

# East Timor - Justice Sector Support Facility

Design framework for GoA assistance

2007 - 2012



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A Sector Working Paper, prepared by Justice Rowan Downing, is provided under separate cover.

## **ABBREVIATIONS**

AAP	Annual Action Plans
AFP	Australian Federal Police
ASF	Advocats sans Frontier (Lawyers without Borders)
AusAID	Australian Agency for International Development
CDCU	Capacity Development Coordination Unit
CoC	Council of Coordination
GoA	Government of Australia
GoTL	Government of Timor-Leste
CSP	Consolidation Support Program
JSMP	Judicial System Monitoring Program
MC	Managing Contractor
MoJ	Ministry of Justice
MoPF	Ministry of Planning and Finance
MoPFCBP	Ministry of Planning and Finance Capacity Building Project
NDP	National Development Plan
NDPEAC	National Development Planning and External Assistance Coordination
OIG	Office of the Inspector General
OPG	Office of Prosecutor General (used synonymously with PPS)
PFM	Public Finance Management
PNTL	National Police of Timor-Leste
PPS	Public Prosecution Service
PSCDP	Public Sector Capacity Development Program
SIP	Sector Investment Program
SJSP	Strengthening the Justice System Program (of UNDP)
SWG	Sector Working Group
TLDP	Timor-Leste Police Development Program
ToR	Terms of Reference
UNDP	United Nations Development Program
UNFPA	United Nations Fund for Population
UNICEF	United Nations International Children’s Fund
UNMIT	UN Mission in Timor-Leste
UNTAET	United Nations Transitional Administration in East Timor

## Executive Summary

Issue/element	Summary Description
<b><i>Background and preparation steps</i></b>	<p>Key events and dates in the preparation of this design framework include:</p> <ul style="list-style-type: none"><li>• August 2003, Australian Ministers approve a A\$40 million, 4.5 year package of assistance to build the capacity of the law and justice sector in Timor-Leste.</li><li>• July 2004, the A\$32m Timor-Leste Police Development Program (TLPDP) is mobilised</li><li>• October 2004, AusAID conducts Justice Sector Program Identification Mission, to look at complementary allocation of remaining A\$8m</li><li>• November 2004, AusAID commits A\$1m to UNDP Strengthening the Justice Systems program</li><li>• August 2005, AusAID conducts Justice Sector Feasibility Study mission</li><li>• March 2006, Draft Design for Public Prosecution Services Project is produced</li><li>• April/May 2006, Crisis and subsequent rethink regarding scope and value of GoA support to the justice sector</li><li>• October 2006, AusAID commits another A\$3.5m to the UNDP SJSP</li><li>• November 2006, Justice and Oversight Facility design team visits Timor-Leste</li></ul> <p>While it was originally hoped that the scope of a broad package of Australian support to the justice sector could have been designed, approved and mobilised more quickly, the extended analytical and preparation process has allowed a thorough and considered design process to now take place.</p>
<b><i>Poverty and key constraints to access to justice</i></b>	<p>Timor-Leste is the newest and poorest country in the region. A poverty assessment conducted in 2001-2002 by the East Timor Transitional Administration in partnership with donors estimated that some 41% of the population fell below the poverty line (US\$0.55 per person per day). With a rapidly growing population and slow rates of economic growth, income poverty levels are in all likelihood increasing. Literacy levels are low (around 40% of the overall population) and health status is generally poor (average life expectancy of 55 years). Women are particularly disadvantaged. Poverty has many causes, but contributing factors are political stability, the ability of the state to enforce the rule of law, and access to justice.</p> <p>Within the justice sector there are currently many constraints to the effective delivery of justice services, including:</p> <ul style="list-style-type: none"><li>• Limited knowledge, skills and experience of key judicial sector actors;</li><li>• Incomplete Timorese legislation and limited understanding of the law among politicians, public servants and the general population;</li><li>• Weak systems and procedures in justice sector agencies, with respect to planning, financial management, budget execution, human resource management, general administration (including case management and monitoring) and coordination within and between key institutions;</li><li>• Laws often only available in Portuguese;</li><li>• Little community confidence in the justice system, due to lack of understanding of the formal justice system, inequality of access to the system and the poor quality of services currently being provided;</li><li>• Women who are the victims of violence (particularly domestic violence), have particular difficulties in accessing justice</li><li>• Accountability and oversight mechanisms not yet adequately functioning.</li></ul> <p>It is believed that a general lack of confidence in the justice system was a significant contributing factor to the crisis of April/May 2006 and to ongoing civil unrest.</p>

Issue/element	Summary Description
<i>Stakeholders</i>	<p>Key stakeholders in the Justice sector include:</p> <ul style="list-style-type: none"> <li>• The people of Timor-Leste, including men, women and children</li> <li>• Members of the Council of Coordination (COC), namely the Minister for Justice, Head of the Judiciary and the Prosecutor General</li> <li>• The Ministry of Justice (including the Public Defenders Office and the Prisons)</li> <li>• The Public Prosecution Service (PPS)</li> <li>• The Judiciary</li> <li>• The Ministry of Interior, and specifically the Timorese Police Force (PNTL)</li> <li>• Oversight institutions such as the Office of the Provedor and the Office of the Inspector General</li> <li>• Civil society organizations involved in the Justice sector, including the Bar Association and the Judicial System Monitoring Program (JSMP);</li> <li>• UNMIT (including a significant deployment of international police) and UNDP who are the main provider of international judicial actors,</li> <li>• Other development partners (such as the World Bank, Portugal and USAID) who are actively engaged in supporting developments in the Justice Sector; and</li> <li>• Other GoA agencies working in the justice sector, particularly the AFP</li> </ul> <p>Fostering improved coordination and harmonisation of stakeholder activities is a significant issue in promoting efficient and effective developments in the sector. Donor initiatives must work in support of GoTL policies, priorities and plans, and through GoTL systems, if they are to build ownership, effectively promote capacity building and result in sustainable benefits.</p>
<i>Design principles and strategy</i>	<p>The principles that have guided strategy selection for GoA support to the sector, and that will also guide implementation, include:</p> <ul style="list-style-type: none"> <li>• Align support with GoTL policies, priorities and operational plans for the sector, and promote government leadership and accountability</li> <li>• Focus on achieving results at the sectoral/national level, not simply the provision of inputs and implementation of activities</li> <li>• Give particular focus to access to justice for vulnerable groups, including women and children</li> <li>• Help the GoTL effectively spend its own (growing) budget, specifically in the justice sector institutions</li> <li>• Take a holistic and long-term capacity building approach and work through existing/emerging GoTL systems and processes to the maximum extent possible</li> <li>• Provide a balance of support to both core justice institutions (supply of justice) and to oversight and civil society organisations (demand for justice, accountability and transparency)</li> <li>• Focus on areas of work where Australian financed support will be welcomed and which complements the work of other donors/agencies (donor coordination and harmonisation)</li> <li>• Provide a coherent and clear framework for GoA support to the sector and thus reduce the level of ad-hoc GoA assistance. Complement, rather than replace, other GoA funding mechanisms to the sector, such as grant funding to multilaterals (such as UNDP) and activities being implemented directly by agencies such as the AFP</li> <li>• Take a long-term perspective (10 years +), recognising that development of institutional capacity will be an ongoing process over many years and require</li> </ul>



Issue/element	Summary Description
	<p>a ‘progressive engagement’ approach by donor partners</p> <ul style="list-style-type: none"> <li>• Ensure flexibility and responsiveness in the delivery of support, and provide appropriate incentives for achieving results (performance)</li> </ul> <p>The following broad options were considered regarding how additional GoA support to the sector might be provided:</p> <ul style="list-style-type: none"> <li>• Provide targeted budget support to the sector, through government systems</li> <li>• Channel money through multilaterals, namely the UNDP justice program</li> <li>• Provide bilateral support to complement existing programs</li> </ul> <p>The design team believes that a combination of multilateral and bilateral support is appropriate at this point in time given that:</p> <ul style="list-style-type: none"> <li>(i) budget support is not appropriate given the government’s own rapidly growing budget, and because public finance management systems are currently critically weak in this sector;</li> <li>(ii) the UNDP program is, among other things, supporting the vital functions of providing international court actors (Judges, Prosecutors and Defenders), the professional training for Timorese actors through the JTC and the development of a computerised case management system. UNDP is a key partner;</li> <li>(iii) however, the UNDP program does not cover all elements of the sector, including civil society and oversight institutions, and given that needs are so great, does not have the capacity to do everything in the sector; and</li> <li>(iv) a focused but flexible program of bilateral support appears to be welcomed by UNDP, the key institutions in the sector and most bilateral donors.</li> </ul> <p>The design team also believes that strengthening the capacity of the Office of Prosecutor General should be a particularly high and urgent priority given that this is where the backlog of cases is building up (even more so since the event of April/May 2006) and because of previous commitments to support the OPG.</p> <p>The focus of Australian support for the core justice sector institutions will be on building capacity in corporate management and administration. This complements the main focus of the UNDP program which is on providing international court actors, supporting the operations of the Judicial Training Centre and designing and implementing an IT based case-management system.</p> <p>Other key elements of the strategy include:</p> <ul style="list-style-type: none"> <li>• Strategic oversight of different GoA agency initiatives in the sector, and the provision of policy advice, by a Senior Law and Justice Sector Adviser.</li> <li>• Alignment of Facility activities and resource allocation with GoTL policies, plans and budgets through linking to their Annual Planning, Budgeting and Expenditure review processes; and</li> <li>• A balance of support provided to supply and demand sides of the justice sector</li> </ul>
<b><i>Program scope</i></b>	<p>The proposed scope of the AusAID funded Facility is summarised in Figure 1 on page vi. This provides an overview of the 3 main Facility components.</p> <p>In addition, it is recommended that GOA continue to provide untied grant funding to the UNDP SJSP.</p>
<b><i>Location, duration and</i></b>	<p>The Facility will provide support to the main justice sector institutions in Dili, to the 4 district courts, and more broadly to the people of Timor-Leste through its support to Civil Society organisations and NGOs which provide legal, information, training and</p>

Issue/element	Summary Description
<i>phasing</i>	<p>advocacy services to promote access to justice for poor and vulnerable groups, including women and children.</p> <p>An initial 5 year program of assistance is proposed, commencing mid-2007.</p> <p>There will be an initial 4 month inception phase, during which a first Annual Plan will be prepared, as well as a Facility Management Handbook (including Monitoring &amp; Evaluation plan, Baseline data, Managing Calls for Proposals, Capacity Building Framework, Adviser Performance Assessment, etc).</p>
<i>Cost and resources</i>	<p>The total cost of the Facility is estimated at A\$28.4m.</p> <p>This is indicatively allocated as follows:</p> <p>Component 1 – Core justice sector institutions   A\$14m</p> <p>Component 2 – Civil Society                   A\$6.5m</p> <p>Component 3 – Coordination &amp; Management   A\$5.9m</p> <p>Senior Adviser and independent review-           A\$2m</p> <p>It is further recommended that the GoA provide A\$10m+ for ongoing core support to the UNDP program over the next 5 years, subject to negotiation of a new grant agreement and ongoing review of need and program performance. This will help ensure that key ‘front-line’ international court actors are in place, at least for the period of GoA bilateral support to building capacity of the ‘back office’ corporate management functions within core justice primary sector agencies.</p> <p>The main resources to be provided through the Facility will include:</p> <ul style="list-style-type: none"> <li>• 5 long-term international Advisers (3 x Senior Management &amp; Corporate Services Advisers co-located within each of the 3 main justice agencies, + a Finance and Budget Execution Advisor and a HRM/D Advisor to be shared between the 3 institutions.</li> <li>• Other long or short-term international or local advisers, as required</li> <li>• Locally engaged expertise to support administration, office IT, translation, etc</li> <li>• Training resources</li> <li>• Operational equipment and supplies</li> <li>• Accountable grants for Civil Society Groups and NGOs</li> <li>• A Facility Manager and support staff to promote and manage coordination, donor harmonisation, a clear capacity building strategy and both sector and facility specific monitoring and reporting activities.</li> </ul> <p>In addition, a Senior Justice Sector Adviser will be directly recruited by AusAID to provide high level strategic advice, support policy dialogue with GoTL, help ensure coherence between different GoA agency initiatives in the justice sector, and provide oversight of the operations of the Facility.</p>
<i>Coordination &amp; Management arrangements</i>	<p>A Facility Management Group will be established. This could either be the existing Justice Sector Working Group, or a sub-set of that group. Representation should include the Ministry of Justice, the Office of the Prosecutor General, the Courts, MoI, MoPF, UNDP, GoA (including the Senior Law and Justice Sector Adviser), Civil Society representation and other donors who may wish to participate.</p> <p>The main responsibilities of this Management Group will be to promote GoTL agency coordination and donor harmonisation, provide strategic direction to the work of the Facility, approve Facility Annual Plans and budgets, review Facility performance and approve changes in priorities, forward plans and resource allocation.</p> <p>Day to day management of Facility funded resources and activities will primarily directed by the senior management of each institution/agency being supported.</p>

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Issue/element	Summary Description
	<p>A Managing Contractor will have responsibility for coordination of Adviser and other Facility inputs, providing the required management and administrative support, mobilising additional resources as required, managing a call for proposals mechanism, and monitoring and reporting on Facility performance.</p> <p>The Senior Justice Sector Adviser will also have a role in advising GoA on the coherence and complementarity of all GOA support to the sector.</p>
<b>Performance monitoring</b>	<p>Performance monitoring will be undertaken primarily as a capacity building activity in its own right. Monitoring will be supported and/or undertaken at 3 main levels, namely:</p> <ul style="list-style-type: none"> <li>• <b>Sector-wide level.</b> To support sector stakeholders to develop a basic system that provides an overview of key developments in the sector</li> <li>• <b>Institutional level.</b> To support core justice sector institutions to develop their own internal performance monitoring systems that provide useful and timely management information</li> <li>• <b>Facility level.</b> To monitor Facility activities, including resource use, Adviser performance and capacity building results.</li> </ul> <p>Harmonising monitoring and review activities with other donors, in particular UNDP, will also be prioritised.</p> <p>Building the capacity of government institutions to collect and use indicators of access to justice for men, women and children will also be prioritised.</p>
<b>Sustainability strategy</b>	<p>Elements of the Facility's sustainability strategy include:</p> <ul style="list-style-type: none"> <li>• An explicit principle of working with government systems in order to help build and sustain those systems and develop ownership</li> <li>• Proposed management arrangements that will help build capacity and ownership</li> <li>• The explicit requirement for advisers to prepare 6 monthly workplans in collaboration with counterparts, which identify their operational and capacity building tasks and how responsibilities will be shared.</li> <li>• A monitoring and evaluation framework that includes capacity building</li> <li>• Explicitly identifying additional recurrent cost implications to be picked up by GoTL after donor funding ceases</li> <li>• Preparing annual combined sources budgets, to make explicit the contributions of the GoTL and development partners</li> </ul>
<b>Risks</b>	<p>This is a high risk activity. The primary risks to the effective implementation of the Facility and the realisation of anticipated benefits are:</p> <ul style="list-style-type: none"> <li>• Political instability and poor security in Timor-Leste.</li> <li>• Lack of effective GoTL commitment to the principle of 'separation of powers' (political 'interference' in the justice sector).</li> <li>• Lack of high level GoTL ownership of the activities supported the the Facility</li> <li>• Poor donor behaviour – lack of effective implementation of Paris Declaration Principles (donor coordination and harmonisation).</li> <li>• Poor quality of Advisers recruited and of Facility Management.</li> <li>• GoA does not effectively coordinate its whole of government activities and does not maintain a long-term/sustained commitment to the justice sector.</li> <li>• Corruption undermines community confidence &amp; access to justice by the poor</li> </ul>



**Figure 1 – Summary Overview of Facility Framework**

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## **1 Background and preparation steps**

The Government of Australia (GoA) is committed to assisting the Government of Timor-Leste (GoTL) to develop and strengthen its law and justice institutions in partnership with other members of the international community. Since July 2004, AusAID and the Australian Federal Police have been working collaboratively on the \$32 million Timor-Leste Police Development Program (TLPDP). A further \$8 million was provided for development of the justice sector institutions more broadly, with the aims of:

- supporting the establishment of law and order and helping to create a stable environment for investment;
- reducing the risk of bottlenecks forming in the justice system; and,
- ensuring appropriate independent oversight mechanisms are in place to contribute to police impartiality and build community confidence in the law and justice institutions.

Between October 2004 and August 2005 a two stage scoping and framework design mission investigated the most appropriate mechanism through which to deliver this \$8 million of support. The mission recommended that the assistance should be delivered through a combination of bilateral and multilateral initiatives. Key components included:

- Core funding support to UNDP Justice System Program (SJSP), with enhanced coordination, performance monitoring and review mechanisms
- A program of bilateral support to the Office of the Prosecutor General (OPG) including long and short-term international and locally engaged advisers and support staff; as well as equipment and resources to support delivery.
- A small flexible support facility to support ‘emerging issues’

AusAID conducted a follow up mission in March 2006 to develop a detailed project design for assistance to the OPG. However, a review of the proposed design determined that additional work was required before the project could be successfully implemented. Before these revisions could be made the May 2006 crisis occurred.

Following the crisis GoA, in consultation with GoTL and other development partners, has recognised the need for a more significant program of support to the justice sector. Current recommendations include significant additional bilateral funding over a longer period with a broad focus on core institutions right across the sector, including justice oversight institutions and appropriate support for civil society actors. A critical aspect of this strategy is that it should compliment, rather than duplicate, the UNDP SJSP and that the funding mechanism should be flexible to meet emerging needs and allow for ‘progressive engagement’.

In November 2006 a design mission visited Timor-Leste to prepare an updated Design Framework for GoA support to the justice sector.<sup>1</sup> The mission was conducted collaboratively with GoTL and UNDP. This document is the product of that mission.

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<sup>1</sup> Terms of Reference are provided at Attachment 1, and the team’s schedule of meetings at Attachment 2. Team members included: Jonathan Hampshire (Consultant Team Leader), Justice Rowan Downing (Justice Sector Specialist), Paul Keogh (AusAID Desk Officer, Canberra), Graham Rady (AusAID M&E Adviser), and Antonio Da Conceicao (AusAID Post). Endre Viegland (UNDP Country Office) participated in most meetings and team discussions.

## **2 Situation analysis**

### **2.1 Country context**

#### **Political context**

Timor-Leste is the world's newest state, gaining full independence in May 2002 some 27 years after being illegally occupied by Indonesia in 1975. During the period of occupation it is estimated that a third of the population died as a result of Indonesian oppression.

Following a referendum offered by the Indonesian government in 1998, which resulted in an overwhelming vote for independence, Indonesia began to withdraw from Timor-Leste in 1999. This was accompanied by an orchestrated campaign of militia led violence which resulted in more than 1,000 deaths and the destruction of much of the country's physical infrastructure.

In September 1999, the United Nations Transitional Administration was established following intervention by a multi-lateral peace keeping force. A 'National Council' was established in 2000 consisting of four Timorese and four international cabinet members, and elections were then held for a Constituent Assembly in 2001. Following the adoption of a Constitution, presidential elections were held in 2002 and full independence achieved in May of that year.

The political situation in Timor-Leste is currently unstable. The events of April/May 2006 have exposed the political divisions and rivalries among the political elite, weak and politicised governance, the feeling of alienation and disempowerment of much of the population, and severe inadequacies in the justice system.<sup>2</sup> The country is in the earliest stages of nation building.

#### **Governance**

Prior to the events of April/May 2006, good progress had been made in establishing the basic governance architecture and associated legal and institutional frameworks.<sup>3</sup> Much of the positive work undertaken now has to be revisited. Building institutional capacity within the GoTL is an imperative if stability is to be re-established and maintained. This must be seen as a long-term endeavour, possibly generational, that is led by the GoTL and appropriately supported by development partners.

Lack of understanding among both politicians and public servants of the legal structures and the legislative regime may well have been a factor in the events of April/May 2006. There is more generally a lack of consistent, reliable and accurate information about what the government is doing.<sup>2</sup> It is believed that a general lack of confidence in the justice system was a significant contributing factor in the crisis of April/May 2006. The UN Commission of Inquiry into the crisis has recommended urgent action by the GoTL to address the culture of impunity, and to reinforce the national judicial system considerably.<sup>4</sup> As the report notes, 'If peace and democracy are to be advanced, justice must be effective and visible'.

Public concern about corruption appears to be growing, with some evidence that this is a particular problem in customs, procurement, the justice system and the private sector. The operational establishment of the Office of the Provedor (in late 2005) will hopefully provide one of the required checks and balances. Freedom of the press and the continued development of

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<sup>2</sup> The Crisis in Timor-Leste : Causes, Consequences and Options for Conflict Management, USAID, October 2006

<sup>3</sup> Consolidated Support Program II (FY2006), Progress and Emerging Issues, Report of March 2006

<sup>4</sup> Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste, October 2006

civil society organisations are other essential elements of a healthy democracy that need to be appropriately supported.

### **Macro-economic context**

The Government has been providing sound macro-economic management of the economy. There has been strong commitment to promoting sustainable growth and maintaining spending in social areas with over 35% of government spending on health and education. With monetary policy stabilized by use of the US dollar and prudent fiscal policy, inflation has been stable at around 3-4% over the last two years. Since the unrest in April/May 2006 inflation has nevertheless increased.

The fiscal position is positive. Domestic revenues have increased to US\$36 million in FY05-06 as a result of much improved tax and customs administration, and are projected to be \$39m in FY 06-07. Petroleum revenues are significantly higher than previously expected, increasing from \$40 million in FY 2004-05 to \$420 million in FY 2005-06 due to a significant boost in world oil prices, changes in the tax treatment of oil revenues and good progress in developing the Bayu Undan oil and gas fields. Projections for FY 06-07 are \$685 m.<sup>5</sup>

However, low rates of budget execution by the GoTL is a critical problem. Although commitment levels have been reasonably high across expenditure categories, actual in-year cash expenditures have been significantly lower. Budget execution in capital expenditure is particularly weak with only just over half of the minor capital budget being executed in cash terms and under 10% of the capital development budget. This is due to a range of factors including: highly centralized MoPF control over procurement; poor capital works design and specification capability in line agencies; a lack of information on procurement procedures in line agencies and formalized and tight procurement controls. These constraints need to be addressed urgently, including in justice sector agencies.<sup>6</sup> The government is not short of money to fund many of its own development priorities.

### **Poverty**

Timor-Leste is the newest and poorest country in the region. A poverty assessment conducted in 2001-2002 by the East Timor Transitional Administration in partnership with donors estimated that some 41% of the population fell below the poverty line (US\$0.55 per person per day). The vast majority of the poor (85%) live in rural areas, and of these the poorest groups are households that have small landholdings or are headed by fishermen.

While the country's national income is increasing (primarily as a result of oil production revenues), given the high population growth rate, limited income earning opportunities outside the resource development sector and low levels of government service delivery, it is believed that poverty is in all likelihood increasing.<sup>7</sup> Women's earned income was estimated in 2003 to be only one eighth of men's,<sup>8</sup> and women are particularly 'time-poor' because of their responsibilities for unpaid labour.<sup>9</sup> These factors limit women's economic opportunities and their access to justice. Average literacy levels (50%) and life expectancy (55 years) are low.

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<sup>5</sup> Budget Document No. 1, 2006-07

<sup>6</sup> Timor-Leste: Budget Execution Mission Aide Memoire, World Bank, July 26 2006

<sup>7</sup> Background paper for the Timor-Leste and Development Partners meeting, World Bank, April 2005

<sup>8</sup> UNDP Timor-Leste: Program Package Document for Sustainable Human Development, Dili 2003

<sup>9</sup> ADB/UNIFEM Timor-Leste Country Gender Assessment, Dili 2006, p26

Access to justice has direct impact on the country's poverty reduction strategies through its influence on political stability and investor confidence. Access to justice for the poor is also a significant human rights and equality issue.

