



International Center for Transitional Justice

Submission to Committee A of the National Parliament

Draft law establishing the Institute for Memory 5 July 2010

Draft Law No./I Establishing the Institute for Memory

General Comments

Institutional Autonomy and Reporting Lines

Providing the Minister for Social Solidarity with the unfettered discretion to dismiss and appoint members of the institute's Governing Board, renders the institute vulnerable to politicization and undermines the institute's 'technical, administrative and financial autonomy'. It is important that issues related to the past conflict and human rights are not exploited for political gain. It is submitted that the Governing Board should be appointed by a specially designated selection panel and dismissed only in clear cases of misconduct, an ongoing conflict of interest or for conviction of a crime. The Minister does not require the power to appoint and dismiss Governing Board members in order to exercise effective oversight over the institute's administration and financial management.

It is not clear to whom the institute is ultimately responsible. In terms of administration and finance, the institute reports to the Minister for Social Solidarity. Regarding the fulfillment of its technical functions, the institute reports to the National Parliament. A single line of responsibility should be established to make it clear to whom the institute really reports. It is submitted that an institute of this nature, that is dealing with historical and human rights issues of national importance, should be under the supervision of the National Parliament. This will protect the institute's programs from being politicized and becoming subject to changing government policy.

Institutional Structure

The law does not provide a clear picture of how the institute will accommodate its multiple functions and powers within an institutional structure. It will be difficult to oversee the different tasks associated with, for example, reparations and documentation projects, if they are administered as part of a single unit. It is submitted that the institute's internal structure be defined in more detail by breaking down the "Unit for Research, Documentation, Reparations and Disappeared Persons" into six discrete units, including a 'external relations' unit responsible for sourcing funding and necessary technical support for the institute.

The Governing Board has functions similar to that of a corporate board, even though it appears to be the entity responsible for managing the entire institute. It is submitted that the law either needs to:

- expand the Governing Board into an honorary governing board with 5-7 members and create the position of Executive Director, OR
- alter the role and powers of the Governing Board to make it clear that it is responsible for managing the institute's technical work, in addition to its administration and finance.

See below for more comments on institutional structure.

Gender Considerations

The draft law's preamble states that women shall have equal access to all the institute's programs and activities. Despite this statement in the preamble, the law does not contain specific provisions ensuring gender equality in program implementation. The only reference to women in the law is with regards to the dissemination of the CAVR and CTF findings and recommendations, whereby the institute undertakes to ensure dissemination is aimed at "rural communities and women".

The draft law could better promote an active role for women in the institute's work by:

- requiring that at least one member of the Governing Board is a woman,
- containing an article stating that the institute *shall* promote the empowerment of women in all aspects of its work,
- stipulating that at least 40% of institute staff shall be women,
- requiring that the centre's work on documenting the history of the conflict should specifically aim to preserve the memory of women's experiences,
- providing that 50% of research scholarships are awarded to women.

Article by Article Analysis

Preamble

It was not the Commission for Truth and Friendship (CTF) that presented its final report to the Parliament on 9 October 2008, it was the President of the Republic.

If the preamble refers to the date upon which the parliament received a copy of the final CTF report, it should also state that the President of the Republic presented the Commission for Reception, Truth and Reconciliation (CAVR) final report to the Timor-Leste parliament on 28 November 2005, in order to indicate that the parliament has a clear mandate to legislate to implement the CAVR recommendations.

Article 4 – Mission

Article 4 provides that the Institute for Memory will “promote, facilitate and monitor” the implementation of the CAVR and CTF recommendations. This mission statement is inconsistent with Article 5 (a) that states that the institute will “*implement* and monitor the implementation of CAVR and CTF recommendations.”

Article 5(a) is a more accurate description of the institute’s activities as establishing a documentation centre, facilitating research into the history of Timor-Leste’s conflict and promoting the search for missing persons all constitute actual implementation of CAVR and CTF recommendations. Article 4 should be amended to include actual implementation of the CAVR recommendations.

