



# **JOINT ASSESSMENT OF THE JUSTICE SYSTEM MINISTRY OF JUSTICE - UNDP**



**MISSION REPORT**

**TIMOR-LESTE**

**November 2002**

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## 1. INTRODUCTION

This document provides the findings of a joint mission by the Government of Timor-Leste and UNDP to assess the justice system with the objective of developing a framework for a three to five year program of technical assistance to build capacity of the institutions therein. In particular, the mission was requested to review the institutional capacity of the Ordinary Crimes section of the District Courts, the Court of Appeal, the Public Defender's Office, the Public Prosecution Service, the Judicial Training Center and the legislative drafting and coordinating functions of the Ministry of Justice. In addition, the mission was also tasked with reviewing the ongoing UNDP supported mentoring program within the justice sector.

The mission was conducted during a two-week period in November 2002. The 10-member team comprised of Ministry of Justice officials and representatives from UNMISSET and UNDP.<sup>1</sup> The team engaged in extensive consultations and undertook a field assessment of the conditions in Oecussi. The outcome of the Mission was a first draft of the herewith report, which contains a situation analysis of each institution and related recommendations. However, time constraints prevented the mission from visiting Baucau and Suai or from consulting all the numerous stakeholders, so following to the Mission, the Government and UNDP continued consultations with some of the stakeholders in December 2002 and January 2003, resulting in the herewith report, which will form the basis for the work of the incoming program formulation mission (10 – 21 February).

However, program formulation will not only be based on the herewith report and continued consultations with the stakeholders, but will also take into account the current road mapping exercise and Annual Action Plans that the Government is currently developing, consisting of prioritizing, and sequencing of the objectives set forth in the National Development Plan, the Government's stability program, and the 2<sup>nd</sup> TSP Quarterly Report.

It is also hoped that the herewith situation analysis of each of the institutions and related recommendations can assist in the existing Prioritization and Sequencing exercise.

## 2. SITUATION ANALYSIS

The Government of Timor-Leste recognizes that establishing effective legal and judicial systems are of critical importance for the development of the nation. Accordingly, the National Development Plan (NDP) of 2002 sets out the following interventions amongst others as particularly significant: drafting the legal framework for the nation, reintroducing Portuguese and introducing Tetun as effective working languages for the administration of justice, developing the necessary legal capacity to serve the Government by establishing the institutions that are essential for the proper functioning of the legal and judicial system and facilitating access to justice for women. In this context, the NDP in its Institutional Development Program identifies "the creation of a Judicial Training Centre and a Public Defender's office as independent agencies" as being high priorities for the Government. The Legislative Program highlights the "formulation of a legislative agenda for the Government" and the "development of capacity to prepare proposals for legislation..." as being of considerable import. Also relevant to the mission terms of reference is the promotion of access to justice, particularly for women, under the Rights and Equality Program.

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<sup>1</sup> See Annex 2

Despite this emphasis placed by both Government and development partners on adopting an effective legal framework and building capacity for the administration of justice, thus the far progress has been slow and formidable challenges loom ahead.

There is widespread dissatisfaction with the present functioning of the Timor-Leste justice system. Many consider it to be partially paralyzed, pointing, as proof, to a mounting backlog of cases, of inconsistent rulings, of illegal orders and the frequent ignoring of legal orders issued by judicial authorities as proof. Several factors contribute to the current problems.

- ❑ Transition from Indonesian occupation, through UN administration to independence;
- ❑ The devastating impacts Timor-Leste's human resource capacity-base, of the Indonesian occupation, and the resultant long struggle of liberation;
- ❑ Transition from a Bahasa-based Indonesian legal system to a Tetun and Portuguese-based national, civil law system;
- ❑ Arrested institutional development of the justice system. Several key institutional components (the Court of Appeal, the Superior Council for the Judiciary, the Office of the Prosecutor-General, the Office of the Public Defender) are yet to fully function;
- ❑ Gaps and inadequacies in existing laws;
- ❑ Difficulties in striking a balance between issues regarding abuses of the past; immediate needs in the period of transition; and long-term development of an effective, independent, professionalized justice system operated by skilled professionals of highest professional integrity;
- ❑ Difficulties in striking a balance between exercise of authority in the interest of accountability and real or perceived interference with independence and autonomy among the institutional components of the justice system;
- ❑ Lack of community awareness of the judicial process and the rights protected by the system;
- ❑ A general atmosphere of lack of trust, confidence and willingness to communicate, much less cooperate, among the institutional components of the justice system;
- ❑ Tensions between some nationals and internationals working in the justice sector in Timor-Leste.

## **2.1. The Courts**

The judicial system in Timor-Leste is currently in its embryonic stages. In August 1999 there was not a single judge in the then territory of Timor-Leste and only some 70 persons with legal training. By 2000, after some crash course training, 25 judges, 13 public prosecutors 10 public defenders and 12 registrar/clerks were appointed by the UN administration on a probationary basis.<sup>2</sup> Today there are 17 trial judges, 6 investigating judges, nine public prosecutors and nine public defenders operating in four district courts in Dili, Oecussi, Baucau and very recently Suai. All of them are still on probation. Apart from these state employees, there is still a general dearth of jurists in the country – a shortage that is likely to continue for some time considering the absence of a law faculty at the only public university in Timor-Leste. In addition the UNTAET established Special Panels for Serious Crimes is part of the Dili District Court.

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<sup>2</sup> These figures do not take into account the appointment of international judges, prosecutors and public defenders that were mostly assigned "Serious Crimes" cases.

### **2.1.1. Superior Council for the Judiciary**

As provided for under section 128 of the Constitution and the recently promulgated Statute of Judicial Magistrates, the Superior Council for the Judiciary is expected to be formed soon. The names of the two members of the Council elected by the National Parliament and by the probationary judges respectively and the two members designated by the President of the Republic and the Government respectively were expected to be announced before the end of 2002.<sup>3</sup> The President of the Supreme Court is by law, prescribed to be the President and the fifth member of the Superior Council. However, until such time as the Supreme Court is functioning the law makes provision for the President of the Court of Appeal to preside over the Superior Council. Currently there is no President of the Court of Appeal. In fact, the Court is comprised of only one probationary judge at the moment and therefore has temporarily ceased to function resulting in a backlog of 39 cases. The UN has made arrangements to bring two international judges to sit on the Court of Appeal, but under the Statute they cannot assume duties as judges until the Superior Council appoints them. The Statute also requires the National Parliament to elect a probationary judge to the Court of Appeal as a transitional provision,<sup>4</sup> but the Parliament has not done so to date. Furthermore, neither the Constitution nor the Statute specifies the mechanism for appointing or electing the President of the Court of Appeal. Both instruments only state that the President of the Republic shall appoint the President of the Supreme Court of Justice subject to ratification by Parliament.<sup>5</sup> Collectively, these legal inconsistencies may complicate the appointment of the presiding fifth member of the Superior Council and may require a political consensus as well as perhaps an amendment to the transitional provisions of the Statute to resolve. In the meantime though, all indications are that the other four members will assume duties without delay.

Once the Superior Council is in place, it will play a critical role in shaping the judicial system. Apart from taking management and disciplinary control of the judiciary, it also has the mandate to oversee judicial inspections and propose to Parliament legislative initiatives concerning the judicial system. In these and other areas it is also permitted under the Statute to seek technical advice from international judge mentors serving in the country.

The Superior Council will eventually have its own secretariat to facilitate and support its work. The Statute provides for designated judicial officials to carry out the functions of the secretariat until necessary resources can be obtained to operationalize a secretariat. Given that “judicial officials” are already over extended and in view of the critical role of the secretariat, development partner assistance toward establishing the secretariat may be requested by the Superior Council in the near future. This would involve, furniture, equipment, and an international advisor.

### **2.1.2. Judges**

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<sup>3</sup> As per 23 January, four out of five members of the Superior Council of the Judiciary have been appointed.

<sup>4</sup> Section 116 of the Statute

<sup>5</sup> Although it makes no reference to the appointment of the President of the Court of Appeal, the Statute does include a transitional provision that empowers the Court of Appeal to exercise the competencies belonging to the Supreme Court until the latter becomes operational. Some have argued that this provision read in conjunction with section 124 paragraph 3 of the Constitution on the appointment of the President of the Supreme Court implies that the same procedure of appointment should be followed on a transitional basis for the appointment of the President of the Court of Appeal.

The Courts are the target of numerous complaints many of which are directed at investigating judges.<sup>6</sup> The complaints include: orders issued that are not in compliance with law; failure to ensure release once warrants have lapsed or sentences served; delays and backlogs; lack of capacity, knowledge and skills; unavailability of judges (especially on non-official holidays) and a reluctance to hold hearings in the afternoon. Judges in turn, complain of their indeterminate status – since they are on “probation” and not yet formally confirmed for appointment. The judges also complain about the necessity of attending training sessions in the Judicial Training Center (JTC) alongside work for entire weeks at the time, sometimes two weeks out of four, causing delay in hearings and their work in general. The training is not perceived by the judges to be relevant because it is not based on applicable laws and procedures in Timor-Leste, nor is it targeting the specific functions for the various judicial officials<sup>7</sup>. In addition, lack of handouts and skilled interpretation hampers good communication between trainers and trainees. Thus the general feeling amongst judges is that the judicial training provided is inappropriate and / or unintelligible. Other comments relate to complaints about the lack of experience, lack of knowledge of civil law, and ineffectiveness of mentors. Yet only a few have attempted to use the services of the mentors, and those who have done so are quite satisfied. There is a clear gap between the judges and the mentors, although judges are slowly overcoming their aloofness, and responding to initiatives from the mentors.

In terms of delays in processing of cases, judges complain about too few translators and interpreters available for interpreting between the languages and the different dialects used in court. Moreover complaints are made that court clerks are not trained in taking notes and are not at work during working hours. Another cause for delay is suspects not turning up<sup>8</sup>, or not being accompanied by a prosecutor or public defender. The judges also complain about poor filing routines, lack of budget and lack of means of transport for the investigating judges. Communication between judges and prosecutors or public defenders is minimal. Since the Superior Council for the Judiciary has not yet been established, there are no lines of authority and little accountability. Communication and misunderstandings are rife and sometimes takes the form of charges of Executive interference with the independence of judges. Critics of the judges feel that there are deficiencies in the work ethic of some judges. The recent strike by the judges has fueled further criticism and there are also allegations of some judges being “too media friendly” even regarding cases pending before them. One judge complains that they (the judges) are not always respected by the public and that their authority is undermined by the recurrent references to the judges as probationary and therefore inexperienced. Interference from the Executive is referred to by some judges at some occasions.<sup>9</sup>

Additional comments from the judges reflect that the Superior Council should be established as soon as possible, the salaries are too low (They are currently at Level 7, the highest salary for a public employee in Timor-Leste); there is a need to clarify which legal system and internal communication procedures will be in place and when.<sup>10</sup>

<sup>6</sup> For instance, the present practice of some investigating judges is to keep their own records of proceedings before them and orders issued by them. As a result it is difficult to obtain an accurate picture of proceedings before these investigating judges. More importantly, it is difficult to track the number of arrest warrants issued and executed and detention orders or conditional release orders issued etc.

<sup>7</sup> Clerks, prosecutors, judges, and defenders sometimes attend training together.

<sup>8</sup> Sometimes a suspect released from pre-trial detention is hard to find and do not turn up for the trial.

<sup>9</sup> In particular the Border Control case is mentioned.

<sup>10</sup> One judge commented that this is when the ‘real’ training starts. However, according to the government priorities, drafting a new penal code and criminal procedures as well as a civil code is not yet a priority, since

The judges moreover want increased awareness and mutual understanding of the roles of the different institutions: the executive and the judiciary. Moreover, a need expressed by some of the judges is that the evaluation criteria for the judges be clarified.

