

# **From JSMP National Parliamentary Bulletin**

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## **Section II: Analysis of Draft Law on a Memorial Institution and Reparations**

### **1. History of how draft laws on a Memorial Institution and Reparations were developed**

#### **a. CAVR and CTF**

The Commission for Reception, Truth and Reconciliation (CAVR) was established during the time of the UNTAET transitional government in 2002 at the initiative of the national leaders from CNRT. This Commission was mandated to carry out research and write a report on human rights violations that occurred within the territory of Timor-Leste between 25 April 1975 and 25 October 1999.

This commission then produced its final report entitled “*Chega!*” which set out a number of recommendations including a recommendation that victims of human rights violations that occurred between 1974-1999 should receive reparations and that the National Parliament should establish an institution to “follow up” the recommendations of the CAVR.

On 31 October 2005 the Commission delivered its final report to the President of the National Parliament.

On 9 March 2005 Indonesia and Timor-Leste agreed on the terms of reference for the establishment of a Commission for Truth and Friendship (CTF) with the aim of revealing the truth about violence that occurred in 1999 in Timor-Leste with an aim of strengthening reconciliation and friendship between the two countries.

This Commission then received a lot of attention and a harsh response from civil society groups in Timor-Leste and Indonesia, as well as the international community, because it was considered to be in conflict with principles of international human rights on serious crimes such as genocide, war crimes and serious violations of human rights.

However the CTF continued to carry out its task and finished its report containing recommendations which was launched and published in March 2008 in Bali, Indonesia. The CTF only recommended reparations for human rights violations that occurred in 1999.

Over a period of approximately four years, with reports being produced from these two commissions (CVAR-CVA), the government and national parliament have still not managed to carry out the recommendations contained in these two reports.

#### **b. CAVR Working Group activities to lobby parliament**

In 2009 a working group demanding justice for victims of human rights violations that occurred in 1999, comprised of members from organizations such as ATP-CAVR, JSMP, Fokupers, HAK, ICTJ JPC Dili and NCD, started conducting activities to lobby National Parliament to initiate a draft law on an institution to follow up the recommendations of CAVR and CTF. This working group for justice conducted a range of activities, of which the largest was organizing a Consensus Dialogue Conference in October 2009 and also submitted a draft law to Parliament for consideration.

On 14 December 2009 the Parliament passed a resolution to implement the recommendations contained in the CAVR and CTF reports. In this resolution the Parliament acknowledged the work of the two aforementioned commissions. This resolution also emphasized the need to acknowledge the suffering of victims through a process of reparation and the most important issue was to implement the recommendations of the two reports.

Then in June 2010 Committee A of Parliament considered and attempted to discuss the draft law submitted by the working group. Two draft laws were produced, namely a draft law on a Memorial Institution and a draft law on Reparations. According to the parliamentary resolution, Committee A had been given three months to study these two reports and make preparations to implement the recommendations from the two reports.

**c. Activities of Committee A in relation to these two draft laws**

In June 2010 Committee A of National Parliament prepared two draft laws on a Memorial Institution and Reparations.

Then on 6 July Committee A held a public consultation with civil society in the national parliament with support from members of the working group. JSMP and other NGOs also were given an opportunity to make presentations in this public meeting. At that time members of NGOs made comments about the two draft laws, in particular focusing on the independence of the institution that would be implementing the mandate established by law.[1] Then on 7 July 2010, Committee A continued the public consultation with the victims of human rights violations from the 13 districts, which was organized by the members of the working group. JSMP was entrusted to organize 5 representatives of victims to travel from Oecusse District to Dili to attend the public consultation. The victims also recommended that it is crucial to guarantee the independence of the follow up institution. They were concerned that the Ministry of Social Solidarity has a lot of work and this will hamper the ability of the officers tasked to implement this mandate. The victims thought it would be better to establish an independent institution to take responsibility for these matters.