Article 5 – Powers

Article 37 provides the institute with a mandate to “assist and support” the government in the implementation of reparations. This is inconsistent with Article 5 that states the institute shall only “advise” the government on reparations. The institute’s reparation-related functions, as defined by this law, are more accurately described as assistance and support, as opposed to mere advice. It is submitted that Article 5 be amended accordingly.

The institute will also require the power to request information from government and non-government organizations in order to adequately monitor the implementation of CAVR and CTF recommendations, to verify data in the database on disappeared persons, and to confirm the veracity of reparation applications.

The institute should also have the power to take statements from victims and communities about their experiences during the conflict. This will significantly add to the written history of Timor-Leste and may act as a form of symbolic reparations.

Regarding reparations, the institute will require the power to establish a database of potential reparation program beneficiaries, and facilitate victims' access to social assistance.

In the course of its work, the institute may also need to establish a presence in other districts of Timor-Leste. The institution should therefore have to power, not only to "create mobile teams" to work with local communities but also to establish sub-offices in the districts.

Article 6 – Oversight

Providing the Minister for Social Solidarity with the power to appoint and dismiss institute staff undermines the institution's "technical, administrative and financial autonomy" provided by Article 2 (1). It is submitted that article 6(1)(a) be deleted.

Article 7 – Institutional Structure

Placing all the institute's substantive functions within a single unit makes it difficult to envisage how the institute will carry out its numerous functions. This not only makes it difficult to carry out a quality public consultation on the draft law, but will make it difficult for the persons engaged to establish this institute to structure the institute, engage appropriate staff and divide up the institute's different functions between sub-units or staff. The organic law of an institution should clearly lay-out the institute's structure and how its different functions will be accommodated within this structure. This law does not do this.

Although a reluctance to establish a large, unwieldy institution is understandable, if the parliament wishes the new institute to adequately execute its functions, it will require a large number of staff and resources. Creating a single unit—the Research & Documentation, Reparations and Missing Persons Unit—to accommodate all the different technical functions of the institute, conceals the complexity of the different technical areas such as reparations or missing persons, and the huge amount of resources that will be required for the institute to discharge its functions in these areas.

It is suggested that the law be amended to create the following units within the institute:

- Reparations
- Documentation and Historical Research
- Education and Outreach
- Disappeared Persons
- Finance and Administration
- International Cooperation (fundraising, liaison, sourcing technical support)

Article 9, Article 13 and Article 14 – Appointment and Dismissal of the Governing Board

If the three members of the Governing Board are employees of the Minister for Social Solidarity, this is contrary to the institution's "technical, administrative and financial autonomy" as guaranteed by Article 2(1). Providing a government

Minister the power to appoint and dismiss the Governing Board makes the institute vulnerable to politicization. The three council members will not pursue their task independently of changing government policy and priorities if their tenure is dependent upon the Minister's discretion. This power to hire and fire staff provides the Minister with more than just the "supervision and tutelage" stated in Article 2(2).

In order to protect the 'autonomous nature' of the institute, it submitted that the Governing Board should be appointed by the President of the Republic, or the National Parliament, from a list of a list of persons meeting the criteria stated in Article 10. The dismissal of Governing Board members, for reasons other than resignation, death, incapacity or expiry of mandate, should *not* be at the discretion of the Minister for Social Solidarity but instead based on clear criteria such as; serious misconduct, an ongoing conflict of interest or being convicted of a criminal offence. Currently, under the draft law, a Governing Board member will be dismissed for missing three consecutive Council meetings, but may not necessarily be dismissed for serious misconduct or criminal acts. This doesn't reflect the intention of the law to create a credible and well functioning public institution.

The law should clearly define 'misconduct', 'conflict of interest', and stipulate dismissal procedures that afford Council members the right to respond to complaints against them. A panel consisting of high-level MSS staff could evaluate complaints lodged against Council members and determine whether the preconditions for dismissal, as specified in the law, have been met. However, public servants within MSS are likely to follow the Minister's direction to dismiss or not dismiss the Governing Board member, and therefore the members will still effectively serve at the pleasure of the Minister.