### **Social and cultural context**

Traditional social structures are patriarchal and hierarchical. Obligations to family and traditional social networks are much stronger than to the more theoretical concepts of the state, democracy, separation of powers, public service ethic, etc. With its history of occupation and repression, there are historically low levels of trust in the formal justice system

There is still widespread belief in traditional magic. Foreign advisers working in Timor-Leste need to appreciate such contextual factors if they are to build effective mentoring/capacity building relationships with their Timorese colleagues and the wider community.

The current crisis has amplified the perceived differences and rivalries between Easterners and Westerners, and led to the displacement of up to 200,000 thousand people into IDP camps. Addressing this schism represents a significant and urgent challenge for the country's political and community leaders.

### **Gender and juveniles**

Women in Timor-Leste face similar disadvantages and discrimination to those in many other parts of the world.

The country has one of the highest maternal mortality rates in the region, only 45% of women are literate (compared to 54% of men), and the incidence of domestic violence and sexual assault is high. Cases of violence against women are being brought to court, however they often move extremely slowly through the system.

Nevertheless, women are relatively well represented in Parliament (26%) and in Government (e.g. the Ministers and vice-Ministers of State Administration and of Planning and Finance). The police force also has one of the highest proportions of female police officers in the region (25%).

Addressing gender inequality and discrimination is being given high priority by the GoTL. Efforts to mainstream gender throughout the government are being driven by the Office for the Promotion of Equality (OPE) located within the Office of the Prime Minister, with gender focal points appointed within each Ministry.

With one of the world's highest birth rates and with more than 60% of the population being under 18 years of age, access to justice for juveniles is a significant issue, and one which the justice system is currently poorly equipped to deal with. There is significant confusion as to the legal definition of a child or juvenile, which needs to be resolved. A common thread in the crisis of April/May 2006 is the involvement of large numbers of young, marginalised males.<sup>10</sup>

## **2.2 Legal, policy and planning framework**

### **Legal Framework**

On 22<sup>nd</sup> March 2002 the Constitution of the Democratic Republic of East Timor entered into force as the superior source of law in the country. The Constitution lays down the various rights that a citizen has under the law, and provides for a clear separation of powers between the main state organs – namely the Office of the President, the Parliament, the Executive and the Judiciary.

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<sup>10</sup> Survey of Gangs and Youth Groups in Dili, James Scambary, September 2006



In accordance with the procedures set out in the Constitution, the National Parliament has embarked on an ambitious program of legislation, the acts and provisions of which will take precedence over the various pre-independence applicable laws and regulations.

The legal framework in the country is in a transitional phase with written sources of criminal law including:

- the Constitution of Timor-Leste;
- UNTAET Regulations and Directives dating from the United Nations administration of 1999-2002;
- Legislation enacted by the Parliament of Timor-Leste since independence in 2002; and
- Indonesia's criminal law to the extent that it has not been overridden by UN legislation or the legislation of independent Timor-Leste and as modified to meet internationally recognised human rights standards.

The Government has decided to continue a civil law legal system, with Portuguese as the dominant official language of the courts.<sup>11</sup> Good progress is being made with the legislative drafting program, although at present some key Justice sector legislation (including the Penal Code and Civil Code) have not yet been promulgated.

### **GoTL policy and planning context**

The framework for GoTL's expenditure plans is set by the National Development Plan (NDP), Sector Investment Programs (SIPs) and line agency Annual Action Plans (AAPs).

**The National Development Plan (NDP)** outlines a program of institutional strengthening to provide basic services in education and health, basic infrastructure, job creation, governance and internal security and requires gender equality to be mainstreamed in core sectors, including in the justice sector and in the police.

**Sector Investment Programs (SIPs)** take the NDP and sector objectives as their starting point and provide detail on how to implement these objectives using combined sources expenditure. 17 SIPs have now been drafted and approved by GoTL, including one for Rights, Equality and Justice. Management of SIP implementation is expected to be through joint donor-Government Sector Working Groups (SWGs). Gender equality has been prioritised in all SIPs.

**Annual Action Plans** are prepared at the level of each Ministry, and within each Ministry for each Department. These should be derived from the SIPs and in turn should directly inform budget preparation.

In addition, a 'National Policy for Justice – Programmatic Framework Document 2005-10' was produced in April 2005, and outlines the vision, values, objectives and programmatic guidelines for the judicial system.

The 'Rights, Equality and Justice Sector Investment Program', which prioritises (i) development of the judicial framework for the formal justice systems; (ii) strengthening the courts, judiciary and the Office of the Public Prosecutor; (iii) strengthening the institutional capacity of the

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<sup>11</sup> The fact that only 5 to 7 % of the population currently understand Portuguese will have significant impact on the population's access to Justice for many years to come. It is noted that Article 13.1 of the Constitution of Timor-Leste provides that both Tetun and Portuguese are the official languages of Timor-Leste.

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Ministry of Justice; (iv) supporting the prisons system; (v) strengthening human resource capacities in the sector; and (vi) improving access to justice through information and public education. The SIP incorporates US\$28.9m of proposed investments in the sector between 2005/06 and 2009/10, including US\$10.8m for strengthening HR capacity in the courts and US\$10.3m for administration and dissemination of justice (including US\$4.5m for the Public Prosecution Service).<sup>12</sup> It is Government policy to establish a Sector Working Group (SWG) for each SIP. The Justice Sector Working Group met on one occasion before the recent crisis, but has not reconvened since that time.

It is important that this established policy and planning framework be appropriately supported and used by donors to help promote: (i) partner ownership of donor supported activities, (ii) coherence between public policy, spending and results; and (iii) effective coordination and reduced transaction for government.

Furthermore, budget support through the Consolidation Support Program (CSP) also includes specific outputs and outcomes for the Justice Sector as set out in their Results Matrix. Key indicators of performance include reduction in the backlog of cases before the Prosecution, the number of detainees released because of inability to place evidence before a judge reduced, and cases of domestic violence resolved according to the law.

### **GoTL approach to capacity development**

Building the capacity of GoTL institutions so that they can effectively deliver services (including justice) is one of the greatest challenges facing the nation.

The GoTL has developed and adopted a model of capacity development that identifies needs and develops methods under ‘three pillars’, namely:

1. Knowledge and skills
2. Systems and processes
3. Attitudes and behaviour

This model broadens the thinking about capacity building approaches away from simply equating it with ‘training’. This approach is now being ‘mainstreamed’ into Government programs and being ‘driven’ forward by the Capacity Development Coordination Unit within the Ministry of State Administration.

The Gender mainstreaming policy adopted by GoTL, Strengthening Gender Mainstreaming in Different Sectors, requires sectors to be responsible for developing programs and policies that promote gender equality. It focuses on capacity building and liaison with the Office for the Promotion of Equality (OPE).<sup>13</sup>

## **2.3 Key institutions and stakeholders**

Key state institutions in the justice sector include:

<b>Institution</b>	<b>Description</b>
<b>The Courts</b>	The highest court in the land as provided for in the Constitution is the Supreme Court. However, until its establishment, the Court of Appeal is taking on this role. The Superior Council of the Magistracy has management and disciplinary control of

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<sup>12</sup> See Annex Table 5 of the Rights, Equality and Justice SIP, April 2006. These investment requirements are expected to be funded almost exclusively by donors.

<sup>13</sup> ADB/UNIFEM Timor-Leste Country Gender Assessment, Dili 2006. p16

Institution	Description
	the judiciary and is also mandated to oversee judicial inspections and propose legislative initiatives concerning the judicial system to Parliament.  As well as the Court of Appeal, four district courts have been established in Dili, Baucau, Suai and Oecussi. Courts outside Dili currently operate intermittently.
<b>The Ministry of Justice (MoJ)</b>	The main responsibilities of the MoJ include: <ul style="list-style-type: none"> <li>• <b>Judiciary Training Centre</b> – mandated with developing a cadre of skilled jurists in the legal sector</li> <li>• <b>Public Defenders Office</b> – mandated with providing legal assistance to those that cannot afford legal services</li> <li>• <b>Corrections systems</b> – including the Prisons Service and rehabilitation/education for inmates</li> <li>• <b>Civil Registry and Public Notary</b> – including issuance of birth/death/marriage certificates and identity cards, Business registry and Lands &amp; Properties registry.</li> <li>• <b>Gender and citizenship</b> – tasked with promoting the legal rights of women and children and increasing citizens knowledge of laws</li> </ul>
<b>Office of the Prosecutor General</b>	The Public Prosecution service represents the State, participates in executing criminal policy, takes criminal action under the law and is responsible for ensuring the protection of minors and other vulnerable groups. The Organic Law for the Office has been approved by the Council of Ministers and has been promulgated. The Superior Council is in the process of being established.
<b>Office of the Provedor (Ombudsman)</b>	The Office of the Provedor is the key independent oversight institution in respect of governance, human rights and corruption. The Office was established in 2005 and commenced operations in 2006.
<b>Office of the Inspector General</b>	Located as part of the Office of the Prime Minister, the Inspector General is responsible for ensuring that departments and agencies of government properly perform their functions. This is a fundamental oversight institution, although not an independent agency.

The Council of Coordination (CoC) was established (with the support of the UNDP SJS project) as a key coordinating body for the Courts, the Ministry of Justice and the Office of the Prosecutor General. Its membership consists of the Minister for Justice, the Chief Justice and the Prosecutor General, with secretariat support services being provided by UNDP.<sup>14</sup> In the absence (to date) of an effective Justice Sector Working Group, the CoC has helped play this role.

The Policia Nacional de Timor Leste (PNTL) is a key player in the Law and Justice Sector, and is primarily charged with ensuring peace and good order in Timor Leste. The PNTL is one of the most ‘community facing’ of the formal justice sector agencies and has the most significant direct, daily interactions with the community. However, since the crisis of May 2006 the PNTL has been effectively ‘stood down’ with the UN again taking over a lead role in operational policing.

The Office for the Promotion of Equality reports directly to the Prime Minister. It provides advice and coordination on gender equality and assists to mainstream gender equality across

<sup>14</sup> It is to be noted that the Council of Coordination has no control or influence over the judiciary. It is involved with considerations of the effective functioning of the courts, the Ministry of Justice and the Office of the Prosecutor General

policy and program areas. It aims to promote the increased participation of women in development and a gender sensitive perspective in policy and law reform programs.

The checks and balances provided by the oversight institutions are fundamental to the resistance to corruption and the development of good governance.

The involvement of civil society stakeholders in the justice system is also vital in supporting citizen's access to justice. Civil society organisations play a particularly important role in monitoring the actions of state institutions and their employees/officials, and providing citizens with access to information and advice which state institutions may be either unable or unwilling to provide. Civil society organisations are a key part of a healthy democracy but as yet are not broadly engaged, at least not in a major way, with the formal justice sector.

These key stakeholders, and the vital linkages between them when considering the justice 'sector' in a holistic way, are presented in Figure 2 below.

**Figure 2: Key stakeholder in the justice sector**

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A more comprehensive profile of each of the main justice sector institutions is provided in the Sector Working Paper (provided as a separate document).

## 2.4 Issues and challenges

There are a significant number of constraints to the effective functioning of the justice system. These have been assessed and documented in a range of existing reports and program/project documents.<sup>15</sup>

A brief summary of these key constraints is provided in the table below.

**Summary of key constraints to the effective functioning of the justice system**

Legal Framework	Systems & procedures	Human Resources	Community confidence	Other
<ul style="list-style-type: none"><li>• Transitional legal framework</li><li>• Incomplete Timorese legislation, including organic laws for individual institutions</li><li>• Limited dissemination &amp; understanding of laws among many stakeholders,</li></ul>	Weaknesses in: <ul style="list-style-type: none"><li>• Devolution of decision making</li><li>• Planning, financial management &amp; budget execution</li><li>• General administration, including case management &amp; monitoring</li></ul>	<ul style="list-style-type: none"><li>• Limited skills and experience of Timorese court actors and of managers</li><li>• Limited understanding of institutional &amp; individual roles and responsibilities</li><li>• Weak human resource management systems</li><li>• Language issues</li></ul>	<ul style="list-style-type: none"><li>• Lack of understanding &amp; information about formal systems</li><li>• Inequality of access to justice, particularly for women and the poor</li><li>• Poor quality of service/results from the fledgling justice system</li></ul>	<ul style="list-style-type: none"><li>• Justice sector under-funded</li><li>• Accountability &amp; oversight mechanisms not yet fully functioning</li><li>• Weak linkage between traditional and formal justice systems</li></ul>

<sup>15</sup> These include the 'Joint Assessment of the Justice System' mission report (JAM) prepared by the MOJ and UNDP in 2002, the UNDP's 'Strengthening the Justice System Project' document prepared in July 2003 and Revised Program document of December 2005, the GoTL's Sector Investment Program document for the Rights, Equality and Justice Sector (April 2005 and 2006), the AusAID Justice Sector Scoping & Feasibility study mission reports (October 2004 and September 2005), the Council of Coordination's 'Needs Assessment' (June 2006) and its 'Justice Appeal' (September 2006), and the Report of the Independent Commission of Enquiry in the events of April/May 2006 (October 2006).

Legal Framework	Systems & procedures	Human Resources	Community confidence	Other
including public servants	<ul style="list-style-type: none"> <li>Coordination &amp; communication within &amp; between key institutions</li> </ul>	& limited translation capacity	<ul style="list-style-type: none"> <li>Courts not hearing civil cases</li> </ul>	

Issues worth highlighting further, particularly with respect to access to justice, include:

- ***Access to and understanding of laws.*** There is currently very limited access to, or understanding of, the law. This applies to politicians, public servants and the general public. Part of the problem stems from the practice of drafting and promulgating laws in Portuguese, without always translating these into Tetun. This represents a fundamental barrier to ‘access to justice’.
- ***Formal and informal systems.*** Most East-Timorese currently seek justice outside the formal system, except for more serious criminal matters. This presumably reflects the fact that most people either do not understand how to access the formal system and/or do not believe the courts can provide them with access to justice. In this light, it will be important for the Government to concurrently support alternative dispute resolution mechanisms (outside the courts) as well as community education and legal aid programs which empower the general population to access the formal system, while at the same time building the capacity of the formal system deliver justice.
- ***International court actors.*** The functioning of the formal justice system is currently dependent on the placement of international court actors in ‘in-line positions’, even more so since the April/May crisis. There is likely to be the need for significant ongoing international support for at least another 10 years. The current plan to provide only 1 year of international mentoring support to Timorese court actors after they have completed their theoretical training at the Judicial Training Centre is believed to be wholly inadequate.
- ***Corporate management capacity.*** A critical issue facing all agencies in the justice sector is weak capacity in the critical ‘back office’ functions of planning and budgeting, financial management, procurement, human resource management, general administration, IT support and translation and information dissemination. Capacity to spend budgeted money effectively is a clear case in point. For example, budget execution figures for end of FY 05-06 (June 06) show that the Ministry of Justice spent only 28.9% of its budget while the Judiciary spent 41.3%. This undermines the advances being made in establishing the legislative framework and strengthening the technical capacities of judges, prosecutors and public defenders through legal training.
- ***Gender and equality.*** Available data suggests that gender-based violence, especially domestic violence, is serious and widespread, affecting both women and children. A study by the International Red Cross found that 51% of Timorese women felt unsafe in their relationships. The formal justice system currently lacks specific mechanisms and capacity to address the problems of violence against women and children, and informal systems are rooted in a patriarchal social system which excludes women from participation in decision making.<sup>16</sup>

<sup>16</sup> Timor-Leste: Rights, Equality and Justice Sector Investment Program, April 2006, pp40-42



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- **Centralised decision making.** There is a very highly centralised approach to decision making which limits management initiative and problem solving ability within government institutions (e.g. in relation to planning, budgeting, staffing, expenditure, etc). This is the case both within Ministries, and in line Ministry relationships with ‘central agencies’ such as MoPF. Without some increased devolution of management authority, access to services (including those of the justice institutions) will continue to be constrained through a high degree of institutional and individual paralysis.
- **Coordination and communication.** There are critical links between core justice sector institutions which need to be understood, coordinated and strengthened in order to improve access to justice. The link between the Police and the OPG is particularly critical. Links into the community and with non-governmental organisations are also a vital element of the ‘justice sector’. International experience has shown that concentrating thematically on the core processes that transcend traditional institutional boundaries is a key to achieving sustainable long-term improvements in the functioning of the justice sector.
- **Realistic expectations.** Improvements in the functioning of the justice system must be realised as quickly as possible, but be undertaken as slow as necessary. The pace of change cannot be unduly forced from outside. It is likely to take a generation or more before we see a sustainable East Timorese Justice system which is delivering substantially improved access to justice.

## 2.5 Donor initiatives in the Law and Justice Sector

Attachment 3 provides a profile of current donor initiatives in the justice sector.

Key issues worth highlighting include:

- **The UNDP ‘Strengthening the Justice System Program’** is currently the most significant single donor initiative supporting the Ministry of Justice, the Courts and the Office of the Prosecutor General, and has been since 2003. The SJSP plays a particularly pivotal role in supporting international in-line positions (key court actors), the operations of the Judicial Training Centre and the establishment of a IT based case-management system. Any bilateral initiatives in the sector, and particularly those focused on building capacity within the core institutions, must be coordinated with, and complementary to, the UNDP Program. GoA has been a significant contributor to the UNDP to date, and should continue to be so for as long as international court actors are required, and the UNDP remains the most appropriate vehicle for effectively mobilising and managing the required personnel.
- **The UN Mission in Timor-Leste (UNMIT)** is expected to play a significant role in all aspects of GoTL administrative functioning. It will include the following mechanisms: (i) UNPOL - A large international police presence (approx 1800) which will be formally responsible for executive policing and the reconstitution/ capacity building of the PNTL; (ii) Democratic Governance Unit – to ensure a strong link between UNMIT and donors on governance issues, and to advise on democratic and institutional developments in Timor-Leste, such as functioning of the organs of sovereignty; (iii) Administration of Justice Unit (AJU) - headed by a Senior Judicial Affairs Officer. The AJU will take a lead role in coordinating development initiatives in the justice sector; and (iv) Human Rights and Transitional Justice Unit – will provide support for strengthening the Timorese institutional and societal capacity for the monitoring, promotion and protection of human rights. UNMIT will establish a Serious Crimes Unit within the Office of the Prosecutor General to respond to the Commission of Inquiry report; and will strengthen

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mechanisms for human rights including the Office of Provedor and other human rights based NGOs. Any bilateral initiative will again have to coordinate closely with UNMIT's activities in the sector.

- ***Other significant GoA funded development initiatives*** which have the potential to impact on access to justice include: (i) the ongoing Timor-Leste Police Development Program, which is now focusing on strengthening corporate governance capacity within the MoI; (ii) the Ministry of Planning and Finance Capacity Building Project, which is supporting not only budget and revenue management, but also budget execution capacity in line-ministries; and (iii) the Public Sector Capacity Building Program which is currently funding a number of advisers in the Justice Sector, and in the future will concentrate more specifically in strengthening the core organs of government which deal with public administration. Synergies between all these programs will need to be fostered and developed on an ongoing basis.
- ***Many small initiatives.*** The sector is relatively 'crowded' with respect to donor support. However, many of the initiatives being funded are relatively small scale and short-term in nature. While these can be useful, they can also confuse and distract. A clear message from most justice sector institutions is that advisors should generally be in place for the long rather than short term.
- ***Donor behaviours.*** Given Timor-Leste's current reliance on many donor-funded international advisers to support the development of key state institutions and the implementation of policies, the behaviour of donors will be a key factor in influencing development outcomes. Competition between donors is divisive and unhelpful (bilateral and multi-lateral), as is a narrow view of promoting bilateral 'national interest' when this distracts from the main game of reducing poverty and building national ownership of key development policies and programs. The Justice Sector differs from other sectors in that it needs to coordinate between a number of Ministries and independent bodies. In addition there is a need to work with civil society and link between the formal and traditional justice systems. This combined with the large number of donors engaged in the sector makes donor coordination particularly important.
- ***Political sensitivities in the sector.*** Donor engagement in another country's justice sector is always a politically sensitive area in which to work, as it can be seen to impinge on issues of national sovereignty. This needs to be taken account in the development and implementation of donor engagement strategies, including where it is most appropriate to use either multilateral or bilateral delivery mechanisms.

## **2.6 Lessons learned**

A selection of general lessons relevant to international experience in supporting Justice Sector development, and then to Timor-Leste in particular, are as follows:

### **Justice sector**

- A strong Justice sector and effective implementation of the rule of law are essential to ensure stability, promote growth and reduce poverty.
- Reform/re-building of justice sector agencies is inevitably a long-term endeavour.
- Greater success has been achieved in strengthening the justice sectors of developing countries through the establishment of regional peer linkages rather than through the establishment of 'twinning' style arrangements with 'developed' countries.

- A strong civil society and community confidence in the judicial system is essential for it to be fully effective. The most successful model for positive change in the justice sector is based on coalition building between state and civil society.
- The effective operations of the justice system requires a holistic analysis of problems and a systems-wide package of solutions. Law and justice initiatives should also not be viewed in isolation from the broader government context.

#### **Timor-Leste**

- Existing institutions and human resource capacity are extremely fragile and building capacity will take decades, and be ongoing. While long-term capacity building is critical, so is the provision of ongoing donor-funded in-line support.
- Provision of in-line international court actors by donors is (at present and for the foreseeable future) best undertaken through multilateral agencies, namely UNDP
- The provision of Technical Assistance by donors needs to be backed up by ongoing political dialogue. TA on its own is not enough. Also, long-term Advisers (2-3 years+) are generally more effective than short-term inputs.
- While effective development planning is important, effective and timely implementation is probably more so. East-Timor is 'plan and research rich', but this has so far not been adequately translated into enough effective action on the ground.
- The expense of investing in effective capacity building developmental work over many years will be significant, but when compared to the cost of picking up the pieces when the systems break down (and international police and defence personnel need to be mobilised), it must be seen as a cost-effective investment.
- Development has been shown to be more effective where gender equality is fully integrated into programming.<sup>17</sup>

### **3 Strategy selection for GoA support**

#### **3.1 Guiding principles**

The principles that have guided strategy selection for GoA support to the sector, and must also guide implementation, include:

- Align support with GoTL policies, priorities and operational plans for the sector, and promote government leadership and accountability
- Focus on achieving results at the sectoral/national level, not simply the provision of inputs and implementation of activities
- Give particular focus to access to justice for vulnerable groups, including women and children
- Help the GoTL effectively spend its own (growing) budget, specifically in the justice sector institutions
- Take a holistic and long-term capacity building approach and work through existing/emerging GoTL systems and processes to the maximum extent possible

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<sup>17</sup> World Bank, Engendering Development, Washington 2001, p97

- Provide a balance of support to both core justice institutions (supply of justice) and to oversight and civil society organisations (demand for justice, accountability and transparency)
- Focus on areas of work where Australian financed support will be welcomed and which complements the work of other donors/agencies (donor coordination and harmonisation)
- Provide a coherent and clear framework for GoA support to the sector and thus reduce the level of ad-hoc GoA assistance. Complement, rather than replace, other GoA funding mechanisms to the sector, such as grant funding to multilaterals (such as UNDP) and activities being implemented directly by agencies such as the AFP
- Take a long-term perspective (10 years +), recognising that development of institutional capacity will be an ongoing process over many years and require a 'progressive engagement' approach by donor partners
- Ensure flexibility and responsiveness in the delivery of support, and provide appropriate incentives for achieving results (performance)

### **3.2 Analysis of options**

The following broad options were considered regarding how additional GoA support to the sector might be provided:

- Provide targeted budget support to the sector, through government systems
- Channel money through multilaterals, namely the UNDP justice program
- Provide bilateral support to complement existing programs

The team believes that a combination of multilateral and bilateral support is appropriate at this point in time given that:

- (v) budget support is not appropriate given the government's own rapidly growing budget, and because public finance management systems are currently critically weak in this sector;
- (vi) the UNDP program is, among other things, supporting the vital functions of providing international court actors (Judges, Prosecutors and Defenders), the professional training for Timorese actors through the JTC and the development of a computerised case management system. UNDP is a key partner;
- (vii) however, the UNDP program does not cover all elements of the sector, including civil society and oversight institutions, and does not have the capacity to do everything in the sector; and
- (viii) a focused but flexible program of bilateral support appears to be welcomed by UNDP, the key institutions in the sector and most bilateral donors.

