

# Concept paper on a National Reparations Program for Timor-Leste

Prepared by the Working Group on Reparations<sup>1</sup> for Parliamentary Committee A

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## 1. Introduction

Timor-Leste has experienced a number of mechanisms designed to provide justice for past wrongs. These have attempted to provide truth (the CAVR, CTF and a number of UN-commissioned reports), criminal justice (the serious crimes process and Ad Hoc trials in Jakarta), and security sector reform. However to date there has not yet been a comprehensive attempt to provide reparations to victims of the human rights violations committed between 1974 and 1999.

The purpose of this paper is to outline a proposal for a reparations program for Timor-Leste. The difficulties which would ordinarily be involved in this task have been significantly reduced by the existence of detailed recommendations from the CAVR. This paper will explain, consider and elaborate upon the CAVR's recommendations, and will conclude with a proposed course of action for the National Parliament in establishing a national reparations program for Timor-Leste.

Despite legislation allowing the establishment of a trust fund for serious crime victims and their families,<sup>2</sup> such a fund was never established. In 2003 the CAVR commenced a limited program to provide "urgent reparations" to around 700 of the most vulnerable victims who had come before it. Victims were referred to organisations providing medical and social services, attended a healing workshop, and provided with a small grant of 200 USD to meet their most pressing needs. Since that time, the only material assistance provided specifically to victims of the 1975-1999 conflicts has come from NGOs working at community level.<sup>3</sup>

Some limited progress has been made in providing non-material (symbolic) reparations. The CAVR held public hearings and created a number of publications. Its work led to public apologies from Timorese leaders, and through its final report an official acknowledgement of victims' suffering. The refurbished former prison which housed the CAVR contains a small exhibition of photos and victim testimonies. However the CAVR's report needs further dissemination to create a sense of collective memory and to provide victims with a sense of individual acknowledgement. The sites and dates of massacres and other atrocities are only rarely marked by monuments or days of national commemoration. And while a limited program for the exhumation and reburial of bodies is soon to begin,<sup>4</sup> this will be the first such program outside the context of judicial investigations.

Interestingly, this situation is in contrast to that concerning the 2006 crisis. A program to pay monetary compensation to victims of the crisis was established by the Government, and a memorial to victims of the police massacre built in Kaikoli. Efforts have also been undertaken to provide recognition and tributes to veterans of the resistance, and to establish a pension scheme for them. In December 2007 205 veterans were provided with a one-off payment of

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<sup>1</sup> The group consists of representatives from Fokupers, Hak Association, ICTJ, PDHJ, STP-CAVR and UNMIT's Human Rights and Transitional Justice Section.

<sup>2</sup> UNTAET Regulation 2000/15, s 25

<sup>3</sup> Examples of reparative work provided to victims by NGOs include on-going psycho-social through Fokupers and Pradet; as well as the International Catholic Migration Commission's program for assistance to victims of torture which came to an end in February 2008.

<sup>4</sup> Led by the Victorian Institute of Forensic Medicine, the program will start with investigations into an alleged mass grave containing bodies of victims of the Santa Cruz massacre.

US\$9600 each (a total distribution of \$1.968m).<sup>5</sup> A more ambitious program to provide pensions to veterans and the family members of deceased veterans has been agreed on and is expected to start being implemented soon. These programs highlight the existence of a gap in Timor's transitional justice program where a reparations program for victims might be expected to be found.

## 2. Justification for a Reparations Program in Timor-Leste

### 2.1. The legal basis for reparations

Under international law, when a violation is committed, reparations must be paid.<sup>6</sup> This rule applies whether the violation is committed by one state against another, or by a state against individuals (including its own nationals). The obligation to provide a remedy (including reparations) to victims of human rights violations, is contained in a number of international instruments.<sup>7</sup> Successor governments inherit the obligation to provide reparations for victims.

Importantly, international law uses a broad concept of "reparations", not confined to monetary compensation. Reparations are understood as *redress provided to victims for the harm they have suffered*. This can include compensation (for economically assessed damage) but also other types of redress, such as:<sup>8</sup>

- rehabilitation (including medical, psychological, legal or social services);
- "satisfaction" which encompasses a number of measures including truth seeking, locating disappeared persons, recovering and reburial of bodies, public apologies, commemoration and memorialization and steps to prevent future violations;
- restitution: that is, measures to restore victims to their original position (including restoration of human rights, identity, employment, citizenship and return of property);
- guarantees of non-repetition: such as institutional reforms and strengthening human rights.

While all types of reparations are important, this paper will focus particularly on *rehabilitation* and *satisfaction*, since these have yet to be provided systematically to victims in Timor-Leste.

Usually it is the violating party which must pay reparations. In the case of Timor-Leste this includes a range of parties named in the CAVR report (including Indonesia and those who supported in, Timorese political parties, and Falintil). However the UN General Assembly has indicated that "where the parties liable for the harm suffered are unable or unwilling to meet their obligations" then "states should endeavour to establish national programmes for reparation and other assistance to victims."<sup>9</sup>

International law is also developing principles concerning reparations after massive violations of human rights, of the kind experienced in Timor-Leste. The UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity states:

Reparations may also be provided through programmes, based upon legislative or administrative measures, funded by national or international sources, addressed to

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<sup>5</sup> "TL Government Honours Veterans With Financial Contributions", Timor Post, 4 Dec 2007; "Xanana: Kombatente Barak Lahela iha Estranjeiru", Suara Timor Lorosae, 4 Dec 2007.

<sup>6</sup> *Chorzow Factory Case* (1927) PCIJ (Series A) No.9 at 21.

<sup>7</sup> Those ratified by Timor-Leste are: International Convention on Civil and Political Rights, art 2; International Convention on the Elimination of all forms of Racial Discrimination, art 6; Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, art 14.

<sup>8</sup> For more detail see 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, Annex to GA Resolution 60/147, paras. 19-23

<sup>9</sup> *ibid.*, para.16

individuals and communities. Victims and other sectors of civil society should play a meaningful role in the design and implementation of such programs. ...<sup>10</sup>

A national reparations program established by the National Parliament for victims of the 1974-1999 conflicts would thus meet Timor-Leste's obligations under international law.

Such a scheme would also comply with the requirements and spirit of section 12(3) of the Timorese constitution, which requires the state to "ensure special protection" to "war-widows, orphans and other dependants of those who dedicated their lives to the struggle for independence and national sovereignty."

## **2.2. Moral and political reasons for establishing a reparations program**

The international legal standards set out above are founded on a cross-cultural moral view which includes an aspiration to justice. One element of justice must be an attempt to remedy past wrongs. This is done most concretely by providing material assistance to victims, but other forms of assistance can also restore dignity and help with psychological healing.

The importance of reparative measures as a type of justice is not simply a western concept. Anthropologists have commented on the central role of reparation in traditional Timorese concepts of justice. In Timorese custom, a person who does wrong must *kasu sala*. This involves recognizing the wrong done, with the victim's family accepting the confession and requesting a payment (which may be compensatory or symbolic). While specific beliefs vary through Timor-Leste, this general approach is common to the country as a whole.

Providing reparations to victims can contribute to the process of healing after trauma:

- Most important in this process is providing *recognition* to victims, acknowledging their suffering. This can restore self-esteem, and assist victims to rebuild their lives.
- In some cases the recognition provided to victims will be enhanced if material assistance is provided together with acknowledgments. This demonstrates a real and concrete commitment from government to addressing victims' suffering.
- While it is important that reparations not be treated as an alternative to criminal justice, victims have often indicated that the provision of reparations would "help them be patient" in their quest for justice.<sup>11</sup>

These reasons are strong ones in Timor-Leste today. Providing reparations would address community expectations which were raised but not yet met. Victims who gave statements to the CAVR or the Serious Crimes Unit are still waiting for justice, acknowledgement or assistance.<sup>12</sup> So far little has been provided. Recent research reveals that many victims feel they have been forgotten by the government.<sup>13</sup> A national reparations scheme would play an important role in restoring the confidence of victims and their communities in the state. This is particularly so given the efforts which have already been made to honour veterans and to assist victims of the 2006 crisis. As a matter of equality and to prevent resentment, some measures should also be extended to the victims of the historical conflicts.<sup>14</sup>

Despite these reasons, it is not uncommon to hear resistance to the idea of a national reparations scheme. Annex 1 identifies and answers some familiar objections to reparations.