If the institute is to remain under the 'tutelage' of the Ministry for Social Solidarity, the law should create an appointment and dismissal committee consisting of the Minister for Social Solidarity, the President of the Republic, the Ombudsman for Human Rights and Justice and representatives of relevant civil society organizations. This would better insulate the Governing Board members' work from political interference.

Again, it is submitted that it is more appropriate for this institute to be overseen by the National Parliament. In this case, appointment and dismissal procedures for the Governing Board could be similar to those for the Provedore for Human Rights and Justice—appointment by parliamentary vote and removal upon approval by two-third majority vote of all parliamentarians.

It is suggested that Article 14, allowing the Minister to dissolve the Governing Board in the case of 'grave irregularities' in the institute's functioning, be removed from the draft law. The three Council members will be appointed based on their moral integrity, independence, professionalism and commitment to human rights. It is hard to envisage any 'grave irregularities' that would require the dismissal of all members of the Council. A competent institute should be able to take action sufficient to remedy any 'irregularities' in its work and if such

irregularities are related to the performance of a particular Council member, he/she can be dismissed through normal dismissal procedures.

If this provision is not removed from the law, there should be at least a clear definition of the “grave irregularities in the functioning of the organ” that justify the dissolution of the Governing Board.

None of these above proposed changes pertaining to the appointment and dismissal of the members of the Governing Board, will compromise the Minister for Social Solidarity’s ability to monitor the institute’s activities and oversee its administration and finances.

Article 8 and 15 – Functions of the Governing Board

Article 8 states that the Governing Board is responsible for managing the institute’s administrative and financial matters. In absence of an executive director, it *appears* that the Governing Board will have to also manage the substantive work of the institution. However, such responsibilities are not explicitly attributed to the Governing Board anywhere in the draft legislation. This leaves open the question of who will actually manage the institute’s work in the area of reparations, missing persons, documentation, and human rights education.

If it is *not* the responsibility of the Governing Board, the law should clearly specify who is responsible for management of the institute’s technical functions. Currently Article 15 only provides the Governing Board with the power to “elaborate and propose” activities, plans and budgets, but no actual power to manage substantive programs. If the Governing Board is intended to take on this role, Article 8 and Article 15 should also be amended to include a power to manage implementation of documentation, education, reparations and missing person programs. Although Article 15 (2)(f) could be interpreted as broad enough to give the Governing Board the competency to implement any programs related to the institute’s functions, a provision clearly providing the Governing Board with the power to manage all the institute’s technical programs would resolve this ambiguity in the law.

Article 17 – Functioning of the Governing Board

If the three members of the Governing Board are managing the institute, they will have to work together each day. Stipulating a minimum of four meeting per month suggests that the council members would not otherwise be employed full-time in the running of the institute. The article gives the impression of the council being similar to a board than a senior management team.

It is submitted that this article is unnecessary and should be removed.

Article 18 – President of the Governing Board

18(1)(a) is repeated again in 18(1)(c)

The law does not specify how the Governing Board’s president is appointed and whether he/she will serve for the full term of the Governing Board.

The president's responsibilities are similar to those of a president of a governing board. It isn't clear who will be responsible for making day-to-day operational decisions regarding the technical aspects of the institute's work.

Creating a management structure in which no one member of the Governing Board is responsible for specific areas of the institute's work may create a situation in which no one takes responsibility for these tasks, or one council member takes on too much work. It is submitted that the respective responsibilities of Governing Board members should be clearly defined. For example, one member could be responsible for oversight of programs related to reparations and disappearances, another for dissemination and education initiatives and the third for documentation.

Article 19 – Signatures

Although it is recognized that two signatures are intended to promote greater transparency in decision-making, this article is unnecessary if the final decision making power over all institute operations in fact resides with the Minister for Social Solidarity.

It is submitted that this requirement should be removed from the law.