Given the numerous constraints faced by the mission, the team was not always able to determine whether the various perceptions are justified or not, but suffice to say that they amply demonstrate the critical need to develop effective channels of communication between the several actors that collectively make up the judicial system in Timor-Leste.<sup>11</sup>

### **2.1.3 Court Administration**

Among the myriad problems facing court administrators in Timor-Leste, perhaps the most damaging at present is the lack of an effective information system where the progress of cases can be tracked from when they enter the system to when they are finally resolved. The absence of such a system means that cases and consequently people, can become effectively “lost” in the system. All the Courts in the country almost uniformly experience the problems relating to court administration to some degree or another. For example, the problems in the switchover of the system of court administration from the Indonesian to the present, which is UNTAET regulation no 13 / 200: the court clerks largely follow the practices that they learnt under the Indonesian system, expressing confusion concerning which procedures and ‘system’ should be in place and how to follow it in on a day to day case management. In addition they mention the fact of having mentors with different background in terms of legal systems as adding to the confusion. The court clerks generally make written notes of court proceedings but the notes are very brief and inadequate to be really useful. These are only complemented by the equally sketchy handwritten notes of judges. The absence of complete written records of trial proceedings impede the development of the law and the administration of justice in Timor-Leste. For instance, decisions on procedural matters are frequently made orally, thus impairing the ability of appellate judges to be fully informed when cases are referred to them on appeal.<sup>12</sup>

The training of court clerks under the mentor program has been useful, but directed only to specific tasks rather than a broader understanding of the role and responsibilities involved in the administration of the court. At the moment, while two court clerk mentors are working for the Ministry of Justice there are no clerk mentors under the UNDP project. There remains a lack of standard work practices and routines that are uniformly followed by the court staff. In addition, the lack of clarity about existing regulations creates confusion especially with respect to investigations and with court orders to release prisoners, which prison officials often do not understand. Moreover, judges do not always accurately inform the court administration about the detention period ordered. As a result, the court administrator is not always able to inform the judge when the period of detention has lapsed. There are also discrepancies in the records at the courts and in the prisons. Under the Indonesian system, there was a judge coordinator who liaised with the prison officials. But this does not exist in the present system.

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there already exist laws in this area. Instead, it is the view by the government at the existing laws can be used, but improved.

<sup>11</sup> Although the mission endeavored to fully consult all the District Court judges it was unable to engage them to the extent it anticipated.

<sup>12</sup> “The Right to Appeal” Judicial System Monitoring Program October 2002

At heart of the Court clerk's concern was lack of physical infrastructure (i.e. there is no telephone lines to Oecussi, Suai and Baucau)<sup>13</sup>; lack of decentralization of the budget for the courts<sup>14</sup>; no petty cash, too much demand on their and their staffs services, and lack of vehicles<sup>15</sup>. Another concern raised is lack of respect amongst judges for the authority of the Court Administrator, in terms of following the administrative procedures established.

Finally, in safeguarding the impartiality and independence of the judiciary, an efficient registry often serves as an intermediary between judges and others who interact with the courts such as government officials, the media, the public and the parties who disputes. An effective and independent politic of court administration in Timor-Leste is only partially established and what exists is fragile. No doubt, the role and competencies of the registry should be clearly set forth by law and both the court and those who use its services should understand its functions so as to expedite the work of the courts.

## **2.2. Public Prosecution Service**

Section 134 of the Constitution of Timor-Leste provides for the appointment of a Superior Council for the Public Prosecution. The competence, organization and functioning of the Superior Council for the Public Prosecution is to be determined by law. However, Parliament is yet to adopt such a law and consequently, prosecution officers continue to be subject to the UNTAET Regulation 2000/16. Although the Government has reviewed two separate drafts laws<sup>16</sup> neither has been submitted to Parliament because in their present forms they are not considered entirely relevant to the country context. It is widely expected that another draft law will be prepared in the coming months and hoped that it will be presented to Parliament by June 2003 after appropriate consultation with stakeholders.

At present there are nine prosecutors in Timor-Leste working under the supervision of the Prosecutor-General. These prosecutors work in four district courts; Dili, Baucau, Oecusse and Suai. Currently, two prosecutors are assigned to Dili District Court (assisted by two colleagues appointed to Suai Court who are currently working in Dili), which as the Court of the capital city has the largest number of cases. The Deputy Prosecutor General for ordinary crimes sits in Dili but generally does not appear in Court. All public prosecutors including the prosecutor-general are serving on a probationary basis since an evaluation to determine whether they would be appointed as prosecutors has not yet taken place. This remains a critical issue and will need to be resolved as soon as possible.

According to section 132 of the Constitution of the Democratic Republic of Timor-Leste, the public prosecutors are responsible not only for the prosecution of criminal offences but also for the defense of the state in civil and administrative matters. This dual role can sometimes be confusing for inexperienced prosecutors.

There is currently one UNDP mentor working with the ordinary crimes prosecutors, who is also the mentor coordinator for the UNDP project and is thus responsible for a number of

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<sup>13</sup> The Ministry of Justice is in the process of procuring mobile phones with prepaid cards for the three courts in the districts.

<sup>14</sup> Training on budget matters will be included in the training program provided by JTC.

<sup>15</sup> Access to vehicles is limited by government procurement rules.

<sup>16</sup> One submitted by Comunidade dos Países de Língua Portuguesa (CPLP) and another by the Office of the Prosecutor-General.

additional administrative tasks outside the scope of mentoring. There is also a UNMISSET international clerk working with the four prosecution administrative staff members.

Records maintained by prosecution administration staff<sup>17</sup> indicate that from January to November 2002, 1285 cases were reported to the ordinary crimes Public Prosecution Service office. Of that total, 377 cases were solved by mediation and did not proceed through the formal court system<sup>18</sup>. Indictments were filed in only 140 cases. Of these indicted cases, the courts have so far finalized only 43. It should be noted that these figures do not include cases from 2001 that have yet to be indicted or tried. Due to the overwhelming caseload, it appears that the four prosecutors currently working in Dili Court are concentrating their efforts in dealing with 72-hour detention review hearings, rather than preparing indictments or working on trial hearings. Despite the lack of reliable statistics regarding the exact number of detention review hearings each day, it seems that this work is consuming the majority of the prosecutors' time.

Regarding the issue of language, one prosecutor in Dili Court speaks a little English and a little Portuguese. The three others speak neither English nor Portuguese. Of the Baucau prosecutors, one speaks fluent Portuguese as well as good English. All remaining prosecutors speak only Bahasa Indonesian and Tetun (as well as other dialects of Timor-Leste). Under the Constitution of Timor-Leste, Portuguese and Tetun are the official languages, while English and Bahasa Indonesian are working languages during the transitional period. By the very nature of their work, the prosecutors are required to deal with international police as well as various other international support services (e.g. UNDP mentors, Ministry of Justice Advisor). There is no interpreter/translator assigned exclusively to the ordinary crimes Prosecution Service.<sup>19</sup>

All ordinary crimes prosecutors were educated in Indonesian universities. They had not practiced before their appointment under UNTAET in January 2000. One attempt to address this lack of experience has been the intense training courses provided by International Development Law Organization (IDLO) at the Judicial Training Center. This training requires prosecutors to attend full day courses for up to two weeks per month. Prosecutors told the mission that the time spent away from the office and court greatly exacerbates their workload and results in further delays in the justice system.

The following principle concerns were noted during the mission.

- There is a lack of understanding of the role of the Public Prosecution Service and the role of the Prosecutor-General. The President has not appointed a Prosecutor General, which weakens the Prosecutor-General's Office mandate.
- The absence to date of an organic law regarding the Prosecution Service impedes decision-making as to the promotion and organization of prosecutors and the monitoring of professional standards. The two drafts under discussion at present – one presented by

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<sup>17</sup> There are some concerns regarding the accuracy of this information as efficient case management systems are not currently in place in the ordinary crimes prosecution office.

<sup>18</sup> Despite frequent use of mediation to resolve criminal cases, there is no regulation or statute in Timor-Leste authorizing the use of mediation to settle such matters.

<sup>19</sup> In November 2002, an interpreter/translator was assigned to assist the entire UNDP Mentor program. This interpreter does not speak English

the CPLP, the other by the Prosecutor-General Office – are confusing and do not take into account the prevailing conditions in the country and within the institution.

- ❑ There is no division within the Prosecution Service between those prosecutors responsible for handling criminal matters and those responsible for acting on behalf of the State in civil and administrative matters.
- ❑ The evaluation that was supposed to happen under UNTAET did not occur and as a result, all prosecutors in place at the moment are considered probationary officers. This is naturally a source of frustration and personal and professional insecurity.
- ❑ There is no permanent advisor to the Office of the Prosecutor-General to provide advice on legal and administrative matters.
- ❑ There is a lack of coordination between the ordinary crimes Prosecution and the international police. There is an urgent need for standardization of investigation procedures and the establishment of a permanent channel of communication. The majority of police inquiries are sent in incomplete form to the Prosecution office and have to be returned for further investigation. In some matters, the police continue to hold on to the case file after the statutory time limit for filing the indictment (six months), and consequently, the suspect is illegally kept under pre-trial detention after the expiration of the legal term.
- ❑ The number of prosecutors available to deal with cases is very limited. The lack of human resources requires prosecutors to focus the greater part of their work on 72-hour detention reviews while cases pending indictment multiply.
- ❑ The building housing the ordinary crimes Prosecution office in Dili is inadequate. There are insufficient offices and no conference room for staff meetings. Prosecutors are required to discuss cases in the main room, which is also the entrance area for the public. This can have adverse impacts on the right to privacy of the victims and suspects. Further, there is no secure storage room for physical evidence.
- ❑ There is no case management system within the ordinary crimes Prosecution Office. The administrative personnel are not trained to deal with information technology in general. The prosecutors prepare their own documents with no help from the administrative support staff, even in terms of entering data in forms. There is only one functioning computer in the Dili office.
- ❑ A telephone line should be installed in all Prosecution Service Offices that do not have one. There is no means of communicating with other institutions or even with other district Prosecution Offices, except by mail. There is no fax or Internet connection.
- ❑ There is no interpreter assigned to the ordinary crimes Prosecution office to facilitate communications between prosecutors and UNPol.
- ❑ There is a lack of understanding on the part of prosecutors and the general public regarding the role of prosecutors. prosecutors frequently become involved in mediations of both criminal and civil matters, despite the absence of any law authorizing this.

Mediation is used indiscriminately, including in cases involving violence or threats against the person, such as domestic violence and rape.

- There is confusion over the role of prosecutors to act on behalf of the State to protect the rights of all parties to criminal proceedings, rather than simply to secure a conviction, as per the international human rights standards and the Section 7.6 of the UNTAET Regulation 2000/16. For example, prosecutors do not understand that they have the power to request conditional release of detainees.
- There is a lack of familiarity with the criminal procedure code as set out in UNTAET Regulation 2000/30. Instead of applying this code, prosecutors (as well as all other jurists in Timor-Leste) tend to follow the Indonesian Criminal Procedure Code instead. There is also a lack of familiarity with the contents of the Indonesian Penal Code, which is essentially the prevailing law in Timor-Leste<sup>20</sup>. In particular, there is confusion regarding who has the right to report a crime.
- There has been insufficient training regarding the criminal code and criminal procedural code. Further, there has been insufficient and inappropriate training regarding the practical skills required of a prosecutor.
- There is a lack of awareness of the particular factors concerning women in the justice system. In particular, domestic violence cases are handled inconsistently. It is likely that reliance on mediation or local dispute resolution to resolve cases of gender-based violence is heightened due to the great paucity of human resources in the Prosecution office.
- There is a lack of awareness of the special protections afforded to juveniles under both Regulation 2000/30 and international human rights standards. Cases involving juveniles are not handled expeditiously and pre-trial detention is sometimes requested inappropriately.
- There is dissatisfaction with the mentoring program as it is based on short contracts. Once the level of trust required to effectively impart skills has been attained, the mentors typically leave and the prosecutors must begin working again with new mentors.