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<sup>10</sup> Principle 32, paragraph 2.

<sup>11</sup> Lia Kent, PhD fieldwork findings, 2007.

<sup>12</sup> This was one of the findings of a recent process of victim consultation undertaken by civil society groups. The consultation was carried out jointly by HAK, Fokupers, the Commission for Justice and Peace (Baucau), STP-CAVR, and ICTJ. The UNMIT HRTJ participated in some districts. A total of 372 victims (146 women and 226 men) participated in the consultation, across 13 districts. Victims' views were sought in focus group discussions and through individual survey forms.

<sup>13</sup> *ibid.* See also Lia Kent, PhD fieldwork findings, 2007.

<sup>14</sup> The recent civil society consultation revealed that many victims feel resentful that recognition and assistance has been extended to these other groups but not to them.

### 3. The CAVR recommendations

Among the CAVR's more than 200 recommendations are 10 pages devoted to a national reparations scheme. In addition many of the CAVR's other recommendations relate to reparations and could be incorporated as part of a comprehensive reparations program.

#### 3.1. How the CAVR's recommendations were created

Throughout the CAVR's work, victims, their family members, witnesses and communities were asked for views on what recommendations the CAVR should make. This input was gathered during statement taking, interviews, public hearing, healing workshops, community profile sessions and town meetings, and in sectoral workshops with civil society groups.

After the CAVR's first year and a half of operation, its Victim Support Unit (which had implemented the urgent reparation program) was transformed into a Reparations Unit with responsibility for designing recommendations on reparations. For three months this unit was assisted by a reparations expert from ICTJ. The unit gathered information collected in the field, held workshops with commissioners, and proposed options from which the commissioners made selections. The recommendations were then formulated by the report writing team and adopted by the Commission.

As a result of this approach, the CAVR's recommendations on reparations are strongly based in victim and community views, and are also informed by international experience.

#### 3.2. Overview of the CAVR's recommendations on reparations

The CAVR sought to reflect five key principles in the reparations program it proposed:<sup>15</sup>

- The program must be *feasible*, taking into account that Timor is still underdeveloped and has many urgent needs. Therefore the program must try to be selective and use collective approaches where possible, so as to minimize the burden on the state.
- The program must be *accessible* even to the most isolated and disempowered victims.
- The program should be *empowering*. It should enable victims to take control of their own lives rather than encouraging dependency.
- The program must take *gender issues* into account, including the way in which men and women suffered differently because of the conflict. At least half the program's resources should be directed toward female beneficiaries.
- The program should *prioritize victims based on need*. Since it is not possible to assist all victims immediately, it is best to start with those who most urgently need assistance.

These principles led the CAVR to recommend a reparations program which can be summarized as follows:

**Symbolic reparations**, both individual and collective, should involve a range of measures and be made available to a very wide group of victims and communities, regardless of their current levels of need.

**Material reparations**, both individual and collective, should be provided only to a small number of victims (and communities), who suffered the most severe types of violations and who are still *highly vulnerable*. These reparations should primarily involve providing access to educational, social, health, and financial services, as well as skills training to ensure that the most vulnerable victims receive optimal support in rebuilding their lives.

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<sup>15</sup> See *Chega!* Part 11: Recommendations, 12.6 (English version p39)

### 3.3. The CAVR recommendations as a starting point

The CAVR's recommendations are not in every respect perfect, and nor are in a sufficiently detailed form to allow their immediate implementation. However they remain the best possible starting point for the design of a reparations program in Timor-Leste.

Because of its research on patterns of violence in Timor and its extensive involvement with victims and communities, the CAVR was well-placed to design responses to human rights violations. Making such recommendations was part of the CAVR's mandate.<sup>16</sup> The CAVR was also the first body in Timor-Leste to undertake a reparations scheme for victims of human rights violations, and remains the only public institution to have provided reparations for violations committed between 1974 and 1999. Finally, the CAVR's recommendations were created through a process which met international best practice: involving community and victim consultation, expert input and final decision-making by Timorese commissioners.

Views expressed at the consultation on reparations held in Obrigado Barracks on 26-27 March indicated that there is strong support for *Chega!* and that the CAVR recommendations would be viewed as an appropriate starting point for a reparations program.

The nature of the reparations scheme proposed by the CAVR also has particular strengths:

- The program is *financially realistic*, as it proposes material reparations for only certain categories of victims, and does not focus on monetary compensation;
- Despite this, the program achieves relative "completeness" (the ability of a reparations scheme to reach *all* victims), by using a combination of collective and symbolic measures;
- The program involves a number of inter-related measures which will bolster each other: including access to education and health, livelihood assistance, and symbolic measures to provide recognition and restore dignity;
- The program, although not intended to be a development initiative itself, would be closely related to ongoing development initiatives, particularly in the areas of health, education and livelihoods. Those initiatives and the reparations program would have a mutually reinforcing effect.

For these reasons, this working group considers that the CAVR recommendations should be used as the basis for a national reparations scheme. These will need to be developed further and made operational through consultation, discussion and expert input, which may also lead to new insights and adaptations.

## 4. Elements of a Reparations Program in Timor-Leste

### 4.1. Types of reparation

Reparations can generally be categorized into four types, as set out in the following table:

	<b>Material</b>	<b>Symbolic</b>
<b>Individual</b>	Measures providing tangible assistance to individuals: eg monetary compensation, pensions, or access to essential services	Measures for individuals which are of primarily symbolic value: eg individual letters of acknowledgment and apology, reburial of individual victims' bodies
<b>Collective</b>	Tangible assistance provided to groups of victims: eg providing a health or education facility to a community	Measures of symbolic value targeted at a community or large number of unspecified individuals: eg a public apology, national days of commemoration

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<sup>16</sup> UNTAET Regulation 2001/10, especially sections 13.1(d) and 21.2.

#### **4.1.1. Material forms of reparation**

##### **(i) Individual material reparations**

CAVR recommended that the program for individual material reparations focus not on distributing money but on providing services, or assisting victims in accessing existing services.<sup>17</sup> Some services which should form a part of this scheme are:

- health and rehabilitation services
- mental health services (including counseling, psychiatric care, social work services)
- skills training and livelihood assistance
- housing assistance
- financial services, such as micro financing schemes
- educational services (including adult education)

The challenge for a reparations program will be to help victims access these services where they have to date been inaccessible. To do this, the program must address the practical barriers which prevent victims from accessing services, including for example that the victim:<sup>18</sup>

- lives too far away from where the service is provided;
- has insufficient money to pay for the service or to travel to the service provider;
- has a physical or mental impairment, or experiences social barriers which make accessing the service difficult;
- has family and/or livelihood commitments which prevent him/her from traveling to the service provider;
- doesn't have materials which are necessary for accessing the service (for example books, shoes for going to school);
- doesn't know that the service exists or doesn't know how to access it; or
- doesn't believe the service will be of benefit because of its nature or quality.

There are also likely to exist many other barriers. In some cases (for example where the victim suffers from a specific medical condition) the barrier may be that the required service simply does not yet exist in Timor-Leste.

