



ILAC Report

East Timor, December 2001

ILAC is a global organisation, established and based in Sweden. ILAC is a consortium of NGOs throughout the world with experience in providing technical legal assistance in post-conflict situations. ILAC's more than 30 member organisations represent over 3 million judges, prosecutors, lawyers and academics.

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ILAC MISSION TO EAST TIMOR

EXECUTIVE SUMMARY

East Timor is struggling to build its government following the traumatic events surrounding the break from Indonesia in 1999. In May 2002 the United Nations Transitional Administration in East Timor (UNTAET) hands over to East Timor's first freely elected government.

In late 2001, UNTAET and the Second Transitional Government of East Timor invited the International Legal Assistance Consortium (ILAC) to send an international team of experts to advise upon the implementation of five priority judicial/legal areas within the overall task of establishing a working system of justice.

The ILAC team spent six intense days in meetings with representatives from both UNTAET and the East Timor Public Administration (ETPA) including a number of judges, prosecutors and public defenders. All figures and statistics stated in this report refer to the time period of ILAC's visit to East Timor.

The ILAC team observed several overriding issues present in each of the five topics reviewed, including:

- There is a general lack of **resources**, both human and material, throughout East Timor.
- There are acute **language** difficulties caused by the existence and use of the local languages Tetun and Bahasa Indonesian alongside English, the working language of UNTAET, and Portuguese, the official language of the Second Transitional Government. Most of the UNTAET personnel, including the mentors brought in to help train the East Timorese attorneys, do not speak the local languages. When there are translators they often lack legal training.
- The people of East Timor desire the tools to do the job; they do not merely want the job done for them. This demands effective **training**, in a language that is understood, and with the necessary resources.

- In certain areas, there seems to be a **lack of direct communication between key ETPA officials and UNTAET managers and line representatives**. Some essential resources, both material and human, currently available within UNTAET that could be used to enhance capacity building are not reaching the East Timorese. For example, many of the local attorneys do not have copies of the laws or UNTAET regulations applicable in East Timor, but these laws are readily available on CD within the Office of the Principle Legal Adviser (OPLA).

Regarding the five priority areas that ILAC was invited to examine, the mission makes the following observations and recommendations:

1. Mechanisms for providing legal defense/legal aid. The public defense unit suffers even more than other areas of the justice system from a lack of resources and trained personnel. It was identified that the following steps need to be taken:

- An increase in the number of public defenders, both national and international;
- Intensified legal training;
- The establishment of a truly independent Legal Aid Service, with a clear line of command;
- The establishment of a dedicated premise for such a service, complete with infrastructure and administrative support;
- Reference materials, such as legal texts, case law, legal data bases, etc.; and
- Establishment of criteria for legal practitioners.

ILAC will use its influence, through the member organizations of the consortium, to help create new channels for support from the international community.

2. Investigative capacity in the Justice Ministry and the Serious Crimes Unit. A Serious Crimes Unit has been established to handle the many allegations of crimes against humanity arising from the events of 1999. As of ILAC's visit, approximately 640 cases were under investigation but only 15 had been disposed of. The slow progress in investigation and prosecution arises out of various factors including: (a) a lack of human resources (legal and administrative); (b) a lack of necessary facilities; (c) accused being fugitives in Indonesia; (d) a lack of access to legislation; and (e) a lack of professional interpreters. It was identified that the following steps should be taken:

- Increase the number of qualified international prosecutors, investigators and judges, extend their appointment from six months to one year and expand their role to include training of their East Timorese counterparts.
- Find qualified teams of international forensics experts and expand their role to include training of their East Timorese counterparts.
- Reference materials such as international humanitarian laws and standards, precedents, conventions, articles, commentaries, etc.
- Efficient and qualified legal interpreters (Portuguese, English, Tetun, and Bahasa Indonesian)
- Increase international pressure to ensure cooperation from Indonesian authorities and actively pursue the MOU with Indonesia to return or extradite persons accused of serious crimes.
- Witness protection to guard against intimidation, threats and violence.
- Place investigators and forensic experts in an independent authority or agency, separate from the office of the Prosecutor General.
- Make a clear and transparent distinction between Serious Crimes cases and those that can come before the Truth and Reconciliation Commission.
- Look to member states formerly subject to Portuguese rule as a source for qualified legal experts that speak Portuguese and have a Civil law background.

ILAC will seek through the organizational members of the consortium, individuals with the appropriate skills and experience to assist the East Timorese.

3. Identification of candidates to serve as International Judges and Prosecutors. The nature of the serious crimes under investigation and trial requires International Judges and Prosecutors to work alongside the East Timorese to provide expertise in a specialised area of law and a bulwark against the intimidation of indigenous professionals by the friends and relatives of accused persons and those under investigation. It was identified that that there is a need for:

- Increased International Judges;
- Increased International Prosecutors; and
- Increased International Defenders

Terms of reference have been provided for these positions, which ILAC will use to seek nominations from consortium members. These nominations will then be put to UNTAET/ETPA for consideration and final appointment.

4. Legal Advisers for the Advisory and Legislative Directorate of the Ministry of Justice. Like any functioning government, the future independent government of East Timor will need legal advice. The Minister of Justice has asked that an Advisory and Legislative Directorate be created for which the following steps should be taken:

- Identify qualified East Timorese candidates to fill local positions
- Identify specific areas for training and qualified international candidates as trainers (awaiting information and terms of reference from UNTAET/ETPA)
- Inventory and compile all laws applicable in East Timor, including Indonesian laws, international laws and UNTAET regulations, and make them widely available, in Bahasa Indonesian, Portuguese and English, to the courts, lawyers and lawmakers operating within East Timor (OPLA should be able to assist in this area)
- Review all laws for consistency with international human rights standards (OPLA and the Human Rights Unit may be able to assist)
- Look to international models and successfully functioning legal systems for models and alternatives in drafting and organizing laws
- Reference library with material on legal drafting, legal opinions, alternative solutions, organizations of laws, international standards, etc.
- Provide computers for the Directorate, along with Internet access and training (UNTAET could assist with training).
- Identify and train qualified East Timorese candidates to provide legal education to the people.
- Create a detailed model and cost proposal for the planned mobile legal service unit for dissemination to the international donor community.

5. Alternative dispute resolution. East Timorese authorities propose to make use of alternative dispute resolution as much as feasible. It is envisaged that arbitration could apply to labor and employment disputes, mediation to domestic matters and international arbitration where international contracts are involved. There is a tradition of customary courts, although these were banned during the years of Indonesian rule. Such courts could

again play a useful role but care will be needed to ensure that customary law conforms to domestic laws and internationally accepted human rights standards. There are regional examples to draw upon.

A number of steps should be taken:

- Identify areas for alternative dispute resolution outside the courts;
- Draft domestic and international arbitration laws;
- Research and identify customary laws, clearly distinguishing between those offenses that can be handled through customary mechanisms and those that must go through a formal state system to ensure fundamental human rights principles;
- Look to methods and models of alternative dispute resolution in other countries.

ILAC will seek international experts in alternative dispute resolution to work with the East Timorese.

ILAC MISSION TO EAST TIMOR

Report

1. INTRODUCTION

In 1999 East Timor was front-page news around the world. In response to East Timor's overwhelming vote for independence, militia groups, backed by Indonesian armed forces, embarked on a campaign of arson, looting and violence, brought to an end only when U.N. forces intervened. Many of the trained professionals and officials fled the terror or were killed. Most of East Timor's infrastructure was destroyed. Now, in 2002, the headlines have been replaced by dramatic events elsewhere, but in East Timor the struggle continues, this time the battle is to build an independent and functioning government. In May 2002 the United Nations Transitional Administration in East Timor (UNTAET) hands over to East Timor's first freely elected government. The rebuilding of the machinery of government has begun but progress is painfully slow.

