

# TIMOR-LESTE

## REMEMBERING THE PAST

Recommendations to effectively  
establish the “National  
Reparations Programme” and  
“Public Memory Institute”

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# 1. INTRODUCTION

On 30 August 1999, the Timorese people voted overwhelmingly in favour of independence from Indonesia in a UN-sponsored referendum. In the lead-up to the polls and their aftermath, pro-Indonesian militias backed by the Indonesian military conducted a campaign that resulted in the death of more than 1,400 Timorese,<sup>1</sup> the displacement of as many as 400,000,<sup>2</sup> and massive damage to East Timor’s already rudimentary civilian infrastructure. These actions constituted crimes against humanity and grave human right violations.

This violence followed 24 years of Indonesian occupation (from 1975), during which the people of what was then called East Timor (now Timor-Leste) suffered serious human rights violations. They included unlawful killings; enforced disappearances; arbitrary detention; torture and other ill-treatment; war crimes; sexual violence; violations of the rights of the child; and violations of economic, social and cultural rights.

For many years survivors, victims, their families and civil society organizations in Timor-Leste have called for truth, justice and reparation for victims of human rights violations committed in Timor-Leste. But these demands remain elusive for many Timorese despite a series of initiatives – including national and internationally-sponsored justice initiatives and national and bilateral truth-seeking mechanisms.

In 2001, the Timorese government set up the Commission for Reception, Truth and Reconciliation in East Timor (Comissão de Acolhimento, Verdade e Reconciliação, CAVR), mandated to document crimes against humanity and other human rights violations which occurred between 1974 and 1999. Among its many recommendations, the CAVR’s final report called for reparations to be provided for victims of past human rights violations and for concrete steps to be taken to identify those who were subject to enforced disappearance.

These calls were echoed in the 2008 report of the Commission of Truth and Friendship (CTF), which was set up in 2005 by the governments of Indonesia and Timor-Leste 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 nonrecurrence of similar events”.<sup>3</sup> The Commission was widely criticized, in particular provisions in its mandate allowing for amnesties for perpetrators of serious crimes, but its final report rejected amnesties and concluded that Indonesia bears responsibility for human rights violations committed in 1999. It recommended measures to provide collective reparation to the victims, including establishing a Commission for Disappeared Persons and a “solidarity fund” that “would give priority to meeting the humanitarian needs of those who suffered through the violence in 1999, and particularly in the areas of housing, health care, and economic opportunities”.<sup>4</sup>

To date attempts to implement these recommendations and to provide a comprehensive programme of justice and reparations for victims of past crimes have been weak. The decision of the Timorese Parliament to debate and enact two laws establishing a national reparations programme and a follow-up institution to the CAVR marks an important step towards ensuring victims of serious crimes and their families their right to full and effective reparation under international law. However, the enactment of these laws is only one part of a wider process needed to effectively deal with the past, and the Timorese authorities must take concrete steps to ensure justice for the victims of human rights violations committed between 1975 and 1999.<sup>5</sup>

#### ESTABLISHING A NATIONAL REPARATIONS PROGRAMME

In June 2010, two Bills were submitted to the National Parliament of Timor-Leste seeking to implement the recommendations of the CAVR and CTF reports. One Bill sought to establish a Framework for a National Reparations Programme for victims of human rights violations committed between 1974 and 1999. The other proposed establishing a Public Memory Institute to undertake a number of functions to implement the recommendations in the CAVR and CTF reports, including implementing the Reparations Programme.

Amnesty International welcomed the submission of the two Bills in June 2010 as an important, long-overdue step towards addressing the suffering of victims of human rights violations committed under Indonesian occupation and in the context of the 1999 independence referendum. Thousands of victims have been waiting for decades for recognition, justice and reparation. The draft laws provide an important starting point for Parliament's debate, but they both require significant amendments to fully implement victims' rights to an effective remedy, including full reparation required by international human rights law – most notably under the United Nations Basic Principles and Guidelines on the Right to an Effective Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Principles and Guidelines).<sup>6</sup>

Since June 2010, a number of national and international non-governmental organizations have commented on the draft laws and recommended how to strengthen them. They all deserve Parliament's serious consideration.<sup>7</sup>

In this document, Amnesty International identifies what it considers to be seven essential areas where the two draft laws must be strengthened and ensure the success of the efforts to address the suffering of the victims. Where possible, Amnesty International suggests text for amendments to illustrate the changes required. Alternative text that achieves the same ends may also be considered.<sup>8</sup>