The reparations program must address these barriers in two ways:

- 1) By assisting individual victims to access services, including by waiving fees or providing transport, referrals, physical or psychological assistance, materials, or scholarships.
- 2) By enhancing the services which already exist, for example by increasing their capacity so they can assist more people, including in more remote areas

This will require planning and analysis to determine the types of measures needed to overcome the barriers which have to date prevented victims from accessing essential services and assistance. Some indications as to these barriers will be found in the information collected by the CAVR during its work. However new investigations will also have to be done, as circumstances may have changed since the CAVR data was collected.

The nature of the measures which are offered will also depend on the type of organizational system which is set up to deliver the reparations program. This issue is discussed further below. However to the extent that it is possible the program should attempt to achieve:

- flexibility – to be able to address the particular needs of individual victims;
- coherence – so that the various measures provided support and enhance each other.

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<sup>17</sup> Support for an this approach was expressed during the recent process of victim consultation undertaken by civil society groups (see footnote 12 above). Victims rarely asked for monetary payments but rather focused on seeking assistance with specific needs including housing, education, healthcare and psycho-social support.

<sup>18</sup> A number of barriers such as these were mentioned during the recent victim consultation process.

Thought will also need to be given to the time period for which assistance will be provided. In the case of educational assistance for children, this might be provided until schooling is completed, or until children reach the age of 18. In respect of other types of assistance, measures could be provided for a set period of time, or until the victim is considered no longer vulnerable.

Finally, consideration must be given to whether to include any monetary payments or pensions in the material reparations scheme. The best reparations models internationally involve a combination of monetary and non-monetary measures. However importantly, the CAVR's proposed scheme does *not* involve the payment of monetary compensation. There are several reasons for this:

- Victims may view payments of money as an attempt to buy their silence, or as an alternative to justice. This has been the experience in other contexts, and was also a concern voiced by some beneficiaries of the CAVR urgent reparations scheme.<sup>19</sup>
- Victims may be offended by the provision of a relatively small amount of money as "compensation" for the loss of a family member or for grave physical or psychological damage, where true compensation for such losses is simply impossible.
- The distribution of money (rather than targeted services) may cause more resentment among non-beneficiaries, as it is a measure which all community members would seek and is not clearly linked to the particular form of suffering experienced by a beneficiary.
- Monetary payments may largely benefit those who are least vulnerable (for example those with access to information and resources). Conversely, targeted services and livelihood assistance are likely to be of most interest to those who are in real need.
- Providing monetary payments encourages a relationship of dependency between victims and the state.<sup>20</sup>
- Timor-Leste's limited resources cannot support monetary compensation for all victims.
- The lack of a financial infrastructure in Timor-Leste would make the distribution of money to a large number of victims difficult to implement and susceptible to corruption.

Some of these problems arise with all forms of material reparations, (and can be mitigated with outreach), but they are likely to be more acute where monetary payments are provided.

In Timor-Leste there is a further reason why distributing money is not the best way to help victims. In many cases simply providing money will not remove the barriers faced by victims in accessing education, health or livelihoods services. Removing these barriers will in many cases require more creative solutions, such as establishing new service providers in remote areas, or assisting existing service providers to expand their areas of work.

Despite this, there may be some victims whom it is difficult to assist without providing some monetary assistance. This may include, for example, elderly widows, who are without the capacity to earn a regular income even with livelihoods training or micro-finance.<sup>21</sup> A small pensions program could be considered to assist the most vulnerable victims of this sort. However great care would need to be taken to establish clear criteria so that pensions were limited to those most in need, and to conduct a strong outreach program so that other victims understood why they were not also receiving money. Given the dangers involved in this approach Parliament may decide to simply not include a pensions program in the reparations scheme. These questions could be resolved through consultation with communities and leaders to determine whether a pensions program is necessary to address victim needs.

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<sup>19</sup> Discussions with former CAVR Victim Support staff. One former staff member explained that some victims felt that the payment was made to "buy their suffering" or to "shut their mouths".

<sup>20</sup> This problem was observed during some cases in the CAVR's urgent reparations program: Interviews with former CAVR victim support staff.

<sup>21</sup> During the recent consultation with victims groups undertaken by civil society groups (see footnote 12 above) some elderly victims requested to be given a small amount of material assistance which would help sustain them in their daily lives.

The proposed program will require a case-by-case evaluation of the measures needed for each victim and his/her family. It is proposed that to do this individual case workers should be used to maintain contact with each victim and his/her family, evaluating their needs, and agreeing on a personalized program. This relationship and liaison is important not only for ensuring access to appropriate services, but also as concrete way of demonstrating to victims that the states cares about their well being and is taking measures to look after them as *victims*. The involvement of this case worker would be the main feature distinguishing this program from the provision of the same services to the rest of the population.

**(ii) Collective material reparations**

The CAVR also recommended that collective assistance measures be provided to severely affected communities. This concept must be clearly defined according to specific criteria.

As with individual material reparations, efforts should be made to provide measures which reflect the particular needs of the affected community. The CAVR recommended that these measures could include:

- healing workshops and creativity therapies using theatre, graphic arts, music and prayer.

Further work should be done to assess the current needs of seriously affected communities, to determine whether additional forms of assistance are required, including, for example:

- Livelihoods assistance to community groups or for communal projects; or
- Establishing service delivery points to meet special health, educational or social needs.

**4.1.2. Symbolic forms of reparation**

Material reparations providing *recognition* to victims should be provided together with symbolic measures as part of a coordinated program. Symbolic reparations are important because they:

- extend the reparations scheme to *all victims*, including those who are no longer significantly disadvantaged by their violation but who still deserve recognition;
- enhance the value of material measures provided to the most vulnerable victims by showing that those measures have meaning and are not intended to buy victims' silence.

The CAVR recommended a range of symbolic measures. These should be undertaken at national, district and local levels. The CAVR also stated that the measures must be chosen in consultation with victims, so that the measures are meaningful to the victims involved.<sup>22</sup>

**(i) Individual symbolic reparations**

Individual symbolic measures could include:

- the creation of a public register of the disappeared and killed;
- an exhumations and reburials program, including assistance to victims in locating the remains of their family members
- letters of recognition/acknowledgement from political or church leaders

**(ii) Collective symbolic reparations**

Some forms of collective symbolic measures which could be undertaken include:

- memorializing (for example by creating monuments and parks and by naming public places after past events);
- days of commemoration (for example in relation to specific massacres, the famine, the Indonesian invasion, or the civil war);

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<sup>22</sup> The recent consultation with victims undertaken by civil society groups (see footnote 12 above) demonstrated that victims would welcome a range of symbolic measures, including many of those proposed by CAVR and listed here.



- the creation and funding of a public memorial and learning center relating to the conflicts, perhaps in the Ex-Comarca Balide;
- marking and honouring mass graves;
- marking former detention centers;
- apologies from leaders regarding specific event (for example during the civil war)<sup>23</sup>
- programs to assist communities in the maintenance of cemeteries and memorials
- encouraging the development of literature, music and art for remembrance (for example by convening exhibitions, providing scholarships for study, or assisting with publications)
- formally, establishing, funding and regulating access to the CAVR archive, as a repository for information relating to the past conflicts;

Further efforts should be made to determine which of these measures would be most meaningful to victims. (For example, there is some indication that particular value is placed on schemes to assist in the exhumation and reburial of bodies<sup>24</sup>). Those which are most meaningful should be prioritized. However, over time efforts should be made toward all these projects, many of which are also of benefit to future generations.

