comprises three separate judgments: that of Joao Franca da Silva alias Jhoni Franca, Sabino Gouveia Leite and Jose Cardoso Fereria alias Mouzhino that were finalised in April 2003. The defendants were charged with various counts of crimes against humanity, including murder, rape, imprisonment, torture and inhumane acts. All three were convicted with two defendants pleading guilty after negotiating plea agreements that resulted in reduced sentences and the withdrawal of some charges. This case was recognised by the Serious Crimes Unit as one of ten requiring priority treatment and has further significance as the first time a defendant has been tried and convicted of rape as a crime against humanity in the Special Panels.

The report identifies the most significant shortcomings of the trial as 'the lengthy periods of pre-trial detention, constant delays throughout the trial and inequality between defence and prosecution counsel. More broadly, the Lolotoe case demonstrates deficiencies in the court's approach to guilty pleas and the need for development in the analysis of rape charges'. Despite these flaws, the report commends the Special Panels for much needed improvement in the overall standard of trials, including progress in the general quality of legal representation and legal arguments, the reduction of problems arising from interpretation, and the more orderly and professional operation of the court.

Of most concern, however, is the continued impunity of those who potentially bear command responsibility for the acts of the defendants. At present, only those low in the broader command chain have been held accountable for their actions and have served time in prison. Those who orchestrated the violence remain free, and in some cases are in active service in Indonesia. If this situation persists, the complete version of events regarding the crimes against humanity committed in Lolotoe will not be uncovered and those who arguably bear most responsibility will escape justice.

As pressure mounts for the UN Secretary-General to announce the establishment of a Commission of Experts to examine cases from the Special Panels as well as human rights trials in Jakarta, JSMP hopes this report further illustrates the flaws

in the serious crimes process and the urgent need for high-level independent review. Unless this occurs, the unjust situation of three relatively low level militia members being convicted while Indonesian officers live in continued impunity will persist. The integrity of the UN and international criminal law, as well as providing meaningful justice for the people of Timor-Leste, depend on the formation of this Commission.

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