### **2.3 Public Defender**

The Constitution of Timor-Leste does not specifically mention a public defender's office and instead only makes a reference to "legal and judicial aid." However, the Decree Law on the Organic Structure of the First Constitutional Government of Timor-Leste assigns responsibility to the Ministry of Justice for "designing, executing, coordinating and assessing the policy as defined and approved by the Council of Ministers for the justice and law fields, namely in the areas of legislative reform and legal advice to the Government...public defender services...as well as matters relating to judicial training..."<sup>21</sup> Moreover, as

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<sup>20</sup> Regulation-UNTAET 1999/1, Section 3.1 - 3.1 Until replaced by UNTAET regulations or subsequent legislation of democratically established institutions of Timor-Leste, the laws applied in Timor-Leste prior to 25 October 1999 shall apply in Timor-Leste insofar as they do not conflict with the standards referred to in section 2, the fulfillment of the mandate given to UNTAET under United Nations Security Council resolution 1272 (1999), or the present or any other regulation and directive issued by the Transitional Administrator.

<sup>21</sup> Section 7, Decree-Law No. 3/2002, 20 September 2002.

mentioned above, it is the Government's intention as stated in the National Development Plan to create a "public defender's office as [an] independent agenc[y]" The precise competencies, organization and functioning of such an office and the extent to which it is or is not independent from the Ministry of Justice *inter alia* will be defined by law. The public defenders are currently examining a draft law, but although the mission was unable to review the same, it is reportedly inappropriate for Timor-Leste's present conditions and will either need to be redrafted entirely or substantially revised. The lack of statues for the public defenders was in discussions recurrently cited as a source of confusion. However, according to the Action Plan Matrix for FY 2002 -2003 draft statutes for the public defenders will be ready by March 2003. The public defenders will draft it them selves, and a workshop to discuss the reference materials<sup>22</sup> is scheduled for February 2003.

There are presently nine public defenders: seven in Dili, one each in Oecussi and Baucau and four unfilled vacancies in Suai. There were approximately 120 cases filed in October in Dili alone. This situation of limited human resources is of great concern to the public defenders and their colleagues in the judiciary. However, it has been decided to recruit 40 paralegals to assist the PDs (at least 3 for each PD).<sup>23</sup> The seven public defenders and two clerks in Dili share very limited working space with no privacy when interviewing clients, and adds to the level of stress. However, USAID is presently funding the rehabilitation of new office space for the Dili District public defenders, and it is scheduled to be completed by April 2003<sup>24</sup>.

Regarding training, the public defenders commented that it is neither intensive nor specific enough (i.e. lacking consideration for the specific needs of the PDs, with is clear delineation of tasks).

Language hampers communication both with clients and mentors, especially when the need arises to discuss complex issues and cases where the mentors are most valuable. The public defenders (PD) feel they get minimal cooperation from the rest of the justice system. Responses from judges and prosecutors are often not prompt. The PDs generally have a good relationship with the Ministry of Justice perhaps since the issue of Executive interference does not arise in their case. PDs, like others, are hampered by key gaps in the present law. Moreover it is hard to train staff when the judicial system is not yet fully defined. One such lacuna is the absence of a law creating the Office of the Public Defender. Expectations are high from the justice system and the PDs feel they can get a fair deal for their clients. Although there is only one UNDP PD mentor, the program has benefited from having the same mentor for the past two years. The PDs have a crucial role to play in the system on behalf of their clients vis a vis the judges, prosecutors and police

Many PDs are currently handling 100 to 150 cases each. Perhaps as a result of this heavy caseload and poor case management, PDs seldom visit their clients in prison or review the pretrial detention orders pertaining to their clients in a timely manner in order to ensure that they are not being illegally detained. PDs are not well paid, a frequently raised concern on their part, and so it is hard to retain them once they are well trained and experienced<sup>25</sup>. There are also problems resulting from the inability of a PD to follow a case all the way through from inception to conclusion. In some instances, private lawyers fail to represent their clients

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<sup>22</sup> The UNTAET Regulation, a draft prepared by an International Public Defender from Brazil employed by UNTAET, and materials from a overseas seminar that one of the public defenders attended.

<sup>23</sup> The paralegals will receive 3 months training be placed in the districts as well as in Dili in the PD's office.

<sup>24</sup> As per January 2003, 14 % of the work is completed.

<sup>25</sup> The PD's are at level L5 and L 6 in the public service salary scale. The highest level is L 7.

to the conclusion of their cases and they are therefore automatically referred to the PDs. In other cases, different PDs appear on behalf of the same client at different stages in the pre-trial and trial process resulting in confusion in the client's mind as to the identity of his or her counsel. The matter is compounded by the failure of the Court to enter the name of the concerned PD appearing on behalf of the accused.

Although there are some disciplinary and work ethic related problems, PDs meet together frequently and there is greater cooperation among them as compared with judges and prosecutors. PDs are not hesitant to request the services of mentors. However, language remains a barrier, with only one interpreter available for the entire mentoring program.

The Government will eventually consider drafting a law on legal aid, but for now it is keen to recruit and train several community based paralegals to ease the constraints on access to justice for the disadvantaged. As this initiative evolves, it will be essential for clear procedures, roles and responsibilities to be set out so that the paralegals, PDs and indeed the other actors within the judicial system work effectively and efficiently together.

Advocats Sans Frontiers – Belgium (ASF) has signed a memorandum of understanding with the Ministry of Justice to provide assistance to the PDs and paralegals, particularly in terms of technical support to finalize the law establishing the public defender's office and building capacity of public defenders, paralegals and staff. The Ministry of Justice has endorsed possible collaboration between UNDP and ASF in this regard.

## **2.4 Ministry of Justice** <sup>26</sup>

The Ministry's competency to play a coordinating role within the judicial system is set out in the law on the organic structure of the Government.<sup>27</sup> Apart from the direct relationship with the public defender services, the Ministry "is also responsible for ensuring the relations of the Government with the Office of the Public Prosecutor and the Courts, under the terms to be defined in its organic law."<sup>28</sup> Hence the establishing of formal guidelines and delineation of tasks and responsibilities within the Ministry in liaising with the various judicial institutions is awaiting the approval of the draft Organic Law. The draft is currently for discussion within the Ministry. The absence of a law represents a lack of direction, as expressed by the staff. Organic laws also in place for the various judicial institutions will further contribute to clarifying work tasks and enhance the workflow in the Ministry. Complaints made by the Ministry staff includes their lack of experience, combined with too few staff to perform too many tasks due to a slow recruitment process (which is now apparently picking up). The judicial institutions await the Ministry has been somewhat hampered in playing an effective coordinating role with respect to support to institutional strengthening of the justice sector in part because of its endeavors to ensure the independence of the institutions therein and resistance from some prosecutors and judges as well as the absence of an effective mechanism of accountability or clear incentives for training and building capacity.

Be that as it may, in the absence of any other body with the express mandate to undertake this function, the Ministry should explore ways and means to fulfill this facilitating and coordinating role effectively. Efforts in this regard are particularly needed in terms of

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<sup>26</sup> Hereinafter the "Ministry"

<sup>27</sup> *Supra* 2.3

<sup>28</sup> See footnote 14

coordinating donor support, which does indeed represent quite a task for the Ministry. While a matrix for assistance from development partners has been prepared, this is only the first step toward mobilizing support, promoting complementarity rather than duplication, and above all ensuring that development partners are aware of and respect the priorities identified by the Ministry.

The objective of the Ministry is to facilitate the workflows and thus assisting the judicial system enhancing delivery of services.<sup>29</sup>

Regarding the requests from the courts on the issue of decentralization of the Budget, the Ministry of Justice sees a need for training and information on procurement processes, accounting and budget monitoring in the courts as well as within the Ministry.<sup>30</sup>

#### **2.4.1. Legal and Legislative Advisor<sup>31</sup>**

The Legal and Legislative Advisor's department is expected to play a crucial role in drafting certain legislation for the Government and providing advice on legislative reform to the Council of Ministers. Despite these vital duties the department is overburdened and understaffed. Presently only two jurists are employed by the unit. Of the remaining five vacant posts, only one is likely to be filled by a drafter given the level of the current posts.<sup>32</sup> Although an international drafting specialist works in the Ministry, he has little to time build capacity of his local counterparts. In addition, as with most institutions in Timor-Leste, the Ministry and in particular the Legal and Legislative Advisor's department is impeded in its work because of the lack of translators. The unit depends on the Ministry's pool of translators for support, but as noted below, their resources are already stretched. The Ministry has stated a need for a pool of 10 high quality translators and interpreters required for translating and publishing the Official Gazette.

Furthermore, most ministries do not have lawyers on their staff. As a result, proposals and drafts are sent to the Ministry of Justice in varying forms with inadequate supporting documentation. The Ministry drafters are thus required to undertake additional work to prepare draft bills.

#### **2.4.2. Judicial Training Center**

Attempts to build capacity of judges, prosecutors and PDs through the Judicial Training Centre (JTC) to date have been less than effective partly because of language barriers, but also because of the perception by some that the training is irrelevant. Although the mission was unable to meet with the director of the JTC (comments has been provided by Mr. Carceres at a later stage),<sup>33</sup> conversations with representatives of International Development Law Organization (IDLO) who are responsible for most of the training through the JTC as well as participants in the training have revealed that many judges, prosecutors and PDs are not fully engaged in the program despite being officially allowed time off for this purpose. Some participants have expressed that the present 15 days a month training schedule is

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<sup>29</sup> This would entail a concerted exercise and training effort focusing on the necessity of following flow charts and work plans to reach the objectives set by NDP.

<sup>30</sup> There is also the lack of routines in the court for handling the existing case registration fees.

<sup>31</sup> Assessoria Legal e Legislativa

<sup>32</sup> The rest are level four or below.

<sup>33</sup> The Director was overseas until 15 December 2002

burdensome given their workload. This may be particularly true of those who have to travel from outside Dili, although ironically, attendance of this group appears to be significantly higher than the Dili-based participants. The perceived lack of consultation in developing the training program and methods of instruction<sup>34</sup> may add to the general apathy. The lack of discipline and an effective mechanism to discipline has also contributed to the present situation.

The Director of the Training Centre in his comments states that he is not well prepared for training and that it is too much for judges to have training ‘on the side of the job’. He also stated that a clear scheduling of the training is needed, coordinated with the schedule of the court. The Director also voiced frustration over lack of punctuality amongst the trainees. On the documentation center role of the JTC, the Director states there is a need for computers and Internet for the judges to undertake research. Training equipment is also needed (a projector).

It is imperative that the capacity of the JTC be enhanced. In the absence of any other legitimate institution to implement training in the justice sector, the JTC will play a crucial role in building the capacity of those within the justice system – from judges and prosecutors to court clerks and prison officers – through a systematic approach to training.

### **2.4.3. Interpreters**

The Ministry has three international and five local interpreters in a pooling arrangement.<sup>35</sup> They are all under UNDP contracts and while they are expected to give priority to the needs of the Special Panel Court for Serious Crimes, they are also required to provide services to all the justice sector institutions if requested. There is little coordination of the interpreters since nobody has been tasked with this function. Although they come under the Administration and Finance division of the Ministry, since they are located in the Court of Appeal building, the division is unable to supervise and coordinate the work of interpreters. The lack of coordination leads to numerous *ad hoc* requests, sometimes with little advance notice.

The interpreters are frequently asked to act as translators, but because of the intensity of the work at the Special Panels for Serious Crimes, the translations are generally delayed. They are further constrained by a shortage in dictionaries and other materials. They have submitted a formal request for several materials and equipment to UNDP and to the Ministry of Justice in early November 2002.

The interpreters also unanimously expressed a sense of being abused by those who use their services, for example being asked to interpret in court for long hours without a break.

None of the interpreters have received any kind of training, either in interpreting skills or legal terminology or for that matter appropriate courtroom behaviour. In addition, not one of them is internationally accredited to interpret or translate. A combination of some of these factors recently led to the unfortunate disqualification of one of the interpreters from being assigned to work with the Special Panels in the future.

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<sup>34</sup> For example some participants have suggested more interactive methods of teaching.

<sup>35</sup> This is in addition to one translator at the Ministry, one IDLO interpreter at the JTC and one interpreter shared by the UNDP mentors.

## **2.5. Information and Communication Technology within the Judicial System**

Access to information with the touch of a computer keyboard should not be seen as a luxury especially in a developing country. The business of running a judicial system is similar to managing any corporation: efficiency to increase output be it products or profits.