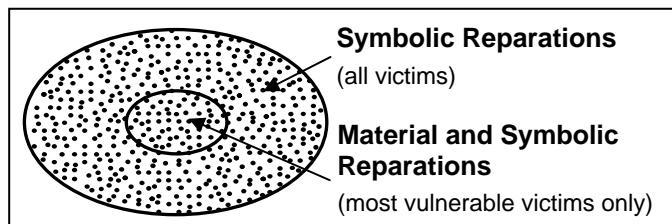
In ensuring that symbolic reparations achieve their goals, special care must be taken regarding the *manner* in which the measures are undertaken. Every attempt should be made to conduct these programs in ways which honour victims and demonstrate respect.

Finally, there is a danger that some people will view symbolic reparations as empty or token.<sup>25</sup> Undertaking symbolic and material reparations schemes concurrently, or better still, building them into one overarching program, is one way of minimizing this problem.

Annex 2 sets out all proposed measures: material and symbolic, individual and collective.

#### 4.2. Beneficiaries

According to the CAVR, material assistance should be provided only to the most disadvantaged victims, while symbolic reparations should be made available to all victims.



##### 4.2.1. Beneficiaries of symbolic measures

In theory, all victims should be beneficiaries of symbolic reparations. In practice it will be hard to reach all victims with individual measures, and also difficult to make collective symbolic measures relevant and accessible to all victims. However, efforts should be made to reach as many victims as possible. This will be achieved in part through effective outreach. However the number of victims able to benefit from symbolic reparations will also depend on the nature of the measures used. Some measures, such as public apologies, can be very quickly applied to many victims. Others measures, such as marking detention centres and mass graves require more time and resources to reach a large number of victims.

<sup>23</sup> Some leaders gave apologies at CAVR's internal conflict public hearing, but these were general in nature and some victims say they are waiting for apologies relating to specific conduct

<sup>24</sup> Lia Kent, PhD fieldwork findings, 2007.

<sup>25</sup> *ibid.* Kent found that some recipients of the veterans' medals were honoured by the process, but others considered the medals worthless and demanded more practical forms of assistance. This was echoed by views expressed in recent victim consultations (see footnote 12 above) and by comments made by civil society groups in the consultation on reparations held on 26-27 March 2008 by the Human Rights and Transitional Justice Section of UNMIT, in cooperation with the members of this Working Group, and with funding support from the Office of the UN High Commissioner for Human Rights. The consultation was attended by Members of Parliament, representatives of Ministries, civil society groups, church representatives, the STP-CAVR, CVTL, ICTJ, ICRC, UNDP, UNHCR and UNMIT.

Programs for some individual symbolic measures, such as locating and reburial of bodies, will also require a system for identifying and prioritizing beneficiaries based on fair and clear criteria. These criteria should be developed with input from community consultations.

#### **4.2.2. Beneficiaries of material measures**

A key feature of the CAVR's recommendations is that under the proposed approach material reparations would *not* be distributed to *all* victims. This reflects an attempt to make the program realistic and manageable from both a financial and a logistical perspective.

##### **(i) Individual material reparations**

According to the CAVR, individual material reparations should be limited through two key sets of criteria:

- The type of violation experienced: This includes:
  - i) the killing or disappearance of a husband, wife, child or parent;
  - ii) sexual violations
  - iii) torture
  - iv) other severe violations which resulted in ongoing physical or mental disabilities
- A resulting present level of vulnerability: individual material reparations would only be received by victims (or their family) who at the time of reparations program remain highly vulnerable or disadvantaged *as a result of the violation they experienced*.

BOTH these requirements must be met. Material reparations would not be made available to highly vulnerable victims of other violations (such as forced displacement) or to victims of serious violations who no longer face significant disadvantage. It would also be a requirement that the extreme vulnerability or disadvantage experienced by the victim (or his/her family) was caused by the serious human rights violation in question.

In this way the number of beneficiaries will be limited, yet assistance will be provided to those who were worst affected by human rights violations and who continue to suffer as a result of that violation. Views expressed during the consultation on reparations held on 26-27 March 2008 show that there is general support for the idea of prioritizing assistance to the most vulnerable in this way.

However, deciding which persons meet these criteria will not be easy. Defining the limits of who may receive assistance will prove difficult. For example:

##### *How should vulnerability be defined?*

The test should focus primarily on *economic disadvantage*, but also take into account *severe physical or mental disabilities* which cause suffering even to persons not facing extreme poverty.

One major challenge will be creating a test for vulnerability which can be applied consistently across the victim population, and which will be perceived as fair by the community. Further consultation will be required to determine how a test can be created and applied so as to ensure community support and not become a cause of tension. Consultation should focus on community views on how assistance should be prioritized: what circumstances do communities believe show a high enough level of vulnerability to attract special assistance?

##### *How should human rights violations be defined?*

Strict legal definitions are unlikely to be helpful for this purpose. Definitions should be easy to understand and apply, and should reflect community views on what constitutes a wrongful act.

A broad approach should be taken in order to include:

- acts committed by any party to the conflict (whether a soldier, state official, guerilla fighter, or a member of the resistance, a political party or a militia);<sup>26</sup> and
- a wide range of acts regardless of the motive for which they were committed.

A wide temporal scope should be used: the scheme must not be limited to violations committed in 1999, but should include those committed from 1974-1999, as recommended by the CAVR.

*What exclusions should apply?*

Some rules may be required to *exclude* beneficiaries from the program. These might apply to people who are receiving assistance under another government program (such as those designed to assist veterans).

*Should the program extend to East Timorese people who remain resident in Indonesia?*

Providing reparative measures to East Timorese refugees who remain resident in West Timor (including those who have formerly taken out Indonesian citizenship) would be a gesture of goodwill and reconciliation. However from a practical perspective, providing measures to these individuals could be difficult, especially if the reparations program focuses on providing referrals to services offered by the Timorese government and non-state organizations working in Timor-Leste. Particular thought should be given to this issue and how challenges could be overcome, including by working together with local authorities and non-government organizations in West Timor.

These and a number of other difficult questions will need to be answered in designing the scheme. In resolving these questions, it will be particularly important to ensure that:

- Consultation is carried out to ensure that the criteria to be used reflect community views;
- The criteria which are used are clear and easy for the community to understand; and
- Outreach is used to communicate and explain the criteria to communities.

These steps should reduce the risk of conflict by ensuring that criteria used to select beneficiaries are considered to be fair by communities and are clearly understood.

## ***(ii) Collective material reparations***

Collective reparations should be provided to communities which suffered large-scale gross human rights violations. CAVR recommended restricting assistance to those communities with a high concentration of victims eligible for individual material reparations. However Parliament could consider relaxing this requirement in order to use collective reparations as a cost-effective way of reaching victims who do not receive individual reparations.

Communities would be required to apply and to submit a list of victims in the community who would benefit from the measures. The CAVR also stipulated that a gender balance of participating victims should be a requirement for receiving collective reparations.

## **5. Organization and implementation: who will implement the scheme and how can beneficiaries be identified?**

### **5.1. Institutional framework for the scheme**

#### ***5.1.1. A specialized institution***

CAVR proposed that a specific body be created to implement and coordinate the national reparations program. This body should be created by the National Parliament. This approach would have a number of benefits:

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<sup>26</sup> During the consultation on reparations held on 26-27 March 2008 it was emphasized that reparations must be provided not only to victims of militia and TNI crimes, but also to victims of the internal conflict and of crimes committed by pro-independence groups.

- Implementing the scheme will involve a range of government ministries (including Health, Education, and Social Solidarity). Some services may be best provided not by government but by non-government organizations.<sup>27</sup> Because of this, it would be difficult to select one ministry capable of overseeing the program and appropriate for this role.
- An independent statutory body created by the Parliament would be more likely than any government ministry to be perceived as independent from political parties and hence more likely to gain community trust.
- Oversight of the process and the body would be easily retained by Parliament, rather than being in the hands of the government in power at any given time.