In late 2001, UNTAET and the Second Transitional Government of East Timor invited the International Legal Assistance Consortium (ILAC) to send an international team of experts to advise upon the implementation of five priority judicial/legal areas, identified by the Minister of Justice, within the overall task of establishing a working system of justice: (i) the mechanisms for providing legal defense/legal aid; (ii) the investigative capacity in the Justice Ministry and the Serious Crimes Unit, including the availability of crime scene examiners, forensic experts and equipment; (iii) the identification of candidates to serve as International Judges and International Prosecutors; (iv) the profiles of the Legal Advisers who should be included in the new "Advisory and Legislation Directorate" of the Ministry of Justice so as to ensure that the necessary legal advice can be provided; and (v) alternative dispute resolution mechanisms that could be established outside of the courts.

The ILAC team, consisting of lawyers from Sweden, Portugal, the U.S., Australia, and India, spent six intense days in meetings in Dili and the districts of Baucau and Oecussi with representatives from both UNTAET and the East Timor Public Administration (ETPA) including a number of judges, prosecutors and public defenders. There was an open and frank exchange of dialogue in reviewing the difficulties faced in the five identified areas and the types of assistance most needed.

The ILAC team was left with the overwhelming impression that East Timor is lacking resources of every description, both human and material. The physical infrastructure of court buildings, equipment, law books, and so on is almost totally destroyed. There are very few trained legal professionals, most of whom are young and inexperienced. It is clear that East Timor is intent on rebuilding a better, and independent, functioning system of justice. While the ETPA representatives are not lacking in dedication or commitment, it is equally clear that, at least in the short term, that East Timor must turn to the international community for assistance.

The ILAC team observed several overriding issues present in each of the five areas reviewed, including: a glaring lack of resources; linguistic complexities; a powerful desire to build East Timor's capacity, not merely receive assistance; and, in some areas, a palpable disconnect between key ETPA Ministers and UNTAET Representatives.

1.1 Lack of resources:

There is a general lack of resources, both human and material, throughout East Timor. Not all of the resources currently available within UNTAET are getting to the East Timorese.

1.2 Language:

There are acute linguistic difficulties caused by the existence and use of local languages Tetun and Bahasa Indonesian alongside English, the working language of UNTAET, and the official language of the Second Transitional Government, Portuguese. Most of the UNTAET personnel, including the mentors brought in to help train the East Timorese attorneys, do not speak the local languages. When there are translators they often lack legal training. The result of which affects direct communication and has added to ineffective mentoring. There is no simple solution to the current situation, although the creation of a training center for translators, with a specific module for legal translators, would be a start. Additionally, the creation of a dictionary of legal terms in Indonesian, Portuguese and English would be quite helpful.

1.3 Training:

The term "East Timorization" was heard often. This term is clearly defined as a passing of knowledge and expertise (capacity building) to the East Timorese people. It was made clear at each meeting that ETPA wants to create an independent system of government.

The people of East Timor desire the tools to do the job; they do not merely want the job done for them. This can be accomplished through effective training, in a language that is understood, and with the necessary resources.

1.4 UNTAET and ETPA:

The U.N. has accomplished a great deal in a difficult situation. It is quite clear that over the last two years substantial progress has been made to develop a working system of government in East Timor, but serious deficiencies still need to be addressed if there is to be a functioning system based on the rule of law. The most basic of which is open and direct communication.

In certain areas, there seems to be a lack of direct communication between key ETPA officials and UNTAET managers and line representative. There appear to be essential resources, both human and material, currently available within UNTAET that could assist with capacity building. A clear example was observed in our meeting with the Office of the Principal Legal Advisor (OPLA) to discuss the range of legal assistance provided to UNTAET and the Second Transitional Government. Many of the local attorneys do not have copies of the laws or regulations applicable in East Timor. In the meeting it became apparent that these laws are readily available on CD within OPLA. It would be quite useful if OPLA could make copies of the laws applicable in East Timor, in Bahasa Indonesian, Portuguese and English, and distribute them to the Ministry of Justice and the courts and legal offices in each of the districts. It is further suggested that OPLA, if possible, continue its review of the Indonesian Laws and UNTAET regulations for inconsistencies and compliance with international human rights norms and provide the results to the Minister of Justice, the UNTAET Human Rights Unit (HRU) could also assist in this effort. While there seems to be a general effort to get the district courts operational, basic communication again appears to be lacking. The Court building in the District of Baucau was recently refurbished, but there is only one Public Defender to 7 judges and 3 prosecutors, the decisions are written in English, leaving the defense attorney unable to read them to his clients, and the administrative and legal personnel are in desperate need of material resources, support and training. The court in Oecussi is non-functioning because there is no Investigating Judge, and the single Prosecutor doesn't speak the local language. Through better communication and allocation of what little resources are available, these courts could become operational or their resources consolidated. Other areas of general capacity building, seemingly available within UNTAET, include legal research, access to and training in the use of the Internet, and

training in the basics of legal drafting. It is not certain whether UNTAET will leave the material resources available to OPLA and other UNTAET offices in East Timor, but it would clearly be beneficial for building the capacity of the East Timorese for them to do so.

During the mission, ILAC saw improvements in communication between UNTAET Representatives and ETPA Ministers simply through having both parties in the same room conversing. The closer it gets to East Timor's independence the more critical it is that UNTAET actively focus on capacity building and the establishment of conditions for continued development as they transfer their functions to the Government of East Timor.

After numerous discussions with representatives from the Ministry of Justice and UNTAET regarding each of the five area defined by the Minister of Justice, the ILAC team makes the following observations:

2. FIVE PRIORITY AREAS

2.1 Methods for Providing Legal Defence/Legal Aid

It is widely recognized that all parts of the judicial system in East Timor suffer from a blatant lack of resources. This is particularly noticeable in the area of the defense. In its report from July 2001, Amnesty International sees the inadequate access by detainees to legal counsel "as an extremely serious problem" and notes "detainees often do not have access to legal counsel for weeks or months" (East Timor: Justice Past, Present and Future. Amnesty International 27/07/2001, p. 24).

At the time of the ILAC mission, the total number of defense attorneys of East Timorese origin was eleven. Out of this number, one attorney was allocated to the district court of Baucau and another to Oecusse. The others work in Dili, where they are organised in the Public Defenders' Unit, which is located in the Appellate Court Building. The ET public defenders are young and have no previous legal experience. Several of them have been working for less than a year. They were supported by 5 international lawyers, from Colombia, Peru, the Philippines, Portugal and Zimbabwe. The international lawyers are supposed to also function as trainers, but the workload of the Public Defense Unit is so heavy that there is little time for anything but "on-the-job" training. The public defenders are responsible for defending not only ordinary criminal cases, but also for the defense of those accused of the numerous wartime atrocities, which are assigned to the Serious

Crimes Investigation Unit. As a rule, the defense attorneys have their office in the court building, which tends to muddle the issue of the independence of the bar and sends the wrong signal to the public.

It is commonly recognized that there is a serious “inequality of arms” between the prosecution and the defense, particularly regarding “serious crimes”. Even if the prosecution also suffers from a lack of human and material resources, the situation for the public defenders is considerably worse. Not only do they lack experience, they also suffer from an almost total shortage of legal texts, case law, investigative capacity and general logistics. It is obvious that under such circumstances they are not able to provide their clients with even basic legal counseling. It is also obvious that, as a consequence of the blatant inequality of arms between the prosecution and the defense, particularly in the area of “serious crimes”, the defendants’ right of “due process” is frequently being violated. It is considered that the weakness of the defense is one factor that makes war crime suspects reluctant to return to East Timor to face charges.

