

# THE UN HUMAN RIGHTS COUNCIL REVIEW OF HUMAN RIGHTS (UPR) IN TIMOR-LESTE

## A personal analysis and recommendations vis-à-vis the proposed Institute of Memory and Reparations Framework.

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### 1. Introduction

Timor-Leste's first four-yearly report on human rights was reviewed by members of the UN Human Rights Council in Geneva in October 2011. The review was part of the Universal Periodic Review (UPR) process that is required of all UN members. Timor's Provedor for Human Rights and NGOs also submitted a joint report. They and the Timor-Leste Government deserve high praise for the quality and seriousness of their reports. The following analysis and recommendations relate only to references made during the UPR to proposals for an Institute of Memory and Reparations Framework, both of which are the subject of draft legislation currently stalled in the Timor-Leste Parliament.

### 2. References at the UPR to Institute of Memory and reparations

#### 2.1 *International community*

At least 15 Governments asked questions or made recommendations to the Government of Timor-Leste regarding either past violations in general and/or the proposed IoM and reparations law for victims. These were (not in order): Czech Republic, Ireland, Netherlands, Indonesia (re CTF only), New Zealand, USA, Germany, Argentina, Austria, Canada, South Africa, Norway, France, UK, Korea. In its report, the Timor-Leste office of the UN High Commissioner for Human Rights also recommended the adoption of the two acts (para 36).

Some who might have been expected to raise these issues, but did not, included:

- The Holy See (whose Ambassador to Timor has demonstrated support for CAVR by visiting P-CAVR and the Chega exhibition and who made a clear statement that reconciliation requires justice at the inauguration of the Pope John Paul 11 statue in June 2008),
- Australia (which supported CAVR and contributed to the setting up of the Chega! Exhibition).
- Portugal (because of its historic role and continued engagement with Timor)
- Japan (which supported CAVR and the P-CAVR dissemination program)
- Brazil.

#### **Recommendation**

**That NGOs visit the five missions listed above (each of whom has an embassy in Dili) and ask that they raise the issue of the IoM and reparations with the Timor-Leste Government in the near future, preferably well before March 2012.**

#### 2.2 *Timor-Leste*

In its report to the UPR, dated 19 July 2011, Timor-Leste referred to both the CAVR and CTF processes under the heading Past Violations of Human Rights (paras 56-59). In para 59 the Government also made a welcome reference to the reparations and Institute of Memory proposals. It stated: "Timor-Leste is committed to provide support to the victims of past human rights violations. A law is presently under debate in the National Parliament on awarding compensation to the victims and the establishment of an institution to preserve the memory of historical events in Timor-Leste".

Further, in its response to the inputs mentioned above, the Government stated (a) that 112 of the 134 recommendations addressed by CAVR to the State have been implemented "through various development programs" and (b) that it could only inform the UN Human Rights Council of its position on the reparations and follow-up institute proposals by March 2012.

Timor-Leste's statement that a good number of CAVR's recommendations have been implemented is welcome. It is suggested that the Government be asked to specify these so that an accurate registry can be compiled and implementation monitored. The Government should also be asked to specify how it plans to respond to recommendations that have not been addressed. These include (1) that the Serious Crimes process should continue and be mandated to investigate and try crimes committed 1975-1999; (2) that a follow-up institution be established; (3) that a reparations program be established; and (4) that the Prosecutor General investigate/prosecute those named or coded in Chega! for serious crimes. A registry should also include a record of implementation or otherwise of recommendations made by CAVR to the international community and other target groups.

It is to be hoped that the Parliament will enact its draft laws on a follow-up institute and reparations in the near future so that Timor-Leste can make a positive announcement to the UN Human Rights Council before March 2012. Interested NGOs and Governments should make this their objective.

If, however, legitimate concerns about the practical implementation of a reparations program cannot be resolved in the time available, it is hoped that at least the Institute of Memory legislation will be enacted so that the process can go forward rather than stall for a possible further 12 months or longer. Having enacted the Institute law, the Parliament could then task the Institute, along with its other duties, to conduct a thorough study into the feasibility of a reparations program and report back to the Parliament by a set date so that it can make an informed decision.

### **Recommendation**

**That legislation for an Institute of Memory (IoM) and reparations program be enacted before the next elections; but, if an official consensus on a reparations program cannot be achieved before then, that a decision on this program be delayed until the IoM researches concerns about a program of reparations and advises the Parliament/Government of its findings by a set date to enable an informed decision.**

Timor-Leste made several other references to the difficult issue of past violations. According to the report of the UN Human Rights Council UPR Working Group, Timor-Leste indirectly challenged countries that were pressing it on contemporary human rights to examine their consciences about their support for Indonesia during the occupation (para 11). It also stated (para 12) that Timor-Leste needed more time before it could 'confront its historical past in a dignified and courageous manner', and (para 13) that Timor-Leste cannot and should not antagonise its closest neighbour.

### *2.3 Timor-Leste Provedor for Human Rights and NGOs*

In their joint submission dated 21 March 2011, the Timor-Leste Provedor for Human Rights and Justice and some 55 NGOs, referred to the CAVR and CTF recommendations in the section headed Impunity and Transitional Justice. The joint submission included a general recommendation that Timor-Leste should "take immediate measures to implement the recommendations of CAVR and CTF" but did not refer to the two proposals before the Parliament for a follow-up institution and reparations initiative.

Summaries of separate submissions by other NGOs can be found in the OHCHR summary of six stakeholder submissions to the UPR. These include submissions by Plan Timor-Leste, Save the Children Timor-Leste, Istituto Internazionale Maria Auxiliatrice (IIMA), Franciscans International, Marist International Solidarity Foundation (FMSI), International Centre for Transitional Justice (ICTJ) and Amnesty International (AI).

ICTJ and AI made detailed references to CAVR and CTF and urged that the Institute of Memory and reparations framework be adopted (paras 19-31). AI also stated that the Timor-Leste penal code is insufficient to challenge impunity for past crimes and proposed several amendments.

### **Recommendation 1:**

**That NGOs and the Provedor clarify their position on the follow-up institute and reparations proposals.**

### **Recommendation 2:**

**That NGOs seek a meeting with the Government of Timor-Leste, specifically the Ministry of Justice, to (a) clarify its position on the follow-up institute and reparations proposals (b) specify which CAVR recommendations have been implemented and its plans for those not yet implemented.**

### **Recommendation 3:**

**That NGOs meet or contact (a) other NGOs who made submissions to the UPR (Plan, Save the Children, IIMA, Franciscans, FMSI) and ask them to support the follow-up institute and reparations proposals and (b) meet with faith leaders in Timor-Leste for the same purpose.**

### **Recommendation 4**

**That, if necessary, civil society campaign on the two initiatives in the 2012 Presidential and Parliamentary elections.**