Until recently access to public information was once the sole monopoly of broadcast and print media. However the Internet revolution has turned this around. Given the rugged landscape of Timor-Leste and her young population, it is only fair that they be introduced to tools available in the world beyond.

A situation where case files go missing or a leaf in a worn-out recording book is obliterated is unacceptable. Computers could be seen at these offices, however there is no expertise to help establish electronic systems to avoid situations as described above. Proper organization and management of Information and Communication Technology (ICT) can open up new opportunities to speed up information dissemination over long distances. Disorganized case management in the judicial system is an Achilles' heel in the system that must be given attention.

From Dili to Oecussi the situation is similar – lack of proper infrastructure and management.

### **Dili District Court**

- Computer desktop share ratio of 1:2
- No Local Area Network
- Manual Case Management
- 1 dial-up internet connection
- Basic computing skills low
- IT support delivery: Ministry of Health

### **Public Defender's Office**

- Computer desktop share ratio of 1:5
- No Local Area Network
- Manual case management
- Basic computing skills low
- IT support delivery: Ministry of Justice

### **The Prosecution Service**

- Computer desktop share ratio of 1:3
- No Local Area Network
- Manual case management
- Simple database is not in production due to lack of end-user training
- IT support delivery: Ministry of Justice

### **National Investigators**

- Computer desktop share ratio 1:3
- Local Area Network managed UNMISSET
- No national involved in maintenance of LAN
- A small database for file recording and retrieval
- Nationals receive training on database usage
- Strong interest to develop a proper Management Information System for criminal records

- ❑ IT support delivery: UNMISSET

### **Ministry of Justice**

- ❑ Computer desktop share ratio 1:1.5
- ❑ Local Area Network
- ❑ No Management information system
- ❑ Four internet available lines
- ❑ Workgroup file server needs configuration for maximum use
- ❑ Intranet portal for file distribution
- ❑ IT support: In-house.
- ❑ IT Manager responsible for other judicial units

### **The Districts**

#### **Oecussi**

- ❑ Local Area Network at Police Headquarters
- ❑ No structured case management system at Police Headquarters
- ❑ No Local Area Network or case management system at court
- ❑ No computing facilities in court
- ❑ Telecommunication link between Oecussi and mainland judiciary very poor

#### **Baucau**

- ❑ No Local Area Network or electronic case management system.

#### **Suai**

- ❑ No Local Area Network or electronic case management system

### **Telecommunication links**

Telstra will give way to a new Telecommunications provider in March 2003. The mission could not obtain reliable information about the new telecommunication company.

### **The Unseen Cost Syndrome:**

When the Serious Crimes Unit was initially established, information and communication technology needs were not properly assessed to give investigators, prosecutors and interpreters needed tools. Absence of a centralized file sharing and case management system hampered and to some extent, resulted in frustrations and low productivity. When facilities were eventually provided there was no in-house IT expert to manage them. It became what the Gartner Group termed “ the unseen cost”. When management does not see recruitment of IT professionals in budget allocations. The loss in worker-hours for the organization tended to surpass what eventually could have been used to recruit an IT professional to prevent system down time, staff frustrations and other symptoms associated with the lack of an organized IT support system.

Implementation of a Management Information System (MIS) did not take off until later stages. This resulted in a total confusion due to a large pile of cases that needed to be recorded electronically. Eventually a data coding post had to be created to work on the backlog of cases.

The Timor-Leste judicial system is starting on the same note as the then Serious Crimes Investigations Unit - from scratch. The Government should learn from the experiences of the Serious Crimes Unit and integrate ICT into the overall development strategy of the judicial system.

## **2.6. Mentors**

The concern, commitment, capabilities and knowledge of the present group of mentors is beyond question. They have slowly built themselves as a team and form an invaluable core group around which the mentoring program can be expanded, deepened and made more effective. They are however facing many obstacles.

- ❑ High expectations and diverse perceptions of their roles and functions by public defenders, prosecutors and court clerks
- ❑ Indifference, hostility and condescension from some judges especially those insecure about their own positions
- ❑ Language problems and problems of communication that have cultural, psychological and institutional dimensions
- ❑ Poor contractual terms and tenure
- ❑ Too few mentors, as compared with what the project design envisaged.
- ❑ Lack of Internet access to legal materials, which they have been used to accessing, before coming to Timor-Leste
- ❑ Lack of program support on a sustained basis tailored to their needs

Despite these issues, there is appreciation of their work, although grudging at times. Criticisms were mainly against the manner in which the program has been implemented over the past 2 years, and against a few past mentors. Such criticisms relating to selection criteria are mainly reflected in the recommendations. All three groups - PDs, prosecutors and judges - are in agreement about the need and value of a mentoring program in Timor-Leste today. But they are all looking for an enhanced and more effective program, learning from the lessons of the past.

The existing literature on judicial mentoring is almost non-existent, and such literature as does exist is conceptually and pedagogically inadequate. Judicial mentoring is a complex job, the psychosocial dimension of which is rarely appreciated. It is easy for mentors to experience self-doubt because it is very hard to see the immediate results of mentoring (except episodically) and methodologies and mechanisms have not been developed to measure the capacity strengthening aspects of a mentor's work. Equally, there are complex issues regarding the psychology of the mentees. Historical and cultural factors and variations assume considerable significance. The recommendations that follow attempt to respond to some of the aspects of judicial mentoring in Timor-Leste today.

### **2.6.1. Lessons Learned**

- ❑ The choice of categories of mentors covered should be demand driven and focused on meeting expressed needs;
- ❑ There is need for greater clarity of roles, functions and tasks of the mentor;
- ❑ Mentees should participate in the process of establishing selection criteria for mentors and developing work plans;

- ❑ A strategic approach should be adopted in developing mentoring methodology and communicated to the mentees;
- ❑ Time and resources should be invested in the induction and introduction of a mentor into the system;
- ❑ There should be a stronger correlation between the expertise and experience of the mentor and access and use by the mentees;
- ❑ There is a need for revising the terms of reference of the mentors;
- ❑ Hands off mentoring does not work very well, and results can not only very difficultly be measured. A more active approach on the part of the mentors is required, specially with regard to assisting each institutions with work flows and in cases;
- ❑ Methodology needs to be developed to assess results and impacts of the work of a mentor;
- ❑ Coordination and management of the program should be strengthened and greater support given to the mentor;
- ❑ The mentors found the workshops conducted during the review very useful. Such workshops, covering both examination of concepts and addressing strategic planning, should be made a periodic feature of the new program
- ❑ Mentors should be encouraged, in addition to their work individually, to also work as a group, addressing the justice system as a whole

The Mentor Program is in the process of being revised together with mentors and mentees, and a first draft of new terms of reference is currently being drafted. The work plans of the mentors should coincide with the work plans of the mentees and the overall objectives for the project.

There is clearly a need for an effective judicial support program in each institution in the judicial system, especially at this crucial stage when the judicial system of an independent nation is being established and UNMISSET will soon end its presence. All categories of persons interviewed agreed on the need for a mentoring program and most called for an expanded, strengthened and more effective program.

### **3. RECOMMENDATIONS**

#### **3.1. Courts**

##### **3.1.1. Judges<sup>36</sup>**

3.1.1.1. Engage judges in a constructive manner in developing course material and methodology of instruction for the JTC.<sup>37</sup>

3.1.1.2. Facilitate the evaluation of judges once the Superior Council for the Judiciary is in place.<sup>38</sup> Provide clarity on the process of moving from probationary status to appointment.

3.1.1.3. Provide focused training and clarity on the role of investigating judges.

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<sup>36</sup> The limited number of recommendations for action relating to judges reflects the severe restrictions faced by the mission in engaging them in an extensive dialogue. As such, further consultation will need to be undertaken with all the judges before a comprehensive program of support can be developed.

<sup>37</sup> A stakeholder discussion to discuss 2003 training is planned for December 2002.

<sup>38</sup> See below.

- 3.1.1.4. Facilitate the development of a regular channel of communication between the investigating judges, prisons, prosecutors and public defenders to prevent illegal detention.
- 3.1.1.5. Provide gender-sensitization training as part of general training for all jurists and with particular reference to issues pertinent to the role of judges. In light of the ratification in December 2002 of the Convention on Elimination of All forms of Discrimination Against Women (CEDAW), training should include education on the principles embodied in the Convention. Such training should be carefully coordinated with the JTC, which is receiving support from the Government of New Zealand for gender sensitization in the justice system.
- 3.1.1.6. Assess the need for updated legal texts in the District Court libraries and supply as needed.
- 3.1.1.7. Provide a printer for the Dili District Court library. Although a computer with Internet connection has been provided there is no printer.

### **3.1.2. Court Administration**

- 3.1.2.1. Recruit at least one mentor for court registrars
- 3.1.2.2. Promulgate a law that clarifies the different competencies and powers of the registry
- 3.1.2.3. Establish the registry as the point of contact between the Court and the public and provide orientation accordingly.
- 3.1.2.4. Create a legal database in each court, preferably disaggregated by case category.
- 3.1.2.5. Court transcriber trainers should be recruited and a training course provided through the JTC.
- 3.1.2.6. Develop a rational and transparent system for assigning judges to cases.
- 3.1.2.7. Establish procedures to ensure that cases before investigating judges are duly recorded by the registry.
- 3.1.2.8. Develop a web site to publish judgments and press releases and find space in each courthouse as a repository for community information brochures etc.
- 3.1.2.9. Ensure that the court schedule is posted in a public place in a timely fashion.
- 3.1.2.10. Create a separate registry for the Court of Appeal as required by the law and train staff.

### **3.2. Public Prosecution Services**

- 3.2.1. Facilitate an open, honest and constructive dialogue among all parties, including the Ministry of Justice, the judiciary, public defenders and prosecutors. The purpose of

this dialogue should be to recover unity and commitment to an independent justice system as one of the pillars of a free nation.

- 3.2.2. Help prepare an organic law of the Prosecution Service that covers the career and administrative organization of officers as well as professional standards, ethics and a mechanism for accountability of the Prosecution Service.
- 3.2.3. A Prosecutor-General should be confirmed and appointed by the President as soon as possible.
- 3.2.4. Initiate without delay the evaluation process regarding the ordinary crimes prosecutors, by a committee comprising international members of suitable stature and experience and with the appropriate knowledge of Timor-Leste. A transitional provision will have to be included in the future statute on the Prosecution Service in order for such an evaluation to take place.
- 3.2.5. Consider the appointment as per the UNMISSET or UNDP support an international advisor to the Office of the Prosecutor-General. This advisor should be competent to deal not only with criminal, administrative and civil matters, but also with the administration of the office.
- 3.2.6. Help to establish standard procedures for investigations. Consider creating a liaison office inside the office of the Prosecutor-General. This liaison office should comprise both international and Timor-Leste police of appropriate rank to facilitate communications with the Prosecution Service and to find solutions to common problems.
- 3.2.7. Promote greater coordination between the Prosecution Service, investigating judges and prisons to ensure better collection of statistics to assist in the prevention of inappropriate and illegal detention.
- 3.2.8. Assess the caseload in each district and recruit additional prosecutors in accordance with those needs.
- 3.2.9. Task specific prosecutors with the responsibility for handling 72-hour detention review hearings.
- 3.2.10. Identify and rehabilitate a new building to house the ordinary crimes Prosecution office of Dili. Such a building should have adequate space for offices for each prosecutor, as well as a private meeting room, large enough to hold staff meetings of the entire office. All Prosecution Service offices should also have adequately sized safe rooms for the secure storage of evidence.
- 3.2.11. Help establish a simple and sustainable system of case management, to be employed by both prosecutors and administrative staff. All staff should be trained intensively on case management principles and the necessity of preparing cases in an expeditious manner. Administrative staff should be trained on support to prosecutors in relation to administrative matters, for example, typing documents and keeping a schedule of hearings. The capacity of many administrative staff is currently so low that they are not even able to enter data in a computer.