Article 20 – Function of 'the Unit'

See comments above under Article 7 – Institutional Structure

Several substantive functions are omitted from Article 20, including the institute's role with regards to the issues of missing persons and reparations.

Article 21 – Competencies of 'the Unit'

The institute should make provision for psychological support for victims wishing to provide information, either for the purposes of entry into the database on disappeared persons or registration as part of the national. The recounting of past traumatic experiences can lead to emotional and psychological difficulties and the institute has a responsibility to provide victims with adequate support to minimize these problems.

If Article 21 is intended to be a comprehensive list of the institute's technical competencies, the following competencies should also be included:

- take statements from victims regarding the experience of a human rights violation,
- translate the final reports of the CAVR and CTF reports into a form that is more accessible to the Timorese population (for example, create a radio version of both reports) and widely disseminate these reports both domestically and internationally,
- provide or organize the provision of psychological support to victims wishing to provide information to the institute,
- register beneficiaries of a reparations program, and
- refer vulnerable victims to social assistance programs.

Although the institute is attributed the latter two powers in the reparations law, it makes sense to include these competencies in the institute's organic law in order to provide a full picture of its institutional functions and powers.

Article 22-24 – Auditor

There is a unit within the Ministry of Finance whose role is to oversee statutory bodies similar to the Institute for Memory. It is submitted that this additional 'special auditor' is unnecessary, both the Ministry of Finance and the Minister for Social Solidarity, in accordance with Article 6 (1)(e), will oversee the institute's finances.

If the parliament deems the auditor necessary, this will ensure strong government oversight over the institute's finance and administration (as stipulated by Article 6), and the accountability of the Governing Board to the Minister for Social Solidarity, to whom the auditor reports. As a result, other measures in the law designed to grant greater government control over the institute's functions, such as providing the Minister with a discretionary power to appoint and dismiss members of the Governing Board, are not necessary. However, the existence of this auditor again highlights that the institute is by no means "technically, administratively and financially autonomous" but that the institute is under government control.

Article 25 – Archives

The law does not specify the content of these archives. The CAVR and the CTF reports clearly recommended that an archive be established to preserve their records, and the CTF suggested that a documentation centre be established that would compile documents relevant to the 1999 violence, including documents of the CAVR, SCU, KPP HAM Indonesia and the Human Rights Ad Hoc tribunal in Jakarta. The law should accurately reflect the intention of the two truth commissions by clearly stating that this archive will contain material related to the 1974 – 1999 conflict and human rights.

Article 26 – Research

It is submitted that Article 26 should include a sub-article on preserving the memory of women during the 1974-1999 period. Ensuring that this institute undertakes research into women's experiences during the conflict will help ensure that women's strength and suffering are more publically recognized.

Article 27 – Dissemination of the CAVR and CVA reports

The logical intention of Article 27(2) is to ensure that both reports are disseminated in multiple languages so that different target audiences, both domestically and internationally, can access the reports.

It is submitted that Article 27(2) should read, "*..... the dissemination should occur in the language best understood by the majority of a particular target population*".

Article 28 – Education

Article 28(2) should contain specific reference to the use of the CAVR and CVA reports in national school curriculums, as was recommended by the CAVR.

Article 29 – Scholarships and Research

In order to promote gender equality and research on women's issues, 50% of scholarships should be provided to women and a certain amount of scholarships dedicated to research into gender and human rights.

If this institute is to effectively promote research and learning, it will have to create an appropriate space in which researchers can study. The Post CAVR Technical Secretariat has established a library that contains books and other materials relevant to the study of Timorese history and human rights. It is submitted that this library should form part of the organic structure of the Unit and the institute should be obliged by law to maintain this library as a facility for researchers.

Article 30 – Training

The exact scope of the institute's human rights training should be more clearly specified in Article 30 to demonstrate that the institute will not duplicate the work of the Ombudsman for Human Rights and Justice (PDHJ). PDHJ is the national human rights institute and is mandated to "promote a cultural of respect for human rights" and "disseminate information regarding human rights" (Law 7 of 2004, Article 25(1)).

