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## IBAHRI and JSMP submission on draft law on the creation of Timorese Bar Association

The International Bar Association's Human Rights Institute (IBAHRI) and the Judicial System Monitoring Programme (JSMP) welcome the opportunity to provide comments on the proposed law ('the Law') for the creation of a Timorese Bar Association ('TBA').

The Democratic Republic of Timor-Leste has demonstrated a commitment to justice as an international obligation, both in its Constitution and by ratifying international human rights instruments. Article 9 of the Constitution states that the legal system of Timor-Leste adopts the general or customary principles of international law<sup>1</sup> and Article 23 further requires that fundamental rights be interpreted in accordance with the Universal Declaration of Human Rights.<sup>2</sup> Timor-Leste has ratified a number of other key human rights instruments including, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights and thus all national laws must comply with these instruments.<sup>3</sup>

The independence of the legal profession is vital to the proper administration of justice, the effective application of human rights standards and to the operation of a strong rule of law. It can be secured via a self-organizing and self-governing national bar association. International law strongly protects the independence of the legal profession. This is primarily reflected in the United Nations Basic Principles on the Role of Lawyers 1990<sup>4</sup> ('the Basic Principles') which requires that 'all persons have effective access to legal services provided by an independent profession'<sup>5</sup> and that governments ensure that lawyers practice their profession without intervention.<sup>6</sup> The United Nations General Assembly<sup>7</sup> echoed that an independent legal profession is an essential prerequisite for the 'protection of human rights, the rule of law, good governance and democracy'.

These obligations are important to Timor-Leste's continued development. Indeed, various organs of the United Nations have stated that greater efforts are required to ensure strengthened legal professional associations in conflict and post-conflict societies, in

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<sup>1</sup> Constitution of the Democratic Republic of Timor-Leste, 20 May 2002, Article 9

<sup>2</sup> Ibid., Article 23

<sup>3</sup> Ibid., Article 9(2)

<sup>4</sup> UN Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

<sup>5</sup> Paragraph 9 of the Preamble

<sup>6</sup> Principle 16

<sup>7</sup> United Nations General Assembly resolution, Human Rights in the Administration of Justice, A/RES/69/172 (18 December 2014)

particular, the quick establishment of functioning bar associations.<sup>8</sup> As such, we believe that the creation of the TBA is a foundational step in regulating the legal profession in Timor-Leste. The TBA will promote professional competence, enforce standards of ethical conduct, and promote a spirit of public service among members of the legal profession in Timor-Leste.

IBAHRI and JSMP have a number of general comments with regard to the draft Law, along with comments about specific Articles within the draft Law.

## **I. GENERAL COMMENTS**

### **Separation of responsibilities between the Timorese Bar Association and the Ministry of Justice**

While it is acknowledged that Article 2(2) of the Law makes reference to the separation of powers and aims to protect the Bar Association's independence, there are still instances where the TBA requires authorisation from the Ministry of Justice to carry out certain functions<sup>9</sup>. It is recommended that the Ministry of Justice give consideration to amendments to the Law so that the TBA is a completely independent body, which functions without any interference or the need for approval from the Ministry.

### **Protection against discrimination for persons entering the Timorese Bar Association**

It is found that there is no requirement in the Law that the TBA prevent discrimination in entry to the legal profession. This is a requirement under international standards and warrants inclusion. Principle 10 of the Basic Principles requires that 'governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession'. Article 18(i) of the IBA Standards for the Independence of the Legal Profession (1990) also states that it is the function of the lawyers' associations to 'ensure that there is free access to the profession for all persons having the requisite professional competence, without discrimination of any kind, and to give assistance to new entrants into the profession'. In addition, and in accordance with the Principles on Rights of Lawyers,<sup>10</sup> provision should be made for intakes of lawyers that speak the other national languages<sup>11</sup> than the official languages of Timor-Leste. As a practical matter this might require the possibility of undertaking professional training in the districts. In cases, this may also require that full fluency in Portuguese is not required of all lawyers, as presently required by the amending Law of 2015 to the Law on Private Lawyers that establishes the Legal Training Centre and its curriculum.