- 3.2.12. Provide an additional computer and two printers to the Dili ordinary crimes Prosecution office. All staff should receive adequate training on computer use. An assessment should be done of the technology needs of each district public prosecution office, noting the particularly situation of Oecusse, where the office has only one computer - which is not operational.
- 3.2.13. Provide the Prosecution Service throughout Timor-Leste with an adequate telecommunications system to permit communication between offices and with external agencies. This should include limited fax and Internet access.
- 3.2.14. Recruit an interpreter/translator specifically to each district Prosecution Office to facilitate the communication between the Prosecution Service and UNPol, as well as with the Mentors.
- 3.2.15. Consider legislation to regulate mediation as a means of dispute resolution. Such mediation should cover only minor offences such as theft, vandalism, and should not be available in cases involving violence.
- 3.2.16. Clarify for prosecutors the role of public prosecutor vis a vis mediation. The prevailing law does not include mediation in civil or criminal cases.
- 3.2.17. Provide intensive training to the prosecutors regarding their role as protector of the rights of all parties, including those of the defendants.
- 3.2.18. Provide intensive training to the prosecutors regarding the legislation in force in Timor-Leste and that which is most relevant to current practice.
- 3.2.19. Provide gender-sensitization training, as part of general training for all jurists and with particular reference to issues pertinent to the role of prosecutors.
- 3.2.20. Incorporate in case management the collection of statistics regarding gender-based violence in order to provide a more accurate picture of domestic violence and rape in Timor-Leste for the purposes of public education and the development of support programs.
- 3.2.21. Provide training regarding the special duties of the actors in the judicial system concerning the rights and needs of juveniles, both victims and offenders.
- 3.2.22. Recruit mentors under one-year contracts in order to permit the establishment of a relationship of trust and confidence between mentor and mentee.

### **3.3. Public Defender**

- 3.3.1. The PD “office” is not fully established yet although PDs continue to function. A chief public defender has not been appointed as yet. The law pertaining to PDs is currently being drafted. The absence of effective procedures has diminished the PD’s accountability to his/her client. For example, the name of the PD appearing on behalf of an accused is not recorded in the court file. There is some confusion when private lawyers or NGOs represent clients but fail to appear at all detention reviews etc. As

such, support the finalization of a law pertaining to public defenders that includes incentives to perform, a code of conduct and effective accountability mechanisms.

- 3.3.2. Establish procedures for PDs to promote greater responsiveness to client needs including *inter alia* an after hours roster or duty solicitor scheme, regular meetings with clients, including visits to detention centers and ensuring the name of the PD is entered in court records at the initial appearance.
- 3.3.3. Establish procedures for coordinating with private lawyers and NGOs representing clients to ensure effective and continuous representation.
- 3.3.4. Provide professional responsibility and ethics orientation through the JTC. There are some allegations of PDs soliciting clients privately, perhaps as a result of a lack of clarity with regard to their roles. We anticipate that with a law establishing the PDO and professional responsibility orientation, greater clarity will be provided to PDs with regard to their roles as public servants.
- 3.3.5. Provide technical expertise to establish efficient administrative procedures and train staff.
- 3.3.6. Appoint a coordinator for the PDs who would work under the direction of the head of office and appoint a chief public defender even on an interim basis as soon as possible.
- 3.3.7. Recruit an additional civil law (preferably Portuguese-speaking) mentor for Dili and one each for Oecussi, Suai (once a PD is recruited) and Baucau.
- 3.3.8. Provide gender-sensitization training, as part of general training for all jurists and with particular reference to issues pertinent to the role of Public Defenders. In light of the likely future ratification of the Convention on Elimination of All forms of Discrimination Against Women (CEDAW), training should include education on the principles embodied in the Convention.
- 3.3.9. Language between mentor and mentee remains a potential stumbling block. Recruit one skilled interpreter possibly as national UNVs for each office.
- 3.3.10. Establish an effective case management system, ensure staff are assigned case management responsibilities and provide training.
- 3.3.11. Assess need for specific legal texts in the district courts and supply materials, which may be accessed by judges, prosecutors and PDs.
- 3.3.12. Explore the possibility of developing a partnership between UNDP and Advocats Sans Frontiers (ASF), with the latter as an implementing agency on activities related to the PD given that the Ministry has already signed a memorandum of understanding with ASF for it to provide capacity building support to the PDs.

#### **3.4. Ministry of Justice**

- 3.4.1. The Ministry should play a coordinating role with respect to support to the justice sector in general whilst respecting the independence of the institutions therein. This is particularly needed in terms of coordinating support from development partners. While a matrix for donor support has been prepared, this is only the first step toward mobilizing such support, promoting complementarity rather than duplication, and above all ensuring that development partners are aware of and respect the priorities identified by the Ministry and the Government.
- 3.4.2. The Ministry could establish a coordinating body within the justice system (police, prisons, prosecutor, PD, courts) that meets regularly to address emerging issues. The police may be prepared to assign a liaison officer of suitable rank to deal with routine matters related to the justice sector.
- 3.4.3. A coordination mechanism of development partners (semi-annual or quarterly meetings) could be set up under the joint leadership of the Ministry of Justice and the Ministry of Finance to consider support to the justice sector. Care should be taken to ensure that this does not promote a sectoral approach to support from development partners.
- 3.4.4. If the Government sees the need for it, provide technical support to the Ministry to develop a comprehensive policy paper for the legal and justice sector (flowing from the National Development Plan) and a 5-10 year strategic action plan to implement the policy. Such an approach would ensure that a harmonized legal framework that promotes a coherent policy is eventually established. This could be done in a highly participatory manner led entirely by the people of Timor-Leste, with working groups made up of representatives of each institution in the justice sector and supported by technical expertise and administrative assistance through UNDP. Once a policy has been developed under the leadership of the Ministry, in order to ensure that a holistic approach to funding is promoted, agencies outside the justice sector but relevant to the process of developing an action plan could also be invited to participate, for example Parliament, the Ministry of Planning and Finance, Ministry of Internal Administration and the Secretariat of Labor and Solidarity and other stakeholders. The terms of reference would be broadly to promote the rule of law in Timor-Leste by preparing an action plan that identifies the necessary legal and judicial framework to promote the principles enshrined in the Constitution. A policy and strategic plan prepared in such a participatory manner will mobilize support from development partners, ensure that that support is driven by Timorese priorities and facilitate coordination of initiatives funded by external partners. The process could take several months to complete. *It is essential that the process be coordinated as part of the Government's national development plans.*
- 3.4.5. Strengthen the capacity in the Ministry to develop and execute technical assistance projects including preparing proposals, managing implementation, monitoring results and providing financial reports to partners as required. Eventually, the Ministry will need to move into national execution and implementation arrangements.
- 3.4.6. Assistance could be given to review the existing staffing profile of the Legal and Legislative Advisor's department and recommendations made to collapse two posts to allow the recruitment of an additional jurist as a drafting specialist.

- 3.4.7. Provide a short-term intensive course in drafting skills that includes advice on adopting an effective legislative drafting process. This could be done jointly for drafters from the Parliament.<sup>39</sup>
- 3.4.8. Prepare a manual for the use of staff of other ministries tasked with preparing draft bills and provide training accordingly.
- 3.4.9. Recruit and train a staff member of the Legal and Legislative Advisor's department who in turn will assist relevant staff in other ministries to prepare initial drafts and research reports.
- 3.4.10. A drafting mentor from a Portuguese speaking civil law country should be recruited along with a translator/interpreter (Portuguese-Tetun-Portuguese).
- 3.4.11. Provide training in gender analysis of laws for jurists involved in the drafting of a new Penal Code, to ensure better protection for girls and women by the law.
- 3.4.12. Prepare a glossary of legal terms in Portuguese, Tetun, Bahasa Indonesian and English in collaboration with USAID and the Asia Foundation.
- 3.4.13. Provide translators to the Ministry (Portuguese-Tetun-Portuguese) to assist drafters and facilitate dissemination of laws.
- 3.4.14. Assist in compiling comparative law studies in areas identified by Government as priorities for adopting legislation.
- 3.4.15. Provide training for Ministry of Justice paralegals in collaboration with ASF, assist in the preparation of clear guidelines on their roles and functions and support their smooth integration into the formal justice system.
- 3.4.16. Facilitate the training of community-based civil society paralegals through the Ministry of Justice paralegals.
- 3.4.17. Develop and implement community awareness program through the paralegals on the judicial system, its institutions and processes, and the rights and responsibilities of individuals as they engage with it.<sup>40</sup>
- 3.4.18. Recruit additional translators and interpreters.
- 3.4.19. Provide training for all Ministry interpreters in interpreting skills, legal terminology and courtroom behavior.
- 3.4.20. Rationalize the utilization of interpreters through effective coordination and rostering and sensitizing the recipients to the needs of the interpreters.

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<sup>39</sup> Assistance in legislative drafting should be done in coordination with the Government of Portugal.

<sup>40</sup> Such an initiative could be prepared in collaboration with the ongoing Government-UNDP civic education program.

3.4.21. Review the requests for materials submitted to UNDP by the interpreters in November 2002 and supply as needed – particularly English, Portuguese and Indonesian dictionaries.

3.4.22. Explore the possibility of UNDP partnering with ASF in undertaking a feasibility study for the Ministry of Justice and the Ministry of Education on establishing a law faculty in the future at the only public university in Timor-Leste.

### **3.5. Superior Council for the Judiciary<sup>41</sup>**

3.5.1. Administrative support and training of staff of the secretariat

3.5.2. Assist the Ministry and the Superior Council in preparing the staffing table of judicial inspectors, accounting inspectors and inspections secretaries.

3.5.3. Support training of judicial inspectors

3.5.4. Provide support as needed to the Superior Council to clarify the status of judges, although care should be taken not to exert undue pressure on the Council at the outset.

3.5.5. Provide technical advise and comparative law research pertaining to the justice sector in order to enhance the Council's ability to advice the National Parliament, as mandated under the statute, on legislative initiatives concerning the judicial system.

### **3.6. Information and Communication Technology**

Through UNDP a cost-effective Judicial Information System providing the following could be developed:

- ◆ Case Management System
- ◆ Asset and inventory control System
- ◆ Static and dynamic (Internet) electronic library and archive database
- ◆ A web-based system that will allow access to documents immediately and simultaneously, from the intranet and Internet when appropriate infrastructure is in place
- ◆ Sustainable system and environment

#### **3.6.1. Getting There**

To achieve the above goals, the following three points must be addressed.

##### **3.6.1.1. Infrastructure**

- Computer Networks
- Telecommunication
- Internet access lines
- Computing equipments

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<sup>41</sup> It should be noted that assistance to the Superior Council would need to be requested by that body once it is constituted and this document only provides an indicative list of possible outputs.

- ❑ Computing peripherals

### **3.6.1.2. Software**

- ❑ Development of scalable MIS for the judicial system in Timor-Leste
- ❑ Software interface in accordance with Government language development policy
- ❑ Relevant software for day-to-day administration duties
- ❑ Special software for system administration duties
- ❑ Software licensing

### **3.6.1.3. Capacity Building**

- ❑ The Judicial Training Center should be the focal point of training activities within the Judiciary.
- ❑ Facilities should be provided to offer a “one-stop shopping” training services.
- ❑ A comprehensive training plan and training schedule should be developed
- ❑ Copies of end-user software in the judicial system should be provided to accomplish the above-mentioned propositions.
- ❑ A monitoring body within Ministry of Justice to measure progress/competence
- ❑ If external service providers are contracted, Service Level Agreements (SLA) must be signed and monitored by the IT Unit.
- ❑ Internet connected computers to serve as electronic library

### 3.6.2. Oecussi – A Special Case

The geographical location of Oecussi calls for new thinking. One of the few tools that can close the distance gap is no doubt Information and Communication Technology. The Internet revolution has brought about enormous opportunities especially for isolated communities. Providing the enclave with good telecommunication facilities and integration into the global computer network or Internet will also boost the enclave’s tourism prospect in the foreseeable future.

### 3.6.3. Organization of IT services within the Judicial System

ICT unit within the judicial system should be re-organized. Information Technology should be “seen” in budget allocations. The following should be considered:

- ❑ IT Manager should be assisted temporarily by an international – UNV
- ❑ International IT professional should spend 70% of this/her time on training and 30 % system administration / development.
- ❑ Budget should be allocated yearly for equipment and training
- ❑ Responsible budgetary executive must approve of funds usage in advance
- ❑ Yearly ICT plan must be demanded from IT Manager
- ❑ Quarterly review of IT plan by IT Manager together with upper management to make possible adjustments to stimulate growth
- ❑ Recruitment of at least three IT support trainees
- ❑ Gender equality must be taken into account during the recruitment.