As the institute's role is to disseminate the CAVR and CTF reports, and oversee implementation of their recommendations, the institute will become an 'authority' on the CAVR and CTF reports. It would therefore be logical if the institute specializes in using the CAVR and CTF findings on the Timorese conflict to teach human rights. This is also consistent with the CAVR and CTF recommendations regarding learning from the past conflict in order to promote institutional reform, friendship between Indonesia and Timor-Leste, and a better understanding of human rights by the people of both countries.

Article 33 and 34 – Confidentiality

Article 33 (1) states that access to the institute's archive will be determined in accordance with the "circumstances and conditions" defined in the present law. This law doesn't actually establish any "conditions" regarding access to the archives. If a breach of confidentiality is punishable by up to two years imprisonment, the law should arguably define "confidential information" and what a breach of confidentiality entails.

At the least, the law could contain some basic principles regarding confidentiality and archival access. For example, persons, and the next of kin of deceased persons who provided testimony to the CAVR or CTF, should have the right to access their, or their relative's testimony. Documents released to the public should also be released in such a way as to protect the privacy of alleged perpetrators and victims, and to protect individuals' safety.

Article 37 – Reparations

The functions described in article 37 are not reflected in Article 21 that lists the competencies of the "Unit for Research, Documentation, Reparations and Missing

Persons". Article 21 should be amended accordingly.

Article 40 – Disappeared Persons

Article 40(4) provides that any information collected about missing persons cannot be used by the institute in carrying out any of its other functions. This will prevent institute staff who are working with the families of missing persons from providing information about a family's situation to the reparations section, who could then assess their eligibility for reparations. This provision will create inefficiencies in the institute's work, and is unnecessary in terms of confidentiality as the draft law already contains general confidentiality provisions. It is submitted that Article 40(4) be deleted.

Article 49 - 50 – Reporting to the Parliament

There is an inconsistency between Articles 49(1) and 49(2) regarding the frequency with which the institute must report to the parliament. It is submitted that an annual report is sufficient for the purposes of oversight.

Articles 49-50, read in conjunction with articles 6,9, 13 and 14 indicate that the institute will report to the Minister for Social Solidarity on administrative and financial matters and report progress in terms of its technical functions to the National Parliament. This division of reporting responsibilities is confusing and complicated. As mentioned above, because the Minister for Social Solidarity has the power to appoint and dismiss the members of the Governing Board, the institute will in practice have to answer to the government. If the intention is to place the institute under the government's control, why not have the institute also reporting to the government on all aspects of its functioning, including administrative, financial and substantive programs?

It is submitted that the institute's annual report, whether it is made to the parliament or the government, should contain recommendations as to what specific organizations, statues or individuals can do to improve implementation of the CAVR and CTF recommendations. The report should be publically available, and considered in a public session in which victims' associations and other civil society groups may participate.

Article 56 – Revision of the law

The parliament has the power to revise this law at any time and therefore this article is unnecessary. However, if it was intended that the *institute's* work and functions would be revised 5 years after it is established, the article should be amended to read; "*.....the functions and activities of the institute shall be revised in 5 years.*"



International Center for Transitional Justice

Submission to Committee A of the National Parliament

Draft Law Establishing the National Reparations Program 5 July 2010

Draft Law No. / II Framework of the National Reparations Program

General Comments

Delayed Delivery of Reparations

The major concern regarding this legislation is the delay in actual delivery of reparation benefits. Many victims are elderly and living in extreme hardship. Undue delay in the delivery of reparations will mean that these victims may die before receiving recognition or assistance under the reparations scheme. The new institute will take six months, if not more, to consult with relevant stakeholders and present its recommendations on the content of a reparations program. The law does not indicate how the government should respond to the institute's report, nor does it prescribe any time limits on the government to act. It is submitted that the Institute, based on the results of its nation-wide consultation, and as an annex to its report on the consultations, drafts a decree law on reparation implementation for consideration by the Council of Ministers. Although the Institute is likely to require 12-18 months to do this, it would most likely reduce the time taken for drafting the law if it is an agreed 'output' of the consultation process.