However although a special institution should oversee the scheme, a cooperative, all-of-government approach must be used. The responsibilities of the specialized institution would include liaising with ministries, and other state institutions as well as non-state organizations.

The institution should be given responsibility for conducting *both* material and symbolic reparations programs. This will enable the programs to complement each other and will encourage victims and the community to view material and symbolic measures as interrelated and part of one coherent process.

One issue to consider is what relationship the reparations institution should have to a CAVR follow-up institution.<sup>28</sup> There would be value in the two bodies maintaining a close relationship. Another option would be for the reparations institution to form one section of the CAVR follow-up institution. This may have some benefits:

- Associating the reparations plan closely with a CAVR follow-up institution may increase victims' acceptance of the scheme, by making use of CAVR's good community relations;
- Locating the reparations institution within a CAVR follow-up institution would maximise access to the CAVR archives which contain valuable information about victims;
- The scarce human resources available with expertise relevant to post-CAVR work may not be efficiently used if divided between a number of separate institutions.

However, undertaking a reparations program will be onerous and time-consuming. Care must be taken that this does not detract from the other important work which should be assigned to a CAVR follow-up body (including maintaining the CAVR archive, conducting dissemination, and assisting in the implementation of other CAVR recommendations).

Whether separate or as part of the CAVR follow-up institution, a reparations program must be given a clear mandate and a guaranteed budget to ensure effective implementation.

### **5.1.2. Constitution and organization of the reparations institution**

The Parliament will be required to decide on important issues concerning the constitution and organization of the proposed institution. These decisions should take into account consultation. Some guiding principles may also assist in this process, for example that:

- Decision-makers in the institution should be chosen after consultation and include people from various districts and political backgrounds. A gender balance should be sought.
- Decision-makers in the institution should be employed on a full-time basis and care taken to prevent conflicts of interest through their concurrent involvement in other projects.

The Parliament should consider mandating the establishment of district offices for the institution to ensure a presence throughout Timor-Leste and facilitate contact with victims in remote areas. Outreach efforts should also be undertaken in West Timor if reparations are extended to victims still residing there.

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<sup>27</sup> One example of this might be psycho-social care. In this field although extremely limited government services are available, skilled local organizations exist.

<sup>28</sup> The creation of a follow-up institution was recommended in Recommendation 13.2.

The program must take into account the special needs of the most vulnerable victims, including that they may need help to access the reparations process. This might include language assistance, assistance reading materials or filling in forms for illiterate victims, transport or counseling. Such services could be provided through NGOs, by a government ministry, or by a special branch of the reparations institution itself.

### **5.1.3. Duration and ongoing oversight**

The major phase of the program will include outreach, applications, decision-making about eligibility and entitlements, and the establishment of systems for delivering assistance. This phase should be completed within a set time period but care should be taken to ensure that adequate time is provided. It is better to provide a longer time period initially rather than relying on repeated extensions of mandate which impede planning and management. It is proposed that this phase of the program could be established for a period of three years.

However after this first phase, ongoing oversight will be required to ensure the continued effectiveness of measures which are continuing in nature. Medical, psycho-social care and educational assistance are likely to fall into this category. Provision should therefore be made for establishing a long-term body to carry out this ongoing oversight, although this body would be small and limited in its functions. The overall duration of the program would depend on how long specific measures are offered for. While this may vary depending on the needs of victims and the types of measures provided, in many cases assistance will need to continue for a long time, perhaps for the lifespan of some victims.

## **5.2. Identification of beneficiaries**

### **5.2.1. Locating potential beneficiaries: identifying the most vulnerable victims**

#### **(i) Identifying potential beneficiaries**

An initial time period should be set during which the reparations program can work on identifying vulnerable victims, and applications can be made by victims seeking assistance under the scheme. Before and during this period a significant outreach effort must be made to ensure that as much of the population as possible is aware of the program. Special attempts should be made to target women through this process to ensure that applications achieve a gender balance.

The application process itself must be designed to be highly accessible to victims, including those in remote locations, those with limited literacy and those who are unable to speak the official languages. This may mean for example:

- using application forms which are as simple and brief as possible;
- providing application forms in various languages;
- providing staff to assist in completing application forms and to answer questions about the process.
- making the time period for lodging applications as lengthy as possible.

#### **(ii) CAVR participants and other victims**

The CAVR recommended that “the reparations program begins with a list of victims who came before the CAVR, selected and prioritized according to the criteria [under the proposed scheme].” A two year period would then be allowed for applications from other victims.

There are some good reasons for providing priority treatment to CAVR participants. These victims participated in the CAVR process voluntarily and allowed it to become a success. Many have been waiting since that time for some acknowledgement of their contribution. Beginning the reparations program with these victims could provide that acknowledgement.

However there are also reasons why care must be taken to ensure that CAVR participants are not unduly favoured over other victims. The CAVR collected statements from only 1 % of the total population and only 21.4% of statement-givers were women.<sup>29</sup> There are likely to be many vulnerable victims who did not have a chance to participate in the CAVR's work or who chose not to participate for personal reasons.

A further difficulty is that information held in the CAVR archives and database is unlikely to reveal which CAVR participants are eligible under the scheme. The CAVR did not collect information about victims' socio-economic circumstances or level of health, and in any event such data would now be out of date. For this reason, some form of screening will have to be undertaken even for those victims who previously participated in the CAVR's work.

One way to balance these issues may be to open the application process to all victims for a certain period of time, but to launch a special program for re-contacting CAVR participants (starting with those likely to be highly vulnerable) and actively assisting them to apply under the scheme. This would ensure that CAVR participants receive special recognition and that the most vulnerable among them receive assistance as a priority, but at the same time ensuring that other victims are equally eligible for benefits.

Final decisions on these issues will require an assessment of the information held in the CAVR archive and the extent to which it would enable the re-contacting or special targeting of CAVR deponents. Discussions are underway with the STP-CAVR for access to this data.

### **5.2.2. *Determining beneficiaries and entitlements: the decision-making process***

Some of the most difficult questions will relate to the system for determining:

- which victims are entitled to become beneficiaries of material reparations; and
- what the extent of each victim's entitlement will be.

This will require assessing individuals' claims and the extent to which they meet the definitions and requirements of the scheme.

Mechanisms to decide these questions must be capable of being explained and understood by victims and communities. A good outreach program will be required to socialize the system throughout Timor-Leste.

Parliament will need to decide what evidence should be used to assist decision-makers in determining eligibility and entitlements. Should decisions be made on the basis of applications and submitted documents? Or should interviews be held in some cases? Other means, such as visits by staff to communities, could be used to check claims made by applicants. Should local community leaders be involved in the process of verifying claims in order to bolster acceptance of the process?

Mechanisms will need be created to ensure that decisions about eligibility and entitlements are as consistent as possible: that is, that persons in like cases are treated alike. This will be enormously important in ensuring public support for the scheme and in minimizing the risk of conflict. One means to achieve this would be to review all applications before any are decided, with like claims grouped together and decided consistently. An alternative is to use a precedent system whereby once a particular case is decided all future cases of the same type are decided in the same way. Other steps, such as ensuring consistency of decision-makers and maintaining clear records would also assist in ensuring consistency.

A balance will need to be found between ensuring that false claims are not too easily made (and thus requiring some evidence) and yet not presenting victims with impossible demands for evidence, since in most cases only minimal evidence will exist. In recognition of this problem, many other reparations programs have required only a very low level of proof.

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<sup>29</sup> *Chega!* Part 1: Introduction, para.174

However some creativity may need to be used to create an approach which is appropriate for Timor-Leste, based on the experiences of victims in this country.

### **5.2.3. Outreach: Consultation and Socialization**

As already mentioned, one of the most important aspects of the scheme will be its outreach program. This should include consultation on the design of the program while it is being prepared, and socialization of the scheme after it is established.

