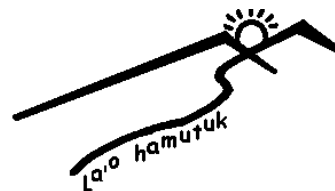


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Submission to Committee A, National Parliament Democratic Republic of Timor-Leste

From La'o Hamutuk

regarding the draft laws for the Public Memory Institute and the National Reparations Program

6 July 2010

For the last ten years, La'o Hamutuk has worked with civil society, international human rights and solidarity organizations, Parliament, the governments of Timor-Leste and other countries, and people around the world to ensure that the victims of crimes against humanity in Timor-Leste are recognized, and that the crimes against them must never again be repeated. We appreciate Committee A's invitation to share some thoughts with you about these two draft laws, which can help move Timor-Leste and humanity toward less suffering, more public awareness and social justice.

We support compensation for vulnerable victims.

Firstly, we would like to give our great appreciation and gratitude to the National Parliament, as the people's representatives, who will pass this law to facilitate the process of providing reparations to Timorese victims from the civil war and illegal occupation from 1974 through 1999.

Timor-Leste's history has created many victims over many years, and many of the victims live in difficult circumstances.

The conflicts in this country between Timorese people and Indonesian invaders created both physical and psychological victims, and confronted all of our people. Many of these victims were noncombatants or civilians. These conflicts forces many people to flee to the forest, lose their lives, lose their relatives and loved ones. Thousands were terrorized, tortured, imprisoned, forcibly displaced, Virtually everyone lost opportunities for political life, education, economic development and more.

Therefore, we support the intention and efforts of the state to provide compensation to the most vulnerable victims, those who cannot recover their lives themselves. We consider that these vulnerable victims have the right and indeed deserve financial support and special treatment. This compensation is a way the state can assist them, advancing humanity and people's lives, as one step toward achieving justice and truth.

Establishing these laws will also facilitate memorialization and remembering the tremendous contributions and suffering of victims and their families, including their story of struggling Timor-Leste's independence. They will also help find people who have were lost or "disappeared" during the occupation.

We would also like to take this opportunity to recommend to the State that every Timor-Leste citizen deserves social justice. This includes those who need social assistance today to rebuild their lives, especially for the most vulnerable among us, including citizens who aren't formally categorized as

victims of human rights violations by the current legislation. Every person in this country today lives with the impacts and consequences of the invasion and the war.

All of the CAVR recommendations are important.

The *Chega!* report is the culmination of many years of work by hundreds of people, and a great deal of thought went into its recommendations. Although the Truth and Friendship Commission had less independence, less time and fewer human resources, its report also results from deep thinking and negotiation. We believe it is important for all of the CAVR recommendations to be implemented, not only those which relate to reparations, public education, memorialization and missing persons.

We are particularly concerned that recommendations directed at institutions outside of Timor-Leste not be forgotten. These include

- Recommendations 1.1-1.15 to the international community
- Recommendations 2.1-2.6 to Portugal
- Recommendations 7.1.1-7.1.2 regarding justice for past atrocities¹

¹ The Commission was clear and eloquent on this topic in its introduction to Recommendation 7, which we bring to the attention of Members of Parliament:

“The Commission acknowledges the difficulties faced by the international community and the governments involved as they continue to seek resolution to the issue of serious crimes of 1999. The Commission notes that, in this process, the international community has paid little or no attention to the issue of justice for the grave crimes committed in Timor-Leste throughout the 23 years prior to the 1999 atrocities. Now that the Commission has reported on the truth of these atrocities, it is its mandated duty to draw the appropriate conclusions based on concerns of international law and not on political considerations. The findings of the Commission indicate that there have been no adequate justice measures for the crimes against humanity committed in Timor-Leste throughout the 25-year mandate period. Based on its mandate founded on respect for international law, the Commission concludes that justice for past crimes must encompass the violations committed throughout the 25-year period of its mandate.

