

Translated from Portuguese, may contain errors. For more information on this process, see <http://www.laohamutuk.org/Justice/Reparations/10ReparIndex.htm>.

**Democratic Republic of Timor-Leste
National Parliament**

Draft-Law No. /II

Framework of the National Reparations Programme

Explanatory Statement

The right of the victims to reparations for the harm they have suffered, whether in the form of rehabilitation, restitution, homage or remembrance, is based on principles founded in international law and is enshrined in the Constitution of the Democratic Republic of Timor-Leste.

The Commission for Reception, Truth and Reconciliation (CAVR), in its report “Chega!”, urges the Government to implement a programme of reparations for the most vulnerable victims of human rights violations. The bilateral Commission of Truth and Friendship also recommended reparations of a collective character.

Both Commissions recognized that the people of Timor-Leste as a whole were affected by the suffering and were, in one way or another, the victim of the conflict, there having people who still suffer daily from the consequences of the conflict and whose children will inherit the disadvantages faced by their parents as a consequence of their victimization.

On the other hand, reparation measures, whether material or symbolic, assume a significant function in the traditional Timorese concept of justice. Reparations can contribute to the process of reconciliation by recognizing publicly the suffering of the victims. Also, material reparations can provide practical assistance to those most in need.

This law is intended to materialise, on the legislative plan, the framework under which the reparation measures of the Government shall be implemented.

Thus, pursuant to article 97(1)(a) of the Constitution, and the provisions in articles 9(1)(b) and 90 of the Rules of Procedure of the National Parliament, the undersigned Members of Parliament submit the following Bill:

The National Parliament, pursuant to article 95.1 of the Constitution of the Republic, enacts the following to have the force of law:

CHAPTER I
General provisions

Article 1
Object

This law shall establish the framework of the National Reparations Programme.

Article 2
Objectives

The National Reparations Programme shall include symbolic and material measures designed to:

- a) Honor and remember those who lost their lives and those who otherwise suffered within the context of the conflicts occurred in Timor-Leste between 25 April 1974 and 25 October 1999;
- b) Rehabilitate and empower the vulnerable victims as well as communities severely affected by the conflict;
- c) Commemorate significant events related to the conflict;
- d) Promote civic education on human rights.

CHAPTER II
Victims and Beneficiaries

Article 3
Definitions

1. For the purposes of this law, *victim* shall mean:

- a) A person who suffered harm, including physical or mental injury, emotional suffering, substantial economic loss, or who has been prevented from exercising his or her rights, as the result of a human rights violation that took place within the context of the political conflicts in East Timor between 25 April 1974 and 25 October 1999;
- b) the spouse or any person who lived under analogous condition, the widow, widower, descendants up to the 1st degree, the ascendants up to the 1st degree, or the dependent of a person falling within the preceding paragraph where that person was killed or went and remains missing.

2. For the purposes of this law, “*human rights violations*” shall mean violation of international humanitarian law, violation of human rights and criminal acts.

Article 4
Vulnerable victims

1. For the purposes of this law, the following shall be considered *vulnerable victim*:

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

Article 5
Right to reparation

Victims of human rights violations, defined in articles 3 and 4 of this law, shall be entitled to adequate and effective reparation in conformity with the National Reparations Programme, pursuant to the law.

Article 6
Beneficiaries

- 1. Reparations pursuant to the Memorialization Program provided for in article 7 of this law shall be intended to all victims.
- 2. Reparations of an individual character shall be intended exclusively to vulnerable victims as defined in article 3 of this law.
- 3. Reparations of a collective character shall be intended to local communities which have suffered a high degree of devastation as a result of the conflict.

Article 7
Exclusions

- 1. Persons benefiting from a pension or other benefits, notably in the framework of the legislation relating to the National Liberation Combatants, shall be excluded from receiving individual reparations under the national reparations program, pursuant to this law.

2. People not residing in Timor-Leste for at least one year before the date on which they request reparations pursuant to this law shall also be excluded.