In the last few months, however, steps have been taken with a view to improving the possibilities of providing defense counsel in criminal cases. A new “Regulation on the Establishment of a Legal Aid Service in East Timor” (No. 2001/24) was promulgated 5 September 2001. However, although the regulation went into force the same day, lack of funds and qualified staff still prevent it from being transformed into reality. Also, the regulation contains some ambiguities, which may threaten its implementation. These ambiguities relate both to the independence of the service and to how it is governed. According to Section 3.1 of the regulation, the legal aid service “shall be an independent statutory body”. Section 3.2 stipulates that the service will be headed by a five-member commission, which shall have “responsibility for the administration” of the regulation and for “such policy matters as are necessary for the effective functioning of the Service”. But the same provision also stipulates that the Cabinet Member for Justice shall “ensure the effective implementation” of the regulation. As a result, there is a lack of clarity regarding both the independence in relation to the executive branch of government and the chain of command of the service. The same lack of clarity pertains to the manner the Director of the service is to be appointed. Section 4 prescribes that the Director is appointed by the Commission “in consultation with the Cabinet Member for Justice”. But it does not say what happens if there is a disagreement on the nomination.

The improvement of the legal defense requires a number of different steps to be taken.

These include:

- an increase in the number of public defenders, both national and international;
- intensified legal training;
- the establishment of a truly independent Legal Aid Service, with a clear line of command;
- the establishment of a dedicated premise for such a service, complete with infrastructure and administrative support;
- reference materials, such as legal texts, case law, legal data bases, etc.; and
- establishment of criteria for legal practitioners.

East Timor will become independent 20 May 2002. The already insufficient resources under UNTAET will be further scaled down after independence. If there is to be any kind of hope for an improvement of the alarming status of the legal system, and particularly the defense, new channels of support from the international community will need to be established. ILAC will use its influence to help create such new channels.

2.2 Serious Crimes Status and Problems Faced

Serious Crimes against humanity are defined in Regulation 2000/15 to include genocide and forced deportation as well as the individual offences of murder, rape and torture committed in East Timor from 1-25 October 1999, the period preceding the establishment of UNTAET.

The Serious Crimes Unit was started in July 2000 and is currently under the control of UNTAET. At the time of ILAC's mission there had been approximately 640 cases from 13 Districts handed over to the Serious Crimes Unit for investigation, which are being worked by eight prosecutors, seven International and one East Timorese, as well as 21 investigators under the office of the Prosecutor General. Forensic experts support the investigating team.

The cases are heard by a Special Panel of three Judges, consisting at present of one East Timorese and two International Judges, located within the Dili District Court. The Special Panel has exclusive jurisdiction over Serious Crimes. The Serious Crime Unit has filed 32 cases in the Court, 15 of which have been decided and 17 are pending disposal. The first Judgment was pronounced on 25 January 2000; it has taken nearly two years to dispose of 15 cases.

There is a huge gap between the 640 cases under investigation and the 15 cases that have actually been brought to trial and decision by the Court or Special Panel for Serious Crimes. The Serious Crime Unit has identified 10 cases to be taken up on a priority basis for investigation and trial. The slow progress in investigation and prosecution before the Court as well as conduct of trials arises out of various factors including: (i) a lack of human resources (legal and administrative); (ii) a lack of necessary facilities; (iii) accused being fugitives in Indonesia; (iv) a lack of access to legislation; and (v) a lack of professional interpreters.

The shortage of legal and administrative resources with experience in international humanitarian law is across the board and includes investigators, prosecutors, defense attorneys and judges. The situation regarding prosecutors has improved but, taking into account the large number of cases yet to be investigated, it is inadequate and the fact that the international attorneys are often deputed for relatively short periods of time affects the continuity of the case causing the investigation to suffer.

Another problem faced by the prosecution is the difficulty of obtaining witnesses and providing adequate protection for them. Little attention appears to have been given to witness protection in serious crimes. If this problem is not addressed immediately witnesses will not come forward.

Although there was mention of a second Special Panel, there is currently only one Special Panel for Serious Crimes hearing cases. At present there is no capacity available within the country to increase the number of panels or Judges trying Serious Crimes; additional International Judges must be appointed to expedite trials.

Another hurdle in the slow progress of filing a case is that Indonesian citizens who, as officers of the Indonesian army/police, are outside the reach of East Timor authorities have committed many of the serious crimes against humanity. These parties cannot be brought to trial in absentia in East Timor and there is a lack of co-operation by Indonesian authorities to prosecute them. Recently some progress appears to have been made to sign a Memorandum of Understanding with the Indonesian Government but until this is effectively implemented the investigation and prosecution process will be seriously hampered.

The language issues are ever present. The locals speak Bahasa Indonesian or Tetun. The official language of the East Timorese Government is Portuguese, while English is the language of UNTAET. Conducting an investigation requires examination of witnesses in the local languages, including several East Timorese dialects. Conduct of the proceedings in the Court is in English or Portuguese. This requires a large number of qualified and skilled interpreters, which are not widely available. When interpreters are available they have minimal, if any, legal training. Most of the international attorneys are not fluent in the local languages, this has a direct impact on effective attorney client communications. Additionally, court transcripts, if they exist at all, are not available in the local languages.

Improvement in Serious Crimes requires a number of different steps to be taken. These include:

- Increase the number of qualified international prosecutors and investigators and extend their appointment from six months to one year. Candidates must have at least 5 years practical experience and increase their role to include training their East Timorese counterparts in the basic legal skills required to prepare and prosecute a criminal case.
- Increase the number of qualified international judges and extend their appointment to one year. Candidates should now have 10 years practical experience and additional experience in crimes against humanity. Their role should be increased to include training their East Timorese counterparts in the basics skills required to be a Judge.
- Increase the number of qualified international forensics experts and either extend their appointment or bring them over in teams. Their role should be increased to include training their East Timorese counterparts in basic forensic skills.
- Reference materials based on international humanitarian laws and standards: laws, precedents, conventions, articles, commentaries, etc.
- Efficient and qualified, legal interpreters (Portuguese, English, Tetun, and Bahasa Indonesian)
- Increased international pressure to ensure cooperation from Indonesian authorities and actively pursue the MOU with Indonesia to return or extradite parties accused of serious crimes.
- Witness protection to guard against intimidation, threats and violence.

- Place investigators and forensic experts under an independent authority or agency, separate from the office of the General Prosecutor.
- Look to member states formerly under Portuguese rule as a source for scouting qualified legal experts. Most of these states were governed under the Civil Law System, worked with Portuguese as the language of the Courts and have English as the second language. In these states the cost of engaging such personnel will be much lower, an important factor in view of down grading of the East Timor budget after it attains independence.

2.3 Identification of Candidates to Serve as International Judges and Prosecutors

The role of the international lawyer (particularly in dealing with criminal cases) in East Timor has been very important and continues to be so. This is especially the case in regard to criminal activities that occurred after the Independence Vote on 30 August, 1999. Most of these activities are being treated as Serious Criminal Offences as defined in Regulation 2000/15 (Serious Crimes) and include crimes of genocide, crimes against humanity, war crimes and torture as well as crimes under the adopted Indonesian Penal Code relating to murder, arson and sexual offences – normally perceived to have been committed by persons acting in concert with the anti-independence militia.

Serious Crimes are dealt with in the East Timor District Court before a Special Panel which normally consists of 1 East Timorese Judge and 2 International Judges. There is a two-fold purpose for the membership mix of these panels: it was perceived (and generally accepted) that the local judges did not have the experience to deal with these types of cases and there was also a concern for the safety of the young East Timorese judges dealing with fellow East Timorese and potentially with accused persons from outside East Timor. We were advised of instances of harassment of judges and prosecutors by relatives and friends of accused persons. Generally the panel system with the combination of East Timor and International Judges has seemed to work well to date.

The prosecution of Serious Crimes has been undertaken by International Prosecutors. These prosecutors are attached to the Serious Crimes Unit set up by UNTAET. Once again, the level of experience was the main reason for the appointment of lawyers from outside East Timor to act as prosecutors.