Initial outreach should begin during the design phase, before legislation is finalized, in order to conduct consultation and encourage sense of local ownership of the program. A program of consultation on reparations which involved victims in 13 districts has already been undertaken by civil society,<sup>30</sup> and the result of this process will be forwarded to Committee A when they have been compiled. Once a draft law has been drafted further consultation on the legislation should be undertaken by the Parliament with assistance from civil society or this working group.

Once legislation is finalized, outreach should be intensified to encourage applications and explain the process to communities so as to minimize the risk of conflict. This socialization must be undertaken so as to reach as much of the population as possible. It should use formal media, including radio, television and newspapers, but also involve special programs to target remote areas. Materials should be produced in local languages and discussion programs held in at the *suko* level. To facilitate this work the reparations institution should include a large outreach unit. It should also work together with the Church and NGOs in order to widen the scope of the outreach program.

It is important that outreach efforts undertaken are *honest*. Socialization programs for past transitional justice mechanisms have at times unduly raised the expectations of communities and victims by promising outcomes which have never eventuated. In order to ensure trust for the program, and to help restore community faith in state institutions, care should be taken to avoid repeating this mistake.

### **5.2.4. Ensuring transparency and accountability**

To ensure fairness in decision-making an appeals process should be established to allow the review of decisions about eligibility under the scheme. The appeals process should be established within the reparations institution in order to maximise its efficiency and the overall consistency of decision-making, although this would not prevent external legal challenges or complaints (for example to the courts or the Provedore's Office) as provided for by the Timor-Leste constitution.

It will also be important to establish measures for preventing corruption (and the perception of corruption). Measures to prevent financial mismanagement should include strict Parliamentary oversight and external auditing covering the use of funds and the implementation of programs. This should include mechanisms to oversee not only the use of funds by the implementing institution, but also the allocation of reparations funding by ministries and other partner agencies.

Provisions of the reparations law should make it an offence for those working in the scheme to misuse funds or information given for the purpose of the program. The provision of false information in applications to the scheme should also be criminalized.

## **6. Funding of the scheme**

A crucial pre-requisite to establishing a workable reparations program will of course be access to sufficient funds. The preceding discussion has attempted to clarify that the

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<sup>30</sup> See footnote 12 above for more details.

reparations program proposed need not impose an impossible financial burden. Despite this, reparations are likely to be expensive. Yet, this is not in itself a reason for refusing to implement a reparations program. Commentators have demonstrated that the most crucial factor in establishing a reparations program is *political will*, and that where this exists a way is usually found to finance a reparations program, even if the program is of reduced scope.<sup>31</sup>

**(i) The CAVR recommendations**

CAVR recommended that the reparation program be funded by a combination of fixed allocations in the Timor-Leste national budget and outside contributions. External sources were suggested as including parties with responsibility for violations in Timor-Leste: Indonesia, Indonesian enterprises who profited from the occupation, Permanent Members of the UN Security Council, other states who provided military assistance to Indonesia during the occupation, and businesses which profited from the sale of weapons to Indonesia. In addition funds could be contributed by donors and humanitarian aid organizations.<sup>32</sup>

**(ii) International experience**

International experience demonstrates that political will is the most significant factor in the successful financing of a reparations program. However it is also true that reparations programs based mostly on foreign contributions have tended to be less successful than those mostly using nationally allocated funds.<sup>33</sup>

**(iii) A proposal for Timor-Leste**

International experience need not rule out foreign contributions to a reparations program in Timor, but should be kept in mind to caution against high expectations for such contributions.

The approach proposed by the CAVR, while well-justified in legal and moral terms, is unlikely to garner strong political support in Timor-Leste. This political support is likely to be the most important factor in the success of a reparations program. For this reason outside contributions for a reparations program should be invited on a no-fault basis, and should be sought from all nations and potential donors, regardless of their level of complicity in the human rights violations which occurred in Timor-Leste. This approach is not only more likely to gain the support of foreign contributors, but also of the Timor-Leste government.

If they were made available *meaningful* contributions by the government of Indonesia to a reparations program would help heal wounds and might also be an important step towards reconciliation. However in order to be *meaningful* contributions from responsible parties should address victims' desires for truth and justice – preferably by being accompanied by a recognition of responsibility and a real commitment to criminal justice processes. Without these aspects, contributions from Indonesia may be viewed with suspicion by victims.

In any event, foreign contributions should not be expected to represent the major source of funding for the scheme. International experience shows that reparations schemes are most likely to succeed when they have annual allocations of funding from the national budget. (This in itself is most likely related to the role of political will; national budgetary allocations are the strongest indicator of political will.<sup>34</sup>) International donors are also more likely to contribute to a fund for reparations where it is clear that the state itself has a strong commitment to the scheme, as demonstrated by budgetary allocations. A significant

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<sup>31</sup> Alexander Segova "Financing Reparations Programs: Reflections from International Experience", in Pablo de Greiff, *The Handbook of Reparations* (Oxford University Press, 2006).

<sup>32</sup> *Chega!* Part 11: Recommendations, Section 12.10.

<sup>33</sup> Alexander Segova "Financing Reparations Programs: Reflections from International Experience", in Pablo de Greiff, *The Handbook of Reparations* (Oxford University Press, 2006).

<sup>34</sup> OHCHR, "Rule-of-Law Tools for Post-Conflict States: Reparations programmes", p29



contribution from public funds also demonstrates to victims and communities that the state is serious about addressing their needs. Since the state has been able to demonstrate such a commitment to veterans, it should also be willing to take some steps to assist victims.

Examples of the successful funding of large-scale reparations programs in very underdeveloped countries are difficult to find. However Timor has two significant advantages over many other underdeveloped nations: its proportionally high income from oil and gas revenue, and its proportionally high level of financial support from the international community. These advantages should be harnessed to create a national reparations scheme.

For this reason Timor-Leste should consider a funding plan which combines substantial regular funding from the national budget with a request for outside assistance. UN support could be sought for creating a UN “solidarity fund” as proposed by the Secretary-General in his report of July 2006 on justice and reconciliation for Timor-Leste.<sup>35</sup> In order for this to occur, Timor-Leste would first need to decide to establish a reparations program, and request UN assistance. However UN involvement should not be seen as a necessary precondition for establishing the scheme. In fact, if a UN fund is limited to addressing crimes committed in 1999<sup>36</sup> (and hence narrower than the national program) it may cause unnecessary complications. For this reason Timor-Leste may prefer to create its own program and seek international funding on a bilateral basis. In order to encourage foreign contributions to a reparations program the government, Parliament and interested partners should engage in a coordinated process to discuss the program with potential donors, demonstrate local political will, and seek assistance.

Ultimately however, national funding should provide the financial grounding for the scheme, with foreign contributions being a welcome bonus. Indeed national funding should be sufficient to ensure that the program can still operate even if foreign donor funding is minimal or non-existent. The best approach would be to establish the reparations program with guaranteed national funding, and after that time (once political commitment to the scheme can be clearly demonstrated to potential donors) begin seeking international contributions.

## **7. The process from here**

This paper has aimed to present some general concepts and suggestions for the creation of a national reparations program for Timor-Leste. However a great deal more work will need to be done before this goal can be realized. This may include:

- discussion of Chega in the national parliament and a commitment to implementation from the national parliament;
- extensive and appropriate consultation with communities and victims to learn their current situation and wishes, and to investigate what sort of measures are required to assist them in accessing essential services;
- an investigation of information held by the CAVR archive, which will reveal the extent of the data retained there about victims and how it may be used in designing the program (especially in relation to identifying potential beneficiaries who were CAVR participants);
- further research into initiatives already been undertaken in Timor-Leste which can instruct plans for reparations (including assistance to veterans, work done by NGOs, reparations to victims of the 2006 crisis, and the CAVR urgent reparations program).<sup>37</sup>

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<sup>35</sup> Report of the Secretary-General on justice and reconciliation for Timor-Leste, UN Doc. S/2006/580, 26 July 2006, para.39(d)(i).