Article 8
Non-discrimination

1. To enable national reconciliation, no victim may be denied his or her right to reparations on the basis of his past or present political affiliation.
2. No victim may be denied his right to reparations on the basis of the political affiliation or opinion of the person or persons believed to have committed human rights violation against the victim.

CHAPTER III
Forms of reparation

Article 9
Contents of the National Reparations Program

1. The National Reparations Program may notably include:
 - a) A **National Commemorations Program** to honor and dignify victims and promote education on human rights and Timorese history that may include the following:
 - i) Commemoration ceremonies;
 - ii) Erecting monuments;
 - iii) Searching for persons missing as a result of the conflict;
 - iv) Exhuming and reburial of the remains of persons who lost their lives as a result of the conflict;
 - v) Marking and honoring of mass graves and former detention centers;
 - vi) Acknowledgement of individual or community's suffering or undertaking any other measures of symbolic value for the victims and their communities.
 - b) An **Individual Reparations Program** aimed at rehabilitating vulnerable victims, which may include the following:
 - i) Provision of health and rehabilitation services;
 - ii) Provision of mental health services including counseling and social services;
 - iii) Provision of education subsidies for children and implementation of education and literacy programmes;
 - iv) Vocational training;
 - v) Assistance with reburial of the remains of missing people.
 - c) A **Collective Reparations Program** that acknowledges and provides material assistance to communities seriously affected by the conflict through the provision of community infrastructure, livelihood projects and projects for paying tribute to the victims at community-level.

2. The concrete forms of collective reparation shall be defined in consultation with the beneficiary communities.
3. The law shall define the forms for the provisions referred to in paragraph 1 of this article, as well as the modalities for their materialization.

Article 10 **Specific measures**

Other specific measures to be materialized in the framework of the reparations program provided for in the preceding paragraph may be established through the process set out in articles 11 and 12 of this law.

CHAPTER IV **Implementation**

Article 11 **Implementation Process**

1. The Institute of Memory (*Instituto da Memória*), I.P., hereinafter referred to as I.M, I.P, shall assist the Government in designing the reparations and the modalities for their provision under the National Reparations Programme.
2. Within six months of its establishment, the I.M, I.P. shall prepare a report in collaboration with the Government, containing notably the following:
 - a) A descriptive summary of the consultations made pursuant to article 12 of this law, mentioning the contributions received and the changes introduced on the basis of such contributions, if any;
 - b) A summary of the assistance provided by the I.M, I.P., pursuant to this law;
 - c) An analysis of the assistance provided by the I.M, I.P. on the basis of the satisfaction of the needs of the vulnerable victims.
3. The report referred to in the preceding paragraph shall also contain recommendations on the manner in which the government may further assist vulnerable victims and shall address the following issues:
 - a) Whether the existing services are adequate and the respective shortages, if any;
 - b) Whether other needs or services of particular relevance for the vulnerable victims are available, in addition to those considered in article 9 of this law;
 - c) Alternative ways to reach out to vulnerable victims in need of assistance;
 - d) Barriers faced by vulnerable victims or that compromise their access to the services provided in the framework of the National Reparations Program;
 - e) Measures adopted by the I.M, I.P. to enable overcome such barriers with specific reference to female, vulnerable victims in remote locations and situations of extreme poverty or illiteracy;

- f) Evaluation of the need for supplementary measures relating to particular groups such as the elderly or those unable to work;
- g) Evaluation of the usefulness and relevance of financial assistance to communal projects or to communities with a high concentration of vulnerable victims.

Article 12 Consultation

1. The I.M, I.P. shall consult with victims and particularly the vulnerable victims, to ascertain their needs and the nature of the reparations considered deemed adequate to respond to those needs.
2. The I.M, I.P. may also consult with organisations providing assistance to vulnerable victims in order to obtain relevant information.
3. The consultations referred to in paragraph 1 of this article may be undertaken by I.M, I.P. itself or in collaboration with other relevant entities.
4. In the preparation of the report, the I.M, I.P. shall take into consideration the contributions received as a result of the consultations referred to in paragraphs 1 and 2 of this article.
5. The following shall be necessarily consulted:
 - a) Victims organizations;
 - b) Representatives of religious denominations;
 - c) State services and organizations with competences in this field or in related fields.