The design team also believes that strengthening the capacity of the Office of Prosecutor General should be a particularly high and urgent priority given that this is where the backlog of cases is building up, even more so since the event of April/May 2006.

### 3.3 Proposed strategy framework

#### Overall GoA framework

Australian assistance to the justice sector in Timor-Leste should be seen in the context of the GoA's Whole of Government approach. Figure 3 provides an overview of the different elements of GoA's current and planned support to the sector.

Over the past three years GoA has, on a number of occasions, made clear its commitment to assist Timor-Leste to develop a strong and stable law and justice mechanisms in Timor-Leste.

- In August 2003, Australian Ministers approved a A\$40 million, 4.5 year package of assistance to build the capacity of the law and justice sector in Timor-Leste.
- Following the recent crisis, large Australian military and AFP contingents were deployed to re-establish stability and the rule of law. A long term commitment of 50 AFP officers will operate under the UNMIT international police force.
- Minister Downer again reaffirmed Australia's commitment to law and justice in trilateral talks between GoA, GoTL and the Government of Indonesia in September 2006.

Recognising the co-dependency of law enforcement and the delivery of justice, GoA will continue to assist with strengthening the sector – providing targeted support in areas where it is *appropriate, effective and welcomed* by GoTL.

The overall objective for Australian involvement is '*to support enhanced rule of law, stability and prosperity in Timor-Leste*'. This will be achieved through helping to build the capacity of key state institutions to deliver justice as well as the capacity of key oversight institutions and of civil society organisations to demand access to justice.

To help ensure coherence between these GoA initiatives it is proposed that a Senior Justice Sector Adviser be appointed by AusAID (see draft Terms of Reference at Attachment 7). The Adviser will support the process of justice sector policy dialogue and strategic planning between GoA, GoTL and other donor partners, as well helping to ensure that the proposed Facility is coherent with other initiatives, is being effectively managed and is delivering results.

The facility proposed in this document will not manage all GoA justice sector initiatives, such as those being run by other GoA agencies (i.e. the AFP or the Department of Immigration). However, it is expected that some justice sector initiatives currently being funded by other AusAID programs (e.g. through the PSCDP and through TLPDP) would logically come under the Facility in the future. If this happens, they may need to bring extra financial resources with them (i.e. TLPDP).

#### Facility framework

The framework for the proposed GoA funded Facility, and the strategy for implementation, is described in Section 4. In summary, key elements of the strategy include:

- Strategic Oversight of the Facility by a Senior Law and Justice Sector Adviser employed directly by AusAID. This Adviser will also play a key role in promoting a whole of government approach by GoA in the justice sector
- Alignment of Facility activities and resource allocation with GoTL policies, plans and budgets through linking to their Annual Planning, Budgeting and Expenditure review processes
- Partnership with UNDP. This will be based on agreement that UNDP will focus primarily on providing international court actors, support the operations of the Judicial Training Centre and continue to design/implement an IT based case-management system,



while GoA bilateral support will focus on providing corporate management ('back-office') capacity building support to the key formal institutions. It is proposed that GoA provide at least an additional US\$ 10m to the UNDP program over the next 5 years (in addition to the cost of the Facility) to support their vital work. This should nevertheless be linked to ongoing improvements in the program's results based performance monitoring and reporting.

- A balance of support provided to supply and demand sides of the justice sector
- A long-term perspective, progressive engagement and flexibility

However, critical issues which will impact on the overall effectiveness of the proposed approach will include:

- Clear endorsement and active ongoing support for the proposed GoA bilateral program from the Minister of Justice, the Chief Justice and the Prosecutor General
- Adequate ongoing financial support (from the international community, including GoA) to allow UNDP to fill critical in-line positions within the courts, the Office of the Prosecutor General and the Public Defenders Office, for at least another 5 years
- Implementation by GoTL of the constitutional requirement that all laws be drafted, promulgated and available in Tetum and that all court proceedings be conducted in Tetum, as well as Portuguese
- Urgent action by the GoTL, led by the Ministry of Planning & Finance and the Ministry of State Administration, to improve budget execution rates across government and to implement other ongoing public sector reforms that improve public administration; and
- The new UNMIT mandate is effectively implemented, does not create functional overlap with other UN & donor programs and does not distract from long-term capacity building efforts

These and other issues are further addressed in Section 5 on 'Sustainability and Risk'.

### **Interim support**

Given that needs are urgent, and that the Facility is unlikely to be 'on the ground' until mid 2007, it is proposed that interim support be provided by GoA through other mechanisms for:

- Senior Management Advice for the Prosecutor General (through the Public Sector Capacity Development Program)
- Strategic plan formulation for the Office of the Prosecutor General, the Courts, the Public Defenders Office, the Office of the Provedor and the Office of the Inspector General (through the PSCDP)
- Budget execution advice in the Ministry of Justice and the Courts (through MoPF Capacity Building Project)

It is also recommended that an appropriate level of administrative support continue to be provided to the OPG through until at least June 2007 (when this Facility should start), and that existing support to MoI (under TLPDP and PSCDP) be continued as currently planned.

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**Figure 3 – GoA Framework of support to the Justice Sector**

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## 4 Description of the Facility

### 4.1 Objectives

The program goal and purpose are sourced from statements contained in the Justice Sector SIP, the National Policy for Justice and the UNDP Justice Systems Strengthening Revised Program Document.

The **Goal** is: ‘Enhanced rule of law, stability and prosperity in Timor-Leste’

The **Purpose** is: ‘Access to prompt, transparent and equitable justice for all men, women and children’

These, together with the component objective statements, are shown in diagrammatic form in Figure 2. This diagram includes a ‘stream’ of ongoing GoA support through the UNDP Strengthening the Justice System Program. This is considered essential in order that UNDP is adequately supported (together with contributions from other donors) to fund: (i) in-line international court actors, (ii) the training of Timorese court actors, (iii) the implementation of the computerised case-management system’ (iv) ongoing support to the prisons system; and (v) its participation in effective monitoring and evaluation of both its own activities and developments in the sector overall. Support to such activities is likely to be required for at least another 5 years.

### 4.2 Description of Facility components

#### Component 1 – Core Justice Sector Institutions

##### *Objective*

Strengthened corporate management and administrative capacity within core justice sector institutions<sup>18</sup>

##### *Key partners and stakeholders*

Key partners will be the Ministry of Justice (including the Public Defenders Office and the Prisons Service), The Courts, the Public Prosecution Service and the Ministry of Interior. In supporting the Public Prosecution Service (a high priority), the principle of ‘equality of arms’ will be followed with respect to the Public Defenders Office.

Support to building corporate management capacity in MOI is expected to continue through the separate TLPDP project at least in the short to medium-term.

Which of the key oversight institutions (e.g. Office of the Provedor and Office of the Inspector General) will be supported, for exactly what purpose, how and when will be determined as part of an ongoing process of dialogue and needs analysis. For example, at present, the Office of the Provedor has a number of other donors providing Advisory Support, and there appears to be little need for additional external assistance.

Other key stakeholders will include the UNDP SJSP, the UNMIT Governance and Administration of Law Units, the Ministry of Planning and Finance (including the Public Finance Management Capacity Building Project) and the OPR which has responsibilities for effectively mainstreaming gender equality.

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<sup>18</sup> Performance indicators for each component objective are described in Section 5.3

### ***Focus of support***

The focus of support will be on building the capacity of ‘back-office’ functions, so that the ‘front-line’ court actors are effectively supported and can focus on their work responsibilities. Capacity building will be viewed holistically, and include the development of systems and processes, knowledge and skills, and attitudes and behaviours. The extent to which Advisers ‘do’ and ‘advise’ will be determined through ongoing consultation with counterparts, specifically through the preparation of capacity building plans (See Attachment 8 for an example).

The Facility will support, and build capacity in the critical functions of:

Planning, budgeting and monitoring: Assistance will be provided in preparing and/or implementing a Strategic Plan for each targeted agency.<sup>19</sup> Preparing clear and practical Annual Action Plans and budgets for each institution (in line with GoTL systems and procedures), will also be a key focus for support. At present the process of AAP and budget preparation is largely focused on identifying inputs and costs, with little link to an analysis of need or the delivery of priority outputs or outcomes. Part of the aim will be to support a clearly argued and documented rationale for adequate budgetary resources from the Ministry of Planning and Finance. Support will also be provided to build monitoring and review capacity within the institutions, with an emphasis on a few key indicators which are of clear and direct relevance to senior management within each institution, and can help them meet their reporting obligations to the Council of Ministers, to Parliament and/or the general public. Promoting a culture of learning through monitoring and review activities will be given particular emphasis.

Financial management and procurement: Strengthening financial management and procurement capacity is a critical issue across government, given the very low rates of budget execution. As the government looks to delegate more financial authority to line-agencies, so their capacity must be enhanced in order that they can take advantage of this opportunity to take effective control over the management of available resources, and remain appropriately accountable. The MoPF has provided a list of key ‘capacities’ that a line-ministry must have in order for it to be granted increased financial accountability, and the Facility will support the development of these specific capacities in each targeted institution. This will involve reviewing and refining in-house financial management and procurement systems and processes, developing improved communication channels with the MoPF, and developing the requisite knowledge and skills.

Human resource management and development: All the key justice sector institutions have a limited pool of appropriately skilled and qualified staff on which to draw. This applies generally in Timor-Leste. Emphasis will be given to developing appropriate competency based training approaches and to mentoring, rather than theoretical or extensive ‘off-the-job’ training. Systems and processes for personnel management and for developing staff knowledge and skills will also be supported, including appropriate and practical approaches to performance assessment. Promoting effective work practices and behaviours such as enhanced team work skills, problem solving approaches and a public service ethic will also be a key feature of the advisory support.

General administration and IT: The basic systems and processes, and knowledge and skills, to provide effective administrative support for service delivery are in need of ongoing improvement. At present, senior managers (even the agency heads) are often having to divert their time to dealing with issues that should not be their responsibility, and indeed are not necessarily within their areas of competence. Basic issues related to such things as computer use and maintenance, filing and record keeping, logistics and communication systems are all areas that currently

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<sup>19</sup> Strategic Plans may already have been prepared for some or all of the agencies by the time the Facility starts on the ground in mid-2007

impede the efficient and effective operations of front-line court actors. Practical hands-on advice will be provided by Advisers, including the development of basic office protocols and on the job mentoring/training.

Translation and information dissemination: The availability of laws and other key documents in languages that are accessible to both public servants and the general public is limited. All public servants should have a basic understanding of the laws which govern, and give focus to, their work, and the public should also have access to information that improves their understanding of their rights (and responsibilities) and how they can access the justice system. Support to translation and to information dissemination activities will therefore be provided through the Facility.

### ***Outputs***

Outputs for each targeted agency that are expected as a result of support provided through the Facility (in partnership with other stakeholders) include:

- Clear and practical Strategic plans
- Improved quality of Annual Action Plans and budgets
- Increased budgets from MoPF in line with demonstrated need and clear plans
- Improved budget execution rates
- Increased and timely availability of basic operational resources
- Increased staff competencies
- Improved access to and use of performance management information
- Improved understanding of relevant laws among public servants
- Improved access to information by the general public about their rights and responsibilities under the law
- Increased capacity to meet GoTL commitments to gender equality

### ***Inputs***

The indicative inputs required to support this component are described in Section 4.4 and at Attachment 4 (Resource and Cost Schedule).

## **Component 2 – Support for civil society initiatives**

### ***Objective***

Strengthened capacity of civil society to demand improved access to justice for vulnerable groups

### ***Key partners***

Key partners are expected to include Private Lawyers (Bar Association), Legal and Human Rights NGOs/Civil Society Groups, Women's Groups and the Media.

Specific NGO/Civil Society partners will be identified through a process of ongoing dialogue and needs analysis. However, the mechanism for providing support will be primarily through a process of 'call for proposals' and the provision of accountable cash grants to undertake specified 'projectised' activities. This proposed process and mechanism is described further in Section 5.2 on 'Financing and Modes of Delivery'.



### *Focus of support*

The focus of support from the Facility will be on a range of themes, including:

- Access to justice by vulnerable groups. This will include support to activities which provide direct support to women and children who are victims of crime, including domestic violence.
- Gender equality. This will support activities which specifically address issues of gender in-equality in the justice sector, including monitoring the access of women and men.
- Human rights protection. This could include future funding to NGO/Civil Society Groups who monitor the judicial system, provide legal aid services and advocate on human rights issues.
- Anti-corruption, transparency and accountability. This could include support to civil society initiatives (including the media) which provide independent scrutiny of the actions of government and other judicial institutions and make information available to the public.
- HIV/Aids. This is a cross-cutting issue which needs to be understood and appropriately acted on by a range of actors within the judicial system. Principles of universal precaution will be promoted, and specific initiatives will be identified and supported that impact on high risk groups, such as prisoners and those charged with their care.

This is likely to involve a process such as outlined below:

- (i) Preparation of draft issues and strategy paper (e.g. ‘Access to justice for vulnerable groups. Challenges, needs assessment, strategies and the role of civil society/NGOs’) based on literature review and discussions with informed individuals/groups in Timor. This should include an analysis of gender issues.
- (ii) Round table meetings with the NGO Forum and with Individual NGO/Civil Society Groups (directly involved in access to justice issues), to discuss the issues paper and development priorities. The focus of discussions should be on two main sets of issues: (a) development activities (which NGOs have a mandate and comparative advantage to implement) that directly impact on access to justice for poor and vulnerable groups, including women and children; and (b) institutional (capacity building) support that NGO’s themselves might benefit from to allow them to more effectively deliver high priority services.
- (iii) Determination of a set of priority themes/objectives for the NGO/Civil Society Facility + establishment of appropriate indicative parameters/scope of funding to individual NGOs/Groups (Value, duration). Again – this might be addressed separately in relation to the two main sets of issues noted above.
- (iv) Preparation of a draft NGO/Civil Society ‘Call for Proposals’ Procedures Manual – specifying the process and procedures for managing and monitoring this mechanism
- (v) Validation of the contents of the draft Procedures Manual with key NGO/Civil Society groups (maybe through the NGO Forum). Review and revision as required.
- (vi) Review of the proposed priorities and the draft Procedures Manual by the Facility Management Group. Editing/revision as required, followed by final endorsement.

Initiation of first round of ‘Call for proposals’.

### ***Outputs***

Development outputs under this component will be specified in project/grant agreements which will be signed between the recipient of assistance and the Facility. The type of outputs to be specified are likely to include:

- Improved access to specific support services among vulnerable groups, particularly women and children
- Increased access to specified information among target groups, and their increased understanding of access to justice issues, including gender inequality issues
- Men and women trained in specific skills/competencies relevant to improving access to justice
- Specified study/research reports
- Improved quality of plans, budgets, financial management, budget execution, performance monitoring etc within targeted institutions and organisations

### ***Inputs***

The indicative inputs required to support this component are described in Section 4.4 and at Attachment 4 (Resource and Cost Schedule).

## **Component 3 – Facility Coordination, Management and Performance Assessment**

### ***Objective***

Effective and efficient management of Facility Resources, aligned with GoTL priorities and harmonised with other donors

### ***Key partners***

Key partners will include the Council of Coordination (Minister for Justice, Chief Justice and the Prosecutor General), the Ministry of Interior (particularly the police), the Ministry of Planning and Finance plus NDPEAC and the CDCU, and Sector Working Group(s) including key multilateral and bilateral development agencies (e.g. UNDP, UNMIT, UNICEF, World Bank, Portugal, USAID, etc).

### ***Focus of work***

The focus of work under this component will include:

Coordination and communication: Effectively coordinating the work undertaken through the Facility with GoTL partners and with the other key donors in the sector will be critical. With respect to coordination with GoTL partners, the primary mechanisms will be the Justice Sector Working Group including members of the Council of Coordination, and a Facility Management Group (a sub-set of the SWG, including civil society representation) which will look specifically at, and approve, the Facility's Annual Plans. Coordination with the work of the key justice sector institutions will also be directly supported through linking the process of Facility Annual Plan preparation directly to the GoTL's Annual Planning and budgeting processes, so that Facility plans and budgets can be directly combined into each institutions forward plans.

Equally important as the formal coordination mechanisms will be ongoing dialogue and communication with all key partners. Key to this will be relationship building, preparation and presentation of information about the Facility's activities (both formally and informally) in clear

language through appropriate media, and adequate translation and interpretation support for Advisers working under the Facility.

The Senior Justice Sector Adviser (to be recruited by GoA) will take a lead role in ensuring that effective coordination and communication mechanisms for the Facility are developed and implemented. The Senior Adviser will also have a key role in ensuring that all other Australian Whole of Government activities in the Sector are coherent and complementary. This will be especially important with respect to activities undertaken in the ‘core’ justice sector institutions and in the police.

Annual planning and budgeting: As noted, the Facility will prepare an Annual Plan and budget in line with the GOTL’s planning and budgeting calendar and processes. This will support coordination, alignment, harmonisation and capacity building objectives. The planning and budgeting exercise must therefore be a fully participatory process, streamlined and practical. It must not be overly complex or focused on producing sophisticated and voluminous documentation which few can then access or use. Annual Plans and operational budgets for the Facility will be approved by the Facility Management Group.

Activity design support and calls for proposals: The Facility will provide support for the design of small/medium scale initiatives to be funded through the unallocated pool of funds (particularly through Component 2). This will include the establishment and gender sensitive management of a ‘call for proposals’ mechanism that will allow NGOs/Civil Society Groups to submit proposals for grant funding to undertake activities with a specific thematic and/or output based focus. Some further detail on how this mechanism would work is provided in Section 5.2. Detailed management/operational guidelines would be prepared by the Managing Contractor during the inception phase.

Human resource management and sub-contracting: The Managing Contractor will be responsible for providing a core team of long-term Advisers, a management support team and the capacity to identify and recruit other Advisers (short or long term) as and when specific high-priority needs are identified and approval is given by the Management Group to recruit. It will be essential that the TA identification and ongoing management process directly involve partner institutions, and that the Contractor has the capacity to recruit regionally and internationally. Terms of Reference for the proposed team of long-term Advisers are provided at Attachment 7.

Financial management: The Managing Contractor will be responsible for managing AusAID funds, accounting for their use and providing budget and expenditure reports to the Management Group. An unallocated pool of funds will be provided so that emerging needs can be met, particularly (although not exclusively) to fund initiatives identified under Component 2.

Performance monitoring, assessment and reporting: The performance of Advisers will be assessed on an ongoing basis, as well as the performance of the overall suite of activities being supported through the Facility. Ongoing review of progress in implementing Facility work-plans will be designed to fit with the GoTL’s review processes. Facility monitoring will thus be undertaken primarily as a capacity building activity in its own right. While the Government has a quarterly review process, it is proposed that Facility specific activities be formally reviewed (again by the Management Group) on a six-monthly basis. This will involve the preparation and submission of a succinct and action focused progress report by the Senior Justice Sector Adviser, supported by the Contractor’s ‘Facility Manager and Team Coordinator’. To as large extent as possible, ongoing review/assessment activities should be aligned with GoTL information needs and harmonised with other donors. It will be particularly important that monitoring/review of the Facility and of the UNDP program be harmonised, in the move towards taking a more holistic sector-wide view.

Further detail of proposed monitoring and review processes are provided in Section 5.3.

### ***Outputs***

The main outputs expected under this component will include:

- Operational/management guidelines for the Facility, including M&E plan and baseline data
- Effective coordination mechanisms established and supported (Facility Management Group)
- Annual plans and budgets for the Facility, aligned with GoTL planning and budgeting processes
- Useful information on Facility progress and performance available to all stakeholders
- Improved information on sector-performance issues, including availability of gender disaggregated data

Through the work of the Senior Justice Sector Adviser, another anticipated output will be that an effective whole of government approach to the justice sector (by GoA) will be established.

### ***Inputs***

The indicative inputs required to support this component are described in Section 4.4 and at Attachment 4 (Resource and Cost Schedule).

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**Figure 4 – Facility Framework**

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### **4.3 Duration, phasing, location and beneficiaries**

The initial duration of this support will be 5 years. It is anticipated that expenditure through this facility would commence in around June 2007.<sup>20</sup>

There will be an inception phase of up to 4 months, during which time the contractor and the Senior Justice Adviser will work together with counterparts to establish an operational capacity on the ground, take stock of the situation, and prepare a first year annual plan. This plan may be for more or less than a full year, given that it should fit with the GoTL planning and budgeting calendar, and build on/support the current Annual Action Plans of each of the targeted institutions (primarily under Component 1).

Under Component 1, Advisers will be co-located with key counterparts in the Ministry of Justice, the Courts and the Office of the Prosecutor General and will share access to facility funded resources. Advisers will be required to travel to the 3 district courts outside Dili to support the development of back office functions at these courts, and to ensure that they understand first hand the reality of accessing justice outside the capital. Under Component 2, it is expected that emphasis will be given to supporting initiatives that have a rural focus and that specifically impact on access to justice by poor and vulnerable groups. Facility management activities under Component 3 will be based in Dili, but will include monitoring and evaluation activities with a country-wide spread.

The ultimate beneficiaries of the proposed Australian investment will be the people of Timor-Leste who come into contact with, or need to access, the Justice system. The project will support their constitutional right to have prompt, transparent and equitable access for all. Particular focus will be given to ensuring that poor and vulnerable groups have equal access to justice.

The primary target groups for the Facility will be: (i) those working in the MOJ, Courts and OPG with specific responsibilities for corporate governance; (ii) the government's key oversight institutions; and (iii) civil society groups working in the justice sector.

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<sup>20</sup> However, it is also proposed that interim support be provided by GoA through other mechanisms for:

- Senior Management Advice for the Prosecutor General (through the Public Sector Capacity Development Program)
- Strategic plan formulation for the Office of the Prosecutor General, the Courts, the Public Defenders Office, the Office of the Procurator and the Office of the Inspector General (through the PSCDP)
- Budget execution advice in the Ministry of Justice (through MoPF Capacity Building Project)

It is also recommended that administrative support continue to be provided to the OPG through until at least June 2007, and that existing support to MoI (under TLPDP and PSCDP) be continued as currently planned.