Article by Article Commentary

Article 3 – Victims

- The Article 3 (1)(a) definition of “victim” appears to be based on Article 8 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (“Basic Principles”). However, several important elements of this definition have been removed, including the aspect of “collective” suffering of harm that will be important for defining collective reparations. The word ‘fundamental’ has also been omitted from the phrase, “...or substantial impairment of their fundamental

rights,” The effect of omitting this word is to recognize as victims, every Timorese who, from 1974 – 1999, were unable to enjoy non-fundamental rights, such as, for example, a statutory right to receive a monthly rice subsidy.

It is submitted that Article 3 adopt the text of the Article 8 of the Basic Principles in full:

“Pessoas que, individual ou colectivamente, tenham sofrido um prejuízo, nomeadamente um atentado à sua integridade física ou mental, um sofrimento de ordem moral, uma perda material, ou um grave atentado aos seus direitos fundamentais, como consequência de uma violação dos direitos humanos, ocorrida no contexto dos conflitos políticos ocorridos em Timor-Leste entre 25 de Abril de 1974 e 25 de Outubro de 1999.”

“Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law that occurred in the context of political conflicts occurring in Timor-Leste between 25 April 1974 and 25 October 1999 .”

- The Article 3(1)(b) definition of ascendants and descendents is not strictly necessary as these people, as family members of direct victims, have also “suffered harm” as defined by Article 3(1)(a).

It is preferable to maintain a broad definition of “victim”, before the symbolic reparations program is designed to ensure the widest range of possible beneficiaries. Article 3(1)(b) may be interpreted as intending to limit the law’s definition of victim. This could result in a situation where symbolic reparations, such as the search and recovery of missing persons, would be available only for immediate family members. If all immediate family members are dead, remaining relatives will be denied their right to know the fate of their missing loved one.

It is submitted that Article 3(1)(b) be removed from the draft law.

- If Article (3)(1)(a) is amended to mirror the UN Basic Principle’s definition of “victim”, Article 3(2) may be deleted as the new definition of “victim” already refers to gross violations of human of international human rights law, or serious violations of international humanitarian law.
- If the parliament decides to retain Article 3(1)(a) in its current form, the Article (3)(2) definition of “human rights violations” should be amended to remove to words, “..and criminal acts,” as the intention of this legislation is not to provide reparations to victims of ordinary crimes.

Article 4 - Vulnerable Victims

- Article 4(1)(a)(iii) terms of ‘torture’, ‘disappearance’ and ‘summary execution’ should be clearly defined in the law.

Torture

If torture is defined according to Article 2 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, this would exclude acts of torture committed by non-state actors. As a result, victims of torture at the hands of UDT or Fretilin would not be classified as ‘vulnerable victims’ and could not access the individual reparations program.

In order to resolve this problem, the reparations law could contain a definition of torture consistent with that in Article 124(f) of the Timor-Leste penal code:

“Torture, construed as infliction of severe pain or suffering, whether physical or mental, upon a person in custody or under control of the perpetrator.”

Disappearance

Enforced disappearance, according to Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, must involve the detention and disappearance of victims by state agents or persons acting with the knowledge or support of the state. Again, this would exclude the relatives of victims disappeared by Fretilin. This would be manifestly unfair and contradict Article 8 that states no victim shall be discriminated against due to the political affiliation of the person believed to have committed human rights violation against the victims.

It is suggested that the law use the international humanitarian law term “missing persons” instead of “victims of disappearance”, and define this in accordance with the International Centre for the Red Cross (ICRC) definition of missing persons:

“Missing persons or persons unaccounted for are those whose families are without news of them and/or are reported missing, on the basis of reliable information, owing to armed conflict (international or non-international) or internal violence (internal disturbances (internal strife) and situations requiring a specifically neutral and independent institution and intermediary).”

