

# Term Of Reference

Saturday, 05 August 2006

Terms of Reference for

The Commission of Truth and Friendship

Established by

The Republic of Indonesia

and The Democratic Republic of Timor-Leste

## Preamble

1.

Inspired by human solidarity and our peoples' aspiration to freedom and dignity, the Republic of Indonesia and the Democratic Republic of Timor-Leste, both being developing countries, one with the largest Muslim population in the world and the other with a predominantly Catholic population, have embarked on the path towards full democracy. This path is full of challenges and perils; and it needs to be carefully nurtured and strengthened.

2.

The peoples of Indonesia and Timor-Leste have come a long way in overcoming the sometimes painful chapter of their shared past. As close neighbors we are determined to work together to promote peace and friendship.

3.

In today's era of globalization, taking full advantage of the freedom that we have attained, our peoples endeavor to build a solid foundation for a future of peace; a future where human dignity and social justice are the guiding force of transformation. Peace, however, is a process and has to be built. The pillars of peace are democracy, sustainable development and respect for human rights.

4.

The democratic transition in Indonesia since 1998 and the international recognition of the independence of Timor-Leste in 2002 have provided the momentum for both countries to strive for those objectives. The prompt recognition of the Democratic Republic of Timor-Leste, the participation of Indonesia at the highest level during the celebration of the 20th May 2002 and the establishment of diplomatic relations signify the spirit of reconciliation and the magnanimity of our peoples.

5.

It is important, however, not to lose sight of the fact that the process of political reform in Indonesia began only at the end of 1998. In the history of countries and peoples, all and any change of an old political system requiring a radical transformation, entails as an almost inevitable consequence different challenges of multi-dimensions. The fact remains that in Indonesia, an archipelagic nation with a great diversity, the process of political transformation has been even more complex than in any other country. It imposes upon Indonesia tremendous efforts to preserve the unity of the country without hindering the goals of reform and democratization.

6.

Despite our respective domestic preoccupation and priorities, the Republic of Indonesia and the Democratic Republic of Timor-Leste have spared no effort in developing a stable, friendly, and mutually beneficial neighborly relationship between the two countries and peoples.

7.

The two governments are committed to resolve residual problems of the past and to deepen and expand bilateral relations both at the government and people-to-people levels. Based on the forward-looking and reconciliatory approach, the progress made in all areas of cooperation over the last three years has been satisfactory. Hence, reconciliation has actually taken place.

8.

One of the important residual issues relates to the reported violations of human rights in 1999 in Timor-Leste. In regard to these events, the two countries have made serious efforts, namely:

a.

In Indonesia, the National Commission of Inquiry on Human Rights Violations in East Timor, known as KPP-HAM, established in September 1999 conducted a credible investigation in 1999. It was followed with the establishment of the Ad-Hoc Human Rights Court and the subsequent judicial process against a number of suspected perpetrators. This unprecedented judicial process has not yet come to its completion.

b.

In Timor-Leste, a judicial process has been conducted by the Special Panels for Serious Crimes. Moreover, a truth and reconciliation process has also taken place and it has been universally commended as innovative, credible and effective.

Based on and benefiting from our shared experience, and motivated by our strong desire to move forward, we are determined to bring to a closure a chapter of our recent past through joint efforts. A definitive closure of the issues of the past would further promote bilateral relations.

9.

Consistent with the spirit described above, the Leaders of Indonesia and Timor-Leste, met in Bali on 14 December 2004, have decided to establish the Commission of Truth and Friendship (CTF), fully owned and operated by the two countries with a mutually agreed terms of reference.

10.

Different countries with their respective experiences have chosen different means in confronting their past. The leaders and people of South Africa, where apartheid was defined as a crime against humanity, opted to seek truth and reconciliation. Indonesia and Timor-Leste have opted to seek truth and promote friendship as a new and unique approach rather than the prosecutorial process. True justice can be served with truth and acknowledgement of responsibility. The prosecutorial system of justice can certainly achieve one objective, which is to punish the perpetrators; but it might not necessarily lead to the truth and promote reconciliation.

11.

The CTF constitutes a new and unique experience whereby two countries, with a recent shared history, agree with courage and vision to look at the past as a lesson and embrace the future with optimism.

#### Objective

12.

To establish the conclusive truth in regard to the events prior to and immediately after the popular consultation in 1999, with a view to further promoting reconciliation and friendship, and ensuring the non-recurrence of similar events

#### Principles

13.

The Commission shall work under the following principles:

a.

The relevant principles contained in the Indonesian Law no.27/2004 on the Commission of Truth and Reconciliation and the Timor-Leste Law no.10/2001 on the Commission of Reception, Truth and Reconciliation (CAVR), in accordance with the mandate of the CTF

b.

In the exercise of its mandate, the CTF shall bear in mind the complexity of the transitional situation in 1999, aiming at further strengthening of reconciliation and friendship between the two countries and peoples.

c.