### **Due process for disciplinary proceedings against lawyers**

It is considered that a gap remains in the Law regarding guarantees for lawyers during disciplinary proceedings. International standards outline due process requirements and, pursuant to Article 23 of Timor-Leste's Constitution, national laws must be interpreted in line with these provisions. It is, nevertheless, submitted that express provisions reinforcing due process requirements are warranted.

Due process is protected under Article 10 of the Universal Declaration of Human Rights, which states that 'everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal'. Principle 27 of the Basic Principles also states that charges or complaints 'shall be processed expeditiously and fairly under appropriate procedures' and that lawyers have a 'right to a fair hearing, including the right to be assisted

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<sup>8</sup> UN Office of the High Commissioner for Human Rights (OHCHR), Rule-of-law Tools for Post-Conflict States, Mapping the Justice Sector, 2006, HR/PUB/06/2, p. 24

<sup>9</sup> see comments on Articles 24(6) that follow

<sup>10</sup> Principle 11. "In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups."

<sup>11</sup> As per Section 13(2) of the Constitution, referring to the many languages of T-L e.g. Baikeno, Fataluko, Mambai, Makasae etc. that are not 'official' or 'working' languages under the Constitution.

by a lawyer of their choice'. Principle 28 of the Basic Principles further states that lawyers, in disciplinary proceedings, 'shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review'. All of these requirements should be expressly provided for in the Law.

### **Right to freedom of expression and association**

The proposed law does not expressly protect the freedom of expression and association of lawyers and this protection would help ensure, as per Principle 23 of the Basic Principles, that lawyers do not suffer 'professional restrictions by reason of their lawful action or their membership in a lawful organization'. The Universal Declaration of Human Rights protects in Article 19 the 'right to freedom of opinion and expression', including the freedom to 'hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers'. Article 20 also protects the right to association. These rights are also found in the Constitution and ICCPR. Nevertheless, express provisions should also be included in the proposed Law.

### **Regulation by the Timorese Bar Association's by-laws rather than by statute**

It is considered that some functions regulated in the Law could be better regulated more broadly by the TBA itself under its own Statute or by-laws. In particular, Section II, Training and Registration as Trainee Lawyer, such as Article 49 specifying training durations, aim and stages, is more prescriptive than necessary and the TBA should have a broader delegation to allow it to deal with these matters more flexibly in by-laws. Matters concerning advertising and fees, such as prescribed in Article 27(1)(l) and Article 35, and Article 15 on professional dress can be decided under the authority of the TBA in by-laws and should be deleted from the Law.

### **Building on the existing laws**

It is noted that the Timorese Parliament has already passed Law 8/2012 On Private Lawyers, which set out extensive provisions governing the legal profession and that this law has been amended three times, to create exemptions for lawyers to attend the Legal Training Centre as well as to more systematically regulate the training provided in that Centre. This Law envisaged the creation of a TBA but transitionally conferred many of the powers and functions of a TBA upon a Governmental body, the Lawyers Management and Disciplinary Body. Law 8/2012 resembles many of the provisions of this Law but has the advantage that it has been in place for a significant period. The Law provides that the TBA should be established by a separate law, which it is proffered could be another amending law, which like previous amending laws left the majority of that Law still in place.

Terms such as 'Legal Profession Management and Discipline Council' and 'Legal Training Centre' could be amended to the 'Timorese Bar Association'. Only some parts of the draft OATL Law would need to be inserted, namely: part of the preamble (and the fifth last to the third last paragraphs might suffice), Chapters I (Creating the TBA) and VII (Transitional and Final Provisions). Of course, it is suggested that those inserted parts be with the changes to those Chapters that have been suggested below i.e. Articles 1-9 for Chapter I and Articles 61-66 for Chapter VII. Further, Articles 7 to 11 of Law 11/2008 concerning training could be specified as transitional by-laws for the TBA until such time as they amended them under the powers as conferred. Article 68 providing for transitional measures could then be removed as the TBA would be able to determine these matters under its Statute as appropriate from time to time.

