



JUSTICE UPDATE

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NEW COURT ACTOR TRAINING PROGRAM

JSMP welcomes the coordinated and serious training initiative being implemented for court actors beginning in October 2004. This programme introduced by the Council of Coordination is funded by UNDP. The training will be open to all court actors and will be conducted from early October 2004 until the end of November, with intensive Portuguese language training being given for the month of September. This is the first time that such a coordinated training has been attempted and its need is without doubt. This paper provides concerns about the practical implementation of the decree law but in no way the intention of JSMP to criticise the overall intention of the training and JSMP fully congratulates the Council of Coordination in this initiative.

Operation of the courts during the training program

With any training initiative, the short term operation of the courts may suffer due to the lack of personnel¹. It is understood that International Court Actors including judges and court administrators are being employed to work in the courts, including the districts, to ensure the court keep operating. On 18 August, Judge Dr. José Luís Goia, was sworn in as a judge of the Court of Appeal. Four international judge mentors were sworn in on 3 September 2004 to serve in the four district courts. JSMP hopes that translators will be available for the international judge mentors to translate court proceedings from Tetum/ Bahasa Indonesia and local languages into a language the international judge mentors understand.

The district Courts, especially Baucau and Oecussi, have been basically non-operational in their respective districts for many months due to lack of personnel and it is hoped that the initiative to employ new international judges will successfully re-start operations again.

However, JSMP has observed a significant decrease in the scheduling of cases in Dili District Court in the week commencing 6 September (following the commencement of intensive Portuguese language training of all court actors). When JSMP questioned the court administrators as to why there were so few cases scheduled JSMP was told it was because most of the court actors were now on training and so were unable to attend court.

¹ JSMP has provided many comments on this issue previously when court personnel were sent to Portugal for a one-year training program.

Given that most prosecutors and defence lawyers will now be in training it is not clear how trials, and indeed hearings, will proceed in the District Courts and therefore, how best use will be made of the useful skills and knowledge the new international judge mentors will bring to the district courts.

Content of the training program

The initiation of the court actor training program results in the stopping of the half completed Prosecutorial training program of IDLO and the program to training the public defenders by ASF is in doubt. It is disappointing that the work that has already been put into these training programs may not be utilised and JSMP would encourage the Council of Coordination to consider incorporating the skills, resources and expertise of these organisations into the programs developed by the judicial training centre.

JSMP understands that the training will be conducted in Portuguese or Tetum. It is hoped interpretation and translation will be provided to Tetum where necessary, as most of the trainers preferred language is Portuguese. Also, where necessary, especially with regard to written legal documents and legal phrases which may not be fully developed in Tetum, it is hoped consideration will be given to using commonly used Indonesian legal terms.

In assessing the effectiveness of training it is hoped that consideration could be given to training in professional groups. A problem in previous judicial trainings in East Timor has been with training of prosecutors, judges and public defenders together when their needs and duties are varied. The recent IDLO Prosecutorial training program has focused specifically on the training requirements of Prosecutors. This focus has contributed to the success of the program.

Training will apparently be conducted on the basis of the laws currently applicable in East Timor – East Timorese laws promulgated since 20 May 2002, UNTAET regulations and Indonesian law – as well as the draft Penal Code, and draft laws of Criminal and Civil Procedure, with reference to a range of other laws too. JSMP is concerned that training is to be conducted on the basis of these draft laws, as these laws have not yet been passed by the Council of Ministers (JSMP is not aware that the draft laws of Civil and Criminal Procedure have even been sent to the Council of Ministers) or the Parliament. JSMP is concerned that training time will be wasted if training is to be conducted in draft legislation which is not yet law, as there is a possibility that the content of these laws may be changed. It may also take a number of months, and perhaps more than one year, before these draft laws are passed and become law.

Results of the training – Decree Law No. 15/2004

The training “preparation course” is open to all court actors currently working in the courts and other persons with a law degree. According to Decree Law 15/2004, following the initial training all participants in the training will have to sit an exam in December 2004. The results of the exams will determine if the court actors will be admitted to the training internship program.

Earlier this year, the judges, court administrators and potential public defenders undertook exams. While the results of the exams for the court administrators have been publicised, JSMP understands that the results of the other exams have not even been made available to those who sat the exams. According to Decree Law 15/2004 it appears the results of the previous exams will not have any impact on the December exam.

According to Decree Law 15/2004, those who successfully pass the December exam will be able to express a preference whether they will become judges (in any court), prosecutors, or public defenders. Future positions will not depend on previous experience but on the results of the December exam and successful completion of the training internship. The exam will be conducted in Portuguese and Tetum and answers to the exam should be written and spoken in Portuguese and/or Tetum (exam candidates will have to have to prove proficiency in both languages). JSMP is concerned that the requirement for proficiency in Portuguese language will disqualify from future work in the courts many current court actors who were trained in Indonesia.

The training internship has two stages: academic (one year) and practical (six months). After this, interns will be allocated to a court for a trial period of one year. Their performance will be considered after six months.

Decree Law 15/2004 does not describe whether those trainees in the October-November Preparation Course who do not pass the December exam, and therefore cannot enter the training internship program, will be able to continue working in the court. Nor does the Decree Law describe if there will be any court actors working in the courts who are not on the training internship program. JSMP recommends the Judicial Training Centre, Ministry of Justice or Superior Council of the Judiciary publicly clarify these questions as soon as possible in order to avoid confusion among court actors.

The future status of private lawyers, and other (currently practising) lawyers who did not enrol in the new training program by the cut off date of 25 August 2004, is not yet clear, but it seems they will continue to be permitted to practice as private lawyers.

Summary of possible problems with training program

- If most court actors are in training from September – December 2004 how will:
 - Hearings and trials proceed during that three month period
 - The new international judges be used.
- Training is being conducted in Portuguese – a language which most court actors do not understand.
- All court actors will be trained in groups of 30 together. Consideration is not being given to the specific training requirements needed for those working in different jobs within the court ie: judges (appeal, special panels, trial and investigative), prosecutors, and defence lawyers.

- Training may be on the basis of draft laws not yet passed by the Council of ministers or the Parliament.
- Future roles of court actors may be decided on the basis of exam results (in Portuguese) after the training program, rather than appraisals of work performance over the past four years of court experience.
- The role of court actors not involved in the training internship is uncertain.

Summary of JSMP's recommendations

- The Decree Law be translated into a language which can be understood by the majority of the court actors, that is Tetum or Bahasa Indonesian.
- A meeting be held to explain the practical operation of this law and to answer questions in order to allay the confusion which currently exists for some court actors and lawyers.
- Consideration be given to incorporation of IDLO and ASF programs into the new training program.
- Interpretation of training and translation of training materials be provided into Tetum and Bahasa Indonesia where appropriate.
- Training be in professional groups.
- Training be conducted on the basis of laws currently applicable in East Timor.
- Adequate consideration be given to appraisal of work performance of court actors over the past four years in deciding their future roles and in accordance with the Judicial Magistrate Law within the judicial system.
- Consideration be given to the fact it is unrealistic to expect court actors to attain proficiency in legal Portuguese after only one month of Portuguese language training.
- Clarification of the future role of court actors not involved in the training internship be provided through a meeting with the actors.