### 3.6.4. Delivery of IT services

The IT Manager at the Ministry of Justice is responsible for IT support services for the Ministry and other organs within the judicial system. The incumbent is without assistance.

### 3.6.5. Highlight of IT services to be provided by IT Unit

Services	Output
<p><b>Server monitoring and corrective action</b></p> <p>1<sup>st</sup> and 2<sup>nd</sup> Line User Support            Internal and External Connectivity Monitoring            DB Activity Monitoring            Capacity/Utilization/Performance Monitoring            Daily Troubleshooting            Daily Problem Resolution</p>	<p>Consistent high level of operational services. Proactive addressing of any potential problem that could interrupt service.</p>
<p><b>Print Services</b></p> <p>Hardware/Software Installation and Configuration            Print Queue and Spooling Management            Secured Printing Management            Printing Problem Troubleshooting and Resolution</p>	<p>Installation, deployment, daily support, and maintenance of printers.</p>

<p><b>Network Management</b></p> <p>Network Capacity Planning  Network Topology Documentation  Network Load/Impact Analysis  New Network Connectivity Management  Network security, file and folder security</p>	<p>Reliable, available, and serviceable network access and connectivity to organization-required data and processing.</p>
<p><b>Web server Administration</b></p> <p>Dynamic update of information  Interpretation of logs</p>	<p>Reliable homepage and availability of information.</p>
<p><b>End-user Training</b></p> <p>Basic computing  Training of new staff  Train users before a new system is put into production  When old systems are updated</p>	<p>Less stress filled computing environment with end-user satisfaction, and unnecessary “sick leave” due to performance problems.</p>

**3.6.6. Information Security Needed**

- Evaluate the organization’s level of threats
- Evaluate the organization’s public image
- What is the threat from natural disasters (hurricane, earthquake, tornado, flood, fire etc)?
- What groups will disapprove of your organization?
- Does your type of business draw protesters
- Do any of the systems directly process money?
- Do any physical neighbors draw targets?
- Do any online neighbors draw targets?
- The level of security should be based on sensitivity classification and should be enforced at all times.

**3.7. Mentors**

There are currently 4 mentors in place under the project: two judge mentors, one prosecutor mentor and one public defender mentor.

**3.7.1. Suggestions for the Mentor Program**

The judicial mentor program could:

- cover courts, prosecutors, and public defenders. The judge mentor, the prosecutor mentor and the public defender mentor should participate in enhancing relations / procedures involving police. The possibility of putting together a manual on procedures (especially regarding investigations) in consultation with mentees and the relevant focal points should be considered by the mentors working as a group.

- ❑ to cover both Dili and the districts that have functioning courts. Ideally the mentor should reside in the district. But other possibilities would be to have at least one mentor in the district (be it a judge mentor, a prosecutor mentor or a public defender mentor) and the Dili-based mentors could cover the other areas of mentoring. Dili-based mentors could send out a questionnaire to the districts to better ascertain mentee needs there. They could then develop resource materials addressing such needs for distribution to the districts.
- ❑ There should be at least two mentors for each category of mentee covered. That would bring the number to eight if all four categories of mentees mentioned above are to be covered

### **3.7.2. Clarification and Change of the Roles of the Mentor**

At the three workshop sessions conducted during the mission, the following roles were prioritized and strategies identified:

#### 3.7.2.1. Accelerated strengthening of capacities

Capacity was seen as encompassing knowledge, skills and attitudes. Knowledge of law, of good practices, of lessons learned, of choices and options and of consequences are all, important. Skills include accessing and assessing facts and information, analysis, communication, decision-making, articulation of reasons for the decision, and time, case and staff management.

Strategies include:

- ❑ Actively Advice, based on case file review
- ❑ Preparation and dissemination of resource materials related to needs
- ❑ Sharing comparative experiences
- ❑ Acquiring knowledge about the applicable law in Timor-Leste
- ❑ Enhancing mentee capacity to assess comparative experiences e.g. on web sites
- ❑ Creating opportunities for collective learning and self-learning
- ❑ Complementing formal training with on the job support
- ❑ Reorienting mentees as to values, roles tasks and functions

#### 3.7.2.2. Assisting mentees to cope with and lessen their workload

Strategies include:

- ❑ Help leaders of the institutions improve case management
- ❑ Assist leaders of the institutions with development of tools: forms, formats, checklists
- ❑ Assist leaders in the institutions with improving staff management

#### 3.7.2.3. Monitoring and promoting and adherence to the rule of law

Strategies include:

- ❑ Advice
- ❑ Observe and participate

#### 3.7.2.4. Recommending law reform in areas arising out of the work of the mentors

#### 3.7.2.5. Commenting, together with mentees, on draft legislation

3.7.2.6. Assisting in creating an information management system and a data base

### **3.7.3. Empowering the mentors**

The following measures are recommended after extensive discussions with the mentors:

3.7.3.1. On induction, the mentors should receive

- ❑ Change of ToR
- ❑ Clarification of roles, tasks and functions
- ❑ Familiarisation with applicable laws and procedures in Timor-Leste
- ❑ Familiarisation with international law relevant to the work of the mentor and useful tools
- ❑ Familiarisation with UNDP and the UN system

3.7.3.2. Periodic discussions / workshops for capacity strengthening of the mentor and mentees, initiated and organized by mentors: addressing new problems and new law reform measures; using legal experts when they visit Timor-Leste on missions for UNDP.

3.7.3.3. Helping mentees developing methodologies e.g. on investigation, interference, corruption, accessing documents

3.7.3.4. Enhancing access to the Internet and assist mentees using Internet for research

3.7.3.5. Technical and equipment support e.g. to a core law library, computers and printers

3.7.3.6. Logistical support when the mentor is out of Dili

3.7.3.7. Promoting greater use of mentors through efforts by themselves, individually and collectively; by the mentor coordinator; by Government officials and by UNDP

3.7.3.8. Creating a list-serve for mentor alumni

### **3.7.4. Program Management Issues**

3.7.4.1. The mentor coordinator should draw up selection criteria and terms of reference for the mentor after consulting the mentees.

3.7.4.2. The search process should involve, in addition to UNOPS, UNDP experts, UNDP country offices in Portuguese-speaking countries and professional associations among others.

3.7.4.3. The selection process should include existing mentors and representatives of the mentees, in addition to the program management structures.

3.7.4.4. Regarding the terms and tenure of the mentor, the mentors should not be recruited as UNVs but should be offered Appointment of Limited Duration (ALD) contracts for a period of one year, renewable for a further year. This is essential to attract suitable mentors with experience and to promote respect for the mentors.

3.7.4.5. Mentors should be required to prepare quarterly strategic work plans both as individual mentors and for the entire group of mentors.

3.7.4.6. Mentors should be encouraged to develop, adopt and apply a code of conduct.

3.7.4.7. Monthly reports by the mentors and an annual performance review should be used to secure mentor accountability. The Project Management Committee (PMC) should undertake the annual review of the work of a mentor early in the last quarter of each year.

3.7.4.8. The mentor program should be assessed annually in terms of its results and impacts on law reform, on access to justice, on promotion of the rule of law and human rights.

3.7.4.9. The Mentor Program Coordinator should work to promote relationships of the mentors; intra-institutional; inter-institutional; system-wide within the justice system; the media; and the public at large.

3.7.4.10. Most importantly, the program should be assured translation and interpretation to overcome language barriers and promote a culture of communications.

### **3.7.5. Program Management Structures**

#### **3.7.5.1. Mentor Program Coordinator**

It is strongly recommended that a separate post of Mentor Program Coordinator (MPC) be created under the revised mentor program. This role should not be played by a mentor alongside regular mentoring responsibilities (as is presently the case). The MPC needs to have the same language and communication skills as are required of the mentor. But the MPC need not have the legal skills of the mentor. Management, coordination, facilitation and public relations skills are more important. The MPC should have, so far as UNDP is concerned, sole responsibility and authority regarding the mentoring program, irrespective of what other arrangements UNDP might make regarding the project as a whole. Existing mentors, representatives of mentee groups, UNDP and Ministry of Justice should all be part of the process of determining selection criteria and terms of reference (TOR) for the MPC and all should be involved in the selection process itself. The MPC should be vested with the powers, authority and resources necessary to effectively perform the tasks set out in the TOR, adhering to work plans and supervised by the Chief Technical Advisor for the project and the Program Officer. A monthly reporting schedule and a quarterly work plan should be required of the MPC, who in turn will be responsible for collecting this from the mentors. The reports and work plans would go to all mentors, the UNDP governance focal point, the Ministry of Justice mentor program focal point, and the Project Management Committee. The oversight/accountability mechanism for the MPC should comprise one representative from each of the aforementioned categories. The body would also undertake the annual review of the work of the MPC.

#### **3.7.5.2. The Project Management Committee**

A Project Management Committee (PMC) similar to the one set up for the present UNDP project of support to the judicial system, is envisaged for the revised and soon to be expanded

UNDP project of support to the judicial system. The PMC will have management responsibility for the entire project including the mentoring component. However, as a matter of rule, the PMC should defer to the decisions made and judgment of the MPC as regards the mentoring programming. The suggestions made by the Mid-Term Review Mission of August 2001 regarding the PMC as to composition, powers, TOR, roles and function, decision-making, processes and record keeping remain pertinent but should be revised by the incoming program formulation mission. The PMC's monitoring procedures should be enhanced and members should seek to acquire knowledge about the objectives of the project and the procedures and role for the PMC.

#### 4. CONCLUSION

The issues identified in this report and the corresponding recommendations provided range from short-term to long-term solutions for the problems afflicting the judicial system in Timor-Leste. Indeed some of these matters can and should be addressed forthwith while others will require considerable strategic planning and consultation. No doubt the Government, the respective independent institutions and other development partners, will address many of the concerns raised here. At the same time, some of them can also be effectively tackled through a UNDP supported project of technical assistance to build capacity within the judicial system in the country.

The task of finding the most strategic interventions and developing a cohesive framework of assistance that takes into account Government priorities and UNDP's comparative advantages vis a vis various entry points lies ahead as does the somewhat sensitive question of program management and implementation arrangements. For this purpose, the mission recommends that UNDP and the Government fully engage the Courts, the Public Prosecutors and Defenders in: (a) obtaining some validation of the findings of this assessment as soon as possible; (b) identifying priorities for future UNDP assistance to the judicial system and (c) deciding together on the next steps that need to be taken in order to prepare a 3-5 year technical assistance project. Once the institutions concerned have demonstrated some degree of ownership of the process, a substantive revision of the existing project may be undertaken by UNDP along with a more rigorous examination of the capacity building needs of the Judicial Training Center and the courts<sup>42</sup> than was possible during this assessment mission.

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<sup>42</sup> More emphasis should also be placed on the Ministry's role in drafting and disseminating laws during the project revision phase.