Summary of the Conclusions arising from Events held prior to the International Conference of Governmental and Non-Governmental Experts (19-21 February 2003)

Summary Execution

It seems strange that only the relatives of victims of summary execution will be eligible to receive individual reparations and not the relatives of someone who died as a result of torture. It is submitted that the words “summary execution” should be replaced with “extra-judicial killing.”

- Article 4(1)(a)(iii) provides that only spouses and ascendants and descendents to the first degree, of persons executed or killed during the conflict may qualify as vulnerable victims.

It is submitted that this definition should be broader. For example, a couple may have cared for a relative’s child from birth. At age 16, that child was

forcibly recruited as a TBO and subsequently disappeared. Arguably the child's adoptive parents have a right to reparation for the psychological suffering and likely economic loss caused by their son's disappearance. This problem could be solved by providing 'dependents' of deceased or missing victims with a right to reparations, or alternatively including a sub-article that provides:

"In exceptional circumstances the Institute shall consider 'victims' to include those with strong emotional or economic relationship of dependency with a victim of killing or disappearance, including adopted children or children raised by the victim."

- There are also some basic drafting problems with Article 4 a).
*"a) Vítimas residentes em Timor-Leste e que continuam a sofrer dificuldades na forma de danos físicos ou psíquicos, ou dificuldades financeiras como resultado de uma ou mais das seguintes violações de direitos humanos:
i) As vítimas de tortura;....."*

In the absence of a comma after, "ou dificuldades financeiras" the provision reads as though only those victims who have experienced financial difficulties will have to prove these difficulties were are result of a human right violations. Article 4 a) also states, "of the following human rights violations;..... " and then goes on to list types of victims, not human rights violations.

Article 6 – Beneficiaries

The name of the symbolic reparations program, in Article 6(1) is the Programa de Memória. In Article 9(1)(a) the same program is referred to as Programa Nacional de Comemorações.

Article 6(2) should refer to article 4, not article 3.

Article 7 – Exclusions

- The current working of Article 7(1) also states that "recipients of pensions and benefits" *including* those under the National Liberation Combatants Legislation may not receive reparations under the national reparations program.

Article 7's wording suggests that those persons already in receipt of disability pensions or subsidies for the elderly will be ineligible to receive reparations. These social assistance programs are no substitute for reparations. The subsidy for the elderly is provided to all Timorese citizens over the age of 55, regardless of whether they suffered a human rights violation or not. It will undermine the integrity of the reparations program if a victim of rape and sexual slavery will be told that her suffering cannot be recognized because she is in receipt of a nominal, old-age subsidy that her neighbor, who lived a good life under Indonesian occupation, also receives. It is submitted that Article 7(1) be amended to make it clear that exclusions apply only to persons in receipt of pensions or other substantive benefits under the National Liberation Combatants legislation.

Additionally, the exclusion in Article 7(1) should only exclude people from accessing the individual reparations program as the collective and symbolic reparation programs described in this law are intended to benefit a wide range of people, including members of the community who may have received benefits under the National Liberation Combatants legislation.

- The Article 7(2) requirement that individuals must have resided in Timor-Leste for one year prior to submitting a reparations claim will impose a heavy administrative burden on the institute. Before approving any application for reparations, the institute will have to prove the applicant has been resident in Timor-Leste for the requisite time period.

Although the need to limit the pool of beneficiaries to a sustainable number is understood, it is unlikely that there will be a huge influx of “vulnerable victims” into Timor-Leste hoping to receive reparation benefits that have not even yet been defined by law. If an increase in people returning from West Timor is a concern, the legislation could seek to exclude these people, who are now Indonesian citizens, by limiting the reparations program to *Timorese citizens* resident in Timor-Leste.

It is submitted that the negative impact of this provision on the administration of the reparations program far outweighs the positive of attempting to reduce the beneficiary pool and should be removed.