“The legacy of this lack of justice for years of human rights violations is manifold. For both Timor-Leste and Indonesia the result is that impunity has become entrenched. Those who planned, ordered, committed and are responsible for the most serious human rights violations have not been brought to account, and in many cases have seen their military and civil careers flourish as a result of their activities. Respect for the rule of law and the organs of the state responsible for its administration, a fundamental pillar of the democratic transition in Indonesia and nation building in Timor-Leste, will always be extremely fragile in this context.

The conflicts in Timor-Leste were of an internal nature during the confrontation of August- September 1975, while Timor was still a non-self governing territory under Portuguese authority. When Indonesian forces invaded Timor-Leste, from October 1975, the conflict was internationalised. Independently of the nature of the conflict, however, the crimes committed over this long period reached on many occasions the threshold of extreme conduct that invokes the responsibility of the international community.

In addition to the nature of the crimes, serious immediate circumstances invoke the responsibility of the international community. The Commission is persuaded that our nascent and still fragile State cannot be expected to bear the brunt of pursuing the daunting task of justice on its own. It is further concerned that the State of Indonesia has never shown a genuine will to bring to book the perpetrators, not just for the crimes committed for 1999, but for any of the crimes committed during the long occupation. Therefore the Commission believes that the definitive approach to achieve justice for the crimes committed in Timor-Leste should hinge critically on the commitment of the international community, in particular the United Nations. They should provide unqualified support for strong institutions of justice, able to act independently of the political situation within and outside Timor-Leste.

The Commission is aware that any formula for the solution to impunity for the crimes committed in 24 years of conflict and occupation will be complex and difficult to achieve. However, a few elements should be identified. Any formula to seek justice for the victims should be based on respect for international law and guarantees of due process. Equally, any design for justice should have the practical support not just of the United Nations as such but of individual countries, ready to help the process in different ways. Finally, any response to impunity should face the challenge of how to ensure that the major perpetrators are accountable in spite of the current protection they enjoy.”

- Recommendation 7.2.1 that the United Nations be prepared to institute an international tribunal
- Recommendations 10.1-10.17 regarding Indonesia.

Although other important CAVR recommendations can be implemented inside Timor-Leste, they have been omitted from the mandate and powers of the new institution. We are particularly concerned about:

- Recommendations 5.1.1-5.1.16 to civil society
- Recommendations 5.6.1-5.6.4 to the Church
- Recommendations 6.1.1-6.4.4 regarding the police and military.

These two laws do not move us toward ending impunity.

La'o Hamutuk recognizes the importance of providing material relief and memorialization for Timorese victims of the violence resulting from Indonesia's invasion and occupation, especially the most vulnerable. However, we are concerned that the legislation and institutions which will address this pressing need should not become obstacles to larger goals of social justice and the rule of law. Providing relief to a relative few must not impede the progress of our entire society.

The culture of impunity is becoming entrenched in Timor-Leste, especially for crimes committed as part of Indonesia's illegal 24-year occupation. If perpetrators of past crimes against humanity continue to escape accountability, those who are thinking about committing crimes today will expect the same. If the rule of law is only applied to some, powerful people will not obey it. And if future victims cannot depend on security and judicial organs to enforce the law without fear or favor, they will take "justice" into their own hands.

Today's political realities – a shortage of courage and foresight among some Indonesian, Timorese and international leaders – make it unlikely that impunity will be ended in 2010. But the arc of the universe is long, and it bends toward justice. We hope that this institution will bend with that arc, rather than impede its progress.

The world community, including the state of Timor-Leste, recognized international responsibility to ensure justice for crimes against humanity when it created the International Criminal Court in 2002. Unfortunately, the legal implementation of this consensus was too late to be applied to crimes between 1975 and 1999, but the moral and political principles which underlie the ICC apply here. This new institution should advance those principles, not obstruct them.

The vast majority of the crimes – and the victims – covered by these draft laws were committed as part of an illegal foreign invasion and occupation repeatedly condemned by the United Nations Security Council and General Assembly. We believe that "reparation" cannot be achieved without acknowledging this fact, and without involving, or even naming, the principal perpetrators – the Indonesian state and individuals following its orders. Although victims' current suffering can be alleviated by the state of Timor-Leste, genuine reparations – a sincere process to address the damage – must involve those who committed the crimes. Without this, the wounds will fester and similar crimes will continue in West Papua and around the world.