On the same day Committee A also organized a meeting with members of the Council of Ministers between 8-13 July 2010 to prepare a report with reference to the results of the public consultations held with the victims. This report recommended the establishment of an institution independent from the Ministry of Social Solidarity. The Council of Ministers is currently considering this report.

Furthermore on 14 July 2010 Committee A of Parliament organized a vote on the report and sent it to the President of Parliament to be discussed in the plenary.

Now we are waiting for the members of the National Parliament to return from their recess to hold high level and specific discussions

**2. Summary of the Draft Law on an Autonomous Institution to implement the recommendations of CAVR**

The aim of preparing this draft law is to hold discussions with civil society, victims groups, government, members of Committee A itself and members of parliament before this law is approved and promulgated. Most of the entities mentioned above expressed their concern about the independence of such an institution if it is under the purview of the Ministry of Social Solidarity. Therefore an amendment was proposed by Committee A to change the name of the Memorial

Institution to 'Autonomous Institution' and to place the institution under the direct supervision of the National Parliament. This proposed amendment received 5 votes in favor, 2 against and 0 abstain. This vote was held at the Committee level on 14 July 2010.

The law is intended to respond to the recommendations contained in the CAVR and CTF which obliges the state to implement these recommendations in accordance with the spirit of the constitution and the law. This law has also been proposed to recognize the suffering of the Timorese people during the conflict that took place between 1974-1999, and to prevent human rights violations in the future.

The draft law consists of provisions relating to general rules, an organic structure, a steering committee, establishment of different units, including a finance unit, the scope of activities, the access and use of files, collaboration with the Autonomous Institution, symbolic and material reparations, missing persons, management of finances and property and other support, parliamentary oversight, jurisdictional oversight, concluding regulations and terms for revision. This is all set out in 11 chapters, 3 sections and 57 articles.

This law substantially deals with the legal basis for establishing a body/institution to implement the recommendations of CAVR and CTF with other financial and technical administrative issues to be entrusted to the state of Timor-Leste, namely with direct oversight from the National Parliament. This institution consists of a Steering Committee, Units and a Finance Unit

In reference to the version of the draft law currently in the possession of JSMP, the Steering Committee consists of three people, one who is the chairperson and two members who are to be appointed in accordance with the conditions and their status as administrative and financial managers. They shall fulfill their mandate for four years and will be assessed by the relevant ministry as deemed necessary. However, JMSP does not yet have clear information about whether this will be the same if the Autonomous Institution will be under the purview of the National Parliament.

In addition, the Research and Documentation Unit, Reparations Unit and Missing Persons Unit will be integrated into one body that will have the competence and responsibility for filing and documentation, organizing data on missing persons and implementing information programs, education and training.

Members of the finance unit will be appointed for a period of three years which will be assessed by the supervising ministry. This unit will be authorized to provide oversight and financial management, execution of the budget/financial procedures and institutional activities as a whole under the direction of the Steering Committee.

This institution must submit a report every year to the national parliament on all of its activities and accounts that will be debated by the competent Parliamentary Standing Committee, namely Committee A. Any person suspected of committing an improper act or omission in the discharge of his duties can be held liable in civil, criminal or disciplinary proceedings, and can be liable to a financial penalty, if deemed necessary.

### **3. Analysis on the contents of the Draft Law on an Institution**

#### **a. Tutelage**

JSMP welcomes the democratic steps and efforts taken by Committee A of the National Parliament to organize consultations with civil society, victims' groups and members of parliament in relation to the draft law to establish and institution to implement the recommendations of CAVR and CTF. JSMP respects Committee A for taking these steps, as well as its consideration of the proposals and comments provided, especially concerns over supervision that was to be provided by the Ministry of Social Solidarity. As a result, now mention is made of an Autonomous Institution under the supervision of the National Parliament. JSMP believes that this amendment can help to ensure that this institution can perform in line with public interest, especially the interests of victims, as the institution will be independent in carrying out its role. At this opportunity JSMP also wishes to express its opinion that other government bodies and relevant institutions have to continue to provide technical, financial and material support in accordance with the constitution and applicable law, as well as institutional goals and interests, as well as national interests.