Article 9 – Forms of Reparations

- Although it is understood that Article (9)(1)(b) do not represent an exhaustive list of measures that will comprise the individual reparations program, the limited nature of benefits listed there could mislead government departments and victims to believe that reparations will only consist of these measures. Many Timorese people remain unfamiliar with the concept of reparations and the potential benefits that could be provided through a reparations program. It will greatly assist the institute conduct a transparent public consultation process if additional measures such as housing assistance, pensions, one off payments or business ‘starter packs’ are explicitly mentioned in the law as possible reparatory measures. This provision can then act as a starting point for discussions on reparations, and the law will more accurately reflect victim demands voiced during 2008-2009 consultations.

Alternatively, it could be made clearer that the reparations measures listed in Article (9)(1)(b) do not represent an exhaustive list of measures that will comprise the individual reparations program by amending the article as follows:

*“b) An Individual Reparations Program aimed at rehabilitating vulnerable victims, which may include, **but is not limited to**, the following:”*

- Article 9(1)(b)(i) – (ii) appears to view “rehabilitation services” as excluding

psychological counseling and includes “social services” as a form of “mental health services”. Social services may include housing assistance, provision of food to needy families and so on. It is suggested that the two sub-articles be revised to read:

- “ i) Provision of mental and physical health services, including long-term rehabilitation services;*
- ii) Provision of social services;..... “*

- The collective reparations programs should be limited to communities within Timor-Leste. It is submitted Article (9)(1)(c) be amended accordingly:

“c) A Collective Reparations Program that acknowledges and provides material assistance to communities, within the territory of Timor-Leste, seriously affected by the conflict”

Article 11- Implementation Process

It is submitted that the objectives of Article 11 and 12 are unclear. These articles intend to establish a process by which reparation measures, and delivery methods are defined. The findings of the described 6-month consultation will presumably form the basis of a decree law regulating the national reparations program. It is submitted, in order to make the law clearer, that Article 11 and Article 12 be combined into a single article below. The results of this consultation will not only be a report but also a draft law on reparation implementation.

Article X Implementation

8.1 The Institute for Memory shall assist government to determine what reparation measures should form part of the national reparations program, and their mode of delivery. The Institute shall;

- (a) carry out a national consultation on reparations,*
- (b) provide a report to the government on the results of the consultation,*
- and*
- (c) prepare a draft decree law on reparations for the Council of Ministers.*

8.2 The Institute shall consult with; victims, NGOS working with victims, representatives of religious denomination, and relevant state services and organizations, on what reparation measures should be provided, who should receive these measures and who will provide such measures.

8.3 The final report on the consultation shall include –

- (a) an assessment of existing services, vulnerable victims’ ability to access these services, and whether those services can meet vulnerable victims’ needs,*
- (c) victim, community and government views on what kind of reparation measures should be included in the reparations program*
- (d) an assessment of government ability to deliver reparation measures*
- (e) an assessment of the financial sustainability of these measures*
- (f) recommendations on what new services need to be created*
- (g) recommendations on the mechanisms for delivering the different reparation measures identified.*

8.3. As an annex to the report, the Institute shall attach a proposed draft decree law for the government's consideration. .

- Article 11(2)(b) – (c) requires the Institute for Memory to include in its report on reparations a “summary of the assistance provided by the Institute pursuant to this law”. It isn’t clear what kind of assistance the law is referring to, but it will be assumed that it means assistance provided to vulnerable victims. However, the institute does not have any role in providing material assistance to victims. It only has the power to refer victims to other service providers and a vague role in supporting memorialization activities. The law therefore obliges the institute to report the numbers of victims referred to government assistance programs and also assess the ‘satisfaction’ vulnerable victims gained from these referrals. It is unlikely that the institute, within 6 months after its establishment—which is when the report is due—will have established the beneficiary database, registered a large number of beneficiaries and referred vulnerable victims to service providers. It is suggested that article 11(2)(b)-(c) be deleted.

Article 13 – National Registry of Beneficiaries

Article 13 should include a provision that obliges state agencies to provide the institute with any information that would assist it verify reparation claims made by victims.

Article 17 – Funding

Article 17 should also contain provision for reparation funding to be augmented by contributions from external sources such as bilateral donors or multilateral agencies.