The CVA acknowledged "institutional responsibility" but failed to recognize that institutions are made up of individuals. Those who gave illegal orders, as well as those who knowingly followed them, must be held accountable for their actions. We do not suggest prosecuting all of the tens of thousands of Indonesian civilian and military officials who committed crimes which killed more than a hundred thousand Timorese people, but if the rule of law is to govern and grow in both Timor-Leste and Indonesia, at least the "big fish" must be held to account.

This mission of the Institute of Memory is "to promote, facilitate and monitor the implementation of the recommendations made by CAVR and CTF" in order "to promote a better understanding of the nature, causes and impact of violations of human rights; as well as to promote a culture of

responsibility/accountability, just reparations and respect for the rule of law ... to promote respect for human rights and to prevent the resurgence of violence.”

Truth must not be suppressed.

Although providing compensation and recognition to vulnerable victims falls within its mandate, the draft functions of the IM do not include the most essential mechanisms and processes recommended by CAVR and CVA to achieve this goal. We believe that this cannot be achieved solely by the state of Timor-Leste, but will require the cooperation of the international community and, eventually, Indonesia. If the IM is not empowered to enhance and advocate international fulfillment of the world community's responsibilities, other mechanisms should be employed to do so. Otherwise, impunity becomes entrenched and accountability is flushed down the memory hole – a sad, ironic result from two institutions whose names start with “Truth” being implemented by another called “memory.”

We are concerned that Article 33 and 34 of the draft IM law (Secrecy) will impede the public education functions of the institution. By threatening long prison terms for people who disclose information about “third parties”-- such as Suharto, Kissinger or Wiranto – without their consent, the law makes it more difficult for the public to know the truth, which is one of the main goals of this institution. It could also become an obstacle to cooperation with Timorese or international judicial processes.

Although we recognize that some institutions and individuals provided information or testimony to CAVR and CVA with an understanding of confidentiality, we do not think an automatic presumption of secrecy is the proper way to keep this promise. The law could include a system of classification of information, under the presumption that everything is public unless there is a specific, compelling reason to keep it confidential.

Although articles 35 and 36 say that other institutions must collaborate with IM, the law says little, even in article 5.2, about IM collaborating with other Timorese and international institutions. This should be addressed.

Who is responsible to repair the damage?

As other submissions to Committee A explain more fully, there is a difference between “reparations” and “compensation” in English, although those concepts are confused in the Portuguese “reparação” and the Tetum “reparasaun.” The root of “reparasaun” is to repair the situation – not only to relieve the victim's material suffering, but, as much as possible, to restore the situation before the crime was committed. This is only possible with the involvement of the perpetrator, either by acknowledging responsibility (voluntarily or through a judicial process) or by providing funds for “reparations.”

Through these draft laws, the Democratic Republic of Timor-Leste takes responsibility to support its citizens who suffered during the occupation, which is better than nobody taking on this task. However, we should not forget that between 17 July 1976 and 4 September 1999 the laws of the Republic of Indonesia stated that virtually all people in Timor-Leste were Indonesian citizens. Until now, Indonesia (as government, not as perpetrator) has failed to fulfill its responsibilities, but that doesn't mean that Timor-Leste should readily take on Indonesia's job of providing for victims from this period, who suffered great majority of occupation-related crimes. At the very least, Timor-Leste and other government should continue to remind Indonesia that it has not carried out its obligations.

The international community, in the person of UN Secretary-General Kofi Annan² and the Security Council³ has already recognized the international responsibility to support reparations through a

² Report of the Secretary-General on Timor-Leste pursuant to Security Council resolution 1690 (2006) (S/2006/628): “In my separate report on justice and reconciliation for Timor-Leste (S/2006/580), I recommend the establishment of a United Nations solidarity fund to collect voluntary contributions from Member States for the purpose of funding a “community restoration programme” and a “justice programme” in Timor-Leste. The community restoration programme would be specifically devoted to supporting efforts to provide for victims of serious crimes committed in

“Solidarity Fund.” The CAVR recommend this in 12.10,⁴ which mentions the Indonesian state and businesses, as well as other states and companies which supported or benefited from the illegal occupation.