## KEY RECOMMENDATIONS

In order to address the needs of victims, survivors and their families, who have long suffered from the human rights violations which were committed between 1974 and 1999, Amnesty International recommends that the Timor-Leste Parliament take the following steps as a matter of priority:

- Debate, amend and enact the legislation establishing the Framework of the National Reparations Programme and the law Establishing the Public Memory Institute at the earliest opportunity, in accordance with international law and standards, and in particular:
  1. Expand the scope of beneficiaries, in particular those eligible to receive individual reparation, which is currently limited to an arbitrary list of “vulnerable victims”;
  2. Provide that all recognized forms of reparation can be made available to victims;
  3. Provide for specific measures to ensure that women can access effective reparation, including challenging the stigma and discrimination experienced by survivors of sexual violence and gender stereotypes that underlie violence against women;
  4. Ensure the independence of the Public Memory Institute and require its Governing Board and staff to have expertise in specific areas necessary to achieve its mandate.
- Amend the two Bills to establish a fund which can receive financial contributions that will be used towards implementing the reparations programme. The fund should be open to international and national contributions, including from governments. The operation of the fund must be transparent. Sufficient resources should be allocated to the fund to conduct fundraising.

Furthermore, Amnesty International recommends that the Timor-Leste government, the Indonesian government, and the UN Security Council:

- Extend full support to the enactment and implementation of the two reparation laws, and in particular, support through donation the establishment of a trust fund to provide a comprehensive reparations programme for victims of past crime. In particular, the Indonesian government should contribute significantly to the fund, in accordance with its obligations under international law to provide full reparation for human rights violations committed by its forces and agents in Timor-Leste between 1975 and 1999.

## 2. THE FRAMEWORK OF THE NATIONAL REPARATIONS PROGRAMME BILL

Amnesty International welcomes the Framework of the National Reparations Programme Bill, which proposes a detailed programme of reparation to recognize publicly the suffering of the victims and to provide them with individual and collective reparation. Both bills include provisions to ensure individual and collective reparation. They also include strong provisions on consultation and outreach to victims, and on gender so that the different experiences of men and women, girls and boys can be taken into account. However, the definition of “victim”, and the scope of the reparation that can be provided for in the Bill are too restrictive. Failure to address these flaws will place Timor-Leste in violation of its obligations under international law, and will result in significant disappointment for many victims, as the harm they experience is compounded, not remedied.

FAMILY MEMBERS OF VICTIMS WHO HAVE NOT BEEN KILLED AND WHO ARE NOT MISSING AND PERSONS WHO HAVE SUFFERED HARM IN INTERVENING TO ASSIST VICTIMS IN DISTRESS OR TO PREVENT VICTIMIZATION SHOULD BE RECOGNIZED AS VICTIMS

As currently drafted, Article 3 (b) could be interpreted narrowly as limiting the definition of “victim” to only include direct victims of violations and family members of direct victims who have been “killed or went and remain missing”. Such an interpretation is not consistent with the definition of victims in international standards. For example, the definition in Principle 8 of the UN Basic Principles and Guidelines states that “*the term ‘victim’ also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization*”. The distinction is particularly important to those family members of direct victims who survived the violations but who are incapacitated. In such circumstances, direct victims may be unable to work or support their families as they had done before the violation(s) occurred and they may require substantial care from their families. Such family members, who clearly suffered, and may continue to suffer, significant harm from the violations committed against their loved-ones, should not be excluded from the definition.

*Recommendations:*

- Article 3 (1) (b) should be amended as follows (*throughout the paper recommendations for proposed additions are indicated in bold italic / proposed deletions are shown in strikethrough*):

(b) the spouse or any person who lived under analogous condition, the widow, widower, descendants up to the 1<sup>st</sup> degree, the ascendants up to the 1<sup>st</sup> degree, or the dependent of a person falling within the preceding paragraph ~~where that person was killed or went and remains missing~~ **who suffered harm.**

- A new sub-paragraph 3 (1) (c) should be added:

***(c) persons who suffered harm in intervening to assist victims in distress or to prevent victimization.***

THE TERM “VULNERABLE VICTIMS” SHOULD NOT BE DEFINED ARBITRARILY.