## 4.4 Resource requirements and costs

### GoA resources

The proposed indicative GoA funding allocation between the 3 program elements, and likely nature of the resources to be provided, is summarised below:

Component	Indicative cost A\$m	Type of resources
<b>Component 1 – Core Justice Institutions</b>	A\$14	<ul style="list-style-type: none"> <li>3 x Long-term ‘Senior Management/Corporate Services Advisers’ for MoJ, OPG &amp; Courts.</li> <li>2 x Long-term Advisers based out of the MOJ, but providing a pooled resource for all 3 institutions, to cover the more specialised areas of: (i) Financial Management &amp; Budget Execution; and (ii) Human Resource Management &amp; Development.</li> <li>Unallocated pool of funds to support strategic planning and corporate management support for the Office of the Provodur and Office of the Inspector General, based on future consultations and identification of priority needs not being met by other donors. The pool of funds would also be used for other long or short-term TA inputs as needs are identified by Facility Management Group (e.g. on Logistics, Procurement, Asset Maintenance, IT, etc).</li> <li>Human resources to support development of basic administration capacity and use/maintenance of in-office IT (locally engaged wherever possible)</li> <li>Human resources to support translation of laws and public information materials into Tetum (locally engaged wherever possible)</li> <li>Resources to support implementation of training &amp; other capacity building plans.</li> </ul>
<b>Component 2 – Oversight and Civil Society</b>	A\$6.5	<p>A flexible fund will support a range of needs, as yet to be specified, but potentially including:</p> <ul style="list-style-type: none"> <li>For the NGO Forum, to support their role in coordinating and supporting capacity building initiatives for those NGOs working on Justice Sector issues such as Human Rights, Legal Aid, Victim support, Vulnerable Groups, HIV/Aids, etc</li> <li>For individual Civil Society groups/NGOs working in the justice sector to support implementation of projects/activities. Resources would be allocated as accountable cash grants based on a system of ‘calls for proposals’ to address identified priority issues.</li> </ul>
<b>Component 3 – Facility Management</b>	A\$5.9	<ul style="list-style-type: none"> <li>1 x Long-term Team Coordinator and Facility Manager (international)</li> <li>1 x Long-term General Office Manager (locally engaged)</li> <li>1 x Long-term Finance and Administration Manager (international)</li> <li>1 x Long-term Finance and Procurement Officer (locally engaged)</li> <li>1 x Long-term Project Officer – primarily for Component 2 (locally engaged)</li> <li>Team of interpreters/translators</li> <li>Other support staff (secretarial support, drivers, etc)</li> <li>Office rental, equipment, supplies and utility costs</li> <li>Pooled vehicles for work use</li> <li>Resources to support Facility and activity monitoring and review,</li> </ul>

Component	Indicative cost A\$m	Type of resources
		including analysis and monitoring of gender issues
<b>GoA Direction and Oversight</b>	A\$2.0	<ul style="list-style-type: none"> <li>• Senior Law and Justice Sector Adviser. To be identified and recruited as soon as possible.</li> <li>• Short-term specialist/independent input to joint-donor sector review missions</li> </ul>

Total GoA costs are therefore estimated at some A\$28.4m over 5 years.<sup>21</sup>

Additional detail is provided in the resource and cost schedule at Attachment 4. However, it must be emphasised that resource allocation between components and for specific activities must remain flexible, and should be reviewed on an ongoing basis (particularly through the annual planning and six-monthly review processes).

The resource requirements and costings do not include:

- GoA contributions to the UNDP Justice Systems Strengthening Program. It is proposed that GoA provide at least an additional A\$ 10m to this program over the next 5 years, namely to ensure key international courts actors are in place, and that the JTC program and the computerised case management system are fully established and sustainable. This should nevertheless be linked to ongoing improvements in the program's results based performance monitoring and reporting.
- the costs of bringing current AusAID funded activities in MOI under the umbrella of the Facility. If it is decided that this should happen at some time in the future, the required additional resources will need to be made available to the Facility; and
- other existing GoA support to MoJ such as through the Department of Immigration (for border control initiatives) and to the Lands and Properties Office (through PSCDP), and any possible future support planned for these areas.

### **GoTL support and resources**

There will also be a requirement for direct GoTL support to allow the Facility to work effectively. This will include:

- Leading the processes of strategic/sector planning, donor coordination and performance monitoring (Government ownership and leadership is a critical area of support)
- Taking responsibility for providing adequate core funding to the sector institutions, including covering salaries, operating costs, basic equipment and infrastructure needs
- Increasing overall levels of budget allocation to the key sector institutions, in line with growing GoTL revenues and sector needs
- Provide office space, basic furniture and local utility costs for Advisers co-located in government offices, primarily the MoJ, OPG and Appeal Court

<sup>21</sup> These indicative GoA costings include the managing contractor's overheads and profit (currently factored into the unit costings for long-term international Advisers)

It is important to emphasise that GoA resources are aimed to complement and support core GoTL funding to the Justice sector, not substitute for it. For example, salaries of GoTL officials, their basic material and equipment needs, vehicles and buildings/infrastructure should be funded primarily from available GoTL budgets. The primary purpose of GoA support to the GoTL is to develop sustainable local capacity to effectively plan for, manage and monitor the use of the GoTL's own resources. Details of respective GoA and GoTL commitments (specifying mutual accountability commitments) will be included in a Memorandum of Understanding to be signed between the two governments.

It is also essential that, over time, the Government increases operational and capital budgets for justice sector agencies (in line with strategic plans and demonstrated need) and dramatically improves its own budget execution.

## **5 Coordination, management and financing arrangements**

### **5.1 Coordination and management**

#### **Overview**

- Overall planning & coordination of GoA support to the sector will be guided through GoTL led processes, including (at present) the Council of Coordination and relevant Sector Working Groups.
- Approval of Annual Plans for the Facility will be given by a 'Facility Management Group' (a sub-group of the Justice Sector Working Group), which will include CoC members and representatives from GoA, UNDP and civil society. These plans will be developed collaboratively with GoTL and UNDP in line with the government's own Annual Planning and budgeting processes.
- Specific needs for assistance within each of the formal justice institutions will be determined primarily by the leadership/senior management of each partner institution (demand driven), in line with their mandates, strategies and Annual Action Plans
- Mobilisation of the required and approved resources will be undertaken by the managing contractor. Selection of Advisers/Specialists will involve input from the host institution(s).
- Advisers/Specialists recruited through the Facility will be accountable primarily to the institution/agency within which they work, and their performance will be jointly monitored and assessed by the host institution and the managing contractor
- AusAID will engage in and support strategic planning and management of the Facility through appointment of its own Senior Justice Sector Adviser based in Dili, through its representation on the Management Group and through its contract with the managing contractor.

#### **Summary of stakeholder responsibilities**

A summary of stakeholder responsibilities is provided in the table below.

<b>Stakeholder</b>	<b>Responsibilities</b>
<b>SWG</b>	<ul style="list-style-type: none"><li>• Coordinate developments in the sector, including all donor activities</li><li>• Provide a forum for the exchange of information between sector stakeholders</li></ul>
<b>Facility Management</b>	<ul style="list-style-type: none"><li>• Review and endorse Annual Action Plans and budgets for the Facility and ensure these are linked to the Annual Action Plans of each targeted agency, GOTL requirements for gender mainstreaming and coordinated with the UNDP program</li></ul>

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Stakeholder	Responsibilities
<b>Group (including CoC members)</b>	<p>and other donor plans</p> <ul style="list-style-type: none"> <li>• Help ensure cross-agency/office processes, systems and training plans supported by the Facility and other donors are complementary and synergistic</li> <li>• Ensure capacity building plans are being effectively designed and implemented, and that gender mainstreaming and sustainability considerations are being addressed</li> <li>• Conduct six-monthly review meetings to discuss progress, issues and action required</li> <li>• Facilitate and participate in the conduct of an independent mid-term review in early 2010</li> </ul>
<b>Formal Justice Sector Institutions</b>	<ul style="list-style-type: none"> <li>• Lead the process of implementing their respective organic laws/mandates</li> <li>• Coordinate donor support to the institution and keep all partners fully informed of respective activities</li> <li>• Provide suitable office accommodation and access to essential utilities for international advisers and locally engaged staff</li> <li>• Lead the process of annual action plan and budget preparation (taking into account both GoTL and donor resources so that an accurate combined sources budget can be prepared and presented to MoPF) and approve the scope of planned donor funded contributions</li> <li>• Actively participate in the selection and ongoing performance management of all donor funded advisers/staff</li> <li>• Organise regular Management Team meetings to review progress, identify issues and agree on any remedial action required</li> <li>• Keep donors informed of progress and any issues arising with respect to activities supported by the Facility and the quality of specific advisory inputs</li> </ul>
<b>NGOs &amp; Civil Society Groups</b>	<p>If applying for and/or receiving funding through the Facility:</p> <ul style="list-style-type: none"> <li>• Prepare proposals in line with Facility requirements</li> <li>• Implement approved activities in line with relevant contracts/letters of agreement</li> <li>• Provide reports on implementation progress and results achieved in line with relevant contracts/letters of agreement</li> </ul>
<b>AusAID</b>	<ul style="list-style-type: none"> <li>• Manage the tender and procurement process to engage a suitably skilled and experienced team of managers and technical advisers</li> <li>• Provide the required financial resources required by the Facility</li> <li>• Participate in the regular 6 monthly reviews of overall Facility performance with the Facility Management Group</li> <li>• Keep the contractor and the Management Group informed of any performance issues or concerns that AusAID may have regarding developments in the sector, including specific activities funded by the Facility, the UNDP or other donors</li> <li>• Maintain ongoing informal communication with all key stakeholders</li> <li>• Facilitate and participate in the conduct of joint GoTL/Donor review missions</li> </ul>
<b>Senior Justice Sector Adviser</b>	<ul style="list-style-type: none"> <li>• Provide oversight of GoA justice sector initiatives in Timor-Leste to help ensure their complementarity, and provide GoA with expert advice on issues of sector strategy, coordination, harmonisation with other donors, sector performance and gender mainstreaming</li> <li>• Engage in ongoing policy dialogue with GoTL justice sector agencies on their strategies, plans, achievements and external assistance requirements</li> </ul>

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Stakeholder	Responsibilities
	<ul style="list-style-type: none"> <li>Engage in ongoing dialogue with other donors to the justice sector to help promote donor harmonisation objectives</li> <li>Engage in ongoing dialogue with Civil Society Groups/NGOs working in the justice sector to keep them informed of GoA activities and to understand their priorities, programs, achievements and possible areas of support</li> <li>Support the development of sector-wide as well as Facility specific performance monitoring processes and systems, as well as the sharing and use of information on sector development issues</li> <li>Provide expert advice to the Managing Contractor regarding the preparation of Annual Plans and Budgets for the Facility, and quality assure the products</li> <li>Participate in joint-donor sector review activities</li> <li>Quality assure the Facility Progress Reports</li> <li>Participate in the Facility Management Group</li> <li>Provide reports, as required, by AusAID</li> </ul>
<b>Managing Contractor</b>	<ul style="list-style-type: none"> <li>Prepare Facility Operational Management Guidelines</li> <li>Prepare Annual Plans and budgets for submission to the Facility Management Group</li> <li>Identify, recruit and mobilise all required long and short-term TA, including organising appropriate language training for all long-term advisers</li> <li>Establish an operational monitoring and evaluation system, including a set of baseline data against which performance can be assessed in the medium/long term</li> <li>Provide the required administrative and financial management support to ensure that advisers are effectively supported, including recruitment and management of interpreters and translators</li> <li>Manage a process of ‘calls for proposals’ that will allow accountable cash grants to be provided to Civil Society Groups/NGOs, and appropriately monitored</li> <li>Coordinate the activities of all advisers in collaboration with counterparts</li> <li>In close collaboration with counterparts, prepare six-monthly Adviser workplans which incorporate appropriate detail of planned operational and capacity building activities</li> <li>Monitor progress in achieving capacity building objectives in partnership with counterparts using an agreed capacity building assessment process and framework (see example at Attachment 8) and other tools</li> <li>In collaboration with counterparts, provide required progress reports to the Facility Management Group</li> <li>Provide other required reports to AusAID/GoA</li> </ul>

## 5.2 Financing arrangements and modes of delivery

### Financing

The GoA finances required to support implementation of activities under the Facility will be provided by AusAID to a Managing Contractor (MC), in line with the scope of the approved design, Annual Action Plans and budgets, and the contract between AusAID and the MC.

The Managing Contractor will set up the necessary bank accounts in their country of origin and in Timor-Leste to ensure both timely application of funds to support project implementation and that

required accounting and financial management standards are met. Details of these requirements will be contained in the contract between AusAID and the MC.

The contractor will establish and manage a Flexible Fund that will be used to fund emerging needs, particularly with respect to activities to be identified under Component 2. The Flexible Fund will nevertheless be able to fund emerging needs under any component.

Budgeting, accounting and financial reporting will be undertaken on an ‘open-book’ basis, allowing both AusAID and the GoTL to identify exactly what money is available and what it has been spent on. To this end, the managing contractor’s profit margins will be agreed and accounted for separately from all actual costs incurred. Profit margins will not be linked to the provision of any particular inputs, thus avoiding the situation where the MC’s primary commercial incentive is to provide certain inputs (e.g. TA). Details of these arrangements will also be contained in the contract between AusAID and the MC.

In order to ensure that there is a holistic picture of the overall resourcing ‘envelope’ available to each of the 3 main formal justice sector institutions being supported, annual combined sources budgets will be prepared (in line with current GoTL requirements), showing both GoTL resource requirements/allocations and those being provided by donors.

GoTL financial contributions will be made in line with GoTL public finance management regulations and procedures.

### **Modes of delivery**

**Under Component 1**, it is anticipated that the primary mode of delivering assistance will be through the placement of Advisers within partner institutions. This is based on the premise that government budget is not the primary limiting constraint for Timor-Leste, but rather human resources with the knowledge and skills to develop and implement improved systems and processes that support the delivery of services and development results.

**Under Component 2**, it is anticipated that assistance will be delivered through a mix of Advisers and a ‘call for proposal’ mechanism which will provide accountable cash grants to civil society organisations/NGOs. A strategy for component 2 (see Section 4.2, Component 2) and the call for proposal mechanism will be developed by the Managing Contractor during the inception period.

The Call for Proposals mechanism will be based on a ‘Project Cycle Management’ approach, and should incorporate the following features: (i) a process for identifying and prioritising themes/activity types that ‘calls’ will be advertised for, within the scope of the overall strategy; (ii) a publicity/information dissemination strategy about forthcoming calls; (iii) clear formats and guidelines for proposal submissions; (iv) a transparent, clear and gender sensitive process for appraising and selecting proposals; (v) procedures for contracting/providing grants; (vi) procedures for ongoing financial management, (vi) procedures for ongoing monitoring and reporting by grant recipients and also activity monitoring by the Facility itself; and (vii) procedures for grant acquittal/completion reporting.

**Component 3** will include a fund of around A\$0.4m which will be available for the Senior Justice Sector Adviser to mobilise short-term TA or other resources that will help him/her investigate and/or review performance issues relevant to the sector and/or more specifically the work of the Facility.

The overall Facility will have the flexibility to fund some minor equipment and/or operational costs where there is an urgent demonstrated need, but not where this is a substitute for GoTL spending its own budgeted resources.

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The facility will also have the flexibility to support the full suite of capacity building initiatives other than Advisory support, possibly including the development of regional twinning arrangements, work placements and various forms of more formal training.

### **5.3 Monitoring and evaluation framework**

The Facility's monitoring and evaluation plan will be further elaborated during the inception phase, as part of preparing the first Annual Plan. This work will be guided by the principles and parameters described below.

#### **Principles**

The following principles underpin the proposed approach to Facility monitoring and evaluation:

- There should be an appropriate balance between meeting accountability requirements and the learning needs of all key stakeholders
- The general approach will be to work through and strengthen existing partner systems. M&E should be seen as a capacity building activity in its own right.
- Where enhancements to those existing partner systems are required, these enhancements should be minimal, relatively simple, progressively introduced and cost effective
- M&E activities should seek to harmonise with other donors and eventually result in a strengthened government (and civil society) monitoring system that meets stakeholder information needs. Collaboration with UNDP on this matter will be very important.
- M&E scope and activities should be periodically reviewed, and improved during implementation, probably annually to be consistent with the evolving design concept embedded in the Annual Planning process;
- M&E should focus on the needs of information users, and be demand driven; and
- Should include reporting that helps assess gender equality results

It will be important that the Facility also work closely with the UNDP to develop a harmonised approach to performance monitoring that is also appropriately aligned with GoTL systems. Assuming GoA approves further grant funding to the UNDP Strengthening the Justice System Program – it is recommended that a new grant agreement be drawn up which explicitly addresses the need for joint/harmonised performance monitoring.

#### **Purpose of M&E**

It is widely accepted that there are two primary purposes of, or needs to be met, by M&E arrangements,<sup>22</sup> namely: (i) accountability; and (ii) learning.

Accountability needs are met by providing evidence of:

- Funds being spent as agreed on high priority inputs/outputs
- These “outputs”, the goods or services delivered, being of good quality (from the perspective of both the delivery partners and the “beneficiaries”)
- These outputs contribute to the achievement of significant change/results, i.e. adequate evidence of “effectiveness”

Learning needs are met by providing evidence of:

- Continuous improvement of the activity's effectiveness during implementation by providing valued and timely information to decision makers

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<sup>22</sup> AusAID's Guidance M&E Arrangements & DAC Guidance

- More in-depth, reflective and evaluative type work to distil lessons that influence future policy, strategy and/or activity design

### The three levels of M&E and information users

M&E activities relevant to the Facility need to be considered at three main levels:

**Level 1 - Sector Wide Progress** – all stakeholders need reliable but basic information about what is happening in the Justice Sector. This “level” needs to focus on providing assistance to the GoTL for building a pragmatic and sustainable M&E system across the sector that can provide all stakeholders with “big-picture” performance information. This will be a long-term and collective endeavour, led by the GoTL. Primary information users will include Timor-Leste’s Parliament and the Justice Sector Working Group members. It will not be possible, or desirable, to try and directly attribute the work of the Facility to achievements at the Sector level. The Facility will only be one contributing factor among many.

**Level 2 - Justice Sector Institutional Performance** – a precondition for sector wide progress is the improved performance of the individual Justice Sector Institutions. With respect to the Facility, the focus will be on supporting each institution to monitor its progress with improving corporate management and administrative capacity. Each institution’s ability to collect, analyse and use basic information to improve management decision making (regarding efficiency and effectiveness) will be a key capacity building objective. Primary information users will be the Management Teams (senior executives) within each of the core justice sector institutions, and the Facility Management Group. Indicators of improved corporate management should be attributable (at least in a significant part) to the work of the Facility.

**Level 3 - Facility performance** – the efficiency and effectiveness with which Facility resources are allocated and managed needs to be monitored. *Efficiency of operations* will require monitoring such things as: timely and appropriate recruitment, timely and clear reporting, timely identification and resourcing of high priority needs, selection and use of appropriate M&E tools, and establishment and maintenance of good records and systems. *Effectiveness of operations* will require monitoring of such things as: Adviser performance and capacity building achievement, the results achieved by individual projects supported, the likely sustainability of those results, what we have learnt, and what follow up support is needed. Primary information users will be the members of the Facility Management Group, including AusAID.

Each of these levels is not completely discrete. Each blends into, and supports, achievements at the next level up.

### Key Performance Indicators

Key performance indicators for the sector overall (level 1), and for each justice sector institution (level 2), will need to be developed by the justice sector agencies themselves, with appropriate support from development partners. This will be an ongoing process and will take time. As already emphasised, the primary purpose of Facility M&E activities (at the sector and institution levels) is to support building M&E capacity within partner institutions, not to develop and create separate/parallel systems.

Indicators of relevance to the work of the Facility are likely to include:

Category	Performance Indicators
<b>Facility Purpose - Sector level</b>	<i>Not directly attributable to the Facility, but should be ‘tracked’ as part of monitoring developments in the sector</i> <ul style="list-style-type: none"><li>• Backlog of cases reduced</li></ul>

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Category	Performance Indicators
<i>Access to justice</i>	<ul style="list-style-type: none"> <li>No. of civil and criminal cases registered for hearing - overall and at each court (M/F)</li> <li>No. of civil and criminal cases heard in each court over each 12 month period (M/F)</li> <li>The aging of cases awaiting hearing (M/F)</li> <li>Number of detainees released due to inability to place evidence before a judge is reduced (M/F)</li> <li>Reduction in number of detainees released due to lack of 72 hour hearing</li> <li>Number of cases of domestic violence resolved according to the law (M/F)</li> <li>Number of cases involving juveniles and the nature of the penalty given (M/F)</li> <li>No. of human rights violations identified, documented and appropriately investigated</li> <li>No. of cases of official corruption identified, documented and appropriately investigated</li> <li>Prisoner numbers, prisoner health, no. receiving vocational training, etc (M/F)</li> <li>Community perceptions of access to justice –particularly among poor and vulnerable groups (M/F)</li> </ul>
<b>Component 1 – Institutional level</b>  <i>Strengthened corporate management and administrative capacity of core institutions</i>	<i>Attributable in significant part to the work of the Facility</i> <ul style="list-style-type: none"> <li>Quality of agency plans (strategic and annual) and budgets, and staff understanding of their content</li> <li>Budget execution rates – recurrent and capital</li> <li>Availability of basic operational resources (including at district court level) to service/support Judges, Prosecutors and Public Defenders</li> <li>Quality of management information available to managers/executives within core agencies, including court actors</li> <li>Availability of gender disaggregated data</li> <li>Improved staff competencies, including knowledge of the law(s) that governs their work (M/F)</li> <li>Progressively increased independence of counterpart staff in undertaking specific operational tasks</li> </ul>
<b>Component 2 – Institutional and community level</b>  <i>Strengthened capacity of oversight institutions and Civil Society to demand access to justice</i>	<i>Actual indicators to be identified once scope of Facility support is determined, but could potentially include:</i>  For oversight agencies (OPG and OIG): <ul style="list-style-type: none"> <li>Quality of agency plans (strategic and annual) and budgets, and staff understanding of their content</li> <li>Budget execution rates – recurrent and capital</li> <li>Availability of basic operational resources to do their work</li> </ul>

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Category	Performance Indicators
	<ul style="list-style-type: none"> <li>• Quality of management information available</li> <li>• Improved staff competencies</li> <li>• Progressively increased independence of counterpart staff in undertaking specific operational tasks</li> </ul> <p>For Civil Society/NGO initiatives funded through the Facility, the specific performance indicators will be identified as part of the call for proposal process, namely during project/activity design and appraisal. However, the types of indicators are likely to include</p> <ul style="list-style-type: none"> <li>• Increased community awareness of their legal rights</li> <li>• Increased community access to information and legal advice, particularly for poor and vulnerable groups (M/F)</li> <li>• Increased community access to victim support services, particularly for poor and vulnerable groups (M/F)</li> <li>• Awareness of, and preparedness for, dealing with HIV/Aids issues among justice sector actors</li> </ul> <p>In addition, basic information on the management of the ‘call for proposal’ mechanism will be collected, including:</p> <ul style="list-style-type: none"> <li>• No. and focus of each call</li> <li>• No. of submissions received, agency/organisations submitting, value, etc</li> <li>• No., value, scope etc, of approved ‘projects’</li> <li>• Timeliness and quality of reporting on each ‘project’</li> <li>• Outputs delivered by each project, including number of beneficiaries (M/F)</li> </ul>
<p><b>Component 3 – Facility Level</b></p> <p><i>Efficient and effective management of resources</i></p>	<p><i>Under directly control of, and attributable to, Facility Managers</i></p> <p>Indicators of performance for Facility management will include:</p> <ul style="list-style-type: none"> <li>• Quality of Facility Annual Plans and link to GoTL processes</li> <li>• Timeliness and quality of Adviser recruitment</li> <li>• Satisfaction of counterpart agencies with quality of Advisers, and with Facility support more generally</li> <li>• Evidence of effective capacity building by advisers (including training data, M/F)</li> <li>• Quality and timeliness of information (including formal reports) provided to stakeholders about Facility activities and results</li> <li>• Sound budget and resource management</li> </ul>

It is not considered necessary or appropriate for the Facility itself to directly undertake any monitoring or evaluation activities at the level of the overall Goal (‘Enhanced rule of law, stability and prosperity’). The Goal thus simply represents a vision statement to which the Facility will be one small contributor.

## Sources of information

The primary sources of information for monitoring and review will be:

- **GoTL agency records and reports.** Records and reports generated by the core Justice sector agencies will be a key source of information.<sup>23</sup> Such sources will include: Annual Plans and budgets; Expenditure records; Asset registers; Staffing and training records; Staff performance assessment records (including for Advisers); Case management records; Court records; Agency progress/annual reports; etc. The Facility will play a direct role in helping core agencies to develop the systems and processes for keeping such records and generating useful reports.
- **Reports from independent East-Timorese agencies.** Reports from such agencies/bodies as the Judicial System Monitoring Program, the Bar Association and local NGO's concerned with monitoring access to justice will be used as a source of information about developments in the sector, specifically with respect to access to justice for the poor and other vulnerable groups.
- **Facility records.** The Facility will keep its own management and administrative records, including for example on: Expenditure; Procurement; Adviser/staff performance; Training conducted; Reports prepared; 'Call for Proposals' process and individual activity reports; Baseline data file (updated on ongoing basis); etc
- **Facility initiated studies.** As needed, the Facility will design and carry out special surveys or studies to collect information that is not available from administrative records or other reports. For example: are women and other vulnerable/disadvantaged groups gaining equitable access to justice and if not why not? What is the level of engagement between Government and Civil Society and what are the constraints? What are the public's perceptions of the Justice Sector, their priorities for improvement and how do these change over time? Any such studies will be designed and undertaken in collaboration with relevant partners.
- **Donor/international agency reports.** Relevant reports from such agencies as the UN, World Bank, USAID, East-West Centre, International Crisis Group, etc will be regularly scanned and, as appropriate, used as a source of information on issues and developments in the justice sector. The Facility will try and play an active role in harmonising donor review/study activities so that there is no unnecessary duplication of effort.
- **Informal sources.** Ongoing informal dialogue with sector stakeholders, including community members, will also be an important source of contextual information on what is happening in the justice sector.