We suggest that Article 43 “Revenue” of the draft IM organic law be amended to specifically reference the UN “Solidarity Fund” and to point out the responsibility for Indonesia and other states to contribute toward relieving the suffering of vulnerable victims in Timor-Leste.

The Memory Institute “*Instituto Público*” must have a clear structure.

Based on the draft law establishing the Memory Institute (IM) as an *Instituto Público*, we believe that some changes should be made to repair and strengthen this institution so it can perform its duties.

Although it is hard for the National Parliament to make major changes as we suggest, we think it is helpful to express our ideas for our leaders’ consideration, as there are some parts of this law which require revision before it is enacted and enters into force.

Article 22 says that this institute will be under the tutelage of the Ministry of Social Solidarity. We think there should be a specific explanation about this issue, especially how the Ministry and the Institute will be linked and financed under the State Budget. We are also concerned that many of the IM’s functions relate to education, foreign relations, justice and other sectors not under the mandate of the Ministry of Social Solidarity, and hope they will not be forgotten.

The structure of this Institute described in the draft law is strongly subject to intervention from the Minister. As in Articles 6.1 and 6.2, for example, facilitate this. We suggest that some of its authority, such as budget allocation and finances, should be under the National Parliament, which will facilitate Parliamentary oversight.

In addition, Articles 9.2, 11, 13(e) and 14.1 include may avenues for the Minister’s political intervention. We think that with this model of structure which gives extensive, exclusive powers to the Minister, this *Instituto Público* will be essentially a directorate under the ministry, and will automatically obey the directions and political decisions of the Minister.

We would like to call your excellencies’ attention to another *Instituto Público*, the National Petroleum Authority (ANP). The structure of ANP, including its annual budget, is not integrated into the General

1999 and their immediate relatives through collective and individual restorative measures, as well as through reconciliatory measures. ...”

³ UN Security Council resolution 1704 (2006): that the Security Council “... welcomes the proposal of the Secretary-General to create a programme of international assistance to Timor-Leste, consisting of a community restoration programme and a justice programme, including establishment of a solidarity fund by the United Nations to accept voluntary contributions from Member States for the purpose of funding those programmes;”

⁴ CAVR Recommendation 12.10: “Indonesia should bear a significant proportion of the costs. As the occupying power which committed most of the violations, Indonesia has the greatest moral and legal responsibility to repair the damage caused by its policies and agents.

“Member states of the international community, and business corporations who supported the illegal occupation of Timor-Leste and thus indirectly allowed violations to take place, are obliged to provide reparations to victims based on the principle of international responsibility recognised in the international customary law of torts.

“Contributions will also be welcome from international agencies and NGOs, based on the principle of social justice.

“Timor-Leste is obliged by the Constitution to “ensure special protection to the war-disabled, orphans, and other dependents who dedicated their lives to the struggle for independence and national sovereignty, and shall protect all those who participated in the resistance against the foreign occupation.” [Section 11, Constitution of RDTL]. In the spirit of reconciliation, the Commission recommends that this undertaking to take care of members of the Resistance is extended to include victims of human rights violations committed by all sides.

“If Indonesia is slow to respond, Timor-Leste and the international community should make their contributions while pressing Indonesia to fulfil its responsibilities. Many of the victims cannot afford to wait.”

State Budget approved by Parliament. The Memory Institute should not be like this, because it prevents Parliamentary oversight, and has no transparency about revenues, expenditures and budget.

Therefore, we suggest that the budget for the Memory Institute should be integrated into the State Budget, and that the powers of the Minister to control this institute be reduced, in order to remove opportunities for abuse of power or political interference.

Thank you for your attention, and we are ready to answer any questions.