Defence attorneys are equally important to the proper conduct of trials of Serious Crimes. We were advised that an accused would always be given the opportunity of having a

defence lawyer available. Obviously the financial means of the accused would determine whether that defence lawyer was well experienced or else was provided from the Public Defenders Office (now Legal Aid Service). It appears that most defences are conducted by the Public Defenders. As it appeared to us that there is only one International lawyer presently in charge of the Public Defenders Office and some young International lawyers acting as mentors; there is a perception of inexperience in the Public Defenders Office – they acknowledge this point as well. Accordingly this appears to give rise to considering the appointment of International lawyers as Public Defenders in regard to Serious Crimes to ensure that the accused are appropriately represented.

There exist major issues regarding support staff and availability of resources for International Judges, Prosecutors and Defenders, but ILAC's main focus is to give the background of those international appointments and to consider ways and means to find additional people to fill these roles.

The ILAC team noted that most of the current appointments were under the United Nations protocols so far as term of engagement and income entitlements. One observation, however, is that while the normal appointment is for 6 months, it was considered that to achieve continuity in the cases a more appropriate term would be 12 month, subject to availability and financing. It is also noted that the roles of the International Judge, Prosecutor and Defender are to continue after 20 May 2002.

Conduct of the trials for Serious Crimes is currently in English and there is a need for translators into Portuguese, Bahasa Indonesian, Tetun and occasionally other East Timorese dialects. The issue of the availability of effective translators is discussed in the introductory section of this report.

We were advised that there is a need for 5 International Judges, 5 International Prosecutors and 5 International Defenders. It appears to us that these candidates can come from any part of the world provided they meet the criteria under the Terms of Reference.

ILAC will institute an invitation to judges and lawyers in Europe, Asia, United States of America, Canada and Australia to submit expressions of interest in taking up an appropriate role. The Terms of Reference will be included in this invitation (we are still

awaiting receipt from UNTAET of the United Nations protocol for appointments, which we presume will show income and traveling details).

Copies of the Terms of Reference for International Prosecutors, Judges and Defenders are attached. Responses are to be directed to ILAC who will coordinate the responses and remit the CVs to UNTAET/ETPA for consideration and final appointment.

2.4 Legal Advisers for the new “Advisory and Legislative Directorate” of the Ministry of Justice

Like any functioning government the future independent government of East Timor will need legal advice. The Minister of Justice has requested that an “Advisory and Legislative Directorate” be created to meet this requirement. The Minister has identified several functions for the Advisory and Legislative Directorate including: serve as legal advisors to the government; draft legislation (company laws, arbitration laws, investment law, etc.); and assist with the proper organization of laws. It will be important that this Directorate provide a mechanism to ensure consistent and quality legal drafting. It is equally important that this body serves as a repository of all laws applicable in East Timor, including Indonesian laws, international laws and UNTAET regulations, and that this information is made widely available to the courts and lawyers operating within East Timor. Other important functions for this body are to determine whether such laws are consistent with international human rights laws and the identification of laws that need to be adopted or drafted (OPLA and HRU should be able to assist in this effort). It was further suggested by the Head of the Human Rights Office, Patrick Burgess, that the Directorate guarantees some type of public consultation to ensure laws reflect public opinion.

The Minister is aware of East Timor’s current lack of resources to staff such a directorate and is looking to international trainers to help get an East Timorese staff qualified to provide such services. It is envisaged that the center will have one to two internationals focused on capacity building of the two to three East Timorese specialists. The training will focus on legal drafting, legal opinions, alternative solutions and legal research. There is a strong desire that the international legal advisors are fluent in Portuguese and have a civil law background. The most important aspect of the center is the transfer of knowledge, furthering the process of “East Timorization.” The Ministry would like the office to be run by qualified East Timorese nationals as soon as training and time permit.

(ILAC is awaiting from UNTAET/ETPA the terms of reference for the proposed international legal trainers.)

The Advisory and Legislative Directorate can play a pivotal role in building the rule of law in this newly independent government, it can be instrumental in creating a functional system of law. It is therefore important that this Directorate be operational as soon as possible. ILAC was informed that the plan is to have the Directorate and training center up and running in March 2002.

Legal education and public awareness is particularly critical in areas of transition. Many of the people in East Timor aren't aware of the current laws or how they directly affect or protect them. In order to develop trust in the system, the people must be educated. Because there is a high illiteracy rate among the citizens of East Timor, several creative means are being considered to get the information out, including the use of cartoons and radio programs. The church is also being looked to as a method of dissemination of such information.

There are currently 13 districts in East Timor; the Ministry of Justice plans to have a representation in three districts. For the other districts the Ministry is considering a mobile unit to bring legal services to the people. It is envisaged that a mobile legal services unit will travel a circuit through the districts handling specialized legal functions, including vehicle registrations, notary services, etc.

The creation of the Advisory and Legislative Directorate of the Ministry of Justice requires a number of different steps to be taken.

These include:

- Identify qualified East Timorese candidates to fill local positions.
- Identify specific areas and international candidates for training.
- Identify qualified international candidates as trainers (still awaiting Terms of Reference from ETPA/UNTAET).
- Inventory and compile all laws applicable in East Timor, including Indonesian laws, international laws and UNTAET regulations, and make them widely available, in Bahasa Indonesian, Portuguese and English, to the courts, lawyers, lawmakers, etc. operating within East Timor (OPLA may be able to assist in this area).

- Review all laws for consistency with international human rights laws (OPLA and HRU may be able to assist in this area)
- Look to international models and successfully functioning legal systems for models and alternatives in drafting and organizing laws
- Build a library with references on legal drafting, legal opinions, alternative solutions, organizations of laws, international standards, etc.
- Provide computers to the Directorate, including access to Internet and effective training
- Identify qualified local candidates to provide legal education to the people
- Create a detailed model for the proposed mobile legal services unit, including a cost estimate (for dissemination to the international donor community.)

2.5 Alternative Dispute Resolution Outside the Courts

There are at least two methods of alternative dispute resolution in East Timor to be addressed: dispute resolution as a means to avoid litigation, including arbitration and mediation, and the use of customary law to resolve local conflicts.

Domestic arbitration is becoming more widely used in countries around the world, particularly in the areas of labor and employment. In this method of dispute resolution, the parties agree to arbitrate disputes that may arise rather than take them before the court. Arbitration is generally thought to be a speedier and less costly method for resolving disputes. Another attribute of arbitration is that the result is usually private, something employers often favor. Arbitration is frequently governed by pre-set rules, as selected by the parties, and the law of the state. The parties determine the number of arbitrators and will often select experts from their field who understand the issues of the dispute. The Minister of Justice is quite interested in creating alternative dispute mechanisms in the areas of labor and domestic issues.

An employee often agrees to arbitration of any disputes as a condition of accepting the job. Another method of choosing arbitration to decide labor disputes is through collective bargaining, where a group of employees, or their representatives, negotiate the conditions of employment with their employer, which often included the specifics of dispute resolution. Arbitration has also become a popular means to resolve disputes arising in business transactions. The parties agree to settle any potential disputes through arbitration and agree to the details of the arbitration when they sign the agreement. The

legal framework of a state often ensures enforcement of arbitration agreements and the decisions of the arbiters under state law.

Mediation is another method of alternative dispute resolution designed to keep the parties out of court. Mediation is often used to resolve domestic situations. A neutral party, the mediator, works with the individuals to resolve their differences and come to an agreement regarding the details of a settlement, if any. If the parties are unable resolve their differences via mediation the parties may be referred to a trial court. The mediator is typically an individual trained in the specific area of domestic mediation. Mediation is also considered to be a speedier, less costly and more amicable means of resolving domestic disputes. Both methods of alternative dispute resolution can save the parties considerable time and money in addition to removing some of the pressure from an overtaxed and developing court system.