Article 6 (2) provides that only “vulnerable victims” are entitled to individual reparation. “Vulnerable victims” are defined in Article 4 as:

“Victims residing in Timor-Leste who continue to suffer from difficulties in the form of physical or mental damages, or from financial difficulties as a result of one or more of five categories of violations:

- i) Victims of torture;
- ii) Victims of a human rights violation that resulted in the victim's permanent physical or mental disability;
- iii) Victims of the disappearance or summary execution of the spouse or of a person who lived with him or her under analogous conditions, descendants up to the 1<sup>st</sup> degree, and ascendants up to the 1<sup>st</sup> degree;
- iv) Victims of forcible removal of their parents while a child and for an extended period of time;
- v) Victims residing in Timor-Leste who suffered violations or sexual slavery, or who were born as a result of an act of rape or sexual slavery.”

Even though the categories may appear to be broad, the approach of arbitrarily excluding victims who may be living abroad and listing only some categories of violations that result in “vulnerable victims” is problematic. Firstly, it requires the Public Memory Institute to strictly apply the definitions provided. For example, the Institute would need to make a determination on whether a victim's physical or mental disability is “permanent” regardless of their current situation. Secondly, it excludes other categories of victims who may continue to suffer substantial physical, mental or financial difficulties as a result of the violations they suffered. Finally, although it may not be practically possible to provide all measures to victims living outside the country, this may not be the case for all measures. Such victims who continue to suffer outside of Timor-Leste should not be excluded.



The strict categorization of who is “vulnerable” fails to acknowledge that victims are individuals and can respond to different violations in different ways. Vulnerability cannot therefore be defined by such a simple formula. The past and current circumstances, including any difficulties in mitigating harm, and the harm suffered by each individual needs to be taken into account.

*Recommendation:*

- Article 4 (1) (a) defining “vulnerable victims” should be amended as follows:

Victims ~~residing in Timor-Leste~~ who continue to suffer from difficulties in the form of physical or mental damages, or from financial difficulties **including** as a result of one or more of five categories of violations: ...

THE PUBLIC MEMORY INSTITUTE SHOULD HAVE DISCRETION TO PROVIDE ALL FORMS OF REPARATION RECOGNIZED IN THE UNITED NATIONS BASIC PRINCIPLES AND GUIDELINES TAKING INTO ACCOUNT THE VIEW OF VICTIMS

Flexibility should be given to the Public Memory Institute in determining what forms of reparation to award. To ensure effective measures are taken to address victims suffering, the Public Memory Institute will need to consult with victims in order to tailor measures to meet the needs identified by the victims themselves. These measures should include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition which are recognized and defined in Principles 18 to 23 of the UN Basic Principles and Guidelines (see Annex 1).

Although a number of reparation measures are listed as possible components of the National Commemorations Programme, the Individual Reparations Programme and the Collective Reparations Programme in Article 9 of the Bill, it is not clear whether the Public Memory Institute is limited to only implementing the types of reparation listed or whether it can develop other measures recognized in the UN Basic Principles and Guidelines. The Bill should be amended to clarify that the measures listed are illustrative and, if necessary, other measures may be employed to effectively address victims’ suffering. Furthermore, although Article 12 provides for consultation with victims, Article 9 (2) only provides for consultation with victims regarding collective reparation. This inconsistency should be resolved.

*Recommendations:*

- Article 9 (1) should be amended as follows:

The content of the National Reparations Programme **shall be decided by the Public Memory Institute taking into account the views of victims which** may notably include: ...

- Articles 9 (1) (a), (b) and (c) should include the following phrase at the end of the sub-paragraphs:

**...and other forms of reparation identified by the Public Memory Institute.**

- Article 9 (2) should be amended as follows to ensure that it is consistent with the text of Article 12 on consultation:

The concrete forms of ~~collective~~ reparation shall be defined in consultation with **victims and beneficiaries** ~~the beneficiary communities~~.

- Article 9 (3) should be amended as follows:

The ~~law~~ **Public Memory Institute** shall define the forms for the provisions referred to in paragraph 1 of this Article, as well as the modalities for their materialization.

#### THE EFFECTIVE PARTICIPATION OF WOMEN IN THE REPARATIONS PROGRAMME SHOULD BE SOUGHT BY PROVIDING MORE CLEARLY FOR GENDER FOCUSED REPARATION

The CAVR report notes in its chapter on reparation:

*“The programme should take gender differences into account because the conflict in Timor-Leste affected men and women differently. Men and women experienced not only different types of human rights violations during the conflict, but also different barriers to mitigating the impact of these violations.”<sup>9</sup>*

Both Bills contain many strong gender provisions that are aimed at increased participation by women in the Reparations Programme. These should be retained and developed further in the working practices of the Public Memory Institute. These provisions include:

- Article 11 (3) of the Framework of the National Reparations Programme Bill requires the Public Memory Institute to prepare recommendations to assist victims in overcoming barriers they face “*with specific reference to female, vulnerable victims in remote locations and situations of extreme poverty and illiteracy*”.
- Article 15 of the Framework of the National Reparations Programme Bill contains a number of measures to ensure women’s participation in the procedure for registration of victims, including “confidentiality of information given by the applicants” pursuant to the law; assistance of “same sex” experts in victim support; and “special flexibility in cases of rape or sexual violence”.

