

# AN INSTITUTE OF MEMORY FOR TIMOR-LESTE

## Update and next steps

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### **1. Introduction**

Both Timor-Leste's truth commissions recommended that a follow-up organisation be established to build on their work. This recommendation is yet to be implemented but recent political developments including the election of a new President, Parliament and Government are a good opportunity to take this proposal forward in the national interest.

The following is a short briefing on the origins and content of the proposal, plus an outline of some issues the Parliament will need to address in its consideration of the relevant legislation.

### **2. Background**

The CNRT (Resistance) Congress held in Dili in August 2000 voted unanimously to establish a reconciliation commission to promote peace and national unity. Following a national consultation and approval by the National Council, the CAVR regulation was promulgated by the UNTAET Transitional Administration in 2001, then written into the Constitution. Led by seven National Commissioners, the CAVR successfully facilitated hundreds of reconciliation cases, documented Timor-Leste's history of human rights violations 1974-1999, contributed to the healing of many victims, and prepared the widely acclaimed *Chega!* report. At the Parliament's request this report was submitted to the Parliament in Portuguese in November 2005 for its consideration. Following the dissolution of CAVR, President Xanana Gusmao established the Post-CAVR Technical Secretariat in December 2005 to complete a number of technical tasks (including publishing and dissemination) and to care for the archives and heritage building until the Parliament responded to CAVR's recommendations. P-CAVR is now in its 7<sup>th</sup> year. The out-going Parliament drafted legislation to establish an Institute of Memory and reparations program, voted funding for the Post-CAVR Secretariat and the publication of an English language edition of *Chega!* and set aside contingency funding for the proposed institute. It did not, however, debate *Chega!* or complete consideration of the two pieces of draft legislation. This has significantly frustrated the CAVR process which was intended to continue beyond CAVR itself and be long-term.

The Commission for Truth and Friendship (CTF) functioned differently to CAVR and addressed only human rights issues in 1999, but its recommendations that further documentation, reparations, human rights training and memorialisation be undertaken have much in common with those made by CAVR. It is therefore logical and cost-effective to implement these common recommendations through one institution rather than to duplicate. The proposed institute would, however, liaise closely with the Ministry of Foreign Affairs on CTF matters that are officially part of the Ministry's brief.

### **3. Role of the Parliament**

Though the Post-CAVR Secretariat is primarily auspiced by the President, the Parliament is constitutionally responsible for dealing with the CAVR report and its recommendations. As mentioned above, the outgoing Parliament accepted this responsibility in a number of ways, but principally by delegating the issue to Committee A, adopting *in generalidade* legislation drafted by Committee A, and devoting several short plenary sessions to the matter. However, these sessions only focussed on recommendations, not the body of the report, and were intermittent and the Parliament did not complete its consideration of the legislation.

The incoming Parliament is not obliged to review and pass legislation that has technically lapsed with the cessation of the former Parliament, but new Members or the Council of Ministers may re-

submit the existing legislation in its original or a revised form. In fact, the media has recently reported that the new President of the Parliament has publicly expressed his wish to see the legislation in question considered as a priority.

#### **4. Issues for Parliamentary consideration**

Some issues that need to be resolved, including by the Parliament, are as follows:

##### *4.1 The principal functions of the Institute of Memory*

It is recommended that the Institute focus on five areas of work: **documentation** (including further statement-taking, archival security and development, research, and publications); **resourcing public and human rights education** (based on Timor-Leste's lived experience through assistance to teachers and students, seminars etc); **educative memorialisation** (policy advice, information, and advocacy to ensure that the period, places – including the Comarca - and people from 1974-1999 are remembered positively, creatively and educationally and that memorialisation contributes to reconciliation and a culture of human rights and non-violence); **the missing** (policy advice, data collection, referral, and coordination undertaken for humanitarian purposes to assist families to locate, identify and, where possible, re-bury loved ones and conducted in the wider context of memorialisation and human rights education); **reparations** (targeted to the most vulnerable and delivered through services, symbolic actions and community projects, not cash hand-outs).

Each of these roles would be implemented in close cooperation with relevant Government Ministries and agencies (e.g. Timor-Leste Red Cross, forensic agencies).

It should be noted that the above Terms of Reference do not include justice. The issue of formal justice for historic crimes is a matter for existing judicial mechanisms, not the institution in question.

##### *4.2 Program of reparations*

Victims of human rights violations are entitled to reparations by international law. In keeping with this entitlement, provision was made to establish a Trust Fund for Victims in the regulation which authorised the Serious Crimes process. This has not been activated but it is understood to have incorporated into Timorese law.

Some in the former Parliament, however, had doubts and questions about the proposed reparations program. These questions related to issues such as the priority entitlements of veterans, eligibility of pro-autonomy victims, double-dipping, competition, monetary versus other forms of reparations, costs and administration.