It is further suggested that East Timor consider drafting a separate international commercial arbitration law for the resolution of international commercial disputes. Many international investors want to be certain of the laws governing their commercial agreements, particularly in developing judicial systems and systems with customary law. The international arbitration law should cover all stages of the arbitral process, from the arbitration agreement to recognition and enforcement of the arbitral award. There are good models for international arbitration laws; in the area of international trade and investment it makes sense to follow a recognized and internationally accepted model so that the law is accessible and transparent to foreign investors. One such model is the UN Commission on International Trade Law (UNCITRAL), Model Law on International Commercial Arbitration.¹ The UNCITRAL Model Law can be used in its entirety or as a guide, but prior to any new legislation relating to international arbitration it is suggested that the text of the Model Law be examined.

Traditional mechanisms employing the use of customary courts have been part of East Timor for centuries, “indeed, many East Timorese subscribe to ‘customary law’ as a means of resolving conflicts.” (Brief Overview of the Role of Customary Law in East Timor. By Dionisio C.B. Soares). During the Portuguese colonial period, parts of East Timor’s traditional structure survived. Criminal acts were brought under state court and other conflicts were settled under customary law. However, when Indonesia came to

¹ U.N. GAOR 40th Sess., Supp. (No. 17), Annex I, at 81, U.N. Doc A/40/17 (1985). For a copy of the text of the law see <http://www.un.or.at/uncitral>.

East Timor in 1975 it completely destroyed the traditional infrastructure, passing a law that permitted no local traditional institution to exist apart from those adopted by the national legislative body. There is still a great deal of distrust in the current legal system and many conflicts that have been brought and settled before state court were not acceptable to the conflicting parties, particularly the victims who want “compensation” for what they have suffered. If the people feel that state courts cannot effectively resolve their disputes the parties will turn to traditional methods. There is also a strong feeling that traditional law is part of East Timor’s culture and, after years of outside rule, East Timor wants to claim its culture back.

While it is important that traditional methods of law not be ignored, there are fundamental differences between customary law and human rights. Customary law is often “indigenous, fragmentary (on a geographical basis), binding only on those who accept it as the law applicable to them. It is basically conservative and patriarchal. Human rights, on the other hand, are introduced concepts, purported to be universal, and founded on liberal, egalitarian principles.” (Conflict Between Customary Law and Human Rights in the South Pacific. By Jennifer Corrin Care) Because each village or district may use its own traditional dispute mechanisms, it is important that the Ministry first conduct research of the systems of customary law and then attempt to standardize the customary laws prior to integration into the legal system. The issue of codification of customary law was raised several times during the ILAC mission. The obvious first step is to identify these laws. Once this is done, the Ministry should determine how these customary laws fit with international human rights standards.

If the Government of East Timor determines to maintain a system of customary law, the Ministry should clearly distinguish between disputes that can be handled through traditional means and those offences that must be handled in state court. It was clear that the Minister of Justice does not want land and property disputes handled through customary law but within the judicial system. It was also raised on several occasions during the ILAC mission that crimes against women, including domestic violence and rape, should be handled in state court. It was evident that in the area of crimes against women customary law was generally in conflict with international human rights norms.

East Timor may want to look to the examples of other newly independent states, where customary laws, state laws and international laws coexist within the legal framework. For example, while most of the Pacific Islands have given constitutional recognition to customary law, others have codified or given specific statutory recognition to traditional

laws. Whatever the method it is important that East Timor take a clear position regarding the effect given customary laws within the national legal system. To build trust among the people and avoid confusion, the earlier this can be accomplished the better.

The development of Alternative Dispute Resolution mechanisms outside the courts requires a number of different steps be taken.

These include:

- Identify areas for alternative dispute resolution outside the courts.
- Draft domestic and international arbitration laws.
- Research and identify customary laws and clearly distinguish between those offenses that can be handled through customary mechanisms and those that must go through a formal state system to ensure fundamental human rights principles
- Look to methods of alternative dispute resolution in other countries.
- Look to examples of newly states where customary law, state law and international laws coexist within the legal system.

3. CONCLUSION:

East Timor is a clear example of why an authoritative legal assessment should be made immediately at the cessation of hostilities and ideally completed prior to the deployment of people. A comprehensive assessment, in consultation with local authorities and institutions, of the legal and judicial system and applicable laws can be the foundation upon which international assistance is based. The specific requirements can be used to coordinate international assistance in seeking appropriate material resources, qualified human resources, and the implementation of effective projects. Many international non-governmental organizations, intergovernmental organizations and member states have already come to East Timor's aid. A great deal of resources, both financial and human, have gone toward assistance in East Timor. However, the assistance has often not been coordinated with UNTAET or ETPA and has, at times, been at cross-purposes or ineffective. This leaves East Timor still in need of a great deal of international assistance with only a few months left to independence. While most organizations readily agree that building a functioning legal system in East Timor is a necessary and worthwhile cause, many feel they have already expended their budgets for East Timor.

After a long fight, peace and independence have finally found East Timor. The passion of the East Timorese to build an independent and functioning legal system was evident in every meeting ILAC attended, but they can't do it alone. Despite organizational and governmental budgetary concerns, the needs of East Timor are real and have not been replaced by the events elsewhere now making headlines. To build a strong foundation, East Timor needs the assistance of qualified members of the international legal community, now more than ever. ILAC is committed to make every effort to call upon the international community to find the resources, both material and human, to assist in this most worthwhile effort to build an independent and functioning legal system in East Timor. The requirements based on the five priority judicial/legal areas are listed below.

ILAC would like to extend our sincere thanks to the many people who met with us and openly and frankly discussed the issues, providing valuable information. Specifically, we would like to thank the Minister of Justice, Dra. Ana Pessoa, and the Deputy Special Representative for the Secretary-General, Mr. Dennis McNamara, for the many hours they spent informing ILAC of the current situation in East Timor and where assistance is needed. We would also like to acknowledge the tireless efforts of Ms. Nina Lahoud, Office of the DSRSG, in putting this programme together. Her dedication to helping East Timor create a functioning legal/judicial system and to the people of East Timor in general is truly commendable.

Note: For more information on this report or how to assist East Timor in building a judicial system please contact ILAC directly.

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Shelby R. Quast

ILAC US

Executive Director

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(509) 694-1754 (FAX)

REQUEST LIST FOR EAST TIMOR

A. Five Priority Areas Identified by DSRSG/Justice Minister:

I. Defense/legal aid

Requested assistance:

- **Candidates for International Defence Attorney, as per TOR**
- **Reference materials**
- **Experienced legal trainers, as required by Judicial Training Center**
- **Establishment of a dedicated premise for Public Defenders Service, including refurbishment, infrastructure and administrative support**

II. Serious Crimes Unit

Requested assistance:

- **Address forensic and investigative needs to identify particular areas of possible assistance (Serious Crimes Unit to clarify)**
- **Assistance in identifying candidates for the following positions:**
 - **Two Trainer Investigators, per TOR**
 - **Two Gender Crimes expert**
 - **One Forensic Pathologist, per TOR**
 - **One Forensic Anthropologist**
 - **One Librarian to assist with both prosecution and public defenders**
 - **Two case managers, per TOR**
- **Provide reference materials in international humanitarian law, as requested**

III. International Judges and International Prosecutors

Requested assistance:

- **Identification of the following candidates:**

- **International Judges, per TOR**
- **International Prosecutors, per TOR**
- **International Defenders, per TOR**

IV. Legal Advisers for the new “Advisory and Legislation Directorate” of the Ministry of Justice

Requested assistance:

- **Identification of candidates:**
 - **International trainers for legal drafting**
 - **Experts to help in law reform**

V. Alternative dispute resolution mechanisms that could be established (e.g. conciliation, mediation) outside of the courts

Requested Assistance:

- **Provision of a synopsis of comparable legal mechanisms in conciliation, mediation and arbitration, both domestic and international**

B. Items Outside Priority Areas For Possible ILAC Assistance:

- **Provision of a legal glossary**
- **Assistance in legal literacy programme**
- **Assistance with the establishment of criteria/parameters for legal practitioners**
- **Mobile court system**

TERMS OF REFERENCE

JUDGE/SPECIAL PANEL - SERIOUS CRIMES UNIT, EAST TIMOR

The Judge for the Special Panel for the trial of Serious Crimes will be an established legal practitioner with no less than 10 years experience as a sitting Judge dealing with complex criminal cases within a civil law system.