- Article 27 (3) of the Bill on Establishing the Public Memory Institute specifically requires that outreach plans “*shall include specific provisions aimed at ensuring that dissemination takes place amongst rural communities and women*”.

The Bills however do not go into much detail on what the Reparations Programme will offer to women and how it will counter-act the gender discrimination that contributed to the violations they suffered and may continue to suffer. Importantly, they do not provide specific reparation measures, such as guarantees of non-repetition that could prevent the continuing targeting of women for these same violations. Nor do they address the recommendation in the CAVR report that “*at least 50 [per cent] of programme resources be directed to female beneficiaries*”<sup>10</sup> – although the obligation of the Public Memory Institute to implement the recommendation can clearly be drawn from its mandate to “*promote, facilitate and monitor the implementation of the recommendations*”.

Article 8 of the Framework of the National Reparations Programme Bill on non-discrimination does not refer to discrimination on the ground of gender. And the contents of the National Reparations Programme set out in Article 9 does not provide for any gender specific measures to improve the lives of women victims.

*Recommendations:*

- A new paragraph should be added to Article 8 of the Bill on the Framework of the National Reparations Programme which states:

***“Victims defined in Article 3 shall be entitled to reparation without discrimination of any kind, such as race, colour, sex, gender, sexual orientation, gender identity, age, disability, language, religion or belief, political or other opinion, national, ethnic or social origin, without exception, caste, property, birth or other status.”***

- A new sub-paragraph (vii) and (viii) should be added to Article 9 (1) (a) stating:

“A National Commemorations Programme to honour and dignify victims and promote education on human rights and Timorese history that may include the following:

***(vii) challenging the stigma and discrimination experienced by survivors of sexual violence;***

***(viii) Identifying and challenging discrimination and gender stereotypes that underlie violence against women.***

***(ix) educating all ages on equality and enjoyment of human rights for all in planning and participating in the future of Timor-Leste.***

- Article 9 (1) (c) should be amended as follows:

A Collective Reparations Programme that acknowledges and provides material assistance to communities seriously affected by the conflict through the provision of community infrastructure, livelihood projects and projects paying tribute to the victims at community level, ***including challenging the stigma and discrimination experienced by survivors of sexual violence and gender stereotypes that underlie violence against women, and promoting equality and respect for all victims.***

## 3. BILL ESTABLISHING THE PUBLIC MEMORY INSTITUTE

The Bill proposes a Public Memory Institute to implement and monitor the CAVR and CTF recommendations, including the Reparations Programme proposed in the Framework of the National Reparations Programme. Again there are many positive aspects of the Bill, including important provisions requiring outreach, public access to archives and searching for the missing. A number of amendments are however required to ensure the independence of the Public Memory Institute and to further define the composition and expertise required of members of the Governing Board and staff, including specifying a requirement for a gender balance.

### THE INDEPENDENCE OF THE PUBLIC MEMORY INSTITUTE MUST BE PROTECTED

To function effectively in fulfilling its mandate – in particular to develop and implement the Reparations Programme for the benefit of victims without discrimination on any ground, to search for the missing and to establish and maintain an archive – the Public Memory Institute must be independent of political interference.

Amnesty International therefore welcomes the recognition in Article 2 (1) that it is to be “*endowed with technical, administrative and financial autonomy*”. Furthermore, Article 7 establishes a Governing Board which Article 10 (1) states will be made up of “*citizens whose moral standards, integrity, independence, technical expertise and professional skills are widely acknowledged and who have demonstrated their commitment to upholding human rights*”. The need to protect the independence of the Governing Board against political interference is recognized in Article 10 (3) which notes that “*membership of the Governing Board is incompatible with having a leading role in a political party*”.