**b. Composition and appointment of the Steering Committee**

Article 9.1 discusses the composition of the Steering Committee. JSMP believes that it is necessary to clarify Article 9.1 in relation to gender equality, in order to ensure that women can be appointed as president or member of Steering Committee. JSMP believes that at least one of these positions (chairperson and two members of the Steering Committee) should be occupied by a woman.

JSMP also notes Article 9.2 which deals with appointment by the supervising ministry without a selection process. This situation will raise doubts in the community about the credibility and ability of those appointed to carry out their function as chairperson or member of the Steering Committee. JSMP believes that appointment that takes place without a clear selection process will make it possible for people to be nominated along party lines. A change has been made so that the Autonomous Institution will be supervised by the National Parliament, but JSMP doesn't yet know who will make appointments under the supervision of the national parliament.

**c. Autonomous Institution needs 4 Units to carry out activities**

Article 7 (b) of the law deals with research and documentation, reparations and missing persons. JSMP is not certain about the intention of this article, if there will only be one unit, or if work will be a split into several units when the institution starts implementing its role. JSMP believes that the Autonomous Institution should establish a number of internal units. The law should provide further clarification to prevent various interpretations. JSMP believes it will be easier and more structured if the work of the Autonomous Institution is carried out by respective units with their own responsibilities.

In addition to establishing a Research and Documentation Unit, Reparations Unit and Missing Persons Unit, it is also necessary to establish a unit for Training, Education and Outreach. JSMP believes this is so because Article 21 (g) deals with education and training which requires the existence of a unit to carry out this work. Article 27 also deals with the distribution of information and Article 28 deals with education. It is important that there is consistency from one article to the next.

JSMP believes that the Autonomous Institution should establish the following units:

1. Research and Filing Unit,
2. Reparations Unit,
3. Missing Persons Unit, and
4. Research, Education and Outreach Unit

**d. Report of Autonomous Institution to Parliament**

JSMP considers Article 49 to be vague because it only states that the National Parliament will hold discussion and debate when it receives reports from the Autonomous Institution. However it is unclear what follow up will be taken after this debate. JSMP is sure that the National Parliament has its own rules to take certain steps in relation to such reports after debate has taken place, however to avoid confusion and potential problems there should be a subsection added to this article that refers to the rules of the national parliament.

**4. Summary on the contents of the Draft Law on Reparations**

Reparations are a means to acknowledge or consider the suffering of victims as a consequence of war and the violation of principles set out in international human rights law and serious crimes under international humanitarian law. Therefore, the draft law on reparations generally states that there will be a national program for reparations to give respect for the dignity of victims.

This law on reparations applies to those considered to be ‘victims’ as defined in the law. Pursuant to Article 3.1(a), *victim* means any person who suffers physical or psychological harm, or emotional suffering, substantial financial loss, or who is prevented from enjoying his rights as a consequence of a human rights violation in the context of the political conflict that occurred in Timor-Leste between 1974-1999. Article 3.1(b) states that victims also include family members or those mentioned in Article 3.1(a).

The law on reparations also contains specific rules for *vulnerable victims*. Pursuant to Article 4, Vulnerable Victims are victims who live in Timor-Leste and continue to suffer physical or psychological consequences or financial difficulties as the result of the following human rights violations:

- Victims of torture
- Victims of human rights violations who consequently suffer a permanent physical or mental disability;
- Spouses of a victim, or close relatives, of a person who is missing or was summarily executed;
- Victims who were ordered by troops to leave the country when they were still minors, and have been absent for a long period; and
- Victims who experienced sexual violence or slavery, or those born as the result of sexual violence or slavery.