DUTIES AND RESPONSIBILITIES:

- 1. Work with Judges to assist them in acquiring basic judicial skills;**
2. Mentor East-Timorese Judges in subjects related to judicial skills including legal analysis and reasoning, decision-making, weighing evidence and processing of cases;
3. Provide on the job training and technical assistance for Judges;
4. Aid in building the judicial capacity of East Timorese Judges, in general; and
5. Sit as a Judge at the Special Panel for Serious Crimes.

Languages

He/She will be fluent in English and/or Portuguese. Knowledge of Bahasa Indonesian will be an added advantage.

TERMS OF REFERENCE

PROSECUTORS – SERIOUS CRIMES UNIT

Job Description

Under the direction of the Deputy Prosecutor General for Serious Crimes the incumbent is responsible for providing legal directions and advice to Investigators, evaluating evidence, drafting indictments and conducting prosecutions of Serious Criminal Offences as defined by Regulation 2000/15 of the United Nations Transitional Administration for East Timor.

Duties and responsibilities:

1. Direct and supervise investigations and prosecutions of Serious Crimes.
2. Study investigation dossiers and evaluate evidence in order to make appropriate decisions in regard to the prosecution of Serious Crimes.
3. Evaluate evidence, determine charges and prepare indictments for Serious Crimes.
4. Conducting trials before the Special Panel in the District Court of Dili, on indictments based on Serious Crimes offences.
5. Appear before the Investigating Judge in all matters within the jurisdiction of the Investigating Judge pertaining to Serious Crimes.
6. Consider appeals to the Court of Appeal. Draft appeal documents and conduct of appeal hearings.
7. Attending to pre-trial preparation such as interviewing witnesses, preparation of factual and legal briefs, motions, etc.
8. Undertake such special assignments as may be required, such as identifying and resolving potential legal issues, participate in the formulation of prosecution policies and principles.

Qualifications

Law degree and admittance to practice in a national jurisdiction.

Experience in prosecution of criminal offences in domestic jurisdiction. Experience in prosecuting in International Criminal Offences is a significant advantage.

Knowledge and exposure to International Criminal and Humanitarian law is an advantage. Ability to direct and advise on criminal investigations.

Languages: the working language is English. Knowledge of Portuguese, Indonesian or Tatum is an advantage.

Terms of Reference: Public Defender

Length of assignment:
Assigned responsibilities and functions: The incumbent will be required to represent defendants in all courts of East Timor in both Serious Crimes and ordinary crimes, in addition to assisting and supporting the development of the capacity of the East Timorese defence lawyers. Capacity building for the East Timorese lawyers will include on-the-job mentoring and assistance in the provision and organization of training and education for the East Timorese public defenders. The incumbent will assist in the development and implementation of the Regulation on the Establishment of the Legal Aid Service in East Timor and the development of efficient and responsive mechanisms to ensure equal access to lawyers by all persons in East Timor.
Qualifications: <ol style="list-style-type: none">1. A recognized law degree.2. Admission to practice law.3. Professional experience as a practicing criminal attorney with courtroom experience for a minimum of 3 years.4. Experience in capacity building and training of more junior lawyers.5. Knowledge of international criminal law.

Programme for ILAC Exploratory Team Visit to East Timor:

26 November – 1 December 2001

UNTAET Programme Coordinator, present at all meetings: Ms. Nina Lahoud/Office of the Deputy Special Representative of the Secretary-General

ILAC team members:

Christian Åhlund/Sweden

João Miguel Barros/Portugal

Francisco De Bragança/Goa, India

Shelby Quast/United States of America

Peter Short/Australia

26 November 2001 (Monday)

9:00 – 10:15 a.m.: Overview of challenges facing the judicial/legal institutions of the Second Transitional Government and priority areas requiring review/assistance

- Presenters: Justice Minister/Dra. Ana Pessoa and Vice-Minister for Justice/Dr. Domingo Maria Sarmiento
- Venue: Court of Appeal Building, Conference Room

10:30 a.m. 0 12:30 p.m.: Briefing by Justice Ministry on Work of Each Service

- Presenters:
 - (a) **Judicial Reform and Court Administration Service: Mr. Claudio Ximenes/Head (and President of the Court of Appeal);**
 - (b) Public Defence, Legal Aid and Legal Training Service: Mr. Xavier Ortega/Head;
 - (c) Penal Management and Training Service: Mr. Stu Davie/Prison Manager [Ms. Isabel Hight/Head: away on leave];
 - (d) Prosecutor Services/Serious Crimes Unit: Mr. Longuinhos Monteiro/General Prosecutor
- Other participants: Justice Minister and/or Vice Minister for Justice
- Venue: Court of Appeal Building, Conference Room

1:00-2:15 p.m.: Lunch with various members of Justice Department (as available)

- Venue: Central Maritime Hotel

2:30-3:30 p.m.: Overview of the transitional process and the importance of the rule of law to political stability and the challenges ahead

- Presenters: Special Representative of the Secretary-General (SRSG) and Transitional Administrator/Mr. Sergio Vieira de Mello and the Chief Minister/Mr. Mari Alkatiri
- Other participants: Justice Minister, Vice-Minister for Justice

- Venue: Office of the SRSG, GPA Building 1

3:45-5:00 p.m.: Overview of range of legal assistance provided to UNTAET/Second Transitional Government and the major legal issues to be addressed

- Presenters: Principle Legal Advisor to the SRSG/Mr. Johan van Lomoen, Justice Minister, and Vice-Minister for Justice
- Other participants: Staff of Office of the Principal Legal Advisor/OPLA
- Venue: Office of the DSRSG, GPA Building 3

5:15-6:30 p.m.: Overview of major legislative tasks of the Council of Ministers and future priorities

- Presenters: Secretary of State of the Council of Ministers/Dr. Gregorio de Sousa and the Senior Adviser to the Secretary of State/Mr. Joao Nataf
- Other participants: Justice Minister and/or Vice-Minister for Justice, Staff of the Secretariat of Council of Ministers
- Venue: Conference Room of Council Secretariat, GPA Building 3

7:30 p.m.: Dinner

27 November 2001 (Tuesday)

9:00-9:30 a.m.: Attendance at opening of plenary session of Constituent Assembly

- Venue: Constituent Assembly Building

9:30-10:00 a.m.: Overview of major issues to be addressed by the Constituent Assembly/Parliament

- Presenter: President of Constituent Assembly/Mr. Francisco Guterres
- Other participants: Vice-Minister for Justice, Vice-President of Constituent Assembly and President of Committee IV (Fundamental Principles/Guarantees, Control and Amendment of the Constitution/Final and Transitional Provision)/Mr. Francisco Xavier do Amaral, Vice President of Constituent Assembly and the President of Legislative Specialized Committee/Mr. Arlindo Francisco Marçal, President of Committee 1 (Rights, Duties and Liberties/Defence and National Security)/Mr. Paulo Assis Belo, President of Committee II (Organization of the State/Organization of Political Power)/Mr. Jacob Martins dos Reis Fernandes, President of Committee III (Economic, Social and Financial Organization)/Mr. Manuel Tilman, President of Systematization and Harmonization Committee/Mr. Adérito de Jesus Soares
- Venue: Constituent Assembly Building, Meeting Room

10:15-11:30 a.m.: Key human rights issues in connection with the judicial process

- Presenters: Head of Human Rights Unit-Office of SRSG/Mr. Patrick Burgess and the Advisor on Human Rights to the Chief Minister/Dra. Isabel da Costa Ferreira
- Other participants: Vice-Minister for Justice, Head of Public Defenders Service/Mr. Xavier Ortega, Case Manager for Serious Crimes/Ms. Molly Groom, Staff of Human Rights Unit/OSRSG
- Venue: Office of Human Rights Unit/SRSG, Comoro