ANNEX 1 Partner	Justice Sector development partner MATRIX Activity	Status	Financial Commitment
PORTUGAL	<ul style="list-style-type: none"> <li>• <b><u>Protocol 1: legislative drafting</u></b></li> <li>• Support to draft, review and adapt essential legal instruments required to govern a State of Law in Timor-Leste;</li> <li>• Establishing of one or more joint Working group, (Portuguese and Timorese jurists), guided by a work plan and working through video conferences or meetings in Lisbon or Dili;</li> <li>• Invite Timorese jurists to participate in legislation drafting courses;</li> <li>• Provide manuals about techniques for drafting legislation;</li> <li>• Legislation elaborated by the CPLP countries will be taken into consideration;</li> <li>• Each Work Group will draft a plan of activities, which will be approved by the Parties, specifically referring in each one of them: <ul style="list-style-type: none"> <li>• The essential objectives and features of each legislative project;</li> <li>• The different phases of the project and its time schedule;</li> <li>• The way the final result of their work will be submitted to the competent authorities;</li> <li>• The mechanisms of the eventual project follow-up in the submission, discussion and approval phases;</li> </ul> </li> <li>? Midterm Review of the project will take place after 1 year.</li> <li>• <b><u>Protocol 2: Judicial Training Centre</u></b></li> <li>• Provide support to the JTC in the areas of training, and legal and judicial investigations;</li> <li>• Hold mutual consultations on the relevant issues</li> <li>• Provide trainers to provide training to Timorese jurists, both in Timor-Leste and Portugal, according to annual planning, and following to a feasibility study;</li> <li>• Portugal will be responsible for the following: <ul style="list-style-type: none"> <li>• To provide support in the organization of the courses, seminars and other training actions in Timor-Leste or its organization in Portugal;</li> <li>• To provide technical and scientific support in investigation studies and projects within the juridical and judiciary areas;</li> <li>• To provide technical support in subjects related with the Center's organization and operation, namely in what concerns the introduction of systems and information processing;</li> </ul> </li> </ul>	<p>Protocol 2 will depend on the ability to pass the necessary bills regulating the operation of the JTC.</p>	

ANNEX 1 Partner	Justice Sector development partner MATRIX Activity	Status	Financial Commitment
	<ul style="list-style-type: none"> <li>• To support the interchange of documentation and technical and scientific information</li> <li>• To provide assistance, during the first three years, in the organization of three intensive and in-depth training courses to a number of 25 to 36 Timor-Leste future magistrates, in accordance with the terms established in the Annex of this protocol</li> <li>• To grant scholarships, to assure the lodging and framework in a pedagogically adequate environment for the jurists, who will become the magistrates of Timor-Leste, to attend courses and (or) apprenticeships related with the juridical or judiciary subjects in Portugal.</li> <li>• Timor-Leste will be responsible for the following: <ul style="list-style-type: none"> <li>• To approve the internal legal and regulatory instruments, within 120 days from the enforcement date of this Protocol, with the rules related with the Center's organization and operation and to assure the respective fulfillment;</li> <li>• To elaborate annually the plan of activities and budget projects and the accomplished activities report and accounts projects, in compatible way with the requirements determined by the fiscal years of each one of the parties;</li> <li>• To promote a progressive integration of Timorese citizens in the teaching staff of the Center, in accordance with academic, scientific and pedagogic level criteria. The Timorese trainers' core should be teaching in the third year as of the signature of this protocol;</li> <li>• To support the interchange of documentation and technical and scientific information;</li> <li>• To support the charges regarding allocation of two vehicles to the JTC, required for the local transport of the Portuguese co-operators</li> <li>• The execution of the protocol will be followed up by a permanent coordinating committee, formed by two representatives from each of the two parties. Will convene once a year.</li> </ul> </li> </ul>		
ASF	<ul style="list-style-type: none"> <li>• Support to the JTC</li> </ul>	-	-

ANNEX 1 Partner	Justice Sector development partner MATRIX Activity	Status	Financial Commitment
	<ul style="list-style-type: none"> <li>• Study the existing list and order additional books on law in English, in Indonesian and Portuguese languages;</li> <li>• Documents relating to International Conventions and Humanitarian laws;</li> <li>• Legal journals and magazines;</li> <li>• Creation of a website with all relevant information about the JTC;</li> <li>• Translation and copying facilities.</li> <li>• Support to research on traditional unwritten law <ul style="list-style-type: none"> <li>• Identify potential NGO Partner;</li> <li>• Design survey methodology;</li> <li>• Assist in the process of incorporating traditional system of justice within the formal structure, if the traditional laws are compatible with human rights standards.</li> </ul> </li> <li>• Timor-Leste Jurist Association <ul style="list-style-type: none"> <li>• Initiate the idea and study models of Bar Association that may suit Timor-Leste</li> <li>• Assess the existing org. set up of ETJA and design a plan of action including roles and responsibility of key office;</li> <li>• Assist in developing contacts with other Bar Assoc. in the region and elsewhere;</li> <li>• Provide institutional support for a limited period of time to help the bar association gain confidence;</li> </ul> </li> <li>• Capacity building of Judges and Prosecutors <ul style="list-style-type: none"> <li>• Meet with judiciary to understand individual and collective needs of judges and prosecutors; Design appropriate training program</li> <li>• Identify potential trainer with practical and theoretical exp.</li> <li>• Organize training schedules</li> </ul> </li> <li>• Training of Paralegal workers <ul style="list-style-type: none"> <li>• Needs assessment;</li> <li>• Comparative analysis of paralegal workers in other countries to help define clearly role and responsibility;</li> <li>• Assist recruitment process;</li> </ul> </li> </ul>		

ANNEX 1 Partner	Justice Sector development partner MATRIX Activity	Status	Financial Commitment
	<ul style="list-style-type: none"> <li>• Support training</li> <li>• Capacity building Public defenders <ul style="list-style-type: none"> <li>• Study training needs</li> <li>• Analyze the draft laws</li> </ul> </li> <li>• Identify a set of trainers with practical experience in civil and criminal law and procedures;</li> <li>• Assist in setting up legal aid offices, and public information.</li> <li>• Feasibility Study on Academy of Law <ul style="list-style-type: none"> <li>• Organize meetings and interviews;</li> <li>• Study draft proposal prepared by the transitional government;</li> <li>• Meet Educational authorities and staff members to assess the level of the newly started faculty of law</li> <li>• Define requirements for a law course and identify resources within and outside the country</li> </ul> </li> </ul>		
UNICEF	<ul style="list-style-type: none"> <li>• A long-term Juvenile Justice / Legal Advisor will be placed at the Ministry.</li> <li>• He/she will provide technical assistance to draft laws and/or regulations related to Juvenile Justice and Child Protection, including a stronger legal basis for juveniles between 12 and 16 accused of minor crimes;</li> <li>• The Advisor will also help build the capacity of judges, prosecutors, public defenders and prison wardens to handle cases of juveniles in contact with the law. Specialization in Juvenile Justice will be promoted through training and other initiatives*. Possibilities for exercising diversion may be explored.</li> <li>• Support strengthened co-ordination between key actors in the prison sector through the development of a <i>Working Protocol</i> between the Ministry and the Secretariat of State for Labour and Solidarity (DSS)</li> </ul>	<p>Development of ToR for Juvenile Justice Advisor underway.</p> <p>Same as above</p> <p>Underway</p>	-

\* As per Agreement on Areas of Cooperation in the Justice Sector between the Ministry of Justice and UNICEF, signed on 9 October 2002

ANNEX 1 Partner	Justice Sector development partner MATRIX Activity	Status	Financial Commitment
	<ul style="list-style-type: none"> <li>• <i>Technical Agreement</i> between the Courts and the DSS Court and Prison Team.</li> <li>• Support the Judicial Training Center with some office equipment and materials on Juvenile Justice.</li> <li>• Support the development of alternatives to deprivation of liberty of juveniles (pre-trial and post conviction) that will facilitate rehabilitation and social reintegration.</li> <li>• Support children in detention to promote their social reintegration. Activities will include education, recreational activities, psychosocial and psychological support.</li> <li>• If a separate facility for juveniles is established, UNICEF will provide technical support to develop criteria for juveniles to be detained, as well as regulations governing the center.</li> <li>• Work with the Central Civil Registry (CCR, MoJ) to promote birth registration through technical assistance (Birth Registration Advisor), capacity building and support to pilot project in two districts*.</li> <li>• Contribute to a possible research on the impact of local practices and customary rules on children.</li> <li>• Increased knowledge on customary practice</li> <li>• Birth Registration Advisor</li> <li>• Birth Registration pilot project and other support to CCR</li> </ul>	<p>Pending MoJ request</p> <p>ToR for JJ Advisor being developed. Exploring possible new partnerships for signing agreement. Not known</p> <p>Recruitment of Birth Registration consultant underway.</p>	
USAID	<ul style="list-style-type: none"> <li>• Rehabilitation of Baucau judges' houses, Public defenders' office in Dili, and Land and property unit office expansion;</li> <li>• Enhance Judicial training Centre in terms of reference materials;</li> <li>• IDLO, in coordination with JTC, to conduct training courses for Judges;</li> <li>• IDLO proposed to Ministry of Justice that the IDLO Judge Trainer and the resident training team could assist with training for the court clerks as well as members of the judiciary on court and case management in 2003. This would include the drafting of a training manual on case and court management in East Timor.</li> <li>• The Asia Foundation to strengthen in-house training unit at JTC through technical assistance for curriculum development, participatory methodologies and evaluation</li> </ul>	<p>Awaiting Ministry of Justice response to 2003 IDLO Judicial Training Proposal submitted in February 2003.</p> <p>TAF awaiting Ministry of Justice response to MOU</p>	<p>USAID grant to IDLO covers training program to end of 2003.</p>

ANNEX 1 Partner	Justice Sector development partner MATRIX Activity	Status	Financial Commitment
	<p>tools;</p> <ul style="list-style-type: none"> <li>• The Asia Foundation to develop a multilingual legal glossary, including terms and concepts used in formal and traditional conflict resolution mechanisms;</li> <li>• The Asia Foundation to support Department of Rights and Citizenship public information campaigns to raise public awareness of legal rights and the legal system;</li> <li>• Asia Foundation to enhance case file management and procedures in court administration, including links to prison offices, public defenders and police, introducing IT solutions as appropriate</li> <li>• Conduct Land and Tenure Study (to be identified US university research group);</li> <li>• Provide general survey assistance &amp; technical assistance in GIS techniques;</li> <li>• Provide funding, technical assistance and training in the management of mapping information database;</li> </ul>	draft submitted 2/03	
UNDP	<ul style="list-style-type: none"> <li>• The existing judiciary project focused on supporting the development of a fair and functional judicial administration in Timor-Leste; <ul style="list-style-type: none"> <li>• Through the rehabilitation of court buildings,</li> <li>• Equipping and furnishing Suai Court and Court of Appeal</li> <li>• Mentoring and training of judges, prosecutors, clerks and public defenders;</li> <li>• Providing access to Internet,</li> <li>• Rehabilitation of office of Public prosecution;</li> <li>• Detention center in Suai</li> <li>• Juvenile house study and</li> <li>• Vocational training workshop for inmates</li> <li>• Build up Pool of translators / interpreters in MoJ to enhance publishing of laws on the Official Gazette</li> </ul> </li> <li>• The project in general is under substantial review to prepare a three to five year technical assistance project coordinating efforts to enhance service delivery and meet the needs</li> </ul>	<p>Suai Court completed Completed 2001-2002 Under revision Under revision Committed Planned 31/12/2003 Planned Planned Committed</p>	

ANNEX 1 Partner	Justice Sector development partner MATRIX Activity	Status	Financial Commitment
	<p>envisaged by the Ministry of Justice with respect to implementing the National Development Plan and the Ministry's Action Plan for the next financial years.</p> <ul style="list-style-type: none"> <li>• A Program formulation mission is expected to <ul style="list-style-type: none"> <li>• Contribute to the development of a long-term capacity building framework</li> <li>• Describe short term and long-term support to the (a) the Courts; (b) the Public Defenders' Office; (c) the Office of the Prosecutor-General, and (d) the prison sector and the Secretariat of the Superior Council of the Judiciary,</li> <li>• Contribute to developing an ICT strategy for the sector</li> <li>• Prepare Strategic Result Based Management tools, such as a Logical Frameworks, and Work Plans / Fiscal Year Action Plans allowing the MoJ and partners to more easily work towards stated objectives;</li> <li>• Facilitating enhanced donor coordination;</li> <li>• Design a project management unit (PMU) to be placed within the Ministry</li> <li>• Recruitment of Chief technical Advisor for 1 year to head the PMU to assist in enhancing; <ul style="list-style-type: none"> <li>• Planning and monitoring capacity in the Ministry;</li> <li>• Capacity to service and coordinate the institutions in the judicial system;</li> <li>• Management skills in the Ministry</li> <li>• Compliance with the objectives stated for the justice sector</li> </ul> </li> </ul> </li> </ul>	<p>10 – 21 February</p> <p>April 2003 March 2003</p>	
<b>ALRI</b>	<ul style="list-style-type: none"> <li>• Training of a pool of legally specific interpreters (not court interpreters, but rather specialists in the more difficult task of assisting complex legal discussions and training). Initially Tetum-English, Bahasa Indonesia-English. (Under the auspices of TAF/USAID)</li> <li>• Ethics workshops with Judges, Prosecutors and Defenders. Elicitation of ethical standards to which these professionals wish to be held accountable. Possible subsequent regional socialization of these standards. (Under the auspices of TAF/USAID)</li> <li>• Elicitation of the principles used in (Tetum speaking) community systems of justice.</li> </ul>	<p>April 2003</p> <p>May 2003-02-18</p> <p>July 2003-02-18</p>	<p>TBC</p> <p>TBC</p> <p>TBC</p>