## Baseline information

A baseline of information will be collected and recorded during the Facility inception phase (in a baseline data file). This baseline information will focus primarily on data relevant to corporate management and administration capacity within the core justice sector institutions being supported by the Facility. The scope and detail of the information required will be discussed and agreed with key counterparts, and will be undertaken as a collaborative capacity building/learning exercise in its own right. It will involve collection of a mix of quantitative and qualitative information, likely to include such things as:

- Availability and quality of strategic and annual plans and budgets

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<sup>23</sup> Information from other GoTL agencies, such as the Ministry of Planning and Finance, will also be used

- Budget allocation, itemised amounts, and execution rates
- Staffing – numbers, levels, vacancies (M/F)
- Staff qualifications and skills (M/F)
- Access to, and understanding of, laws by agency staff (M/F)
- Availability and quality of basic operational resources – including office supplies, phones, basic office equipment, transport
- CPV processing time
- Quality of basic records/reports

In addition, some basic baseline information on sector level performance will be collated from existing sources, including on such issues as:

- Backlog of cases
- Number of cases heard in each court during past 12 months, by type
- Etc

Particular emphasis will be placed on building capacity, over time, to collect and use relevant gender disaggregated data.

It is anticipated that this baseline information will generally be updated on an annual basis.

### **External monitoring and review**

It is proposed that there should be a joint-donor review of developments in the sector on at least an annual basis. Key donor partners in such a review should include UNDP, AusAID and presumably relevant UNMIT representatives (e.g. from the Administration of Law Unit). Other donors may wish to participate. The review teams would involve independent consultants, and look broadly at developments in the justice sector, including the contributions being made by UNDP, AusAID and other key donors.

AusAID may also, at its discretion, undertake any other external monitoring activities to meet any of its specific accountability or learning needs regarding the work of the Facility.

### **Reporting requirements and information dissemination**

Paper based formal reporting should be kept to the necessary minimum, with the priority placed on quality not quantity of information. The timing of key reports such as the Annual Plans must also fit with the GoTL's planning and budgeting calendar. The information needs of user-group(s) should be kept clearly in mind, as well as the need to present key documents in either Tetun and/or Portuguese, as well as English.

It is proposed that the following reports be required from the Facility Managing Contractor:

#### For the information of all Facility Management Group members:

- Annual Plans (including review of previous year's achievements/issues etc after the first one)
- Six-monthly progress report (once per year, to include review and update of plan for second six-months of each year)
- Activity Completion Report (at end of year 5)
- Any special reports/studies as requested by the Facility Management Group



For AusAID’s specific reporting and accountability needs *(may include)*:

- Monthly ‘exception reports’ on any critical issues
- Financial/expenditure reports
- Simplified Monitoring Toolbox reports (quarterly); and/or
- Adviser reports on any specific issues or contractible deliverables

Table A of Attachment 5 provides further description of proposed Facility reporting requirements.

## **Resources**

An indication of the type and scale of resources that might be required to support Facility M&E is provided at Table C of Attachment 5.

# **6 Sustainability and risk**

## **6.1 Sustainability**

### **Economic and financial**

Given the methodological complexity of trying to quantify the Facility’s benefits in dollar terms, no economic or cost benefit analysis has been undertaken. However, in terms of promoting cost effectiveness and the financial sustainability of the proposed investment, the following design elements have been incorporated:

- Additional recurrent cost implications to be picked up by GoTL after donor funding ceases will be explicitly identified during the ongoing Annual Planning and Budgeting process
- Supporting the preparation of annual combined sources budgets for the Justice Sector Institutions, will make explicit the contributions of the GoTL and development partners
- Supporting the justice sector institutions to build a clear case, based on strategic plans and improved performance, for any required increases in recurrent funding from MoPF

### **Institutional**

The design has a number of features that will help build institutional sustainability, including:

- Progressive engagement, with flexibility to change priorities and plans as needs change and emerge
- The explicit requirement for advisers to prepare 6 monthly workplans in collaboration with counterparts, which identify their operational and capacity building tasks and how responsibilities will be shared.
- A monitoring and evaluation framework that includes measures of capacity building
- An explicit principle of working with and through government systems in order to help build and sustain those systems and develop ownership
- Co-locating key advisers within target institutions Proposed management arrangements that will help build capacity and ownership.

## Technical

The Facility will not try to introduce technically complex solutions, but rather build on existing systems and capacities with the underpinning principle of ‘keeping it appropriately simple’

The computerised case-management system being developed and introduced under the UNDP SJSP is likely to be one of the more complex technical innovations being introduced to the sector. It will be important that the knowledge and skills to manage and maintain this system are firmly established within the core justice sector institutions

## Social/cultural and gender

Advisers recruited under the Facility will be provided with information, training and ongoing support to ensure that they are aware of, and sensitive to, social and cultural norms in Timor-Leste and therefore display appropriate attitudes and behaviours. Tetun language training for Advisers will be obligatory for those Advisers without either Portuguese or Bahasa Indonesia language skills.

The Facility will aim to recruit an appropriate balance of male and female advisers. It will also ensure that: (i) Advisers support both male and female counterparts; (ii) males and females have equal access to learning/training opportunities provided by the Facility; (iii) gender disaggregated data is collected (where appropriate) through monitoring and evaluation activities; and (iv) the principles of gender equality are promoted in all activities supported through the Facility.

## Environmental

There are not expected to be any significant bio-physical environmental impacts associated with activities that the Facility will directly support. Nevertheless, taking account of potential environmental impacts will be included in the Terms of Reference of the Senior Management Advisers for each of the core institutions under Component 1. For example, in developing planning, financial management, procurement and/or asset maintenance systems, it will be required that appropriate environmental impact assessment procedures be established.

## 6.2 Risks and risk management

This is a high risk activity.

There are 2 immediate risks associated with the proposed focus for GoA support to the Justice Sector.

- The first is related to the acceptability of the proposal to the GoTL (namely the bilateral financing arrangement) and specifically to the Ministry of Justice, the Head of the Judiciary and the Public Prosecutor. The views of UNDP will also be critical in this regard.
- The second relates to whether or not the Government of Australia approves the strategy proposed by the design team, and if there are serious objections from the GoTL, whether or not an alternative approach can be negotiated in a timely manner.

Assuming that these risks are addressed over the next few months, primary risks to achieving the desired outcomes during implementation are likely to include:

***Social and political instability and poor security.*** Timor-Leste is currently politically unstable and there is simmering community conflict. It remains a new and fragile democracy. The ‘honeymoon’ period for the new independent government is over, partly because it has not yet managed to demonstrably deliver on providing both improved public services to the mass of rural people, or a supportive environment for private sector economic development.

A reasonable degree of social and political stability will be critical not only to allow ongoing improvements in the delivery of justice services to be made, but in all areas of social and economic development.

***Political interference in the work of justice sector agencies.*** Separation of powers, including the independence of the Judiciary, remain a constitutional vision, not a current reality. There is recent evidence of political interference in the work of justice sector agencies, including with respect to the operations of the police. Access to justice, and community confidence in the justice system, will be significantly compromised unless the principle of separation of powers is understood, respected and effectively implemented as required under the constitution.

***Weak coordination and harmonisation among multi-lateral agencies and bilateral donors working in the justice sector.*** There are many ‘external’ players active in the justice sector, not least the new UN Mission in Timor-Leste, including the significant numbers of UN Police. UNDP remains a significant player in supporting institutional strengthening of the core justice sector agencies, but the World Bank, Portugal, USAID and UNICEF (among others) are also active. If these various initiatives are not effectively coordinated, and if donors fail to effectively harmonise their activities so as to reduce transaction costs to Government, there is a significant risk of inefficiency and ineffectiveness. In the process, government ownership and prospects for delivering sustainable benefit streams will also be compromised.

***GoA does not effectively coordinate its whole of government activities and does not maintain a long-term/sustained commitment to the justice sector.*** The Government of Australia has a significant interest in building the capacity of the GoTL to provide effective security, to enforce the rule of law, and provide equal access to justice. Support is currently being provided through a number of avenues, including through contributions to the UN, provision of Defence Force personnel, Australian Federal Police officers and through AusAID funded and managed bilateral programs. There is a risk that if this support is not coherent, effectively coordinated or maintained and sustained over a suitably long-term horizon, that the anticipated sustainable benefits will not be achieved.

***Poor quality of Facility management and behaviour of expatriate Advisers.*** In any program or project which relies significantly on the provision of expatriate advisory support, the quality of advisers is critical to success. It doesn’t matter how good (or bad) the activity design – the quality of advisers and the way in which they are managed is probably the biggest factor in determining the success or otherwise of donor support. AusAID and the Managing Contractor must therefore place the highest priority on selecting, and supporting, high-quality management and advisory inputs. With aid to Timor-Leste now being untied, this includes putting additional effort into sourcing advisers internationally and from within the region.

***Suitably motivated and skilled counterparts are not available for Advisers to work with.*** Without available and suitably motivated counterparts to work with, the ability of Advisers to build institutional and individual capacities will be constrained. It is nevertheless understood that there is a severe skills shortage within most East Timorese institutions, and that at times there may be no suitably skilled counterparts to work with. Advisers will therefore at times be playing more of a capacity supplementation, rather than capacity building role. The long-term objective nevertheless remains capacity building. The targeted justice sector institutions will need to help ensure that critical vacant positions are filled as soon as possible, and that ongoing efforts are made to support the development of appropriate attitudes and behaviours among their workforce.

***Continued centralisation of Public Finance Management (PFM) systems and decision making.*** While the GoTL’s currently highly centralised PFM system has helped ensure fiscal prudence, there are significant risks that it will continue to constrain efforts to increase budget execution rates, and will also increasingly frustrate the efforts by line-agency managers to take on

responsibility and accountability for effective and efficient service provision. Appropriate delegation of responsibilities and financial management authority both within the MoPF and from the MoPF to line-ministries (based on agreed systems and processes) will be an essential element of supporting sustainable improvements in service delivery.

**Corruption.** Spread, or increase, in institutional corruption is a significant risk to bringing about improvements in Justice sector services. Corruption generally impacts most negatively on the poor, as they cannot afford to pay. While corruption is not currently a critical concern, given the history of institutional corruption during Indonesian rule, the rapid accumulation of petroleum-related wealth and the experience of many other countries in the region, this remains a clear threat which will need to be actively addressed on an ongoing basis by the GoTL. Developments in the Judicial Sector and Petroleum Fund management will be critical in this regard.

A summary of key risk management strategies is provided at Attachment 6 (Risk Management Matrix).

The proposed investment through the Facility is considered feasible, although high risk given the complexity of the issues being addressed, the political sensitivities in the sector and the currently unstable political and security environment in Timor-Leste.

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## **Attachments**

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## **A1 – Justice & Oversight Design Mission TOR**

### **1. Background**

The existing justice sector institutions in East Timor have been built from scratch since 1999. Whilst considerable progress has been made, the development needs remain significant. These needs have been documented in various reports, most recently in the Joint Needs Assessment by the Council of Coordination and UNDP, June 2006 and the Council of Coordination Justice Appeal: Upholding Service Delivery in the East Timor Justice System During the Crisis, September 2006.

Some of the issues that the sector faces are:

- Institutional and administrative capacity across all justice institutions need to be developed;
- A large backlog of cases from the serious crimes investigations of the 1999 atrocities;
- Continuing requirement for international in-line judges, prosecutors and public defenders, in light of the shortage of trained Portuguese speaking court actors.
- Low levels of coordination across the justice sector institutions, acknowledging the fact that the Sector Working Group is not yet operational;
- Low levels of public trust in the formal justice mechanisms;
- No interface between the traditional and formal justice mechanisms.

### **2. Mission Context**

In October of 2004 AusAID conducted a scoping mission to determine appropriate areas of support for the justice Sector in East Timor. The options presented in this paper were the subject of continuing discussions between the AusAID post and the Government of East Timor (GoET). From these discussions the decision was made to conduct a feasibility and design mission in August of 2005 to make recommendations on bilateral and multilateral assistance to the sector.

The mission recommended that both approaches should be supported - continued financial support to the UNDP SJS program combined with a program of bilateral support to the Office of the Prosecutor General (OPG). The bilateral support would also include a flexible mechanism to deal with emerging issues across the sector. Follow up design work was conducted in March 2006 to develop a detailed project design for assistance to the OPG. The mandatory AusAID peer review process concluded that additional work was required to bring the design to a point where it could be successfully implemented. Before these revisions could be made the May 2006 crisis occurred.

Since the crisis the justice sector has been highlighted as a requiring significant additional support. Numerous reports have pointed to a perceived culture of impunity in East Timor and lack of public trust in the formal mechanisms of justice as both a contributing factor to the crisis, and as a key element of any future strategy to bring stability to the country.

Taking these considerations on board, AusAID will reframe its program of assistance to the justice sector, noting the significant needs in all the justice institutions. The support should compliment AusAID's continuing significant support to the UNDP SJS program, estimated at A\$3 million this financial year.



### Development Focus

The proposed approach will only be successful if it integrates closely with the UNDP SJS program and existing GoET coordination mechanisms. The focus of the UNDP program has been constrained by the imperative to provide in-line judicial actors to ensure the justice system continues to operate. It has not been in a position to adopt a sustainable institutional strengthening focus. Designers should consider that Australia does not have a comparative technical advantage in a Civil Law system, but does have significant expertise in capacity building and institutional development. Discussions with UNDP have suggested that ‘back office’ functions are a possible key focus of Australia’s assistance, such as Human Resource Management, budget execution and organisational planning etc.

### Relationship Management

Recognising the importance of Australia’s obligations under the Paris Declaration on Donor Harmonisation AusAID wishes to strengthen its relationships with other development partners. AusAID will work with the Government of East Timor (GoET), UNDP and UNMIT to foster a practical and effective approach to delivering this bilateral program. All components should compliment, rather than duplicate activities being undertaken by other donors in the area, particularly the UNDP’s SJS program. GoET partners have indicated a broad level of support for Australian bilateral assistance in the justice sector. Given the support for this approach, it is AusAID’s intention to develop a basic program framework to present to GoET and other development partners in the initial consultations. The design team can then refine this model over the two week mission to reflect partner preferences.

### Rationalisation of Current Assistance

Up to this point AusAID has addressed the diverse needs across the sector through the Public Sector Capacity Development Program (PSCDP). This approach does not have a long term strategic focus and has the potential to distort the public sector management focus of PSCDP. AusAID also provides institutional strengthening support to the Ministry of Interior through TLPDP. Designers should consider the Australian Government funded activities across the law and justice sectors, with a view to rationalising these into a coherent framework for Australian cooperation in law and justice. (Including UNDP SJS program)

### Whole of Government Focus

AusAID is operating in a whole of (Australian) government context in East Timor, with a number of Australian government agencies working across various sectors. The program design should be sufficiently flexible to allow support to be given to relevant capacity building activities of other Australian Government organisations in the law and justice sector, including any future Australian assistance to policing in East Timor.

### Innovative methods of support

Designers should consider targeted capacity building support to activities not covered by the UNDP project, including to non-government organisations. This may include support to non-government organisations involved in: monitoring the justice system, providing civic education on legal rights and responsibilities, and supporting vulnerable groups who are the victims of (or accused of) crime.

### Addressing Cross Cutting Policy Issues

Designers should be mindful of key cross cutting policy issues including gender, poverty and peace and conflict. Of particular importance is the cross cutting theme of transparency and accountability, noting the key oversight role of many of the justice sector institutions.

### **3. Broad Design Principles**

Based on the above considerations the designers should be mindful of the following broad principles:

- identify GoET priorities, expectations and requirements
- Strengthening East Timor’s relevant national development strategies and associated operation frameworks (e.g. planning, budget and performance frameworks)
- Eliminate duplication of effort, and rationalise donor activities to make them as cost effective as possible;
- balance maximum flexibility and responsiveness with the need for maximum impact and sustainability;
- maximise linkages with existing Australian-funded programs, particularly TLPDP, Public Sector Capacity Development Program and the Australia-East Timor Ministry of Planning and Finance.

### **4. Scope**

#### Pre-departure preparation

Review all relevant documents including but not limited to the Sector Investment Program for Rights, Equity and Justice, the East Timor Justice Sector and Oversight Framework Document, and relevant program documentation for the UNDP Justice Program. See section 10 for a list of required reading.

#### Initial Mission Workshop

Prior to commencement of the mission the team leader and post will conduct a short workshop to develop a model for initial consultations. This will be used as the basis for initial consultations with GoET and development partners

#### Consultations

Undertake wide ranging consultations with a range of stakeholders in the law and justice sector to complete a situational analysis and recommend a design framework.

#### Activity formulation

The framework should cover the key areas of focus as identified in the background, above. The final activity document should address the following issues:

- considers a wide range of forms of aid, with a detailed justification for the proposed approach and full exposition of the rationale for the activity;
- assessing the feasibility, sustainability and viability of the preferred option(s) in detail by addressing the key design issues, including, where possible, the overall net benefits;
- Detailed discussion of the assumptions on which the preferred program approach is based, including discussion of issues which will be critical to the successful implementation of the program;
- management and performance evaluation framework;

- key elements/ components/ features and its links to GoET agencies/ programs/ coordination mechanisms, and other AusAID or donor funded programs;
- strategy for improving coordination and harmonisation with other donors in the sector, and identifying opportunities to leverage additional support for other donors;
- assessment of lessons learnt from similar approaches and more traditional interventions in the law and justice sector;
- address AusAID's requirements for practical sustainability, environmental management, gender focus and socio-economic analysis;
- considers Australia's comparative advantages/ disadvantages as a donor;
- identifies key risks and sustainability issues;
- incorporates/facilitates a whole of Australian government approach where practical;
- sets out next steps towards the design and/or implementation of Australian Government support in the sector.

#### Reporting

	<b>Report</b>	<b>Responsibility</b>	<b>Submission Date</b>
1	Aide memoir	Hampshire	14 November 2006
2	Draft sectoral report	Downing	14 November
3	Draft monitoring and evaluation framework	Rady	14 November 2006
4	Draft Program Framework (incorporating items 2 and 3 above)	Hampshire	12 December 2006
5	Final Program Framework (including amended)	Hampshire/ Downing/ Rady	Early February – as agreed with AusAID
6	Draft Scope of Services	Hampshire	Early February - as agreed with AusAID
7	Final Scope of Services	Hampshire	Mid February - as agreed with AusAID

## A 2 – Design mission itinerary

Schedule of Meetings: Law and Justice Program Design Mission				
31 October to 14 November 2006				
Hour	Activity	Participant	Location	Remarks
Wednesday, 1 November 2006				
8:30 - 9:30	Meeting with Post	- Robin Scott Charlton	Embassy	conducted
		- Donna-Jean Nicholson		
		- Antonio da Conceicao		
8:00 - 10:00	Meeting with AusAID Bilaterals	TLPDP - Police Development Program	Embassy	conducted
		Capacity Development Program		
10:00 - 11:30	GoA Roundtable	AFP Counsellor - Kunhke	Embassy	conducted
		AFP Capacity Building - Duthie		
		DFAT Counsellor - Hall		
3:00 PM	Meeting with:	Margareth Towmey		Conducted
4:00 PM	Meeting with:	Haddon Wright		Conducted
Thursday, 2/11/06 - Official Holiday				
9:00 - 12:00	Design Team Workshop	Jonathon Hampshire	Embassy	
		Rowan Downing		
		Donna-Jean Nicholson		
		Paul Keogh		
Friday, 3/11/06				
11:00-12:00	Council of Coordination	- Claudio Ximenes - CoA	MoJ's Office	Conducted
		- Domingos Sarmiento - MoJ		
		- Ivo Valente		
3:00 - 4:00	Meeting with:	The Asia Foundation	TAF's Office	Confirmed
Monday, 6 November 2006				
9:00 - 10:00	Prosecution Service (1/2)	Prosecutor General	PG's Office	Conducted
		Deputy Prosecutor General		
10:00 - 12:00	Workshop - Prosecution Service	Head of Admin Unit	PG Compound	Conducted

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Schedule of Meetings: Law and Justice Program Design Mission				
31 October to 14 November 2006				
Hour	Activity	Participant	Location	Remarks
3:00 - 4:30	Donor roundtable	USAID	Embassy	
		Irish		
		Portugal		
		Brazil		
		UNDP		
		New Zealand		
		US Embassy		
		World Bank		
		Embassy of Japan		
		UNMIT		
Tuesday, 7 November 2006				
9:00 - 10:00	Ministry of Justice	Minister of Justice	MoJ' Office	Conducted
Wednesday, 8 November 2006				
9:00 - 10:00	Court of Appeals	Claudio Ximenes	CoA	Conducted
2:00 - 3:00	Meeting with UNDP	Akbar, Ana Graca, Noura	UNDP	
Thursday, 9 November 2006				
11:00 - 12:00	Provedore	Sebastiao Ximenes - Provedor		
Friday, 10 November 2006				
9:00 - 10:00	Ministry of Interior	Minister of Interior	Mol Office	Cancelled
		Vice-Minister of Interior		
Monday, 13 November 2006				
2:30 - 3:30	Aide Memoire presentation to:	Permanent Secretary	MoJ	
		President of the CoA		
		Rep Prosecutor General		

### **A 3 - Profile of internationally supported activity in the sector**

When assessing future options for Australian support the design team consulted with all major donors, multilateral agencies and NGOs in the justice sector. The following summarises the major initiatives that are currently underway.

#### **UNDP Strengthening the Justice System Project**

This multi-donor, broad ranging project commenced in July 2003 to strengthen policy, legislation, human resource and system development across the three pillars of the Justice System (Ministry of Justice – including the Judicial Training Centre, Public Defenders Office and the Prison sector - the Courts and the Office of the Prosecutor General). Donors include Australia, Brazil, Belgium, Denmark, Ireland, Norway and Portugal.

UNDP recently undertook a comprehensive re-design of the SJSP to align with new priorities and take account of the planned withdrawal of UNOTIL in May 2006. The project budget is US\$10.3 million over three years (2006- 2009). Despite the very broad scope of the project design, the program currently focuses on the following three key areas:

- International Judicial Placements: The core function of the SJSP to date has been the placement of international court actors to allow the continued functioning of the courts, public defenders office and the OPG. The program currently has, or is in the process of recruiting, the following international judicial actors:
  - 7 judges (3 for the Court of Appeal and 4 for the district courts);
  - 4 prosecutors
  - 4 public defenders
  - 4 to 6 court and prosecution clerks
  - 3 translators and interpreters
- Judicial Training Centre: A significant achievement of the UNDP SJSP has been the establishment of the Judicial Training Centre (JTC). The JTC provides a standardised post graduate professional training program for judges, prosecutors and public defenders. The first 27 students graduated in December 2005, and are now working in a probationary role alongside international Judges and prosecutors. The JTC plans to include private lawyers in future intakes.
- Case Management IT System: Development of a computer based management system to allow case tracking across the key institutions in the justice sector.

Coordination Mechanism: The Council of Coordination (CoC) consisting of the Minister of Justice, President of the Superior Council of the Judiciary and the Prosecutor General is responsible for project oversight and donor coordination. The project's Chief Technical Adviser provides secretariat services to this body. The CoC has very strong ownership of the project which is currently considered by GoTL as the primary mechanism for coordinating and delivering assistance to the sector. This arrangement may be challenged with the arrival of the UNMIT Administration of Justice Group (see UNMIT section below).