<sup>36</sup> The recommendation of the last Secretary-General in his report on justice and reconciliation in Timor-Leste refers to a “community restoration programme” which would provide measures to assist “victims of serious crimes committed in 1999 and their relatives.” *Ibid.* para. 39(d)(ii).

<sup>37</sup> A number of comments were made during the consultation held on 26-27 March 2008 in Obrigado Barracks indicating a need to learn from mistakes made during the creation of and implementation of the veterans’ assistance programs so that these mistakes are not repeated.

- discussions with social service providers, including government ministries and non-government agencies, to assess how realistic the proposed program is in the light of their capacities;
- research and analysis are undertaken to estimate the cost of the proposed program, possibly including a small pilot population survey to aid in anticipating beneficiary numbers and circumstances.

These further steps will help to resolve remaining questions in program design, after which time legislative drafting could begin.

While the creation of a national reparations program should be treated as important and urgent (as many victims are already old and sick), care should be taken to spend adequate time creating a scheme which is realistic and acceptable to communities and victims. Despite this, a target should be set for creating a draft law on a national reparations scheme. This working group proposes that Committee A aim to have a draft ready by the end of 2008 and have it passed by the Parliament by March 2009 .

In order to facilitate this process, Committee A should consider the creation of a focused sub-committee with responsibility for moving this work forward.

This working group (composed of Timorese civil society, STP-CAVR, ICTJ and the UN) is willing to continue its work to provide assistance and input to the Parliament. This may take the form, for example, of conducting further research on certain specific issues, assisting with victim consultation, facilitating input from outside experts with experience in implementing reparations programs in other countries, or assisting with legislative drafting.

## **Recommendations of the Working Group**

### **Process for establishing a national reparations scheme**

The working group recommends that:

1. The National Parliament pass a resolution indicating its intention to lead the implementation of the CAVR's recommendations, including the creation of a national reparations scheme.
2. Committee A of the Parliament establish a special sub-committee of 3 Deputies, to work on the creation of a national reparations law.
3. With assistance from this working group as required, the reparations sub-committee undertakes consultation with the church, civil society, victims groups and community leaders on the proposals included in this concept paper and related issues.
4. With assistance from this working group, the reparations sub-committee undertakes consultations with service providers including government ministries and non-state organizations to assess their capability to participate in the proposed scheme.
5. With assistance from this working group as required, the reparations sub-committee undertakes research to produce an estimated costing for the proposed scheme.
6. By the end of 2008 the sub-committee, with assistance from the working group as required, produces a draft law for a national reparations scheme.
7. An allocation is made in the 2009 national budget to allow the program to start work during 2009.
8. A process of consultation on the draft law is undertaken and the draft law is presented to the Plenary of the National Parliament by March 2009.

### **Content of the proposed scheme**

While further consultation and research is still needed, the working group recommends that the draft law include the following as a core approach.

#### ***Institutional structure***

1. The creation within the CAVR follow-up institution of a Reparations Division mandated to implement the reparations program, which:
  - (i) is overseen by full-time and independent commissioners, who are selected after a process of community consultation and appointed by and accountable to the Parliament;
  - (ii) establishes offices in every district of Timor-Leste;
  - (iii) includes a dedicated outreach unit which is mandated to socialize the reparations process and distribute information about applications
  - (iv) includes a Victim Assistance Unit, mandated to provide assistance to applicants;
  - (v) includes a gender officer;
  - (vi) has free and complete access to the CAVR archives for the purpose of carrying out its mandate;
  - (vii) will operate for an initial period of three years, and thereafter be replaced by a smaller institution to monitor ongoing reparative measures.

#### ***Individual material reparations***

2. The provision of individual material reparations to "*highly vulnerable victims*" meaning persons who between 25 April 1974 and 25 October 1999 experienced:
  - (i) torture or physical assault;
  - (ii) a sexual violation; or

(iii) the killing or disappearance of a family member

and *as a result of that act* continues to experience severe socio-economic deprivation or physical or psychological suffering.

3. An exclusion from beneficiary status for victims who are already receiving adequate assistance through other programs or have sufficient private means.
4. A program of providing individual material reparations to eligible beneficiaries using a case-worker to determine what forms of assistance are needed by the victim and his/her family and serves as a referral point to those services, which could include:
  - (i) medical services
  - (ii) psycho-social care
  - (iii) educational services (formal or non-formal)
  - (iv) housing assistance
  - (v) livelihoods training
  - (vi) micro-finance
  - (vii) small pensions

Depending on the specific needs of individual victims and their families, different kinds of assistance would be offered to ensure access to these existing types of services.

5. Expansions and improvements to government services to ensure that adequate assistance is available to meet the needs of victims as determined by the Reparations Division case workers.
6. A system for applications and decision-making in respect of individual material reparations which:
  - (i) includes a concerted outreach program is undertaken to make potential beneficiaries aware of the program, including by sending staff to stay at the sub-district level throughout the application period;
  - (ii) opens applications for a set period of time (perhaps one year) which is sufficient to allow outreach efforts to reach all potential beneficiaries;
  - (iii) sends dedicated staff to locate and provide assistance in applications to former CAVR participants who are known to have experienced violations of a kind likely to make them eligible for assistance;
  - (iv) requires the Victim Assistance Unit mentioned above to assist potential beneficiaries in their applications;
  - (v) sets a low standard of proof for demonstrating victimhood, but uses information gathered from local community leaders to verify claims made;
  - (vi) uses clear criteria and a system of precedent to ensure consistency in the determination of claims;
  - (vii) includes an internal appeals process;
  - (viii) makes it a criminal offence for applicants to knowingly provide false information to the Reparations Division in an application;
  - (ix) makes it a criminal offence for staff or commissioners of the Reparations Division to misuse information provided in applications, or to misuse funds provided to the Division.

#### ***Collective material reparations***

7. A program to assist seriously affected communities, tailored to meet the specific needs of these communities arising out of the violations suffered by them, but including the following measures, provided by government agencies or non-state organizations:
  - (i) group therapies;

- (ii) collective livelihood training;
- (iii) micro-finance for collective projects;
- (iv) the establishment of service delivery points within communities;

and with communities which are thought likely to be highly vulnerable being sought out and provided with information and special assistance in applying.

***Symbolic reparations***

8. A program of symbolic reparations, also overseen by the Reparations Division, and assisted by other parts of the CAVR follow-up institution, including:
  - (i) the establishment of a national register for persons killed or disappeared between 1974 and 1999, with a team of dedicated staff working on outreach and research to encourage family members to participate in this effort;
  - (ii) in connection with the national register, a program to locate bodies and/or provide reburials for families of those killed or disappeared;
  - (iii) a program to work with communities which wish to establish memorials or mark sites of detention or mass graves in achieving these objectives;
  - (iv) other symbolic measures which are identified by victims and communities through a process of consultation (possibly including those mentioned in Annex 2).

***Funding***

9. A funding and financial reporting scheme which:
  - (i) sets a base level of funding to be provided from the Timor-Leste national budget;
  - (ii) establishes a fund into which international donations for the program can be made (with this process being facilitated through the use of staff dedicated to fundraising);
  - (iii) requires external audits and financial reporting to the Parliament.

## **Annex 1: Answers to some common objections to a national reparations program**

The mention of reparations often brings strong objections that such a scheme is not possible or important in Timor-Leste. It is important to consider carefully whether these allegations are correct. It is also important to understand how the CAVR's recommendations for reparations were designed to address the specific context in Timor-Leste.