## **II. SPECIFIC COMMENTS ON ARTICLES OF THE DRAFT LAW**

## **The Preamble**

It is considered that the preamble would benefit from the inclusion of further references to constitutional provisions and to international human rights standards and guarantees. Article 135 (3) of the Constitution of Timor-Leste can be seen as the basis for the development of this particular law by requiring that 'the exercise of the legal profession be regulated by law' and so express reference to this provision could be made.

## **Article 1**

Article 1(4) (a) provides for the 'election of officeholders', it could, however, be added to this the requirement that it be 'free' election of officeholders. The Law does not, however, sufficiently elaborate upon processes and requirements for the inaugural General Assembly or for the organisational structure of the TBA, other than that it will be organised by the Management and Disciplinary Council for Lawyers. Further, this provision would benefit from tighter time frames as 3 months for the General Assembly followed by 90 days for the TBA to become operational is contended to be an inordinately long period.

Article 1 could also expressly provide for the power to make rules on professional liability insurance for lawyers, as this is an important matter for the protection of clients as well as lawyers.

Article 1(4) (i) refers to the duties of lawyers to the TBA, however, it could also be considered to provide for their rights. Therefore, it could read 'Duties and rights of lawyers within the Timorese Bar Association'.

## **Article 2**

This Article describes, amongst other things, the nature of the TBA. It is submitted that Article 2(1) must be amended to reflect that the TBA will represent 'law graduates and lawyers'.

## **Article 3**

This Article describes the scope of the TBA. It is submitted that enforcement of Article 3(2), which provides for the powers and competencies of the TBA to extend outside of the national territory may be difficult to realise. It is suggested that consideration be given to how exactly it is foreseen that this sub-Article could be enforced by the TBA and whether it is necessary or realistic to make such provision.

## **Article 4**

This Article sets out the powers of the TBA.

Article 4(j) allowing for the TBA to exercise exclusive jurisdiction with regard to the discipline of lawyer and trainee lawyers is too wide in scope. This authority should not extend to discipline for matters outside the scope of the proposed law and Statute, for instance discipline in criminal matters. We recommend this Article be amended to reflect that the TBA is only able to exercise exclusive jurisdiction with regard to all disciplinary matters within the scope of the proposed law and Statute.

Further, it is contended that an additional power, 'the authority to develop legal aid schemes', should be explicitly given. Legal aid schemes, *pro bono* or otherwise, are commonly coordinated by bar associations.

## **Articles 5 – 10**

There are no comments on these Articles.

## **Article 11**

This Article describes that only lawyers and trainee lawyers with valid registration with the TBA may practice the acts that are proper of the legal profession. It is submitted that Article

11 does not account for those law graduates who exercise the legal profession within non-government organisations when advocating in legal matters for clients. We believe that such law graduates undertake an important role and so consideration must be had as to whether such a group is exempt from the provisions of Article 11(1).

The definition of the acts of lawyers seems to be somewhat limited. It is noted that Law 8/2012, the Private Lawyers Act, in its Article 22 continues with a more complete list of acts of the legal profession.<sup>12</sup> The definition of a lawyer is shown to be lacking in clarity as to its substance, when this Article later allows for others to perform these acts, despite them not clearly being “lawyers” within the meaning of this law. Namely, in Article 11(4) lecturers and doctors of law who are not lawyers can provide legal advice, so long as they limit their activity to written legal opinions and in such circumstances ‘are not considered to be exercising the legal profession’. Further, neither term is clearly defined and both are ambiguous terms due to the lack of reference to accreditation for lecturers and that, in a Portuguese language context, the term ‘doctor’ is applied widely and does not only apply to a graduate from a PhD programme but often to any university graduate.