The law on reparations includes three types of reparations programs:

- A national reparations program which will be applied to all victims and includes a program to honor and dignify victims and increase education about human rights and the history of Timor-Leste. This program will include: commemoration ceremonies, the construction of monuments, search for missing persons, identifying and dignifying burial sites and detention centers. These provisions are pursuant to Article 9.1 (a) of the Law on Reparations.
- The second type is an individual reparations program for vulnerable victims. This program will provide various forms of rehabilitation for vulnerable victims, including providing health care, mental health care, counseling and social services.
- The third is a program of collective reparations for members of the communities that suffered significantly from the conflict. This program will be implemented through community infrastructure projects, subsistence projects and projects paying respect to victims at the

community level. The contents of this program will be established through consultation with beneficiary communities.

Based on the draft law in the possession of JSMP, the Autonomous Institution will have joint responsibility with the MSS to implement reparations programs. As the name has been changed from Memorial Institution to Autonomous Institution, JSMP does not know how the institution will share its implementation responsibilities with Parliament and the Ministry.

## **5. Analysis on the contents of the Draft Law on Reparations**

### **a. Reparations should prioritize girls, women and children**

JSMP is concerned that the current draft law does not contain specific provisions for girls, women and children. JSMP is certain that this law should provide benefits and avoid discriminating against victims of human rights violations such as girls and women who suffered sexual violence or torture committed by Indonesian police and military. It is crucial that their needs are met, so that girls, women and children will be given special protection. Efforts must be made to ensure that girls are provided with health services and rehabilitation for mental health issues, including counseling and social services, including professional training and non-formal education for the illiterate. JSMP is also concerned that the current draft law does not give specific attention to intellectually handicapped children or those suffering from mental illness. These types of children have the right to services that meet their needs.

The process for identifying vulnerable victims should also consider how to identify vulnerable girls and women. The process used for identifying male victims may not be effective for identifying female victims.

### **b. Implementation**

Based on monitoring conducted by JSMP, even though the law on reparations is relatively simple, it is important that it is implemented effectively with public awareness programs that have an adequate reach. It is crucial that everyone can understand who are victims and vulnerable victims. It is also important that everyone understands that the programs set out in this law are not the same as a pension and do not include giving money to people.

JSMP also believes that in parts this law uses language and terminology that is vague and inconsistent. For example, it is unclear how the Autonomous Institution will identify communities to receive collective reparations or identify vulnerable victims.

### **c. Indonesia's Responsibility**

Although JSMP feels that it is important for Timor-Leste to give support to the victims of human rights violations, it is also important to acknowledge that the Indonesian government committed many violations and the Indonesian government has a responsibility to provide reparations for victims who suffered from their invasion of Timor-Leste which subjected the entire population to direct and indirect violence.

JSMP acknowledges that the UN General Assembly has adopted a special resolution on reparations, namely Resolution 60/147 on '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'. This resolution states that when individuals or

entities who are responsible are not available, then the state members of the UN have a responsibility and obligation to ensure that each state member adheres to these principles.

Therefore JSMP remains concerned that even though the state, via the government, is implementing a program of reparations for victims through the construction of memorials, granting of scholarships, use of symbols etc, however in reality many victims of human rights violations have not benefitted from this process. Therefore JSMP demands for Indonesia to take responsibility for granting reparations to the victims in accordance with the terms of reference between Timor-Leste and Indonesia based on the report and recommendations of the Commission for Truth and Friendship that was issued in March 2008 in Bali, Indonesia.

**d. There must be justice**

JSMP also believes that the law on reparations does not mean that victims do not need justice. In accordance with UN General Assembly Resolution 60/147, victims have the right to the following remedies:

- Access to equal and effective justice;
- Reparations that are adequate and effective for those who have experienced suffering; and
- Access to relevant information on violations and reparations mechanisms.

This means that reparations constitute only one part of the remedy for victims. Victims continue to have the right to justice for the violations they suffered as a result of Indonesia's invasion of Timor-Leste. JSMP wishes to underline that the CAVR in its report also recommended that justice and the truth must be upheld for victims in Timor-Leste.

[1] For further information relating to JSMP analysis of the draft law on reparations, please refer to a JSMP justice update issued in March 2010.

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