However, the independence of the Governing Board is undermined by Article 9 (2) which provides that the Governing Board “*shall be appointed and dismissed by a ministerial instruction issued by the Minister overseeing the [Public Memory Institute]*”. This is problematic on two grounds. Firstly, it threatens to politicize the appointment of members of the Board – who must serve as independent experts. If the Public Memory Institute is to be accepted as credible and capable of achieving its vital objectives, the members of its Governing Board must be selected by a transparent process that inspires public confidence. Non-governmental organizations, victims’ groups and other civil society organizations, including women’s organizations, should fully and actively participate in the process of selection and appointment of the Board. Secondly, a decision of the Minister to dismiss a member of the Board may be perceived as political interference in the absence of a clear basis for the decision and an impartial process that demonstrates

it is not politicized. Although Article 13 sets out some genuine circumstances where the term of office shall be terminated, it still provides the Minister with unfettered power to dismiss members without a fair reason.

Although the Public Memory Institute is not a commission of inquiry, it will assume similar roles particularly in relation to searching for the missing. In this regard, Article 7 of the United Nations Updated Set of principles for the protection and promotion of human rights through action to combat impunity provides useful guidance. It states:

*“They [commissions of inquiry] shall also be constituted in accordance with conditions ensuring their independence, in particular by the irremovability of their members during their terms of office except on grounds of incapacity or behaviour rendering them unfit to discharge their duties and pursuant to procedures ensuring fair, impartial and independent determinations.”<sup>11</sup>*

Finally, Article 14 of the Bill provides the Minister with the power to disband the whole Governing Board “*in the event of serious irregularities being detected in the operation of the Board*” without clearly defining what would amount to “serious irregularities”. In fact, it is difficult to anticipate any such circumstances which would require the disbanding of the entire Board whose members will be appointed on the basis of their “*moral standards, integrity, independence, technical expertise and professional skills*”. The power is inappropriate and should be deleted.

*Recommendations:*

- Article 9 (2) should be deleted and replaced with the following provision:

***The President of the Republic shall appoint members of the Governing Board based on the recommendations of an advisory group which shall include the Ombudsman for Human Rights and Justice and representatives of civil society, including women's organizations.***

- Article 13 (1) should be amended as follows:
  1. The term of office of the members of the Governing Board shall be terminated by ***President of the Republic*** under the following circumstances:
    - a. End of their term of office;
    - b. In case of death, permanent disability or as a result of a supervening incompatibility of the member of the Board;
    - c. As a result of his/her resignation to be submitted in writing;
    - d. After being absent from three successive meetings of the board or five interpolated meetings, and unless a justification for

such absences is accepted by a plenary meeting of the Governing Board;

- e. ***in the event of other behaviour rendering them unfit to discharge their duties;***  
~~As a result of his/her dismissal by a ministerial instruction from the Minister overseeing the [Public Memory Institute];~~
- f. Disbandment of the Governing Board in the terms of the article.

- Article 13 (2) should be changed to Article 13 (3) and the following provision should be included as a new Article 13 (2):

***In making a decision on whether to terminate the term of office of a member of the Governing Board under Article 13 (1) (d), the President of the Republic shall establish an advisory group which shall include the Provedor for Human Rights and Justice (Provedoria Direitos Humanos e Justisa, PDHJ) and representatives of civil society organizations to consider the facts and base his/her decision on their recommendations.***

- Article 14 should be deleted.

#### THE COMPOSITION AND EXPERTISE REQUIRED OF MEMBERS OF THE GOVERNING BOARD AND PUBLIC MEMORY INSTITUTE STAFF SHOULD BE FURTHER DEFINED

At present the Bill does not ensure that women will be adequately included in the development and implementation of the Public Memory Institute's work, or represented on its Governing Body and staff. In particular, there is no requirement for a balance of women and men on the Governing Board under Article 9, or a requirement under Article 10 for members to have gender expertise.

Although the requirements of Governing Board members in Article 10 (1) contain many important elements, it should be further expanded to ensure that its members have complementary experience and expertise to perform its functions, including experience in dealing with victims of serious crimes, including traumatized victims, victims of sexual and gender-based violence and child victims.

Similarly, the skills and experience of the staff of the Research and Documentation, Reparations and Missing Persons Unit should be more clearly set out to ensure that it can achieve its mandates.