Article 11(2) provides that ‘Public defenders exercising their functions in accordance with its own statute are exempt from the provisions in paragraph 1 above’, i.e. registration with the TBA. Thus without such registration they would still presumably be ‘lawyers’. There is, however, no reference to public prosecutors or other legal professionals who, while not requiring registration with the TBA still should be the subject of the safeguards, which apply to ‘lawyers’.

In addition, we submit that Article 11(3) should be removed. The allowance for law graduates to provide legal consultation without needing to register with the TBA could potentially have a serious negative impact. It is submitted that, any law graduate who provides legal consultation, no matter their employment, should be either registered with the TBA or required to be under the direction of a mentor lawyer who has at least five years of legal profession experience.

#### **Article 12**

This Article describes the freedom lawyers have to practice acts, which are proper of the legal profession. It is submitted that an exception should be specified in this article to prevent those lawyers from practising who have been banned under this Law. Accordingly, it is suggested that the inclusion of ‘unless otherwise prevented from practising as a lawyer under this Law and Statutes’.

#### **Articles 13 – 14**

There are no comments on these Articles.

#### **Article 15**

As noted in the General Comments, the official dress of lawyers is a matter that can be wholly determined by the TBA under its Statute and/or by-laws.

#### **Articles 16 - 17**

There are no comments on these Articles.

#### **Article 18**

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<sup>12</sup> c) The exercise of a mandate with powers to negotiate the establishment, change, or extinction of legal relations;  
d) The preparation of contracts and the practice of preparatory acts for the establishment, change, or extinction of legal business, namely those made with registrars and notary offices). Negotiation for collection of credits;  
f) The exercise of the mandate in the framework of claims or impugnation of administrative or fiscal acts, or before any public corporate body or respective organs or services, even where they raise or discuss mere matters of fact.  
g) Those acts resulting from the exercise of the right of citizens to accompany themselves by a lawyer before any authority.

Article 18(4) refers to the President of the Court of Appeal, however, as per Article 164 of the Constitution of the Democratic Republic of Timor-Leste, the Court of Appeal exercises the jurisdiction of the Supreme Court of Justice on a temporary basis and so, rather, this Article should identify the Chief Justice of the Supreme Court of Justice.

#### **Articles 19-22**

There are no comments on these Articles.

#### **Article 23**

The inclusion of the general principles with regard to incompatibilities and impediments set out in this Article is supported.

#### **Article 24**

This Article describes those functions and activities which when performed are incompatible with the exercise of the legal profession. It is submitted that in Article 24(1) it should be specified that the list of incompatibilities is not exhaustive.

Article 24(3) allows for lawyers on unpaid leave to perform those functions and activities which are outlined in Article 24(1) as 'incompatibilities' is concerning. It is regarded that upon the legal professional's return to their substantive position from leave to perform an incompatible function and/or activity, there exists the possibility that a perception of bias or conflict of interest may occur. In order to address such possibility it is recommended that an additional sub-Article is included within Article 24, which requires a lawyer in such a position to declare the incompatibility and restrict any work they complete which may otherwise result in bias or a conflict of interest.

Article 24(6) illustrates an instance of where the TBA requires authorisation from the Ministry of Justice to fulfil their function of authorising notaries or public registrars to exercise the legal profession in areas where there are no lawyers and, as previously noted, such restrictions upon the independence of the TBA are opposed.

#### **Article 25**

Article 25(2) establishes that any lawyer who has been a holder or member of organs of sovereignty and their advisers, members and staff and agents of said offices are barred from representing pecuniary actions against the State in any jurisdiction. This seems unnecessarily wide and aimed at the State avoiding legal action being taken against it. The key issue should relate to confidentiality and conflict of interest specifically relating to the functions performed at the relevant time. It is submitted that this Article should be removed from the Law. In any case, a limitation could be provided on the period for which an impediment would be in place, which might be for a number of years after leaving a position rather than permanently.

### **Chapter III Professional Ethics (Articles 26 – 42)**

These Articles describe the general principles for professional ethics. It is submitted that they should be amended so as to extend the general principles to legal trainees as well as lawyers. It is important that when legal trainees undertake the second stage of their training and commence the exercise of the legal profession that they comply with the professional ethics outlined within Chapter III of the Law.