Hopefully the new Parliament can resolve these issues and implement this recommendation without delay. If however this proves difficult, further delays the establishment of an Institute of Memory or leads to a debate which is divisive and negative, it is proposed that the Parliament be encouraged to refer its concerns to an independent research body and defer debate on reparations until it has the benefit of this body's informed advice.

It is proposed that this program be implemented by the Institute of Memory in close collaboration with the relevant Ministries (e.g. Social Solidarity, Justice) and in order to lighten the existing workload of these ministries.

##### *4.3 Independent or part of Government?*

Some believe that the Government should be responsible for the activities of the proposed Institute and that it should be part of an existing Government Ministry or Secretariat of State.

It is recommended that the proposed institute be independent but connected to Government and accountable to the legislative terms of reference determined by Parliament, i.e. comparable to CAVR and not an NGO free to determine its own direction and program of work. It is also recommended that the institute be governed by an honorary (but active) Board that includes a significant number of senior government officials. Given the breadth of its activities, the proposed Institute will be required to liaise closely with a number of Ministries (e.g. education, social

solidarity, justice, foreign affairs). This will not be possible if it is located within one Ministry.

#### 4.4 Funding

It is recommended that the proposed Institute and its activities be funded from the Government budget, as currently happens with the Post-CAVR Secretariat, be subject to government procedures and audit, but also free to receive donor funds for project purposes. Funding for reparations would come primarily from the (voluntary) Trust Fund for Victims referred to above (4.2).

#### 4.5 The CAVR archives

The extensive multi-media CAVR archives are an important, unique and irreplaceable part of Timor-Leste's historical patrimony. They are also of significant emotional importance to victims, key actors (who contributed their knowledge under oath through public hearings and interviews), and a significant resource for researchers, educators, the families of victims and the community. It is therefore critical that they are preserved, secure, and accessible (allowing for some caveats).

It is recommended:

a. that the archives remain at the Comarca Balide to be cared for and administered by the proposed Institute. They are an integral part of the CAVR and post-CAVR process and, because of their human rights contents, form a distinct part of the national patrimony. They should therefore be protected and maintained as a separate and inviolate entity and not broken up to be distributed through other institutions.

b. that any new materials collected by the new Institute be kept at the Comarca but physically separate from the 2001-2005 CAVR archive.

c. that though located and cared for separately, the existing and new archives be officially regarded as part of the national archival collection (i.e. the property and responsibility of the State).

d. that the Parliament, after consultation with National Archives and other archival depositories, including the Post-CAVR Secretariat/proposed Institute of Memory, be encouraged to enact archival legislation to define, protect and provide access to official archives.

e. that an archival expert or organisation be engaged to review the CAVR archives (contents, space, organisation, storage, preservation, threats, access, facilities and future use) and make comprehensive recommendations on these matters for the benefit of the President, Parliament, National Archives and other stakeholders including the proposed Institute.

#### 4.6 Ex-Comarca Balide

The ex-Comarca Balide is a significant heritage site. It has been a very real part of five key periods in Timor-Leste's modern history: Portuguese colonialism, the 1975 civil war, Indonesian occupation, UN transitional administration, independence. As the CAVR central office it also represents Timor-Leste's positive transformation into a society committed to reconciliation, inter-group understanding, human rights, accountability and non-violence. This transformation from a ruin in 1999 was the initiative of Timorese ex-political prisoners representing the large number of Timorese detained during the Indonesian occupation. In brief, the ex-Comarca prison is a place of great historical, emotional, and symbolic significance and has significant educational and tourist potential.

*Chega!* contains several recommendations about the future of this site including its use as a centre similar to the envisaged Institute of Memory. It may need to be modified or extended (in keeping with heritage and archival principles) but in any case it should be used dynamically as a site of active memory, not relegated to some other function or left idle. Establishing the Institute in the Comarca will ensure that activities consistent with the history of the site and Timor-Leste's nation-building agenda are carried out and that the Comarca is meaningfully preserved and used for the benefit of future generations.

## **5. Next steps**

### *5.1 Start again*

A fresh initiative is required to put the question of the Institute of Memory (and related reparations program) on the agenda of the in-coming Parliament. As noted in Item 3 above this is required because the previous legislation lapsed with the end of the out-going Parliament. Taking this initiative is a matter for the relevant stakeholders (victims, NGOs, MPs) and requires that relevant legislation is submitted in its original or revised form.

### *5.2 Presidential support*

President Ruak's backing will greatly assist the process even though a final decision on the proposal is a matter for the Parliament. Apart from his personal authority, the President has inherited the issue from his predecessors and auspices the Post-CAVR Secretariat.

### *5.3 Government support*

The support of Prime Minister Gusmao and key Ministers (e.g. Social Solidarity, Education, Justice and Foreign Affairs) will greatly assist the process.

### *5.4 Briefings*

Briefings are recommended for key members of Parliament (e.g. chefe bancada, Committee A), Government, civil society, church leaders and the media to ensure that the initiative is well understood and not compromised by misunderstandings.