Donor appeal for additional financing: In September 2006, UNDP made an appeal for additional funds from donor countries to meet the demands placed on the justice system as a result of the recent crisis. These needs were identified in the *Joint Needs Assessment (June 2006)*, and will cover the following key areas:



- \$1.7m for the immediate deployment of 3 extra judges, 3 extra prosecutors, 2 extra public defenders, 1 Prison Security Expert plus matching numbers of clerks, interpreters and logistic support, for up to one year – all in addition to existing UNDP advisers
- \$0.5m for replacement of looted equipment from the Ministry of Justice, Court of Appeals and Office of the Prosecutor-General buildings in Dili
- \$1.2m for urgent upgrading of Prisons Service holding facilities

GoA has pledged A\$2.5 million to help meet these needs.

#### Monitoring and Evaluation Framework

The redesign of the UNDP SJSP did not include any substantive evaluation of past performance, and instead provided an ‘in-house’ assessment of progress. In response to requests from donors, UNDP will hire a monitoring and evaluation specialist to develop performance indicators, both at an individual advisor level, and to measure performance of the sector more broadly.

#### **United Nations Mission in Timor-Leste (UNMIT)**

As UNMIT scales-up its operations in Timor-Leste, it will have a large role in all aspects of GoTL administrative functioning. It will also take a central role in coordinating development activities across all sectors, through the following instruments:

- UNPOL - A large international police presence (approx 1800) which will be formally responsible for executive policing and the reconstitution/ capacity building of the PNTL.
- Democratic Governance Unit – to ensure a strong link between UNMIT and donors on governance issues, and to advise on democratic and institutional developments in Timor-Leste, such as functioning of the organs of sovereignty.
- Administration of Justice Unit (AJU) - headed by a Senior Judicial Affairs Officer. The AJU will take a lead role in coordinating development initiatives in the justice sector. It will include legal affairs officers for strategic planning, gender mainstreaming and public information.
- Human Rights and Transitional Justice Unit – will provide support for strengthening the Timorese institutional and societal capacity for the monitoring, promotion and protection of human rights. The unit will establish a Serious Crimes Unit within the Office of the Prosecutor General to respond to the Commission of Inquiry report; and will strengthen mechanisms for human rights including the Office of Provedor and other human rights based NGOs.
- Security Sector Support Unit – Coordinating PNTL and F-FDTL reconstitution and capacity development.
- Political Affairs Unit - Process of community and political reconciliation through political good offices.
- Public Information and Outreach Unit – to implement a strategic communications campaign designed to explain the Mission’s work, provide an objective and reliable source of information for the Timorese population, build local media capacities and distribution capabilities, support voter education, promote reconciliation and counter misinformation.

- Senior Gender Advisor advising the mission on gender related issues of concern to the population.
- Electoral Unit – to oversee preparation for the elections in May 2007
- Economic Development Support Unit - responsible for advising UNMIT on support to the Government on poverty reduction and economic growth policies and strategies, in order to promote the goals of the National Development Plan.
- HIV/AIDS advisor - to assist with the mainstreaming of HIV/AIDS programming throughout all components, policies and programmes of the Mission

While UNMIT has been deployed since August 2006, the mission has not yet established any of the civilian components outlined above. As the units are established UNMIT will have to negotiate an overall agreement with GoTL on the functions of these bodies and the extent of their mandate. Until these agreements have been negotiated, it will remain unclear as to how the mission will operate alongside the sovereign government structures of Timor-Leste.

Other multi lateral agency initiatives: These include activities being implemented by such agencies as UNICEF, UNIFEM and UNFPA which specifically support children's and women's rights. The World Bank is providing support to the Procurator for anti-corruption initiatives and IT support and training in the Office of the Inspector General.

### **Other Government of Australia Programs**

- Timor-Leste Police Development Program (TLPDP) was a comprehensive A\$32 million program to improve almost all aspects of the capacity of the Timor-Leste Police Force including community policing, investigations, operations, training, management, administrative systems, processes and planning. This project was jointly administered by and Australian Contractor and the Australian Federal Police. Since the crisis and the dissolution of the PNTL, the AFP component has ceased operations. The contractor implemented component is now operating in the Ministry of Interior with four advisors in: human resources, financial management,
- There are clearly some important linkages to be developed between this program and any work undertaken in supporting the functions of the Prosecution Service and the courts.
- Public Sector Capacity Development Project is providing targeted support for public sector capacity development. As identified above, advisory support to the Justice Sector is currently being provided to:
  - the National Directorate of Land and Property (4 Advisers),
  - the Council of Ministers and
  - the Office of the Prosecutor General (3 Advisers).
  - A strategic planning advisor to operate across the Office of the Prosecutor General and the Office of the Inspector General.
- The Ministry of Planning & Finance Capacity Building Project commenced in 2003 and was designed to enhance the capacity of the Government Budget Office and Revenue Service to achieve and sustain prudent financial outcomes. It is currently in phase 2 (July 2005 up to December 2006) with the scope being expanded to give greater emphasis to institutional capacity building of core Ministry of Planning and Finance functions and to address problems of budget execution within line Ministries. A World Bank led joint donor Public Finance

Management Capacity Building Program has also been designed, and is expected to take over the work of the bi-lateral project (as well as covering new areas of required support) some time in early 2007. There is scope for developing linkages between this project and the program of support that is to be provided to Justice Sector institutions.

- The Australian Department of Immigration and Multicultural Affairs (DIMIA) is providing A\$1.7m to the International Organisation for Migration to deliver a 2 year project which will enhance Timor-Leste's migration management capacity. The project is working with the Department of Migration, the Ministry of Interior and also with the Civil Registry in the Ministry of Justice.

### **Other donors and civil society initiatives**

There are a host of other donor programs and projects that have operated in the sector over the past four years, including:

- Portugal has focused its assistance on the education and justice sectors. Support is primarily through the provision of language training and Advisers. As identified above, Portugal is also a key supporter of the UNDP Strengthening the Justice System Program, and in 2005 agreement was reached between the Governments of Portugal and Timor-Leste to provide bilateral support to the establishment of a law faculty at the University of Dili.
- USAID has had a long involvement with the Justice sector but outside the UNDP program. Technical advice in legal drafting was provided to the Land and Property office for the development of land titling legislation. USAID will consider providing additional assistance to the Land and Property Office once this legislation has been passed. The program also has a flexible funding mechanism to respond to specific requests to strengthen the finance and administrative capacity of the justice sector and compliment other donor initiatives. The current focus of the program is on providing financial management training and mentoring the Ministry of Justice, Public Defenders Office, Provedor and Prosecutor General. Additional funding for the justice sector may also be provided through the Millennium Challenge Account. NGOs such as the Asia Foundation and the Judicial Systems Monitoring Program also receive funding through USAID's Democracy Assistance Program.
- Advocats sans Frontiers (ASF) provide support to the Bar Association and dissemination of legal information (with EC funding support).
- Asia Foundation: Funded largely by USDAID, the Asia Foundation provides support to strengthen the accountability and transparency of judicial system and programs to support broad based access to justice
- A number of human rights and advocacy programs are run by local NGOs with some external support.

### **Summary of Support by Institution**

#### Ministry of Justice

- Portugal: legal advisors
- USAID: financial management training and mentoring

#### Office of the Prosecutor General

- AusAID: Two technical support advisers through PSCDP, and currently recruiting a senior management advisor to the Prosecutor General
- UNDP: Prosecutors and Court Clerks

#### Public Defenders Office

- UNDP: Two international defenders through Strengthening the Justice System Program, with an additional two positions currently being filled
- USAID: Financial management training and mentoring

#### Office of the Provedor

- UNMIT: two long term legal advisors (previously funded by UNOTIL)
- The World Bank: US\$1 million to develop anti-corruption legislation and to support the anti-corruption functions of the office work of the Office of the Provedor.
- USAID: Administrative support for preparation of budgets, improved handling procedures and developing administrative procedures. They also receive the UNAID financial management training.
- NZAID: New office facilities
- UNDP: Has designed a human rights capacity development program, although this has not commenced due to a lack of funding.

#### Office of the Inspector General

- World Bank: IT support and development of an internet portal, as well as translation services
- UNDP: Long term Advisor support
- JICA: Long term Advisor support
- AusAID: Strategic planner through CDP to be engaged in January 2007.

#### Courts

- UNDP: International judges, including the Head of the Court of Appeal. UNDP has also provided a number of court clerks.

#### Land and Property Office

AusAID: Planned placement of two advisors through PSCDP

#### Prison Services

- UNDP: planned \$1.2 million prison strengthening program (Funded by GoA)
- UNFPA: Prison Guard training program
- UNDP: Is currently in the process of designing
  - Court of Appeal - offers accepted by 2 judges; remaining post in process.
  - District Court – offers accepted by 2 judges, the 3rd post in process and the 4th is being
  - identified with joint Brazil Cooperation and UNDP.
  - Public Defenders – offers accepted by 2 public defenders; the other 2 are being identified

- with joint Brazil Cooperation and UNDP.
- Prosecutors – 1 post is already filled; offers accepted by 2 prosecutors and 2 others are
- being identified with joint Brazil cooperation and UNDP.
- Court Clerks – 4 posts are being identified with Portuguese Cooperation and UNDP.
- Prosecution Clerks – 2 posts are filled with Portuguese Cooperation and UNDP.

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## A 4 – Indicative resource and cost table

Component	Indicative Inputs	Unit	Unit Cost \$AUD '000	Quantity	Total \$AUD '000
<b>Component 1</b>	<b>Personnel</b>				
Core	Senior Management & Corp. Services Adviser - MOJ	Month	27.00	60.00	1,620.00
Institutions	Senior Management & Corp. Services Adviser - OPG	Month	27.00	60.00	1,620.00
	Senior Management & Corp Services Adviser - Courts	Month	27.00	60.00	1,620.00
	Financial Management & Budget Execution	Month	25.00	57.00	1,425.00
	Human Resource Management & Devt Adviser	Month	25.00	57.00	1,425.00
	Short/medium term specialist advisers (unallocated)	Month	35.00	44.00	1,540.00
	<b>Procurement</b>				0.00
	Minor office equipment - per institution	Lump sum	200.00	3.00	600.00
	Vehicles - shared work use	Car	50.00	4.00	200.00
	<b>Training</b>				0.00
	Various - to be determined	Lump sum	500.00	1.00	500.00
	<b>Other</b>				0.00
	Vehicle running costs/maintenance	Per car	50.00	4.00	200.00
	Office supplies	Per institution	100.00	3.00	300.00
	Translation and interpretation	Lump sum	200.00	1.00	200.00
	Local TA - e.g. for IT and admin. support	Lump sum	300.00	1.00	300.00
	Flexible fund - unallocated	Lump sum	2,500.00	1.00	2,500.00
<b>Sub-Total</b>					<b>14,050.00</b>
<b>Component 2</b>	<b>Other</b>				
Civil Society	Flexible fund for Civil Society/NGO Initiatives - unallocated	Lump sum	6,500.00	1.00	6,500.00
Desmand for Justice					
<b>Sub-Total</b>					<b>6,500.00</b>
<b>Component 3</b>	<b>Personnel</b>				
Coordination & Management	Team Coordinator and Facility Manager	Month	28.00	60.00	1,680.00
	Finance & Administration Manager	Month	22.00	60.00	1,320.00
	General Office Manager (locally engaged)	Month	6.00	60.00	360.00
	Finance & Procurement Officer (locally engaged)	Month	5.00	60.00	300.00
	Project Officer - Call for Proposals (locally engaged)	Month	5.00	60.00	300.00
	M&E Specialist (Short-term)	Month	35.00	8.00	280.00
	<b>Procurement</b>				0.00
	Vehicles - shared work use	Vehicle	50.00	2.00	100.00
	Office equipment	Lump sum	300.00	1.00	300.00
	<b>Training</b>				0.00
	Various - to be determined	Lump sum	200.00	1.00	200.00
	<b>Other</b>				0.00
	Vehicle running costs/maintenance	Per car	50.00	2.00	100.00
	Office supplies & utilities	Per year	25.00	5.00	125.00
	Translation and interpretation	Per year	25.00	5.00	125.00
	Drivers/security/general admin	Per year	25.00	5.00	125.00
	Office rental	Per year	40.00	5.00	200.00
	Flexible fund - unallocated (e.g. studies/surveys)	Lump sum	400.00	1.00	400.00
<b>Sub-Total</b>					<b>5,915.00</b>
<b>Other</b>					
Senior Justice Sector Adviser	Senior Justice Sector Adviser	Month	30.00	50.00	1,500.00
& External Monitoring	Independent specialists for joint-donor reviews	Per year	100.00	5.00	500.00
<b>Sub-Total</b>					<b>2,000.00</b>
<b>Total</b>					<b>28,465.00</b>

	A\$ '000	%
<b>Personnel</b>	14,990.00	53
<b>Procurement</b>	1,200.00	4
<b>Training</b>	700.00	2
<b>Other</b>	11,575.00	41
<b>Total</b>	<b>28,465.00</b>	<b>100</b>
Of which unallocated - flexible funds	11,440.00	



## **A 5 – Monitoring & Evaluation Working Paper**

*See overpage*

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## **East Timor Justice and Oversight M&E Arrangements**

### **Working Paper**

#### **Introduction**

These suggested arrangements are based on the following principles:

- There should be an appropriate balance between meeting accountability and learning information needs of all the key stakeholders
- Where possible, the approach should be to work through and strengthen existing partner systems
- Where enhancements to those existing partner systems are required, these enhancements should be minimal, relatively simple, progressively introduced and cost effective
- They should seek to harmonise with other donors and eventually result in a single government system that adequately (if not fully) meets all stakeholder needs
- They should be periodically reviewed, and improved during implementation, probably annually to be consistent with the evolving design concept embedded in the Annual Planning process

It is widely accepted that there are two primary <sup>24</sup> purposes of or needs to be met by M&E arrangements, i.e., accountability and learning.

- Accountability needs are met by providing evidence of:
  1. Funds being spent as agreed on high priority inputs/outputs
  2. These “outputs”, the goods or services delivered, being of good quality (from the perspective of both the delivery partners and the “beneficiaries”)
  3. These outputs contribute to the achievement of significant change/results, i.e., adequate evidence “effectiveness”
- Learning needs are met by providing evidence of:
  4. Continuous improvement of the activity’s effectiveness during implementation by providing valued and timely information to decision makers
  5. More in-depth, reflective and evaluative type work to distil lessons that influence future policy, strategy and/or activity design

The Australian Government’s White Paper (2006) and the Paris Declaration on Aid Effectiveness (2005) have significant implications for M&E arrangements for all future activities. That is, it is necessary to demonstrate, inter alia, that activities are:

- achieving results (adequate effectiveness)
- working through and building partner government systems (alignment)
- working in partnership with other key donors (harmonisation)
- adequately effective in promoting gender equality and anti-corruption (cross cutting issues)

#### **Exiting Partner Government and other Partner M&E Systems**

##### Government of Timor Leste M&E Systems

M&E systems in East Timor are embryonic in nature and with a strong focus on the budget process. At a macro level, through the Consolidated Support Fund, the GoTL has established a Results Matrix of key areas of reform or priority initiatives that are to be implemented and progress reported.

- This process is reviewed six-monthly by a World Bank led multi-donor Supervisory Mission.

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<sup>24</sup> AusAID’s Guidance M&E Arrangements & DAC Guidance

- As part of this process the GoTL prepares a six-monthly sector progress report.
- The format of this report covers: expected outputs and outcomes for the financial year, performance indicators and targets, expected outcomes for the following financial year, agency and donor responsible and then a record of expected progressive achievements by quarter over the next year.
- There are 11 key agreed outcomes for the Justice Sector, in the latest Matrix. For example: HRD and appointment of the first cohort of judges, prosecutors and defenders; adherence to civil and criminal code by all justice sector institutions; improved understanding of proceedings by justice actors and the public; clear case processing and management systems etc. Some of these indicators are measurable, and some are not.

As the provision of in-line technical assistance/advisers is such an important part of the donor assistance to East Timor, the GoTL is in the process of developing an Adviser Monitoring System for assessing the performance of these advisers. This is being led by the Capacity Development Coordination Unit (CDCU).

### **UNDP M&E Systems**

The UNDP, currently the main provider of assistance to the Justice Sector, has a well documented M&E system<sup>25</sup>. This system requires: (i) a focus on assessing progress towards outcomes, (ii) analysis of factors contributing to or impeding the achievement of outcomes, (iii) an analysis of UNDP's contribution to outcomes through the outputs delivered, (iv) an assessment of the partnership strategy, and (v) distilling lessons. However, a recent semi-annual progress report falls a little short of its own Agency's requirements and there is little evidence of significant capacity building of key counterpart systems and personnel. The UNDP is in the process of recruiting an M&E Specialist, for at least six-months but possibly up to two and a half years. This person, while required to provide some support to counterparts is primarily envisaged to establish a robust M&E system for UNDP. Unless the Terms of Reference<sup>26</sup> for this position can be amended to include helping the GoTL to develop their own M&E system across the Justice Sector and the duration of the assignment confirmed to be for two and a half years or more, then a significant gap exists in building the M&E systems and capacity in this vital area of sector management.

### **Details of the M&E Arrangements**

#### **The Three Levels of M&E Arrangements for this Activity**

Reflecting the reality that there are a number of key stakeholders involved in this activity, the M&E arrangements can be discussed at three levels:

1. *Sector Wide Progress* – all stakeholders need reliable but basic information about the Justice Sector, inter alia, its current status as represented by key indicators and other more qualitative/descriptive information, changes occurring (trends) overtime in those key indicators, what all players are contributing (in more than dollar terms) in the sector, and more evaluative or “research” type information that is needed to indicate what the people think of the situation, what is working, what is not working and why, and so where do we need to focus for improved effectiveness. This “level” needs to be assistance to the GoTL for the building of a single, pragmatic and sustainable M&E system across the sector that can provide all stakeholders with “big-picture” progress information. This will be a long-term endeavour.
2. *Justice Sector Institutional Performance* – a precondition for sector wide progress is the improved performance of the individual Justice Sector Institutions. It is necessary to assess progress with improving corporate management and administrative arrangements, e.g., budget execution rates. All the key stakeholders need to know, inter alia, what is the state

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<sup>25</sup> UNDP, “Handbook on Monitoring and Evaluating for Results”, Evaluation Office 2002

<sup>26</sup> UNDP, Terms of Reference: Monitoring and Evaluation Specialist for the Justice Program, 2006

of key indicators of institutional corporate and management performance, what corporate and other administrative improvements are being made in Justice Sector institutions and other partners, the likely sustainability of those changes/results, what we have learnt, what follow up or further support is needed by all players.

3. *Facility Performance and evidence of the contribution of individual Facility funded “project” contribution to enhanced institutional performance* – in the interest of efficient and effective implementation by a key player, the Facility, we need information about
- efficiency of operations*, such as, budget management, good practice participatory management, supporting high priority initiatives, appropriate feasibility and design assessments of individual “project” proposals, appropriate M&E of individual Facility funded projects, good governance, establishment and maintenance of good records and systems etc.
  - effectiveness of operations*, such as, the results achieved of individual projects supported, the likely sustainability of those results, what we have learnt, what follow up support is needed, etc. To interpret this contribution it will also be necessary to understand the contribution of all other players in this particular area of focus. Initially this information will need to meet Australian Government standards. However, assuming for the moment greater integration with GoTL systems and control of the Facility funding is a desirable objective, then overtime these arrangements could morph into something more consistent with enhanced GoTL systems.

### **LogFrame**

The M&E arrangements for the Facility, consistent with the principles mentioned above, needs to be driven by the logic of the Facility’s design. A proposed Framework for Australian Government Support, which provides an outline of the logic of the intervention/ Facility, is in Annex ?. However, considerable additional work will need to be done on detailing this Framework during implementation, through a combination of the First Annual Plan and subsequent Annual Plans, consistent with the evolving design of this activity/Facility.

These two alternative presentations, of the three levels of the M&E arrangements and the more conventional LogFrame M&E presentation, come together as follows.

- *Sector wide progress information will be the equivalent of the Purpose level M&E for the Facility.* The Facility and other partners will need to assist with building the capacity of the Justice institutions and other players to provide essential information for assessing the ultimate results achieved in terms of access to justice.
- *Justice Sector Institutional Performance is M&E at the Component Objective level – primarily for Components 1 and 2.* As this level is about building institutional capacity and if working through GoTL systems is a desirable and realistic medium-term objective, then it follows that it will be necessary to gradually build the “management information/ performance assessment systems” of the partner GoTL institutions (as an integral aspect of the overall sector wide M&E arrangements).
- *Facility Performance and evidence of the effective contribution of individual Facility funded “project” contribution to enhanced institutional performance is an aspect of M&E at component objective and below.* Component 3 is explicitly about Facility’s efficiency of management and the Components for supporting “Core Justice Sector Institutions” and “Government and Civil Society Oversight and Accountability Mechanisms/Organisations” are clearly the bulk of what the Facility will be delivering and we need some analysis of the contribution of the individual projects to these changes.

In short, the notion of three levels of M&E arrangements and the conventional LogFrame M&E aspects are just different ways of looking at the overall M&E arrangements needed.

See Table “B” for an elaboration on indicative information needs, how this will be collected, how frequently, who will be involved, how this information will be used and by whom and what are the resource implications.

### **Baseline Information Needs**

It is important to gain a clear picture of the current situation so as to be able to compare progress overtime with this “starting point”. However, this information is also important for indicating priority areas for future support. Hence, while some information exists through UNDP reporting, it is suggested that this will need to be supplemented by more qualitative information about values, attitudes, beliefs, perceptions, needs and priorities. This is not intended to be a significant academic exercise, rather a pragmatic source of qualitative information that helps interpret the statistics. The information will need to be collected periodically (say every two years) and revised based on demonstrated utility.

Key statistics to be collected and analysed include, inter alia:

- *sector wide performance*, e.g., case backlog, crimes by category, numbers in prisons by gender, numbers of corruption cases, established CFP reform agenda and possibly recent progress (with data disaggregated by gender, age and other categories) etc
- *government institutional capacity information*, e.g., budget, staff by gender, in-line advisers, qualifications of staff, years of experience etc
- *civil society capacity*, e.g., names of organisations, profiles, objectives, resources, receiving assistance for what, demonstrated ability etc

### **Cross Cutting and Policy Requirements**

In the interests of development effectiveness, but now an explicit requirement stemming from the Australian White Paper, it is necessary that the Facility be able to analyse the context and track progress against key policy/good practice development practice, inter alia:

- gender equality
- anti-corruption
- extent to which the activity funding is untied
- extent to which partner systems are used or worked through
- proportion of assistance delivered as technical assistance (TA)

In short, it will be important that eventual reporting from the Facility address these policy imperatives.

### **Longer Term Research or Evaluative Work**

Understanding the issues and constraints affecting improved delivery of justice to all and the actual impacts occurring (some planned, some unplanned, some desirable and some undesirable) may require some more in-depth research or evaluative work. For example, are women and other vulnerable/disadvantaged groups gaining equitable access to justice and if not why not? Is the initiative to give prison inmates vocational skills working, if not why not and how can this program be improved? What is the level of engagement between Government and Civil Society and what are the constraints? What are the public’s perceptions of the Justice Sector, their priorities for improvement and how do these change over time? Some of the key evaluative questions will require minor studies and yet others may require the establishment of longitudinal data.

### **Existing Decision Making Mechanisms**

The GoTL has established a CoC, with representatives of Minister for Justice, Chief Justice and Prosecutor General, to assist with coordination of the key Justice Sector institutions. This forum has played a very valuable role in coordinating the three key institutions, however, the Justice Sector is broader than this forum and this Facility will be working with a broader array of stakeholders. Hence, it is proposed to involve a broader group of stakeholders in the paramount “Advisory” body for this Facility; which is proposed to be a sub-group of the Justice Sector Working Group.