#### *Recommendations:*

- Article 9 (1) should be amended as follows:

The Governing Board shall comprise a Chair of the Board (Presidente) and two other Board members. ***It shall include both female and male members.***

- Article 10 (1) should be amended as follows:

The members of the Governing Board shall be appointed from amongst East Timorese citizens whose moral standards, integrity, independence, technical expertise and professional skills are widely acknowledged and who have demonstrated their commitment to upholding human rights, ***including through promoting the rights of women and dealing with victims of serious crimes, including traumatized victims, victims of sexual and gender-based violence and child victims.***

- Article 20 should be amended as follows:

- (1) The Research and Documentation, Reparations and Missing Persons Unit, hereinafter referred to as the Unit, shall be the organ tasked with the management of the Archive and other documentation held by the [Public Memory Institute], as well as with the development of outreach, education and training programmes.
- (2) **The staff of the Unit should include expertise and experience in:**
  - (a) dealing with and providing services to victims of serious crimes, traumatized victims, victims of sexual and gender-based violence, child victims and relatives of the missing;***
  - (b) international human rights law and international humanitarian law;***
  - (c) protection, support and security issues relating to victims;***
  - (d) researching human rights violations;***
  - (e) outreach and communication;***
  - (f) education and training, in particular relating to human rights;***
  - (g) managing archives and databases;***
  - (h) gender and cultural diversity;***
  - (i) children, elderly persons; persons with disabilities;***
  - (j) social work, counselling and healthcare.***



## 4. FUNDING

### THE REPARATIONS PROGRAMME AND THE PUBLIC MEMORY INSTITUTE MUST BE ADEQUATELY FUNDED

To be successful and meet the rights and needs of victims, both the Reparations Programme and the Public Memory Institute must be adequately funded. The Public Memory Institute has a broad mandate and will require a significant number of staff with a range of expertise to fulfil the functions allocated to it. In particular, the Institute will require sufficient resources to develop and fully implement the Reparations Programme. Both Bills indicate that the primary source of funding will be from the State Budget, although Article 43 (3) of the Bill Establishing the Public Memory Institute does recognize other sources of revenue, including voluntary contributions.

Neither Bill provides for Indonesia to contribute to the funding or implementation of the Reparations Programme, despite the fact that both the CAVR report and the CTF concluded that the Indonesian government and its forces bear responsibility for many of the human rights violations committed in Timor-Leste.

Under international law a state which is responsible for internationally wrongful acts – including crimes under international law – must provide full reparation.<sup>12</sup> To Amnesty International’s knowledge, however, the Timor-Leste government has not sought reparation on behalf of victims from the Indonesian government. This is an issue that should be considered by the National Parliament recognizing that, while it fails to seek reparation from the responsible state or while negotiations proceed, the Timor-Leste government should step in to provide reparation immediately to the victims and incur the costs involved.

In addition, while the Bill Establishing the Public Memory Institute provides for voluntary contributions, it does not expressly create a fund through which international and national voluntary contributions, including from states, could be provided. Although establishing the “solidarity fund” recommended by the CTF may be implied through the Public Memory Institute’s mandate to implement its recommendations, the proposed fund appears to limit the fund to “meeting the humanitarian needs of those who suffered through the violence in 1999” and does not cover violations committed in the preceding 25 years. Any fund established must be independent and operate transparently. It would also require fundraising staff and resources to be effective.

#### *Recommendations:*

- The National Parliament should request that the government of Timor-Leste seek full reparation from the government of Indonesia, including contributing to funding the Reparations Programme.
- The National Parliament should amend the two Bills to establish a fund which can receive financial contributions that will be used towards implementing the reparations programme. The fund should be open to international and national contributions, including from governments. The operation of the fund must be transparent. Sufficient resources should be allocated to the fund to conduct fundraising.

## 5. CONCLUSION AND RECOMMENDATIONS

Victims, their families and civil society organizations in Timor-Leste continue to call for truth, justice and reparation for human rights violations committed in Timor-Leste between 1974 and 1999. However, to date attempts provide a comprehensive programme of justice and reparations for victims of past crimes have been weak.

The decision by the Timorese Parliament to debate and enact two laws establishing a national reparations programme and a follow-up institution to the CAVR marks an important step towards ensuring victims of serious crimes and their families their right to full and effective reparation under international law. However, significant amendments must be made to both laws to fully implement victims’ rights to an effective remedy, including full reparation required by international human rights law.

In order to address the needs of victims, survivors and their families, who have long suffered from the human rights violations which were committed between 1974 and 1999, Amnesty International recommends that the Timor-Leste Parliament take the following steps as a matter of priority:

- Debate, amend and enact legislation establishing the Framework of the National Reparations Programme and the law Establishing the Public Memory Institute at the earliest opportunity, in accordance with international law and standards; and
- Amend the two Bills to establish a fund which can receive financial contributions that will be used towards implementing the reparations programme. The fund should be open to international and national contributions, including from governments. The operation of the fund must be transparent. Sufficient resources should be allocated to the fund to conduct fundraising.