ANNEX 1 Partner	Justice Sector development partner MATRIX Activity	Status	Financial Commitment
	<p>Research and consultations identifying how these systems resolve disputes. (Under the auspices of TAF)</p> <ul style="list-style-type: none"> <li>• Continuing provision of legal resources; reference materials, office equipment etc.</li> <li>• Further assistance to the establishment of a Bar Association. (AusAID/ALRI funded, conducted in coordination with ASF)</li> <li>• Placement of a paralegal to be available to all law firms and legal aid organisations in Dili. (ALRI/AusAID)</li> <li>• Placement of lawyer within CAVR. (ALRI/AusAID)</li> </ul>	<p>Ongoing July 2003</p> <p>March 2003</p> <p>March 2003</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>



## ANNEX 2 - TEAM MEMBERS

### Team Leaders:

1. Manuel Abrantes, Vice-Minister of Justice, Government of Timor-Leste
2. Sanaka Samarasinha, UNDP Rule of Law Advisor for the Pacific and East Asia

### Members:

3. Aires Amaral, Director UNDP Justice Project, Department of Justice, Mozambique
4. Vasco Soares, Jurist, Ministry of Justice, Timor-Leste
5. Clarence J. Dias, President International Center for Law in Development, New York
6. Paul Nifah, IT specialist, UN Serious Crimes Unit, Timor-Leste
7. Ana Clara Paixão, Mentor Coordinator, Prosecutor Mentor, UNDP Timor-Leste
8. Josephine Moss, UNMISSET Human Rights Unit
9. Gaspar de Araújo, IT Manager, Ministry of Justice, Timor-Leste
10. Fabio Buonomo, Court Administrator for UN Special Panels for Serious Crimes, Timor-Leste.
11. Beate Bull, Program Officer, UNDP Timor-Leste
12. Ann-Mari Karlsson, Intern, Governance Unit, UNDP Timor-Leste
13. Carlos Dinis, Foreign Relations Project Coordinator, UNDP Timor-Leste
14. Fernando Encarnação, Translator/Interpreter

### ANNEX 3 - MISSION PROGRAM

Thursday 7 November

12:30 PM Arrival Clarence Dias (separate schedule)  
2:00 – 2:45 PM Meetings at UNDP with Beate Bull and Sophal Ear  
3:00 – 4:00 PM Meeting with the Minister of Justice,  
6:30 PM Meeting with UNDP Senior Deputy Resident Representative Haoliang Xu

Friday 8 November

9:00 – 12:00 AM Meeting with mentees  
12:00 – 2:00 PM Meeting with Josephine Moss (UNMISSET) and Beate Bull about Human  
rights seminar  
2:00 – 5:00 PM Meeting with mentees

Saturday 9 November

9:00 – 12:00 Meeting with the mentors

Monday 11 November

09:00 – 12:00 AM Meeting with the mentees  
2:00 – 3:00 PM Sanaka Samarasinha, Clarence Dias: Meeting Sophal Ear Assistant Resident  
Representative , UNDP Beate Bull, Program Officer  
3 – 5 PM Meeting full team RR's room UNDP  
5 – 6 PM Meeting with the Minister of Justice, Ms. Ana Pessoa

Tuesday 12 November

Santa Cruz Massacre Commemoration Day

Wednesday 13 November

07:45 Arrival Dr. Aires  
8:30 - 9:00 AM Team meeting in the Ministry of Justice  
9:00 – 10:00 AM Meeting with Dili District Court administrator, Mr. Jeronimo Luis  
10:00 – 11:00 AM Meeting with Judge President Dili District Court, Mr. Aderito Tilman  
11:00 – 12:00 PM Meeting with public defender co-ordinator, Mr. Sergio Hornai  
2:00 – 2:45 PM Meeting with DSRSG, RC and RR, Mr. Hasegawa  
3:00 - 4:00 PM Meeting with Timorese judges in the special panels: Dr. Helder Vianha do  
Carmo and Dr. Maria Natercia Gusmao  
4:00 – 5:00 PM Meeting with the Prosecutor General, Longuinos Monteiro  
5:30 – 6:30 PM Judicial System Monitoring Program, Ms. Bu Wilson

Thursday 14 November

9:00 – 10:00 AM Meeting with the Office for External Assistance Management and TSP  
Mission Members, UNDP,  
11:00– 12:30 PM Meeting with the Serious Crimes trainees and international team leaders,  
Serious Crimes Unit, Komoro Office,  
3:00 – 4:00 PM Meeting with UNPol Commissioner, UNPol, Mr. Peter Miller  
5:30 – 6:00 PM Meeting within the Team

Friday 15 November

8:00 – 9:00 Working Breakfast with IDLO, D. Aleixo Hotel, Ms. Cate Sumner  
9:00 – 10:00 AM Meeting in the Prison of Becora,  
10:00 – 12:00 AM Meetings in the Ministry of Justice,  
12:30 PM Departure Clarence Dias  
2:00 – 3:00 PM Meeting with Acting Chief National Investigation,

Monday 18 November

9:00 – 10:30 AM Meeting with Asia Foundation, AF HQ, Mr. William Collins,  
10:45 – 12:00 AM Meeting with Avocats sans Frontiers, George Mukkat  
12:00 – 14:30 PM Working lunch with the team  
3:30 – 4:30 PM Meeting with CRTR  
4.30 – 5:30 PM Meeting with Director of the Judiciary Training Centre, Mr. Lourenço  
Ferreira  
5:30 – 6:30 PM Meeting with the Minister of Justice,

Tuesday 19 November

8:30-10:00 AM Meeting with USAID, Edith Bowles  
10:45 – 12:00 AM Meeting with Longuinos Monteiro,  
12.30 – 13.30 PM Lunch with UNICEF and Dept. of Social Affairs,  
2:00 - 3:00 PM Meeting with the Advisor for Human Rights, Ms. Isabel Ferreira  
3:00 – 4:00 PM Meeting with the Office for External Assistance Management and TSP  
Mission Members, UNDP,  
5:30 – 6:00 PM Meeting with the Special Panel of Judges,

Wednesday 20 November

8:00 – 12:30 PM Field trip Oecussi Court  
10:30 – 11:30 AM Advisor for the Promotion of Equality, Domingas Alves  
4:15 – 5:30 PM Meeting with Ausaid, Cynthia Burton  
5:30 – 6:30 PM Meeting with the Police Mission

Thursday 21 November

9:00 – 10:00 AM Meeting with Dili Court Judges  
10:00 – 11:00 AM Meeting with the Portuguese Mission, Ms. Isabel Pedrosa  
11:00 – 12:00 PM Meeting with the Interpreters  
3:00 – 4:00 PM Meeting with the Deputy Speaker of National Parliament and Commission A  
4:00 – 5:00 PM Meeting with UNDP Staff  
4:00 – 5:00 PM Meeting with the prosecutors  
5.00-7.00 PM Meeting with Mentors

Friday 22 November:

9:00 - 10:30 AM Debrief with MOJ  
3:00 – 4:00 PM Debriefing with Mr Sukehiro Hasegawa  
4:30 – 5:30 PM Debriefing with Donors

## ATTACHMENT A - ACCESS TO JUSTICE FOR THOSE UNDERGOING PRETRIAL OR ILLEGAL DETENTION IN TIMOR-LESTE

### The Problem Addressed

The Ministry of Justice (MOJ) has expressed repeated concern about the 286 persons undergoing pretrial or illegal detention in Timor-Leste today. A third of them are being detained in violation of the current procedural law applied in Timor-Leste today. Two thirds of them are undergoing pretrial detention.

The problem merits attention because of the plight and human suffering of these undergoing detention. The problem also merits attention because it is symptomatic to persistent failures in the current operation of the justice system in Timor-Leste today. Left unaddressed, the problem will become endemic and destroy the credibility and legitimacy of Timor-Leste's justice system. Fortunately, the problem can be resolved provided that there is a common, cooperative approach adopted by all actors of the justice system: judges (both investigative and trial judges), prosecutors, public defenders, police and prison officials.

### A Suggested Approach

UNDP is willing to partner with the Supreme Judicial Council (as soon as it comes into existence), in cooperation with the Ministry of Justice (in furtherance of Ump's project of judicial support with the Ministry) in undertaking the following project initiative aimed at:

- developing a fuller understanding of the problem, its causes and consequences
- developing a common approach (both remedial and preventive) that would be adopted and applied by all of the above-named actors of the justice system.

The proposed initiative envisages three steps: two workshops (held on consecutive Saturdays) bringing together judges, prosecutors and public defenders; followed by a high-level meeting of the heads of each of those three institutions and the Vice Minister of Justice, to adopt and implement an agreed upon plan of action.

**PRIOR TO THE FIRST WORKSHOP:** a study would be undertaken, commissioned by the partners to the project, building upon the data presently available about the current detainees. Annex 1 provides further details about the scope and methodology of the study.

**THE FIRST WORKSHOP:** would bring together as many judges, prosecutors and public defenders as is possible. To ensure this, the workshops are planned to be held on weekends when the IDLO run training program is being conducted. The first workshop seeks to develop an enhanced and *common understanding of the problem* and the roles judges, prosecutors and public defenders can play in addressing the problem. The various components of the problem will be identified. The workshop will begin with a presentation of a hypothetical detention review, performed by Fraternal (with a script developed by the project partners, drawing upon several real-life cases and situations). This will be followed by an analysis of the problems and of the applicable law and will seek to develop **agreement about the various, contributory causes of the problem** and the relevant law (contained in the procedural law, the Constitution, and international human rights instruments that Timor-Leste has subscribed to..

**THE SECOND WORKSHOP:** would examine a detailed approach to resolving the problem. Such an approach (developed during the interim between the 2<sup>nd</sup> and 3<sup>rd</sup> workshops) would:

be presented in the form of a “*good practice*” *procedural guide* detailing the range of options available to the decision-makers (and suggesting “good practice” choices among such options) at each and every stage of the process of detention and release.

The final HIGH-LEVEL WORKSHOP will decide upon implementation of the approach agreed upon at the third workshop, through a concrete plan of action.

### **Project Objectives and Justification**

- ❑ Combining a reactive and proactive approach, aimed at securing access to justice and effective remedies for the present detainees and preventing future recurrences of the problem.
- ❑ Fostering communications (and overcoming language barriers) between the various components of the justice system. Building confidence, respect and trust through working together, towards a common goal.
- ❑ Strengthening the various institutions in the justice system and the system as a whole, and enhancing consistency throughout the system.
- ❑ Involving the Superior Council of the Judiciary and the Judiciary Training Institute.
- ❑ Strengthening working relationships between the Ministry of Justice, the Superior Council of the Judiciary, Judges, prosecutors, and Public Defenders.
- ❑ Creating opportunities for harmonization of national laws with international law standards.

### **The Study**

The study will analyze existing data about the detainees, disaggregating the data by age, gender, socio-economic background, language abilities, literacy e t c, to build a profile of the detainee. It will also collect data about the representation received and the various pleas sought. Through interview data of the entire detainee population (preferably) or of a representative sample, detainee perceptions as to effectiveness of representation; quality of justice received; suggestions for reform; awareness of human rights and rule of law principles; and comments on their experiences as they passed through various stages of the process will be ascertained. By doing so, the study will seek to identify the points in such process when individuals become especially vulnerable and particularly susceptible to illegal detention.

*This initiative will pilot test the methodology to address emerging issues in the justice sector. The lessons learned from the process could be replicated to deal with other serious developments in the justice sector.*