



JUSTICE UPDATE

Period: October 2006

Issue: 14/2006

JSMP RESPONSE TO THE REPORT OF THE UN INDEPENDENT SPECIAL COMMISSION OF INQUIRY FOR TIMOR-LESTE

1. Background

In late June 2006 the UN High Commissioner for Human Rights, on the request of the UN Secretary-General established a Special Independent Commission of Inquiry for Timor-Leste ("the Commission"). The main tasks of the Commission were:

"(a) To establish the facts and circumstances relevant to incidents on 28 and 29 April, 23, 24 and 25 May and related events or issues that contributed to the crisis, including issues related to the functioning of the security sector;

(b) To clarify responsibility for the above-mentioned events;

(c) To recommend measures to ensure accountability for crimes and serious violations of human rights allegedly committed during the above-mentioned period ...;

*(d) To report its findings within three months of its establishment through the United Nations High Commissioner for Human Rights to the Secretary-General and the National Parliament of Timor-Leste."*¹

The mandate of the Commission required it to present the results of its investigation to the Secretary General of the United Nations and the Timor-Leste Parliament on 7 October 2006. However the report was ultimately submitted to the National Parliament of Timor Leste at Parliament House in Dili on Tuesday, 17 October 2006.

As a national NGO which conducts monitoring of the judicial system in Timor-Leste, JSMP welcomes the report of the Independent Special Commission of Inquiry for Timor-Leste. JSMP observed that from the moment it initiated its activities on the 7 July, 2006, the Commission strictly adhered to its mandate. JSMP believes that the Commission was truly independent in the performance of its duties and acted without influence from any third parties.

¹ Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste, Geneva, 2 October 2006, para.4.

2. The findings of the Commission

In its report the Commission made findings as to what occurred during the crisis in April and May 2006. In addition, it did the following:

- made findings regarding the responsibility of certain institutions in Timor-Leste in respect of the crisis, and in particular the armed forces (F-FDTL), the national police force (PNTL), the Government (including the Prime Minister), the President, and the United Nations Office in Timor-Leste (UNOTIL);
- named certain individuals who may be reasonably suspected of participation in criminal activity in relation to the crisis in April and May and recommended their prosecution; and
- named certain individuals whose involvements in the events of April and May make them persons of interest deserving further investigation although there is not sufficient evidence to recommend their prosecution at this stage.

The Commission found that “failures of the rule of law and accountability were at the heart of the events in April and May.”² It recommended certain measures be taken in order to strengthen the domestic justice system so that this system could be used more effectively to establish the accountability of those involved in the crisis. These recommendations include the recruitment of international staff to lead the justice process; increased resources for the court, prosecution and public defenders’ office and the provision of adequate security; and the establishment of a witness protection program.

3. Presumption of Innocence

JSMP emphasizes that the Commission’s report is the result of inquiry and investigation. It includes recommendations regarding prosecutions of certain individuals, but does not constitute a decision as to the guilt or innocence of any individuals. Such a decision can only be made by a court. It is important for the community to understand this and to respect the principle of the presumption of innocence. Only a court may hand down a decision as to whether a person is guilty of a crime and impose a sentence. The Commission specifically emphasized that it applied a standard of reasonable suspicion rather than a standard of proof beyond reasonable doubt.³ Therefore those persons whose prosecution is recommended in the Commission’s report can be considered only as suspects until they are tried by a court of law.

For this reason, JSMP emphasizes that the Commission’s recommendations must be followed by conducting legal proceedings which will enable a court to decide whether the persons listed in the Commission’s report are in fact guilty or innocent.

² Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste, Geneva, 2 October 2006, para.136.

³ Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste, Geneva, 2 October 2006, para.110.

4. Implementation of the Commission's recommendations

JSMP believes that it is now important for Timor-Leste to follow the recommendations of the Commission.

JSMP notes that in previous cases in which national and international commissions have acted in Timor, the President, Government and Parliament have not followed recommendations. In many cases where prosecutions have been recommended people have not been subject to legal proceedings before the courts. Rather, political decisions are often used to resolve criminal cases, a practice which has a negative impact on democracy and the rule of law.

- In May 2005 the Commission of Experts appointed by the UN Secretary-General finalized its report which included, *inter alia*, recommendations that the prosecution of serious crimes from 1999 and before should continue or that, in the alternative, an international mechanism for the prosecution of these crimes should be established by the UN.⁴ These recommendations were resisted by the Government of Timor-Leste and have never been implemented.
- On 31 October 2005 the Commission for Reception, Truth and Reconciliation (usually referred to by its Portuguese acronym "CAVR") handed its report to the President of Timor-Leste. He presented the report to Parliament on 28 November 2005. The report included, among many others, recommendations for the improvement of the judicial system⁵ and for the prosecution of those involved in serious crimes between 1975 and 1999.⁶ The CAVR also prepared a list of suspected perpetrators which it recommended should be referred to the Office of the Prosecutor-General for investigation and prosecution.⁷ However the great majority of the recommendations outlined in the CAVR report have not been followed up. On the contrary, despite recommendations from the CAVR for prosecutions, the Government sought alternative methods of resolution and thus bypassed the courts through political compromises made with other parties. These moves have served to strengthen impunity for the perpetrators of crimes in Timor-Leste and have taken the country further away from its commitment to adhere to justice and the rule of law.

Noting these precedents with concern, JSMP calls on all institutions of sovereignty in Timor-Leste to ensure the implementation of the Commission's recommendations. It is particularly important that the Office of the Prosecutor-General follows the Commission's recommendations regarding prosecutions and investigations into the activities of certain individuals. In order to enable

⁴ Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999, 26 May 2005, annex II to UN Doc S/2005/458, paras. 503-513.

⁵ *Chega!*, Final Report of the Commission for Reception, Truth and Reconciliation, Part 11, pages 16-17.

⁶ *Chega!*, Final Report of the Commission for Reception, Truth and Reconciliation, Part 11, pages 24-26.

⁷ *Chega!*, Final Report of the Commission for Reception, Truth and Reconciliation, Part 11, page 25 (recommendation 7.1.6)

the Prosecution Service to do this effectively, it is also important for the Government, the Parliament, the President and UNMIT to follow the Commission's recommendations which are directed at the strengthening of the justice sector.

Finally, the Commission's report also recommended that the Office of the Provedor for Human Rights and Justice, UNMIT and NGOs continue to monitor the progress of cases related to the crisis. In accordance with this recommendation, JSMP will continue its work monitoring and reporting on the the progress of cases arising out of the crisis as well as responses to the Commission's report.