Furthermore, Amnesty International recommends that the Timor-Leste government, the Indonesian government, and the UN Security council:

- Extend full support to the enactment and implementation of the two reparation laws, and in particular, support through donation the establishment of a trust fund to provide a comprehensive reparations programme for victims of past crime. In particular, the Indonesian government should contribute significantly to the fund, in accordance with its obligations under international law to provide full reparation for human rights violations committed by its forces and agents in Timor-Leste between 1975 and 1999.

### 5.1. THE FRAMEWORK OF THE NATIONAL REPARATIONS PROGRAMME BILL

With regard to the Framework of the National Reparations Programme, Amnesty International is recommending that Parliament:

- Amend Article 3 (b) to expand the definition of "victim" by removing the phrase "*where that person was killed or went and remains missing*" and replace it with the phrase "*who suffered harm*".
- Add a new sub-paragraph to Article 3 (1) to include in the definition of "victim" "*persons who suffered harm in intervening to assist victims in distress or to prevent victimization*".
- Amend Article 4 (1) (a) to ensure that it does not arbitrarily exclude other categories of victims by restricting it only to five categories of violations.
- Remove the phrase "*residing in Timor-Leste*" from Article 4 (1) (a) to ensure that victims who continue to suffer outside of Timor-Leste are not arbitrarily excluded from the definition of "vulnerable victims".
- Amend Article 9 (1) to include the phrase "*shall be decided by the Public Memory Institute taking into account the view of victims which...*".
- Ensure that Articles 9 (1) (a), (b) and (c) include at the end of the sub-paragraph the phrase "*... and other forms of reparation identified by the Public Memory Institute*".
- Amend Article 9 (2) to ensure that it is consistent with Article 12 on consultation by removing the phrase "*the beneficiary communities*" and replacing it with the phrase "*victims and beneficiaries*". Further, ensure that it refers to all forms of reparation included in Article 9 (1) by removing the word "*collective*".
- Amend Article 9 (3) to provide that the Public Memory Institute, not the law, shall define forms for provisions referred to in Article 9 (1).
- Add a new paragraph to Article 8 stating that victims defined in Article 3 will be entitled to reparation without discrimination of any kind consistent with Article 2 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Timor-Leste is a state party.
- Add three sub-paragraphs to Article (9) (1) (a) providing that activities of the National Commemorations Programme may include "*challenging the stigma and discrimination experienced by survivors of sexual violence*"; "*identifying and challenging discrimination and gender stereotypes that underlie violence against women*"; and "*educating all ages on equality and enjoyment of human rights for all in planning and participating in the future of Timor-Leste*".

- Amend Article 9 (1) (c) to provide that the Collective Reparations Programme includes measures “*challenging the stigma and discrimination experienced of survivors of sexual violence and gender stereotypes that underlie violence against women and promoting equality and respect for all victims*”.

## 5.2 BILL ESTABLISHING THE PUBLIC MEMORY INSTITUTE

With regard to the draft law Establishing the Public Memory Institute, Amnesty International recommends that Parliament:

- Remove Article 9 (2) which threatens to politicize the Public Memory Institute and instead replace it with a provision which states that the Governing Board will be appointed by the President based on the recommendations of an advisory group which includes the Provedor for Human Rights and Justice (Provedoria Direitos Humanos e Justisa, PDHJ), civil society and women’s organizations.
- Delete Article 13 (1) (e) and replace it with a provision which allows for the termination of the office of members of the Governing Board “*in the event of other behaviour rendering them unfit to discharge their duties*”.
- Change Article 13 (2) to become Article (3) and create a new Article 13 (2) which requires the President to establish an advisory group to consult with in the event of termination of the term of office of a member of the Governing Board.
- Delete Article 14 on disbandment of the Governing Board.
- Amend Article 9 (1) to require a gender balance in the Governing Board.
- Amend Article 10 (1) to ensure that members of the Governing Board have gender expertise by adding at the end the phrase “*...including through promoting the rights of women and dealing with victims of serious crimes, including traumatized victims, victims of sexual and gender-based violence and child victims*”.
- Add a sub-paragraph to Article 20, providing that staff in the Research Documentation, Reparations and Missing Persons Unit have expertise and experience in the following areas: dealing with and providing services to victims of serious crimes, traumatized victims, victims of sexual and gender-based violence, child victims and relatives of the missing; international human rights law and international humanitarian law; protection, support and security issues relating to victims; researching human rights violations; outreach and communication; education and training, in particular relating to human rights; managing archives and databases; gender and cultural diversity; children, elderly persons; persons with disabilities; social work, counselling and healthcare.