### ***(i) Objection: "But in Timor-Leste there are too many victims. Everybody is a victim."***

It is true that in Timor-Leste there are many victims of human rights violations. Victims perhaps even constitute the great majority of the populations. It is true that this situation makes it more difficult to create a comprehensive and effective reparations program. However this does not make reparations impossible.

Indeed, the existence of a very large number of victims is a common feature in many post-conflict countries, including some which have successfully implemented reparations schemes. The recent Moroccan commission, for example, has provided for 13,500 victims who will receive a letter of apology detailing the violation experienced, as well as compensation.

The existence of a large number of victims does not diminish the suffering experienced by victims. It also does not detract from the moral or legal rights of those victims to reparation. It may make practical implementation more difficult, but measures to address this can be built into a reparations scheme.

Experience from other countries demonstrate that one way of dealing with large victim populations is to provide *material* reparations to some victims only. Of course, limiting material reparations to only some victims has other implications, such as the potential for creating further conflict. However with care such problems can be minimized. It is also important to recognize that reparations should not be limited to material assistance, and that symbolic reparations can more easily be extended to larger numbers of individuals and to sizeable communities, even to entire nations.

This approach was endorsed by the CAVR. It proposed that material assistance be provided only to the most disadvantaged victims, while symbolic reparations should be provided to all victims. This reflects an acknowledgement that while almost all Timorese have been victims, *not all victims are the same*. As Chega! states: "We are all victims but not all victims are equal."

### ***(ii) Objection: "But paying material reparations to only some people will cause others to feel jealous or resentful and may create conflict"***

It is true that reparations programs may be a source of jealousy, resentment and conflict. However measures can be taken to minimize the extent of such problems. For example:

- The criteria which determine who receives reparations must be clear, fair and reflect of community attitudes. If communities agree with the system for deciding who receives and who does not receive assistance, the potential for conflict is reduced.
- A program of socialization should be undertaken to explain the material reparations program, including the criteria used to select beneficiaries, the types of assistance they will receive (and what they will not receive), and the reasons for the program's design. Outreach should also include information about symbolic measures being undertaken, and should provide opportunities for communities to provide feedback.
- The procedures and decision-makers used for determining the beneficiaries of material reparations must also be meaningful to communities (see further below).

- Effort must be made to ensure that the program operates transparently and that opportunities for corruption and nepotism are minimized. Effective mechanisms for complaints and appeals should be established and publicized.

These mechanisms can together attempt to reduce the level of resentment generated by selectively paying material reparations, as well as providing non-violent channels for resentment which does arise.

**(iii) Objection: “But who will fund the reparations? Foreign powers may not be willing to pay reparations and Timor is only a small and poor country.”**

It is true that according to international law, reparations should usually be paid by the responsible party. For Timor-Leste, this will in many cases be the Indonesian government or military. The CAVR report also reminds us, however, that other countries and organizations also bear responsibility (legal and/or moral) for violations in Timor. We also know that Timorese institutions are not without responsibility for violations which occurred during the period 1974-1999. For example 30% of killings reported to the CAVR were attributed to resistance or pro-independence groups.<sup>38</sup> The Timorese government is probably the most appropriate body to pay reparations for these violations.

In addition, according to international standards,<sup>39</sup> where the parties responsible for violations (for example Indonesia and those who supported it) are unable or unwilling to pay reparations, the government should establish a national reparations program.

Timor-Leste will need to be creative about funding sources, rather than relying simply on those who bear legal responsibility. Funding options are considered further below, however it is important to remember that reparations need not always relate to individual monetary compensation. Timor-Leste should undertake a reparations program which provides an appropriate and affordable combination of measures (material and symbolic, individual and collective).

**(iv) Objection: “But if the government pays reparations isn’t this like a way to buy victims’ silence on the issue of justice?”**

In some countries victims themselves have objected to reparations programs. This is particularly the case where criminal justice has not been achieved. Reparations can be perceived (sometimes correctly) as an attempt to buy victims’ silence.

In order that a reparations program achieves its objectives it is important that it is not intended to replace other transitional justice mechanisms, such as prosecutions. It is also important that this is made clear to victims, and that victims are reassured that receiving reparations cannot remove their right to demand further justice.

This can be addressed both in the legislation establishing a reparations program, as well as in the outreach which explains the program to communities.

**(v) Objection: “But nothing can undo the harm done to victims.”**

It is true that the harm caused by serious human rights violations can never be undone. But this is not a reason for doing nothing. Reparations aim to address the harm done by violations. Even where the damage cannot be repaired entirely, some healing can be achieved. During this process it is important to be aware and to acknowledge that the

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<sup>38</sup> *Chega!* Part 6, Profile of Violations, para.73.

<sup>39</sup> UN General Assembly, *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* (Annexed to UN GA Resolution 60/147, 16 December 2005), article 16.

reparations provided can never erase entirely the harm done. Managing victims expectations is a key feature to developing a good reparations program.

**(vi) Objection: “It is more important for Timor-Leste just to focus on development and social justice for everybody.”**

Development and social justice are undeniably important. However these are not alternatives to reparations. Every Timorese citizen should be able to benefit from development, and all disadvantaged Timorese citizens should be able to access government welfare measures. However reparations are needed in addition to these measures. Reparations are different because they are directed only at victims of human rights violations, and they are not simply a payment or a service but also a *recognition* of suffering and an attempt to remedy that suffering.

Focusing only on development and social justice fails to provide this recognition which is sought by victims and does not acknowledge the special suffering inflicted by gross violations of human rights. This is why some victims have been upset by the position taken by a number of Timorese leaders that it is better to focus only on development for all: they feel that this approach ignores their suffering.<sup>40</sup>

However it should also be remembered that reparations and development are related. A good reparations program for Timor-Leste (as explained further below) will require the continuing development of key areas of government services such as health, mental health and education.

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<sup>40</sup> Lia Kent, PhD fieldwork findings, 2007.



**Annex 2: Proposed forms of reparations recommended by CAVR**

	<b>Material</b>	<b>Symbolic</b>
<b>Individual</b>	<p>Referral programs and the expansion of services to assist victims in accessing the following services:</p> <ul style="list-style-type: none"> <li>• Health and rehabilitation services</li> <li>• Mental health services (including counseling, psychiatric care, social work services)</li> <li>• Skills training and livelihood assistance</li> <li>• Housing assistance</li> <li>• Micro credit schemes</li> <li>• Educational services</li> </ul>	<ul style="list-style-type: none"> <li>• The creation of a public register of the disappeared and killed;</li> <li>• An exhumations and reburials program, perhaps including assistance to victims in locating the remains of their family members</li> <li>• Letters of recognition/acknowledgement from political or church leaders</li> </ul>
<b>Collective</b>	<ul style="list-style-type: none"> <li>• Healing workshops and other restorative work, including creativity therapy and theatre, graphic arts, music and prayer.</li> <li>• Livelihoods assistance to community groups or for communal projects; or</li> <li>• The establishment of service delivery points within the community to meet special health, educational or social needs.</li> </ul>	<ul style="list-style-type: none"> <li>• Memorializing and commemoration, including for example in relation to specific massacres, the famine, the Indonesian invasion, or the civil war</li> <li>• The creation and funding of a public memorial and learning center relating to the conflicts, perhaps in the Ex-Comarca Balide</li> <li>• Marking and honouring mass graves</li> <li>• Marking former detention centers</li> <li>• Apologies from leaders regarding specific event (for example during the civil war)</li> <li>• Encouraging the development of literature, music and art for remembrance (for example through convening special exhibitions on relevant themes, providing scholarships for study, or assisting in the publication of such works)</li> <li>• Formally, establishing, funding and regulating access to the CAVR archive, as a repository for information relating to the past conflicts</li> </ul>