11:45-1:15 p.m.: Overview of key issues and problems encountered by the Public Defenders Service

- Presenter: Head of the Public Defenders Service/Mr. Xavier Ortega
- Other Participants: Vice-Minister for Justice, Staff of Public Defenders Service
- Venue: Court of Appeal Building, Conference Room

1:15-2:00 p.m.: Lunch with staff of the Public Defenders Office Service

2:15-4:45 p.m.: Review Session 1: The mechanisms for providing legal defense/legal aid (including the arrangements established for the Public Defenders Service)

- Opening comments/facilitators: Justice Minister and Vice-Minister for Justice
- Other participants: Head of Public Defenders Service/Mr. Xavier Ortega and Public Defenders, Human Rights Adviser to the Chief Minister/Dra. Isabel da Costa Ferreira, Head of Human Rights Unit-Office of SRSG/Mr. Patrick Burgess, Director of East Timorese Jurists Association/Mr. Aderito Soares, head of Policy/Advocacy Department of Yayasan Hak/Mr. Joaquim Fonseca, Libertas/Ms. Maria Vasconcelos
- Venue: Court of Appeal Building, Conference Room

5:00-6:15 p.m.: Visit to East Timor police Training College and Briefing

- Presenters: ETPS Commissioner and Director of East Timor Police Service College/Mr. Paola Martins, CIVPOL Commissioner/Mr. Peter Miller, Acting Deputy CIVPOL Commissioner for Operations/Mr. Henrique Lima de Castro
- Other participants: Vice-Minister for Justice
- Venue: Police Training College

8:00 p.m.: Dinner (with President of Court of Appeal/Mr. Claudio Ximenes, General Prosecutor/Mr. Longuinhos Monteiro, Head of Public Defenders Service/Mr. Xavier Ortega, Human Rights Adviser to the Chief Minister/Dra. Isabel da Costa Ferreira, Head of Human Rights Unit-Office of SRSG/Mr. Patrick Burgess)

28 November 2001 (Wednesday)

8:30 a.m. – 10:00 a.m.: Update on status of prosecution of serious crimes and the major difficulties encountered

- Presenters: General Prosecutor/Mr. Longuinhos Monteiro and the OIC-Deputy General Prosecutor for Serious Crimes/Mr. Buwaneka Aluwihare
- Other participants: DSRSG, Vice Minister for Justice, Senior Advisor to the General Prosecutor/Mr. Mohamed Othman, Staff of Serious Crimes Unit
- Venue: Office of Serious Crimes Unit, Comoro

11:15-1:15 p.m.: Review Session 2: The investigative capacity of the Justice Ministry, including the availability of crime scene examiners, forensic experts and equipment

- Opening comments/facilitators: DSRSG, Justice Minister and Vice-Minister for Justice
- Other participants: General Prosecutor/Mr. Longuinhos Monteiro, Senior Advisor to General Prosecutor/Mr. Mohamed Othman, Deputy General Prosecutor for Serious Crimes (OIC)/Mr. Buwaneka Aluwihare, Deputy General Prosecutor for Ordinary Crimes/Mr. Amandio de sa Benevides, Investigating Judge/Mr. Serzio Dias Quitas, CIVPOL Investigators assigned to Serious Crimes Unit, CIVPOL Commissioner/Mr. Peter Miller, Acting Deputy CIVPOL Commissioner for Administration/Dr. Megh Gurung, Deputy CIVPOL Commissioner for Operations/Mr. Henrique Lima de Castro, Chief of National Investigations Unit-CIVPOL/Mr. Ibrahim Baka, Commissioner of the East Timor Police Service (ETPS) and Director of East Timor Police Training College/Mr. Paolo Martins
- Venue: Court of Appeal Building, Conference Room

1:30-2:30 p.m.: Lunch with Finance Minister/Ms. Fernanda Borges, Vice Minister for Finance/Dr. Arlindo Rangel da Cruz, other Finance Ministry staff

- Venue: Maubere Restaurant

2:45-4:15 p.m.: Overview of role of International/Local Judges and Prosecutors and critical issues/problems to be addressed, followed by tour of court facilities (Dili District Court, Court of Appeal)

- Presenter: President of the Court of Appeal/Mr. Claudio Ximenes
- Other participants: Vice-Minister for Justice, International and Local Judges/Prosecutors
- Venue: Dili District Court, Conference Room

4:30-6:30 p.m.: Review Session 3: The identification of candidates to serve as International Prosecutors and International Judges

- Opening comments/facilitators: Justice Minister, Vice Minister for Justice
- Other participants: DSRSG, General Prosecutor/Mr. Longuinhos Monteiro, Senior Adviser to General Prosecutor/Mr. Mohamed Othman, President of Court of Appeal/Mr. Claudio Ximenes, International Judges and International Prosecutors
- Venue: Court of Appeal Building, Conference Room

7:30 p.m.: Dinner

29 November 2001 (Thursday)

6:45 a.m.: Departure from Central Maritime Hotel to travel to Heliport/Dili

7:45 a.m.: Departure for Baucau
- Venue: Heliport/Dili

8:00 a.m.: Arrival at Baucau Airport

8:30 a.m.: Overview of political situation in Baucau
- Presenters: Baucau District Administrator/Mr. Marito Reis and UN Coordinator and Advisor to the DA/Ms. Nharebat Inchasso
- Other participants: President of Court of Appeal/Mr. Claudio Ximenes, Judge-Court of Appeal/Mr. Luis Antero, District Legal Officer/Ms. Carolyn Tanner, District Human Rights Officers/Ms. Beatriz Balbin-Chamorro and Mr. Antonio Ximenes
- Venue: Baucau District Administration Headquarters

9:00 a.m.-Noon: Briefings on major judicial/legal issues in Baucau
- Presenters:
(a) Judge of Baucau District Court/Mr. Deolindo dos Santos,
(b) Prosecutor in District Prosecution Office/Mr. Domingos Barreto,
(c) Public Defender/Mr. Joao Ribiero,
(d) District Legal Officer/Ms. Carolyn Tanner, and
(e) Prison officials at Baucau Detention Centre
- Other participants: President of Court of Appeal/Mr. Claudio Ximenes, Judge-Court of Appeal/Mr. Luis Antero
- Venue: Baucau District Court

12:30 p.m.: Lunch in Baucau (with District Affairs staff, ThaiBatt)

1:30 p.m.: Departure from Baucau Airport for Dili

2:00 p.m.: Arrival at Dili Heliport

5:00-7:00 p.m.: **Review Session 4:** The profiles of the Legal Advisers who should be included in the new “Advisory and Legislation Directorate” of the Ministry of Justice so as to ensure that the necessary legal advice can be provided
- Opening comments/facilitators: Justice Minister, Vice Minister for Justice
- Other participants: General Prosecutor/Mr. Longuinhos Monteiro, Senior Adviser to the General Prosecutor/Mr. Mohamed Othman
- Observer: Principal Legal Adviser to the SRSG/Mr. Johan van Lamoen
- Venue: Court of Appeal Building, Conference Room

7:30 p.m.: Dinner hosted by Deputy SRSG (with Chief Minister, Justice Minister and others)

- Venue: Uma Mutuk Restaurant (Burned House)

30 November 2001 (Friday)

6:45 a.m.: Departure from Central Maritime Hotel for travel to Comoro Airport/Dili

7:30 a.m.: Departure for Oecussi

- Venue: Comoro Airport/Dili

8:30 a.m.: Arrival at Oecussi Airport

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9:00 a.m.: Overview of political situation in Oecussi

- Presenters: District Administrator/Mr. Francisco Zavier Marques and UN Coordinator and Adviser to the DA/Ms. Maggs MacGuiness
- Other participants: President of Court of Appeal/Mr. Claudio Ximenes, Judge-Court of Appeal/Mr. Luis Antero, District Legal Officer/Mr. Carlos Albisu, District Human Rights Officers/Ms. Carolyn Graydon and Ms. Ana-Paula Sequiera
- Venue: Oecussi District Administration Headquarters