### 5.3 FUNDING

With regard to funding the Public Memory Institute, Amnesty International recommends that Parliament:

- Request that the government of Timor-Leste seek full reparation from the government of Indonesia, including contributing to funding the Reparations Programme.
- Establish, under law, an independent fund to contribute to the implementation of both laws and which would be open to international and national voluntary contributions, including from governments. The operation of the fund must be transparent. Sufficient resources should be allocated to the fund to conduct fundraising.

# ANNEX 1: PRINCIPLES 18 TO 23 OF THE UNITED NATIONS PRINCIPLES AND GUIDELINES

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.

20. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. Rehabilitation should include medical and psychological care as well as legal and social services.

22. Satisfaction should include, where applicable, any or all of the following:

- (a) Effective measures aimed at the cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

- (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
- (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- (e) Public apology, including acknowledgement of the facts and acceptance of responsibility;
- (f) Judicial and administrative sanctions against persons liable for the violations;
- (g) Commemorations and tributes to the victims;
- (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:

- (a) Ensuring effective civilian control of military and security forces;
- (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
- (c) Strengthening the independence of the judiciary;
- (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
- (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;
- (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
- (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;
- (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

## ENDNOTES

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<sup>1</sup> 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, May 2005, S/2005/458, para 6.

<sup>2</sup> See Robinson, Geoffrey “East Timor 1999 Crimes against Humanity”, A report commissioned by the United Nations Office of the High Commissioner for Human Rights (OHCHR), University of California Los Angeles, July 2003, p 1. The report of the Commission for Reception, Truth and Reconciliation (CAVR), *Chega!*, estimates that 250,000 people were displaced after the referendum. See Part 7 Section 7.3 Forced Displacement and Famine.

<sup>3</sup> Terms of Reference for The Commission of Truth and Friendship Established by The Republic of Indonesia and The Democratic Republic of Timor-Leste.

<sup>4</sup> Final report of the Commission of Truth and Friendship (CTF) Indonesia – Timor-Leste, p 300.

<sup>5</sup> See for example Amnesty International, *Timor-Leste: 'We cry for justice': Impunity persists 10 years on in Timor-Leste* (Index: ASA 57/001/2009), August 2009; and Amnesty International *Timor-Leste: International Criminal Court: Justice in the shadow* (Index: ASA 57/001/2010), June 2010.

<sup>6</sup> United Nations Basic Principles and Guidelines on the Right to an Effective Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN document A/RES/60/147, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

<sup>7</sup> See for example La'o Hamutuk *Submission to Committee A, National Parliament Democratic Republic of Timor-Leste From La'o Hamutuk regarding the draft laws for the Public Memory Institute and the National Reparations Program*, 6 July 2010 and International Center for Transitional Justice (ICTJ) *International Center for Transitional Justice Submission to Committee A of the National Parliament Draft Law Establishing the National Reparations Program*, 5 July 2010 *International Center for Transitional Justice Submission to Committee A of the National Parliament Draft law establishing the Institute for Memory*, 5 July 2010.

<sup>8</sup> The comments and analysis in this report are based on an unofficial translation of the draft laws obtained by Amnesty International in September 2010. They are Draft Law No. /II Framework of the National Reparations Programme and Draft Law No. /II Establishing the Public Memory Institute.

<sup>9</sup> Part 11 Section 12.6: Guiding principles for a reparations programme in Timor-Leste, Commission for Reception, Truth and Reconciliation (CAVR) report, *Chega!*, 2005. Weblink: <http://www.cavr-timorleste.org/chegaFiles/finalReportEng/11-Recommendations.pdf>, accessed 3 February 2012.

<sup>10</sup> Part 11 Section 12.6: Guiding principles for a reparations programme in Timor-Leste, Commission for Reception, Truth and Reconciliation (CAVR) report, *Chega!*, 2005. Weblink: <http://www.cavr-timorleste.org/chegaFiles/finalReportEng/11-Recommendations.pdf>, accessed 3 February 2012.

<sup>11</sup> Principle 7, UN Doc. E/CN.4/2005/102/Add.1.

<sup>12</sup> See, for example, the International Law Commission's Draft articles on the Responsibility of States for Internationally Wrongful Acts, 2001. Article 1, “[e]very internationally wrongful act of a State entails the international responsibility of that State”; and Article 31 (1), “[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.”





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