### **Formative Evaluation/Mid Term Review**

Due to the evolving nature of this Facility's design and our overall assistance to this sector, it is proposed that a Mid Term Review/Formative Evaluation be held just after the 2.5-year point, so as to be able to significantly influence and take advantage of the next Semi-Annual Plan to be able to revise the approach if so required. It will have a broad mandate to assess the rationale, the appropriateness of the objectives and design, the professionalism of the contractor, review evidence of results achieved, likely sustainability of those results and distil key lessons.

### **Databases and IT Solutions**

It is not envisaged that much emphasis will be placed on this aspect; however, the following opportunities exist and will warrant further consideration during implementation.

- *Case Management System* – it is already proposed that the newly established manual Case Management System be made electronic. At the moment this is being managed by UNDP. The Facility will need to monitor progress and be available to assist if needed.
- *A Public Database of Key Records and Sector Data* - in the interest of public transparency, accountability to the wider population and encouraging involvement with civil society, it is suggested that a public website be established that makes available key statistics, important studies, key international references, important international website linkages and progress reports. While it would be highly desirable that this be operated by GoTL, if priorities/funding constraints preclude this situation then possibly this might be initially either a Facility or civil society operated website. This might be a good medium-term activity of the civil society community.
- *In-house IT systems for Key Organisations* – this might be an option for support if assessed to be feasible on an individual proposal basis.

### **Justice Sector Adviser**

To provide ongoing skilled peer support for the Facility and its partners, it is proposed that a Justice Sector Adviser will be appointed. This person will be employed by AusAID under the administered budget. This person will be considered as the Australian Government's most senior person responsible for the Justice Sector program in East Timor and will report directly to the AusAID Counsellor in Dili. This Adviser will be available for:

- comment on the Semi-Annual Review and Plan reports
- ongoing quality assurance (QA) comment on the most significant deliverables in a particular year (decided at the time of the Semi-Annual Plans)
- ad hoc comment and advice to Post

### **Resources Required**


As indicated in Table "C" it is estimated that a total budget of \$1.5 million will be required for the M&E arrangements. Table "C" can be incorporated into the final indicative cost schedules and is provided to facilitate appropriate budgeting for this important part of Facility and Sector wide management.

### **Contractor Performance Assessment**

AusAID has an existing contractor performance assessment system. It is suggested that ensure informed decisions are made about the Facility manager's performance, the contractor be required to provide the following information through the Semi-Annual Report. Evidence of:

- good financial management (accurate records, accurate forward budgetary planning, proactive in identifying significant variations),



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- good personnel management (a robust adviser performance assessment system, efficient mobilisation and briefing of consultants),
  - good relations with key stakeholders (feedback systematically sort from key stakeholders and acted on, good personal relations with key individuals, open in communicating problems, clear and concise but adequate reporting),
  - good practice participatory management (consistently inclusive approach with key stakeholders),
  - supporting high priority and feasible initiatives (evidence of consistently following selection criteria and rejecting low priority or unfeasible proposals, proactive in developing important potential initiatives, adequately designed proposals approved),
  - appropriate M&E of individual Facility funded projects (systematic monitoring and evaluating activities, strategic evaluation program),
  - good governance & QA processes established & followed (key coordinating meetings held with important agendas and showing evidence of continuous improvement of the Facility's operation, important QA processes in place and adhered to), and
  - establishment and maintenance of good records and IT systems (accurate and comprehensive records maintained).

This would be assessed in detail probably twice in the life of the activity through a combined performance and financial audit. One of those occasions will be just prior to the MTR.

### **Reporting**

As discussed above it should be our intention to use and build on existing GoTL and other players' reports. However, this is only likely to be relevant at the sector wide level and based on the current situation it will be a while before this reporting will not require some supplementary effort by the Facility. Hence for the foreseeable future the following is suggested to be required. See Table "A" Suggested Reporting Requirements.

### **An M&E Plan**

As part of the formulation of the First Annual Plan the contractor would prepare an M&E Plan. This Plan would cover:

- an "evaluability" assessment of the Facility's design/LogFrame
- reassessing the information required, how it would be collected, when/frequency, by whom, for whom and at what cost
- ensuring it meets the priority needs of all stakeholders at all levels of the LogFrame
- how all information will be analysed, managed to influence decisions and stored
- ensuring an adequate balance between meeting accountability and learning needs
- capacity building for the counterparts and their systems
- key policy imperatives
- more detailed specification of reporting needs/formats
- allowance for periodic review of the overall M&E arrangements

### **Activity Completion Report and other Completion Activities**

A standard Activity Completion Report will be required no less than three months before completion and because of the significance of this activity an Independent Completion Report will also be required to be completed at least a month before the completion date. A completion workshop, involving all key players, will be required to assess progress and distil key lessons, even if this activity is being extended into another phase. This workshop should be held at an appropriate time to influence the design of the future phase.

Table “A” Suggested Reporting Requirements

Report Title	User/Purpose	Content	Frequency
<b>Reports for Sector Wide Discussion</b>			
First Annual Plan	AusAID and all key Government and Partner Donor Stakeholders	<ul style="list-style-type: none"> <li>Detailed design document (Annual Plan Format supplemented as agreed with AusAID)</li> <li>Clear output and input details over first year with detailed indicative outputs and budget over the balance of the activity period</li> </ul>	Only one delivered with say 3-6 months of commencing (will be influenced by actual start up date and need to have some funds for immediate expenditure before approval of this report)
Semi-Annual Plan and Report	AusAID and all key Government and Donor stakeholders. Discussed at 6 monthly sector meeting	<ul style="list-style-type: none"> <li>Annual Plan format used because of rapidly evolving nature of sector and our needed response</li> <li>progress against Semi-Annual Plan outputs</li> <li>key issues, problems and suggested or implemented solutions (evidence of continuous improvement)</li> <li>progressive budget expenditure and payment requests/acquittals</li> <li>significant planned events for next month</li> </ul>	Twice a year, with one due at the end of March (?). What about GoTL budget year implications
Activity Completion Report	AusAID and all key Government and Partner Donor stakeholders	<ul style="list-style-type: none"> <li>Standard ACR format</li> </ul>	Lodged within 3 months of completion and to be subject to an ICR within the final 3 months
<b>Internal AusAID Reports</b>			
Monthly Exception Report by email	Primarily to update AusAID on key issues	<ul style="list-style-type: none"> <li>key issues, problems and suggested solutions</li> <li>significant planned events for next month</li> <li>rarely more than 2-3 pages</li> </ul>	<p>Monthly and provided within first two working days of the following month</p> <p>Other more urgent reports may be provided by phone or face-to-face or by email depending on the situation. Generally accompanied by a meeting</p>
SMT	AusAID	<ul style="list-style-type: none"> <li>Standard format</li> </ul>	Once a year (April-May)
Adviser Reports	Primarily for AusAID, though could be used as a resource in multi-stakeholder reviews	<ul style="list-style-type: none"> <li>QA of key deliverables</li> <li>Topic specific comments or analysis key issues, problems and suggested solutions</li> <li>significant planned events for next month</li> <li>rarely more than 2-3 pages</li> </ul>	Adviser Monthly, 2 working days after Facility’s Exception Report

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**Table “B” Indicative M&E Information Needs**

Facility Logic Level	Indicative Information/ Indicators (quantitative and qualitative information needed for both accountability and learning)	Means of Verification/ Source (existing or enhanced partner systems where possible)	Frequency (pragmatic and minimal)	Providers /Users/ Existing Management (decision making) System
<b>Purpose/Justice Sector Wide Progress/ Impacts</b>	<p>Changes in the sector context, i.e., core crime statistics, e.g.:</p> <ul style="list-style-type: none"> <li>• crime rates for key categories</li> <li>• average waiting period</li> <li>• court backlog figures</li> <li>• detainees released after vocational training</li> <li>• % of total budget to Justice</li> <li>• % HIV/AIDS in prisoners</li> <li>• % population feeling safe</li> </ul> <p>Progress in the Consolidated Support Program matrix agenda items.</p> <p>Some qualitative analysis of the Facility’s contribution to these bigger picture changes.</p> <p>Statistics should be disaggregated by gender and other relevant ways</p> <p>Population’s perceptions should be obtained as feedback from “users”.</p> <p>“Research” on key Justice Sector issues/ questions, understanding changes at this level, investigating key positive, negative, planned and unplanned impacts.</p> <p>Baseline data collected/study</p>	<p>Enhanced/supported GoTL systems providing key data. Possibly making available via a sector “website” at some point.</p> <p>Consolidated Support Fund matrix and 6-monthly supervisory missions.</p> <p>Supplementary donor funded surveys etc in early years.</p> <p>Evaluative and long term research work into understanding key Justice Sector issues/questions/ impacts/needs/improving effectiveness.</p>	<p>Core crime statistics accepted good practice, i.e., semi-annually/ annually.</p> <p>A suggested new standard “state of the sector” survey once a year to complement the core statistics with qualitative interpretative information.</p> <p>One priority evaluative research issue or study commissioned per annum on a key sector wide issue (may be not first year).</p>	<p>Existing GoTL systems of information collection, storage, analysis and review.</p> <p>Sub-group of Sector Working Group.</p>

Facility Logic Level	Indicative Information/ Indicators	Means of Verification/ Source (partner systems where possible)	Frequency (pragmatic and minimal)	Information users	Indicative Resource Implications for M&E
<b>Component Objective levels/ Outcomes by Organisation</b>	Evidence of capacity building, i.e., improved enabling environment (policies etc), new systems in place and individual KAP changes  Assessment of needs.  Sector Matrix Outcomes/Indicators for Justice Sector in CSF Program.	GoTL has 3 pillars capacity building model and we should use and strengthen this assessment system (need more details)	Six-monthly big picture assessments linked to WB Supervisory Mission	Six monthly meeting of the enhanced CoC/ Sector Working Group/Facility Board? and WB Supervisory Missions	Total M&E budget - \$600,000 for Goal/ Sector wide support  Balance for assessing and improving the effectiveness of the Facility \$900,000
<b>1. Core Justice Sector Institutions</b>	Evidence of capacity building tailored specifically for focus areas supported. Evidence of: <ul style="list-style-type: none"> <li>improvements in key financial, management and administrative systems as required in proposal for funding, e.g., Case Management System operational</li> <li>increased financial &amp; staff resources for new or existing relevant units</li> <li>new desirable initiatives, e.g., improved transparency</li> <li>training conducted with evidence of changes in KAPs and improved subsequent performance of trainees</li> <li>construction or refurbishment of key facilities</li> <li>budget allocation by sector organisations</li> <li>% budget spent by sector organisations</li> <li>new policies or legislation</li> </ul>	<ul style="list-style-type: none"> <li>formal assessments of efficient operation of new systems, e.g., Case Management System Review</li> <li>before and after KAP assessments for training</li> <li>annual assessment of staffing levels (existing GoTL system)</li> <li>capital asset records for GoTL</li> <li>six-monthly WB supervisory mission (Adviser attached)</li> <li>GoTL Budget Reports</li> </ul>	Six-monthly update by Facility with key counterparts as part of WB Supervisory Mission for CSF Program (Adviser or SMG attached)	Six-monthly information to key implementing stakeholders through the formal Facility management body (sub-group of Sector Working Group and WB Supervisory Missions)	Assume 30% of time of full-time M&E specialist spent on this Component for 5 years (\$195,000 total). Training \$50,000 over 5 years  Supplementary surveys, training assessments \$30,000 total for 5 years.  <b>\$275,000 total over 5 years</b>

Facility Logic Level	Indicative Information/ Indicators	Means of Verification/ Source (partner systems where possible)	Frequency (pragmatic and minimal)	Information users	Indicative Resource Implications for M&E
<b>2. Govt and Civil Society Oversight and Accountability Mechanisms</b>	<p>Evidence of capacity building tailored specifically for focus areas supported. Evidence of, e.g.:</p> <ul style="list-style-type: none"> <li>civil society engagement strategy completed and progress in implementing</li> <li>evidence of engagement with civil society – meetings and following up requests</li> <li>undertaking of relevant new initiatives for key target groups, e.g., trauma centres, website for distribution of information etc</li> <li>training and/or workshops held and positive feedback</li> </ul>	<ul style="list-style-type: none"> <li>Facility conducts formal assessment of implementation and progress of all key initiatives with relevant counterpart (quarterly)</li> <li>review meetings with civil society to gauge progress (six-monthly)</li> <li>Training or workshop reports</li> <li>Participant feedback</li> </ul>	<p>Six-monthly progress assessment.</p> <p>Six-monthly civil society meeting.</p>	<p>Six-monthly information to key implementing stakeholders and six-monthly information to sub-group of Sector Working Group and WB Supervisory Missions).</p>	<p>Assume 20% of time of full-time M&amp;E specialist spent on this Component for 5 years (\$130,000 total).</p> <p>Training \$50,000 over 5 years</p> <p>Supplementary surveys, training assessments \$20,000 total for 5 years.</p> <p><b>\$200,000 total over 5 years</b></p>
<b>3. Facility Coordination, Management &amp; Performance Assessment</b>	<p>Evidence of:</p> <ul style="list-style-type: none"> <li>good budget management,</li> <li>good practice participatory management,</li> <li>supporting high priority initiatives,</li> <li>appropriate feasibility and design assessments of individual proposals,</li> <li>appropriate M&amp;E of individual Facility funded projects,</li> <li>good governance &amp; QA processes established &amp; followed,</li> <li>establishment and maintenance of good records and IT systems etc</li> <li>evidence of effectiveness of “projects”</li> </ul>	<ul style="list-style-type: none"> <li>Performance and financial audits</li> <li>Adviser analysis</li> <li>Post feedback</li> <li>Formative evaluation/ MTR assessment</li> </ul>	<p>Audits twice (say after 2 years and 4 years).</p> <p>Semi-annual Adviser assessments</p> <p>Post annual assessments.</p> <p>2.5-year MTR assessment.</p>	<p>AusAID/AUSP Contractor Performance Assessment System</p>	<p>Assume 10% of time of full-time M&amp;E specialist spent on this Component for 5 years (\$65,000 total).</p> <p>Performance and Financial Audits \$110,000 over 5 years</p> <p><b>\$175,000 total over 5 years</b></p>



Facility Logic Level	Indicative Information/ Indicators	Means of Verification/ Source (partner systems where possible)	Frequency (pragmatic and minimal)	Information users	Indicative Resource Implications for M&E
	<ul style="list-style-type: none"> <li>funded</li> <li>evidence of modification of approach to improve effectiveness of projects and Facility, i.e., continuous improvement</li> </ul>				
<b>Outputs for Individual Projects?</b>	<ul style="list-style-type: none"> <li>Documented evidence of quality of outputs (i.e., appropriateness of objectives and design, priority, professionally implemented, participatory implementation, evidence of results/objectives achieved, partner ownership and likely sustainability)</li> <li>Stakeholder/ beneficiary opinions</li> <li>Different information for modes of delivery, e.g., training of staff – before and after KAP information and suggestions for improvement of future training</li> <li>Accounting for money</li> <li>Lessons learned for improved design, policy and strategic direction</li> </ul>	<p>Formalised QA system for individual projects</p> <ul style="list-style-type: none"> <li>proposal &amp; design formats</li> <li>selection criteria and process</li> <li>agreed quarterly report format (2-3 pages)</li> <li>quarterly visit by Facility manager</li> <li>ACR report</li> </ul>	Quarterly monitoring process	Manager of Facility and Adviser/SMG	<p>This is core work of the Facility Management and any spot checking by SMG and/or the M&amp;E specialist is allowed for under the Components</p> <p>Contingency of \$100,000 total over 5 years, i.e., about 6.5% (NB probably more training and surveys with civil society component)</p>

Table “C” Budget Details for M&E

Cost Item	Description	Indicative Amount A\$
<b>Sector Monitoring Group</b>	Sector Monitoring Group (2 pax, 25 days each pa @ \$2000/day for 5 years).	500,000
<b>M&amp;E Specialist</b>	Main input would be an M&E specialist to support M&E plan devt, baseline data collection and annual update, and technical/training support to both Facility and sector stakeholders. Up to 50 days pa x 4 years @\$2000 per day.	400,000
<b>M&amp;E Training</b>	<ul style="list-style-type: none"> <li>• Sector wide performance training \$140,000 over 5 years</li> <li>• Core institutions training \$50,000 over 5 years</li> <li>• Oversight and Accountability training \$50,000 over 5 years</li> </ul>	240,000
<b>Surveys/ evaluative studies</b>	<ul style="list-style-type: none"> <li>• Sector wide supplementary surveys/ research studies \$100,000 for 4 years.</li> <li>• Core institutions supplementary surveys, training assessments \$30,000 total for 5 years.</li> <li>• Oversight and Accountability supplementary surveys, assessments \$20,000 total for 5 years.</li> </ul>	150,000
<b>Performance and Financial Audits</b>	Two combined performance and financial audits for Facility management assessments	110,000
<b>Contingency</b>	Probably underestimated Oversight and Accountability requirements	100,000
<b>Total</b>		1,500,000

**A 6 – Risk management matrix**

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### Risk Management Matrix

Risk	Potential Adverse Impact on the Facility	Risk likelihood	Risk impact	Risk management strategy	Responsibility
Social and political instability and poor security	Would distract attention from implementing capacity building initiatives, delay implementation of workplans, hinder personnel movement, make Adviser recruitment and retention more difficult, compromise personnel security, etc	M	H	To manage this risk the Facility will: (i) prepare an emergency preparedness and management plan and ensure all staff are clear of procedures and safety requirements; (ii) carefully monitor the security situation on an ongoing basis; (iii) ensure Advisers have contingency work plans which will allow them to remain busy/productive even during periods of unrest; and (iv) have a plan for scaling down (possibly terminating) activities if instability and poor security make continued operations unviable.	Facility Managing Contractor, in consultation with AusAID Dili
Political interference in the work of the Courts, the Office of the Prosecutor General and/or the Police	Would undermine the principle of separation of powers, community confidence in the justice system and negate any improvements in corporate management capacity of core justice institutions in terms of supporting improved access to justice	M	H	The Facility will provide support, as determined by the Facility Management Group, to the Office of the Prosecutor and the Office of Inspector General in order to support effective oversight and accountability of core justice sector institutions. In addition, Facility support to civil society organisations that monitor the functioning of the courts will help identify and expose cases of political interference. Joint GoTL/donor sector review missions will also help identify and expose any concerns regarding overt political interference in the justice system.	Facility Management Group Joint GoTL/donor sector review missions
Weak coordination and harmonisation among multilateral agencies and bilateral donors working in the justice sector	Would undermine GoTL ownership, lead to incoherent and fractured support for justice sector development and compromise capacity building	M	M	The Facility will take an active role in promoting donor coordination and harmonisation through its engagement with the Sector Working Group/Facility Management Group. Facility Annual Plans	Facility Management Group Contractor

<b>Risk</b>	<b>Potential Adverse Impact on the Facility</b>	<b>Risk likelihood</b>	<b>Risk impact</b>	<b>Risk management strategy</b>	<b>Responsibility</b>
	and sustainability objectives			and budgets will be prepared in line with GoTL processes and timetable, and in close cooperation with UNDP. Facility monitoring and reporting processes will also be implemented as capacity building activities in their own right – strengthening the capacity of justice sector agencies to collect and use information that promotes donor coordination and harmonisation objectives.	
GoA does not effectively coordinate its whole of government activities and does not maintain a long-term/sustained commitment to the justice sector	Would reduce the potential positive impact, and beneficial synergies, of a coherent and long-term commitment by Australia	M	M	The appointment of a Senior Justice Sector Adviser is designed to mitigate this risk.  In addition, there will need to be ongoing joint agency meetings in Canberra to help ensure a coordinated and coherent WofG approach is taken to supporting development in the justice sector.	AusAID, including Senior Justice Sector Adviser AFP Other GoA agencies
Poor quality of JSSF management	Would result in inefficient and ineffective planning and allocation of Facility resources, thus compromising achievement of desired results	L	H	The management of the Facility will be overseen by both the GoA funded Senior Justice Sector Adviser and the Facility Management Group. AusAID will also conduct its own contractor performance assessments. Payments to the contractor will be dependent on quality of management services being provided. Criteria and expectations will be clearly articulate in the contract between AusAID and the contractor.	GoA funded Senior Justice Sector Adviser  Facility Management Group AusAID
Poor quality and behaviour of expatriate advisers recruited through the JSSF	Would compromise the Facility's credibility and capacity building objectives	L	H	The Facility will establish rigorous adviser recruitment processes, clear performance criteria for all Advisers, and conduct ongoing Adviser performance assessments.	Facility Managing Contractor Senior Justice Sector

Risk	Potential Adverse Impact on the Facility	Risk likelihood	Risk impact	Risk management strategy	Responsibility
				<p>An important part of such assessments will be getting feedback from Timorese counterparts with whom Advisers are working.</p> <p>The Senior Justice Sector Adviser will have input into/oversight over the performance assessment process.</p>	Adviser
Suitably motivated and skilled Timorese counterparts not available to work with Advisers	Would compromise capacity building and sustainability objectives of the Facility	M	M	<p>Each long-term Adviser will be required to develop and monitor their own capacity building work plans in partnership with their 'host' institution (See Attachment 8). A long-term perspective will be taken, allowing for the fact that there may be no suitable counterparts available at certain points in time – and that Advisers may therefore be 'supplementing' capacity more than 'building' capacity during certain periods.</p> <p>The GoTL host institutions will also be expected to make every effort to ensure that any high priority vacant positions are filled, that counterpart staff commit to engaging in agreed learning/training activities, and that staff are given appropriate incentives to work collaboratively with Advisers.</p>	<p>Managing Contractor and individual Advisers</p> <p>GoTL Host Institutions</p>
Continued centralisation of Public Finance Management systems and decision making	Would continue to undermine management accountability, motivation and efficiency within justice sector institutions	M	M	The Facility will directly support the development of improved corporate management systems and processes within targeted institutions so that they can take advantage of MoPF's plans to decentralise financial management/procurement to agencies with demonstrated capacity.	