Based on the spirit of a forward looking and reconciliatory approach, the CTF process will not lead to prosecution and will emphasize institutional responsibilities.

d.

Further promoting friendship and cooperation between governments and peoples of the two countries, and promoting intra and inter-communal reconciliation to heal the wounds of the past.

e.

Does not prejudice against the ongoing judicial process with regard to reported cases of human rights violations in Timor-Leste in 1999, nor does it recommend the establishment of any other judicial body.

## Mandate

14.

The Commission shall have the mandate to:

a.

Reveal the factual truth of the nature, causes, and the extent of reported violations of human rights, that occurred in the period leading up to and immediately following the popular consultation in Timor-Leste in August 1999:

i.

review all the existing materials documented by the Indonesian National Commission of Inquiry on Human Rights Violations in East Timor in 1999 (KPP HAM) and the Ad-hoc Human Rights Court on East Timor, as well as the Special Panels for Serious Crimes, and the Commission of Reception, Truth and Reconciliation in Timor-Leste;

ii.

examine and establish the truth concerning reported human rights violations including patterns of behavior, documented by the relevant Indonesian institutions and the Special Panels for Serious Crimes (as contained in its indictment letters) with a view to recommending follow-up measures in the context of promoting reconciliation and friendship among peoples of the two countries.

b.

Issue a report, to be made available to the public, in Bahasa Indonesia, Tetum and English, and translated into Portuguese, establishing the shared historical record of the reported human rights violations that took place in the period leading up to and immediately following the popular consultation in Timor-Leste in August 1999.

c.

Devise ways and means as well as recommend appropriate measures to heal the wounds of the past, to rehabilitate and restore human dignity, inter alia:

i.

recommend amnesty for those involved in human rights violations who cooperate fully in revealing the truth;

ii.

recommend rehabilitation measures for those wrongly accused of human rights violations;

iii.

recommend ways to promote reconciliation between peoples based on customs and religious values;

iv.

recommend innovative people-to-people contacts and cooperation to further enhance peace and stability.

#### Time Frame

15.

The Commission shall commence its work as soon as possible, but no later than August 2005 for the period of one year, with the possibility of an extension of a maximum of one year.

#### Composition

16.

The Commission shall comprise of 10 members (five from Indonesia and five from Timor-Leste) chosen among persons of high standing and competence drawn mainly from legal and human rights fields, academia, religious and community leaders.

a.

Following consultations, and in accordance with the domestic requirements or the constitutional provisions of each country, the President of the Republic of Indonesia and the President of the Democratic Republic of Timor-Leste shall jointly appoint the ten members of the Commission.

b.

Members of the Commission, in the exercise of their mandate, shall enjoy immunity from prosecution and civil liability for actions arising from their mandate.

c.

Members of the Commission shall enjoy the necessary facilities to exercise their mandate.

d.

The Commission shall be co-chaired by two members, one from Indonesia and one from Timor-Leste, chosen by all members.

e.

The joint secretariat of the Commission shall be in Denpasar, Bali.

17.

The Commission shall adopt its working procedures, and consider the possibility of establishing sub-commissions as necessary, as well as technical support offices in the respective capitals.

18.

The two Presidents, in accordance with the domestic requirements or the constitutional provisions of each country, may appoint individual(s) of international standing as patron of the Commission.

#### Right to Free Access

19.

In the conduct of its work, the Commission shall be guaranteed:

a.

Freedom of movement throughout Indonesia and Timor-Leste.

b.

Free access, in accordance with the law, to all documents of the Indonesian National Commission of Inquiry on Human Rights Violations in East Timor in 1999 (KPP-HAM), the Ad-hoc Human Rights Court in Jakarta and the Special Panels for Serious Crime in Dili, and the CAVR final report.

c.

The right to interview all persons in possession of information considered relevant by the Commission, guaranteeing privacy and confidentiality if necessary.

d.

Appropriate security arrangements both by the Governments of Indonesia and Timor-Leste to the Commission members and persons interviewed by the Commission and persons who provide information and documents to the Commission, and for documents obtained and retained by the Commission, without restricting their freedom of movement.

## Financing

20.

The Governments of Indonesia and Timor-Leste shall bear the costs of the Commission.

21.

Both governments shall allocate start-up funds.

#### International Assistance

22.

The two governments welcome any assistance from the international community, based on joint request.

#### Working Languages

23.

Working languages of the Commission shall be Bahasa Indonesia, Tetum and English.

#### Report

24.

The Commission shall submit progress reports of its work to the respective Heads of State and Government on a periodical basis through their respective Foreign Ministers. The two Foreign Ministers shall observe the work of the Commission and act in an advisory role.

25.

The final report shall be presented to the Heads of State and Government of Indonesia and Timor-Leste, who shall forward it to the respective National Parliaments and make it available to the public. The final report shall contain the findings of the Commission and recommendations focusing on revealing the truth, ensuring the non-recurrence of similar events, fostering reconciliation and promoting friendship.