Article 11 National Registry of Beneficiaries

1. The I.M, I.P. shall establish a national registry of individual and collective beneficiaries entitled to reparations, pursuant to the law.
2. The registry referred to in the preceding paragraph shall contain the following information relating to human rights violations, including, notably:
 - a) The current circumstances of the victim;
 - b) The characterization of the current physical or mental disability of the victim as a result of the human rights violation;
 - c) The current and permanent obstacles or difficulties resulting from a human rights violation;
 - d) The socio-economic conditions of the victim;
 - e) Any other relevant information necessary to the characterization of the victim's situation for purposes of this law.
4. The request for registration shall be presented by the concerned person or by his or her representative, pursuant to the law.
5. The registration shall be made by the services of the I.M, I.P. or by an organization indicated by the I.M, I.P. to this end.

Article 14

Inquiries

For the purposes of the preceding article, the IM, I.P. may, by itself or in collaboration with third entities, conduct inquiries aimed at facilitating the identification and registration of potential beneficiaries.

Article 15 Registration Procedure

1. All interviewed applicants are ensured reserve of the intimacy of private life.
2. Confidentiality of the information given by the applicants shall be guaranteed, pursuant to the law.
3. The assistance of experts in victim support and, whenever requested, of the same sex, shall be guaranteed.
4. During the interview, there shall also be guarantee for:
 - a) Assistance in completing the necessary documents, including forms, deemed necessary;
 - b) Assistance in the identification or obtention of the means of proof required for the purposes of this law.
5. It shall incumbent upon the I.M, I.P. to declare the beneficiaries, once the requirements have been met.
6. Lack of documentation or eyewitnesses alone will not constitute a basis for rejecting an application.
7. Special flexibility shall be used in cases of victims of rape or sexual violence, or in cases of violations of human rights of a similar nature, of crimes usually committed without the presence of witnesses or without leaving evidence, as well as in those crimes committed in remote areas or in times and circumstances where it was difficult to ask for help, to denounce or to file a complaint.
8. The I.M, I.P. may refuse to register where it has reasonable grounds for considering that the applicant does not meet the criteria to be entered on the register.
9. The decision refusing to register may be appealed against to a panel specially established for that purpose, pursuant to a regulation of the I.M, I.P.
10. The regulation referred to in the preceding paragraph shall regulate the appeal and the respective procedure and process.

Article 16 Referral of Vulnerable Victims

1. The I.M, I.P. may assist the vulnerable victims by providing them with information relating to the benefits or the existing services and by taking steps to enable them to access those services.

2. The steps referred to in the preceding paragraph may include:
 - a) Explaining the nature of the service and the manner in which it may assist;
 - b) Liaising with the service provider, and
 - c) Providing assistance to complete and/or translate application forms.
3. For the purposes of this article, “existing services” shall mean services provided by the public administration, non-governmental organizations or religious institutions.
4. The I.M, I.P. shall collaborate with the providers of existing services to keep them informed about the nature and extent of the needs identified by the I.M, I.P. and the expected impact.
5. Information provided by the I.M, I.P. in connection with its functions shall be publicized in a general and abstract manner with a view to ensuring the anonymity of the victims and their relatives.

**Article 17
Funding**

To perform the functions contained in this law, the I.M, I.P. shall be provided with additional funding from the State Budget, apart from the appropriations provided to it pursuant to the law establishing it.

**Chapter V
Final and transitional provisions**

**Article 15
Entry into Force**

This law shall enter into force on the day after its publication.

Dili, National Parliament, 15 June 2010.

The Members of Parliament,