Risk	Potential Adverse Impact on the Facility	Risk likelihood	Risk impact	Risk management strategy	Responsibility
				<p>Communication links between targeted institutions and the MoPF will also be strengthened.</p> <p>The Facility will also support development of HRM practices within targeted institutions that will promote appropriate delegation of decision making authorities.</p>	
Corruption within the justice system	Would further undermine confidence in the justice system, compromise the work of the Facility (aligned with a corrupt regime) and jeopardise the attainment of development objectives	M	M	<p>The Facility will be directly supporting improved corporate governance through its focus on Planning and Budgeting, Financial Management, Human Resource Management and the development of more robust monitoring systems. This will help to reduce opportunities for corruption.</p> <p>In addition, the Facility may provide support (as required) to the key oversight agencies (Provedor and Office of Inspector General) – which are specifically tasked with identifying and addressing corruption issues.</p> <p>Support for Civil Society Groups/NGOs monitoring the justice system will also act as a further check and balance.</p>	<p>Senior Justice Sector Adviser, Managing Contractor and all team members</p> <p>Office of Provedor</p> <p>Office of Inspector General</p>

*Key for risk likelihood and risk impact: H = High; M = Medium; L = Low*

## A 7 – TOR for Advisers

- For reference, the attributes of the ‘Ideal Adviser’ (as solicited from MoPF staff at a workshop in November 2004) are presented below

Technical skills and ability (skills & knowledge)	
<p>The ideal adviser <b>should</b>:</p> <ul style="list-style-type: none"> <li>Have the capacity to assist and support the development of useful procedures within the unit</li> </ul>	<p>The ideal adviser <b>should not</b>:</p> <ul style="list-style-type: none"> <li>Be technically incompetent or lack the appropriate technical skills, credentials, and expertise for the job</li> <li>Lack specific professional experience in the area they are ‘advising’ on</li> </ul>
Methodology (systems & processes)	
<p>The ideal adviser <b>should</b>:</p> <ul style="list-style-type: none"> <li>Use a cooperative approach when working with Timorese counterparts and staff</li> <li>Try to transfer knowledge to staff</li> <li>Adapt appropriately to the working environment, including finding solutions to any language barriers that exist</li> <li>Have and follow a well-defined work plan that supports the work program of the unit/agency and counterpart staff</li> <li>Maintain good relationships with all members of the team</li> <li>Be flexible and responsive to the needs of the job and the situation</li> <li>Share information</li> </ul>	<p>The ideal adviser <b>should not</b>:</p> <ul style="list-style-type: none"> <li>Intervene when it is not necessary for work objectives to be achieved</li> <li>Favour an individualistic approach over a cooperative approach</li> <li>Not follow or complete their own work plan</li> <li>Participate in official meetings or represent the department/ agency / ministry without previous approval from a senior Timorese manager</li> <li>Make decisions without consultation with counterparts</li> </ul>
Personal attributes (attitudes & behaviour)	
<p>The ideal adviser <b>should</b>:</p> <ul style="list-style-type: none"> <li>Be transparent and foster a sense of trust</li> <li>Be honest and open</li> <li>Be disciplined</li> <li>Adapt appropriately to the working environment and the Timorese culture</li> <li>Be committed to supporting national staff to achieve outcomes / objectives of department and ministry</li> </ul>	<p>The ideal adviser <b>should not</b>:</p> <ul style="list-style-type: none"> <li>Be undisciplined or lazy or late</li> <li>Put private interests ahead of national interests</li> <li>Be egotistical</li> <li>Have a colonial or patronizing attitude</li> <li>Present an attitude that demonstrates a lack of trust</li> <li>Behave in an authoritarian manner.</li> </ul>

Source: Timor-Leste Planning and Financial Management Capacity Building Program Aide Memoire (draft) - Preparation Mission: November 2-19, 2004, pp38-39

## **Terms of Reference – Long-term Advisers**

### **1. Senior Justice Sector Adviser**

<b>Reports to:</b>	Development Counselor in the Australian Embassy in Dili.
<b>Primary counterparts</b>	<p>Justice Sector Agencies including, The Ministry of Justice, The Ministry of the Interior, Judiciary, the Courts, the Office of the Prosecutor General The National Police of Timor-Leste, the Office of the Public Defender, The Office of the Inspector General, the Legal Training Centre, the Office of the Provedor.</p> <p>GoA agencies working in the justice sector in Timor-Leste, particularly the AFP</p> <p>Must also develop working relationship with the UN, other donor agencies and with NGO/Civil Society groups working in the sector</p>
<b>Duration</b>	Up to five years, with possibility of renewal
<b>Location</b>	Facility Management Office in Dili, Timor Leste, with some travel to the Districts
<b>Language</b>	The sector agencies use Portuguese and Tetun (official languages), as well as Bahasa Indonesian and English (working languages). A high level of proficiency in written and spoken English is required, as well as the ability to speak at least one of the other languages. .

### **Responsibilities/tasks**

The Senior Justice Advisor will have a varied role. He/she will provide strategic oversight of the Justice Sector Support Facility and provide advice to AusAID and other Australian government agencies on strategic engagement in the law and justice sector. The role will also involve providing assistance to the Government of East Timor, UNDP, UNMIT and other bilateral donors on the development of the justice sector more broadly.

1. Provide strategic and technical leadership and quality assurance oversight for the Facility:
  - Apply his/her experience and knowledge of effective development assistance in the Justice Sector in Timor Leste and/or in other countries, to the operations and activities of the Facility;
  - Liaise with GoTL, AusAID and the senior leaders and management of the Justice Sector Agencies and Stakeholders, in particular the UNDP, in relation to the areas of focus of the Facility and the coordination, identification, development and implementation of activities to be undertaken by the Facility;
  - Review and endorse all plans for activities of the Facility to ensure that they are:
    - coordinated with other stakeholders,
    - in conformity with the strategic direction of the Justice Sector as determined by GoTL,
    - effective in design and
    - in conformity with the key cross cutting issues (including promoting gender equality) as determined by AusAID in respect of all activities undertaken utilising Australian funding.
  - Ensure that the Contractor is working within the principles of the Facility and building the capacity of the Justice Sector Agencies.
  - Attend meetings in Canberra and/or Dili to review or discuss the Facility including the following matters:
    - the general progress of developments in the justice sector, and specifically with regard to the the Facility;

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- matters arising from reports to AusAID;
  - any issues arising as a result of communication by AusAID or the Contractor with Stakeholders;
  - any significant variations proposed to the scope of the Facility;
  - contract performance matters; and
  - any other matters as required.
- In cooperation with the Facility Manager, prepare and quality assure Annual Work Plans and budgets for the Facility before submission to the Facility Management Group.
  - Help ensure that the Facility is able to meet urgent and immediate needs in the Justice Sector as requested by the Facility Management Group and/or AusAID.
  - Support the Facility Manager/Team Coordinator to produce progress reports on the work of the Facility, and other reports as required
  - Participate in the review, monitoring and evaluation of the activities of the Facility (including Adviser Performance Assessments)
2. Provide strategic oversight to GoA activities in the justice sector, and provide advice to other actors in the justice sector on development
    - Provide AusAID and other members of the Facility Management Group (including GoET/ UNDP/ UNMIT) with expert advice on strategic justice sector development issues, the effective use of development assistance, and in particular the use of Australian aid
    - Advise GoA agencies working in the justice sector in Timor-Leste on issues of coherence/effective whole of government issues and approaches
    - Participate in and contribute to significant Justice Sector events or meetings as they arise and participate in such joint donor reviews and monitoring of projects and programs in the Justice Sector as may be required.
  3. Produce periodic reports for AusAID on sector-wide strategic issues

### **Selection Criteria**

The successful applicant should have the following qualifications, experience and skills:

#### ***Qualifications***

A Bachelors Degree in Law and/or admission to practice as a lawyer. A Masters Degree in Law or similar qualification is desirable.

#### ***Experience***

The adviser should be a senior lawyer, possibly a judicial officer, with at least 15 years of experience working within the justice sector, in private practice or a government office. Experience in respect of justice sector policy development will be regarded highly. The adviser should also have had experience as an adviser in developing countries, of capacity development in such setting, and a demonstrated knowledge of gender equality issues. Knowledge of civil law systems is highly desirable.

#### ***Skills-Technical***

The adviser must be able to demonstrate high level accomplishment in strategic development in respect of the justice sector, when considered as a whole and when considered at an agency level.

A high level of proficiency in written and spoken English is required.

*Skills-interpersonal*

The position demands strong interpersonal and intercultural skills, and an ability to work through an interpreter in stressful and less than ideal operating circumstances; hence patience and perseverance are required. The adviser must be at complete ease in relating with high level government officials, Ministers of State and constitutional office holders in the justice sector.

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## **2. Facility Manager and Team Coordinator**

**Reports to:** Senior Justice Sector Adviser

**Primary counterpart agencies** Justice Sector Agencies including, The Ministry of Justice, The Ministry of the Interior, Judiciary, the Courts, the Office of the Prosecutor General, The Office of the Inspector General and the Office of the Provedor.

Must also develop working relationship with the UN, other donor agencies and with NGO/Civil Society groups working in the sector

**Duration** Up to five years (3 + 2 year contract), with possibility of renewal

**Location** Facility Management office in Dili, Timor Leste, with some travel to the Districts

**Language** The sector agencies use Portuguese and Tetun (official languages), as well as Bahasa Indonesian and English (working languages). A high level of proficiency in written and spoken English is required. The ability to speak any of the other languages mentioned will be a significant advantage.

### **Responsibilities/tasks**

- Take overall responsibility for the efficient and effective management of Facility resources as provided by AusAID
- Develop and maintain effective working relationships with sector stakeholders and with all team members working through the Facility
- Promote effective team work, staff motivation and a focus on achieving development results
- Ensure effective capacity building strategies are designed, implemented and regularly reviewed for the Facility as a whole and by each of the long-term Advisers
- Coordinate and oversee the preparation of Annual work plans and budgets for the Facility
- Coordinate and oversee the preparation of Facility Progress Reports for submission to the Facility Management Group, as well as other AusAID specific reporting requirements
- Develop and oversee the Facility's financial management, accounting and reporting systems and procedures, including the procedures for the management of a Flexible Fund and a 'call for proposals' mechanism
- Develop and oversee the Facility's Human Resource Management systems and processes, including staff/Adviser recruitment, ongoing management and performance assessment systems
- Develop and oversee the Facility's monitoring and evaluation systems and processes
- Ensure an effective communication/stakeholder engagement strategy is implemented
- Provide appropriate secretariat support services to the Facility Management Group

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### **Selection Criteria**

The successful applicant should have the following qualifications, experience and skills:

#### ***Qualifications***

An appropriate Tertiary Qualification, ideally in management, law or the social sciences.

#### ***Experience***

The Facility Manager should have at least 10 years of senior-level experience as a program/project manager, either in the public or private sectors. Experience in respect of justice sector programs/projects will be regarded highly. The adviser should also have had significant experience as a manager/adviser in developing countries and of capacity development in such a setting.

#### ***Skills-Technical***

The Facility Manager must be able to demonstrate high level accomplishment in the management of complex institutional development/capacity building projects. Significant experience is required in preparing work plans and budgets, managing finance systems, managing staff, and preparing management reports to a high standard. High level problem-solving skills and a demonstrated knowledge of gender equality issues are required.

A high level of proficiency in written and spoken English is also required.

#### ***Skills-interpersonal***

The position demands strong interpersonal and intercultural skills, and an ability to facilitate the work of others. The Facility Manager must be at complete ease in relating with high level government officials as well as working with representatives of donor agencies and local civil society groups/NGOs.

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### **3. Senior Management/Corporate Services Advisers x 3**

<b>Reports to:</b>	Facility Manager/Team Coordinator  Head of each of the 3 (initial) host Agencies (or his/her deputy), namely in the Ministry of Justice, the Office of the Prosecutor General and in the Courts.
<b>Primary counterparts</b>	Head of Administration/Finance or Corporate Services within each of the 3 targeted agencies  Must also develop working relationship with other GoTL agencies (such as the MoPF and the Ministry of State Administration), the UNMIT mission, UNDP Strengthening the Justice System Program and other donor agencies working in the sector
<b>Duration</b>	Up to five years (3 + 2 year contracts), with possibility of renewal
<b>Location</b>	Co-located with the targeted institutions in Dili, with some travel to the Districts
<b>Language</b>	The sector agencies use Portuguese and Tetun (official languages), as well as Bahasa Indonesian and English (working languages). A high level of proficiency in written and spoken English is required. The ability to speak any of the other languages mentioned will be a significant advantage.

#### **Responsibilities/tasks**

Each of the Senior Management Advisers will be responsible (within their respective agencies) for working collaboratively with counterparts, and with other Specialist Advisers working through the Facility, to:

- Develop and maintain effective working relationships with all key stakeholders
- Ensure clear and appropriate capacity building strategies and plans are designed and implemented. This will include providing on-the job training/mentoring, as well as supporting the design and implementation of more structured training activities as appropriate (in collaboration with the HRM & D Adviser)
- Provide ongoing strategic management advice to senior executives
- Develop, review and implement agency strategic and corporate plans
- Introduce and manage agreed programs of organisational change
- Develop and implement improved planning and budgeting systems, that accord with MoPF requirements (in collaboration with the Financial Management & Budget Execution Adviser)
- Develop and implement improved financial management systems and procedures, that accord with the GoTL's Financial Management Act (in collaboration with the Financial Management & Budget Execution Adviser)
- Develop and implement improved human resource management and development systems, that accord with the Civil Service Act (in collaboration with the HRM & D Adviser)
- Develop and implement improved in-house monitoring, review and reporting systems and procedures that focus on providing clear and timely management information of direct relevance to users
- Develop and implement improved communication and coordination mechanisms between the target agency and other key stakeholders
- Contribute to the preparation of Facility Annual Plans and budgets and progress reports as required by the Facility Manager
- Provide other management advice, training and capacity building support as required/requested by the Head of Institution and/or the Facility Management Group

## **Selection Criteria**

The successful applicants (x 3) should have the following qualifications, experience and skills:

### ***Qualifications***

A Bachelors Degree in management, business, law or one of the social sciences is required. An MBA or similar qualification is desirable.

### ***Experience***

The Advisers should have at least 10 years experience working as a Corporate Services Manager and/or Senior Management Adviser in either a public or private sector agency. Experience of working in relevant justice sector agencies will be regarded highly. The adviser should also have had some experience as an Adviser in developing countries and of capacity development in such setting.

### ***Skills-Technical***

The Advisers must be able to demonstrate high level accomplishment in undertaking Management and Administration functions, including planning and budgeting, financial management and human resource management. High level problem solving skills are required, as well a demonstrated understanding of gender equality issues. Skills in training and motivating staff must also be demonstrated.

A high level of proficiency in written and spoken English is also required.

### ***Skills-interpersonal***

The positions demand strong interpersonal and intercultural skills, and an ability to work through an interpreter in stressful and less than ideal operating circumstances; hence patience and perseverance are required. The adviser must be at complete ease in relating with high level government officials, Ministers of State and constitutional office holders in the justice sector, as well as with donor agencies and their representatives.

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#### **4. Financial Management & Budget Execution Adviser**

<b>Reports to:</b>	Facility Manager and Team Coordinator
<b>Primary counterparts</b>	<p>Justice Sector Agencies including: The Ministry of Justice, the Courts and the Office of the Prosecutor General. Specific counterparts will be officers responsible for Financial Management and budgeting execution activities</p> <p>Budget Office within the Ministry of Planning and Finance</p> <p>May also be required to provide support/advice to the Office of the Inspector General and the Office of the Provodur</p> <p>Must also work closely with the Senior Management &amp; Corporate Services Advisers recruited under the Facility, and with the UNDP Strengthening the Justice System Program and other donors active in the sector</p>
<b>Duration</b>	Up to five years (3 + 2 year contract), with possibility of renewal
<b>Location</b>	Based in the Ministry of Justice, Dili, but also working out in other targeted Justice Sector institutions. Some travel to the Districts required.
<b>Language</b>	The sector agencies use Portuguese and Tetun (official languages), as well as Bahasa Indonesian and English (working languages). A high level of proficiency in written and spoken English is required. The ability to speak any of the other languages mentioned will be a significant advantage.

#### **Responsibilities/tasks**

The Financial Management & Budget Execution Adviser will be responsible for working closely with counterparts to:

- Develop and maintain effective working relationships with all key stakeholders
- Ensure clear and appropriate capacity building strategies and plans are designed and implemented. This will include providing on-the job training/mentoring, as well as supporting the design and implementation of more structured training activities as appropriate (in collaboration with the HRM & D Adviser)
- Provide ongoing Financial Management & Budget Execution advice to senior executives and managers within the targeted justice sector institutions
- Develop and implement improved planning and budgeting systems, that accord with MoPF requirements
- Support preparation of agency annual plans and budgets that are aligned with strategic priorities
- Develop and implement improved financial management systems and procedures, that accord with the GoTL's Financial Management Act
- Support the development and implementation of improved financial and physical monitoring, review and reporting systems and procedures that focus on providing clear and timely management information of direct relevance to users
- Contribute to the preparation of Facility Annual Plans and budgets and progress reports as required by the Facility Manager
- Provide other technical advice, on the job training and other capacity building support as required/requested by the Facility Management Group and/or the Facility Manager

### **Selection Criteria**

The successful applicant should have the following qualifications, experience and skills:

#### ***Qualifications***

A Bachelors Degree in Finance, Accounting, Business or another appropriate discipline. A Masters Degree or similar qualification is desirable.

#### ***Experience***

The Adviser should have at least 10 years experience of working as a Finance Manager within a public or private sector agency. The adviser should also have had experience as an adviser in developing countries and of capacity development in such a setting.

#### ***Skills-Technical***

The adviser must have a demonstrated record of achievement in Financial Management, Administration and people management. Demonstrated skills in systems review, design and implementation are required. Skills in training and motivating staff must also be demonstrated. Computer literacy in financial management/accounting software is essential.

A high level of proficiency in written and spoken English is also required.

#### ***Skills-interpersonal***

The position demands strong interpersonal and intercultural skills, and an ability to work in stressful and less than ideal operating circumstances; hence patience and perseverance are required. The adviser must be at complete ease in relating with high level government officials and constitutional office holders in the justice sector.

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## **5. Human Resource Management and Development Adviser**

<b>Reports to:</b>	Facility Manager and Team Coordinator
<b>Primary counterparts</b>	<p>Justice Sector Agencies including: The Ministry of Justice, the Courts and the Office of the Prosecutor General. Specific counterparts will be officers responsible for Human resource management and development activities</p> <p>May also be required to provide support/advice to the Office of the Inspector General and the Office of the Provodur</p> <p>Must work closely with the Senior Management &amp; Corporate Services Advisers recruited under the Facility, and with the UNDP Strengthening the Justice System Program and other donors active in the sector</p> <p>The National Institute of Public Administration (INAP) and the Capacity Development Coordination Unit are also important partners in capacity building</p>
<b>Duration</b>	Up to five years (3 + 2 year contract), with possibility of renewal
<b>Location</b>	Based in the Ministry of Justice, Dili, but also working out in other targeted Justice Sector institutions. Some travel to the Districts required.
<b>Language</b>	The sector agencies use Portuguese and Tetun (official languages), as well as Bahasa Indonesian and English (working languages). A high level of proficiency in written and spoken English is required. The ability to speak any of the other languages mentioned will be a significant advantage.

### **Responsibilities/tasks**

The Human Resource Management & Development Adviser will be responsible for working closely with counterparts to:

- Develop and maintain effective working relationships with all key stakeholders
- Ensure clear and appropriate capacity building strategies and plans are being designed and implemented by all Advisers working under the Facility.
- Provide ongoing HRM and Development advice to senior executives and managers within the targeted justice sector institutions
- Support the development and implementation of improved human resource management and development systems and processes within targeted justice sector agencies. This would include addressing such issues as organisational structures, job descriptions, workforce planning, effective personnel management, staff motivation and incentives, staff performance assessment, and issues of attitudes and behaviours.
- Support preparation of justice agency staff development/training plans and budgets that are aligned with strategic priorities
- Liaise closely with INAP, CDCU and other GoTL agencies involved in HRM and development issues to ensure effective coordination and the development of appropriate synergies
- Contribute to the preparation of Facility Annual Plans and budgets and progress reports as required by the Facility Manager
- Provide other technical advice, on the job training and other capacity building support as required/requested by the Facility Management Group and/or the Facility Manager



### **Selection Criteria**

The successful applicant should have the following qualifications, experience and skills:

#### ***Qualifications***

A Bachelors Degree in HRM/D, management or another appropriate discipline. A Masters Degree or similar qualification is desirable.

#### ***Experience***

The Adviser should have at least 10 years experience of working in a suitably senior position(s) dealing with Human Resource Management and Development issues within a public or private sector agency. The adviser should also have had experience as an adviser in developing countries and of capacity development in such a setting.

#### ***Skills-Technical***

The adviser must have a demonstrated record of achievement in Human Resource Management and Development. Demonstrated skills in strategic thinking, HRM/D systems review, design and implementation are required. Skills in training and motivating staff must also be demonstrated, as well as an understanding of gender equality issues. Computer literacy is essential.

A high level of proficiency in written and spoken English is also required.

#### ***Skills-interpersonal***

The position demands strong interpersonal and intercultural skills, and an ability to work in stressful and less than ideal operating circumstances; hence patience and perseverance are required. The adviser must be at complete ease in relating with high level government officials and constitutional office holders in the justice sector.

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## **A 8 – Capacity Building Assessment Framework**

*This framework (following pages) was prepared in November 2004 by advisers working on the Ministry of Planning and Finance Capacity Building project (MoPFCBP). It should be considered as a tool for joint planning and assessment of capacity building support being provided by advisers.*

*The example provided is from the MoPFCBP.*

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<b>Step 1.</b>  Task-wise assessment of capacity using capacity building framework (appended in part B below)	<b>Part A. Capacity building assessment process</b>							
	Work task / Process	Lead	Adviser Involvement	% Local	ETRS staff capacity		Further capacity building needs	
	Timor Sea 1: Register new Timor Sea taxpayers	ETRS staff	Negligible	95	<i>Quality</i> - "Supported" <i>Follow through</i> - "Independent" <i>Doing</i> - "Guided"		Improved staff qualifications. Language training.	
	TS2: Develop and implement strategies to find taxpayers and encourage them to pay	Adviser	High	40	<i>Quality</i> - "Dependent" (the adviser quality controls by directing ETRS staff to cross-check) <i>Follow through</i> - "Dependent" (staff are not yet requesting, on their own initiative, further information in a strategic manner) <i>Doing</i> - "Supported" (staff consult the adviser for help as required)		Need to develop problem solving and investigative skills, to question information provided by taxpayers.	
<b>Step 2.</b>  Summary reporting and analysis of progress	TS3: Interpret the tax laws ...	...	...	...	...		...	
	Work task / Process	Lead	Adviser Involvement	% Local	Quality	Follow through	Doing	Design / Dev'g
	TS1: Register new Timor Sea taxpayers	ETRS staff	Low	95	Supported	Guided	Guided	n/a
	TS2: Develop and implement strategies to find taxpayers and encourage them to pay	Adviser	High	40	Dependent	Dependent	Supported	n/a
	TS3: Interpret the tax laws governing Timor Sea taxpayers to determine tax liabilities	Adviser	Very High	5	Dependent	Dependent	Dependent	Dependent
	TS4: Respond to requests for information and provide information (for taxpayers and government)	ETRS staff	Very High	20	Dependent	Guided	Supported	Dependent
	TS5: Collect revenue from taxpayers operating in the Timor Sea (withholding tax, income tax, wages tax and VAT)	ETRS staff	High	40	Guided	Guided	Guided	n/a
	TS6: Maintain an Excel spreadsheet on taxpayers, tax paid and tax debits for the 4 types of taxes	ETRS staff	Low	95	Independent	Supported	Independent	n/a
	TS6: ...	...	...	...	...	...	...	...

**Part B. Capacity building assessment framework**

Degree of Independence: (Level of Adviser Support)	Dependent (High)	Supported (Medium)	Guided (Low)	Independent (None)
GENERIC ROLES AND FUNCTIONS				
DOING Undertaking work tasks	All work products (documents, models, etc.) are created and completed by advisers	Pro-forma work products are manipulated and adapted by staff for simple cases  Complex work products require direction from the adviser  Staff do not always realise when they need to ask for help	Adviser is infrequently consulted, on the staff member's initiative  Staff can do all but the most difficult elements without assistance  Staff know when to ask for help	All work products (documents, models, etc.) are created and completed by staff  No input is requested from adviser
QUALITY Checking the work is of adequate quality	'Quality control' - Adviser controls the quality of work products by checking all outputs  <i>Adviser is responsible for work quality</i>	'Quality assurance' - Adviser assures quality by checking most work products  <i>Adviser is responsible for work quality</i>	'Quality checking' - Adviser checks quality  <i>Staff take responsibility for work quality</i>	No checking by adviser  <i>Staff take responsibility for work quality</i>
FOLLOW THROUGH Following up on tasks to ensure completion	'Directing' - prompting by Adviser is essential and work is not undertaken without prompting  <i>Adviser is responsible for timeliness</i>	'Reminding' - work for slips without prompting by Adviser  <i>Adviser is responsible for timeliness</i>	'Encouraging' - adviser occasionally prompts  <i>Staff take responsibility for timeliness</i>	Work is completed on time without prompting by Adviser  <i>Staff take responsibility for timeliness</i>
DESIGNING AND DEVELOPING Designing and developing work systems and processes	All design and development of work systems and processes is undertaken by advisers. Decisions about changes to work systems and processes are taken by advisers with minimal staff involvement	Design and development is done by advisers and some work by staff. Decisions about changes are taken by staff with guidance from advisers	Most design and development work is done by staff. Decisions about changes are taken by staff with advisers consulted on staff initiative	Staff refine and re-develop work systems and processes, and decide on changes, without adviser assistance

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