10:00 a.m.-12:30 p.m.: Briefings on major judicial/legal issues in Oecussi

- Presenters:
 - (a) **Judge President of Oecussi District Court/Mr. Sebastiao Amado Ribeiro de Almeida,**
 - (b) Prosecutor/Mr. Afonso Carmona, and
 - (c) Public Defender/Mr. Mateus Nessi
- Other participants: President of Court of Appeal/Mr. Claudio Ximenes, Judge-Court of Appeal/Mr. Luis Antero
- Venue: Oecussi District Court

12:30 p.m.: Lunch in Oecussi with District Affairs/Human Rights staff

1:30 p.m.: Departure from Oecussi Airport

2:30 p.m.: Arrival at Comoro Airport/Dili

3:30-5:00 p.m.: Overview of Commission on Reception, Truth and Reconciliation

- Presenters: Mr. Jacinto Alves/Member of CRTR Interim Office, Mr. Pat Walsh/Coordinator of CRTR Interim Office
- Other participants: Mr. Xanana Gusmao, Chief of Staff/Mr. N. Parameswaran, Human Rights Adviser to the Chief Minister/Drs. Isabel da Costa, Head of Human Rights Unit-Office SRSR/Mr. Patrick Burgess, Director of East Timorese Jurists Association/Mr. Aderito Soares, Head of Policy/Advocacy Department of Yayasan Hak/Mr. Joaquim Fonseca

- Venue: CRTR Building

5:15-6:30 p.m.: Review Session 5: Alternative dispute resolution mechanisms that could be established (e.g. conciliation, mediation) outside of the courts

- Opening comments/facilitators: Justice Minister, Vice Minister for Justice
- Other participants: Human Rights Adviser to the Chief Minister/Dra. Isabel da Costa, Head of Human Rights Unit-Office of SRSG/Mr. Patrick Burgess, Ombudsperson-Office of SRSG/Mr. Dhevaji Subramaniam, Director of East Timorese Jurists Association/Mr. Aderito Soares, Head of Policy/Advocacy Department of Yayasan Hak/Mr. Joaquim Fonseca
- Venue: Court of Appeal Building, Conference Room

7:30 p.m.: Dinner

1 December 2001 (Saturday)

8:00 a.m. – Noon: Debriefing on each review session and proposed follow-up action to be taken

- Presenters: Justice Minister and ILAC team
- Other participants: SRSG, DSRSG, Chief Minister, Vice-Minister for Justice, General Prosecutor/Mr. Longuinhos Monteiro, Deputy General Prosecutor for Ordinary Crimes/Mr. Amandio de sa Benevides, Head of Public Defenders Service/Mr. Xavier Ortega, Principal Legal Advisor to the SRSG/Mr. Johan van Lameon
- Venue: Court of Appeal Building, Conference Room

SUMMARY

INTERNATIONAL LEGAL ASSISTANCE CONSORTIUM (ILAC)

Background. A series of conferences sponsored by the Stanley Foundation in 1997 – 2000 to address ways to improve the international community’s approach to post-conflict justice and judicial rehabilitation during the post-conflict period. UN peace operations showed that one aspect that had not gone well was the re-establishment of the rule of law and a functioning justice system following international intervention. The report of the UN Panel on Peace Operations (the ‘Brahimi’ report, August 2000) and the EU’s ‘Concrete Targets for Strengthening of the Rule of Law in Crisis Management’ (May 2001) likewise called for improved arrangements on these issues. Those with experience on the ground noted that there was no lack of international support for rebuilding justice systems; but while some efforts had shown success, all too often entities arrived uninvited, make independent assessments of the requirements for assistance and then followed through in an uncoordinated way, often working at cross purposes.

It was identified by those with practical experience that one measure that would make a major improvement to existing arrangements would be, at the outset, to make a single authoritative assessment of what needed to be done to rebuild the justice system; that assessment could then be used by the local government, IGOs, NGOs and donor governments as the basis for further action.

ILAC is a consortium of NGOs with experience in assisting with the rebuilding of justice systems in a post-conflict environment, which have come together to provide expert teams to make that initial assessment of what is needed to create a functioning judicial system. ILAC’s report will be provided to the UN, other inter-government organizations, the national government (where one exists), donor governments and NGOs as a basis for further action.

ILAC is committed to impartiality and respect for local legal traditions and culture. Wherever possible, ILAC will work with the local government. ILAC is committed also to freedom from political interference.

Inaugural Conference. In December 2000 ILAC held a conference in Saltsjöbaden, Sweden, where the participants developed the framework for the creation of ILAC. More than 80 delegates, representing many of the organisations that are expected to become members of ILAC, from 42 countries attended. The participants determined that ILAC should focus on rebuilding shattered justice systems and unanimously agreed on a plan for the launch of ILAC. An interim Council was formed to serve until the first General Meeting of ILAC.

ILAC based in Sweden. ILAC has been established in Stockholm as a non-profit organisation. The Swedish Government has pledged long-term financial support for ILAC administration, on the basis of a Memorandum of Understanding (MOU). Offices

have been identified in Stockholm and are available for occupancy from Spring 2002. ILAC · USA has been established in Washington, D.C. as a not for profit 501(c)(3) organization.

The ILAC Mission. The guiding principles for ILAC were developed at the conference sponsored by the Stanley Foundation in February 2000:

- Because ILAC's membership is comprised of international and domestic NGOs and other experts experienced in analyzing the state of legal systems and providing assistance to countries developing their national judicial systems, it will be able to respond quickly and effectively in providing needed post-conflict legal assistance.
- ILAC will work closely with local NGOs and other experts in affected environments to ensure their immediate involvement in the assistance projects.
- ILAC will be firmly committed to the principles of impartiality and respect for local legal systems and cultural traditions. ILAC will not seek to impose a particular legal approach, realizing that a broad-minded spirit towards other cultures and awareness of the strengths of different legal systems is necessary to achieve the goal of establishing effective judicial systems in post conflict situations.
- ILAC will be premised on the belief that assistance in developing judicial systems must, whenever possible, be undertaken with the cooperation of national governments.
- ILAC will be politically unbiased and will conduct its work in a manner that is transparent to the domestic and international communities.
- ILAC teams will include, wherever feasible, indigenous expertise, regional expertise, subject matter expertise, international law expertise, and practical and technical expertise.
- ILAC will be international in its membership.
- ILAC will be nondiscriminatory and will endeavor to ensure appropriate geographic, gender, cultural, and legal system diversity in its structure.
- ILAC will be committed to a system of continuing self-evaluation and will modify its practices in order to best meet its purpose.
- ILAC will be committed to absolute independence from political influence.

Links to United Nations. A MOU is under discussion with the UN whereby ILAC undertakes to be in readiness to provide a judicial system assessment team, while the UN agrees to consider including ILAC in its intervention plans, as needed.

Organisations eligible for membership. The range of organisations that are being drawn into ILAC has been broadened beyond the legal world to include, for example, arbitrators and experts in the administration of Justice and Justice Ministries.

Mission to East Timor. ILAC's first mission was in East Timor 25 November – 1 December 2001 at the request of the UN Transitional Administration for East Timor (UNTAET). The team, composed of members from Australia, India, Portugal, Sweden and the United States, facilitated talks on justice issues between the East Timorese Public Administration and the UNTAET. ILAC is promoting a number of assistance projects to potential providers.

Afghanistan. Contacts have been initiated with the UN Special Mission to Afghanistan, to determine if ILAC can assist the Judicial Commission established within the Interim Administration by the Bonn Agreement to rebuild the Afghan justice system.

The interim Council is presently laying plans for the first General Meeting of ILAC, it is anticipated that the General Meeting will be held in Spring 2002.

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