#### **Article 26**

Law 8/2012 On Private Lawyers in its Section VI makes express provision for the types of sanctions for violating professional ethics and this Article should also include a statement of such sanctions, namely: private reprimand, public admonition, probation, suspension, and disbarment.

#### **Article 27**

Article 27(1)(c), states that the duties of the lawyer to the community includes to 'not advocate against the expressed law'. This directly stifles freedom of expression and needs to be deleted. This inhibits both freedom of expression and belief. Under Principle 23 of the Basic Principles, lawyers have the right to take part in 'public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings'. Similarly, Article 14(a) of the IBA Standards for the Independence of the Legal Profession protects the right of lawyers to 'take part in public discussion of matters concerning the law and the administration of justice.' This cannot be protected while lawyers are prevented from advocating against the law. In addition, Article 14(c) of the IBA Standards for the Independence of the Legal Profession protects the right to 'propose and recommend well considered law reforms in the public interest and inform the public about such matters'. In Article 18(g), it also protects the function of the lawyers' association to 'promote and support law reform, and to comment upon and promote public discussion on the substance, interpretation and application of existing and proposed legislation'. The Law directly violates these principles by preventing lawyers from advocating for the reform of existing laws.

#### **Article 28**

This Article describes professional secrecy and when lawyers are obliged to observe this. It is submitted that Article 28(4) is too vague and unclear as to when professional secrecy shall cease. A paragraph allowing for informed consent for clients to authorise disclosure of certain information could be added. We recommend that within Article 28(4) there be greater consideration of when a lawyer should no longer adhere to professional secrecy. Article 28(4), which allows the TBA to waive client confidentiality, should be removed as confidentiality is a right, as per Section 136 of the Constitution.

#### **Articles 29 – 33**

There are no comments on these Articles.

#### **Article 34**

It is noted that Law 8/2012, Private Lawyers Act, contains no provisions on conflict of interests, though it does provide for impediments and incompatibilities. It is unclear why the original provisions are insufficient and, if it is necessary to rewrite the law in this area, the essential conflict of interest principle underlying this could probably be more simply framed. We note that greater information as to conflict of interest needs to be provided to lawyers and trainee lawyers. It is recommended that all training syllabus should include a greater emphasis on how to identify and handle a conflict of interest.

#### **Articles 35**

The prohibition against 'contingency fees' should be removed from the Law. Matters concerning fees can be decided by the TBA and there are many good reasons why allowing contingency fees would facilitate meritorious claims by litigant who would not otherwise have the means to pursue them. Lawyers should be able to decide based on the merits of the case whether they are willing to accept payment on this basis.

#### **Articles 36 – 44**

There are no comments on these Articles.

#### **Article 45**

This Article describes the restrictions to the right to register for lawyers and trainee lawyers. It is submitted that Article 45(a) which prevents the registration of any lawyer who has been convicted of an intentional crime is unreasonable as well as inconsistent with the Constitution, which states that the objective of criminal punishment is rehabilitation. We recommend that the proposed Article 45(a) be amended so to place authority on the TBA to determine when a criminal offence will prevent a lawyer or trainee lawyer from registering. It is further submitted

that no clear power has been conferred on the TBA to suspend a lawyer or trainee lawyer e.g. for committing felonies or other unethical behaviour and that such should be provided for.

#### **Article 46**

Article 46(1) is unclear. Presumably, it aims to provide for limited instances where the exercise of the legal profession by non-registered individuals is allowable e.g. based on a judicial motion in a case i.e. by leave of the Court). If so, it needs to be rephrased.

#### **Chapter V, Section II – Training and Registration as Trainee Lawyer (Articles 47 – 54)**

Section II of Chapter V provides for the training of, and registration as, a trainee lawyer. It remains unclear whether it is the TBA or the Ministry of Justice that has responsibility for legal training of law graduates. It is submitted that this Section be amended to place full responsibility with the TBA. This recommendation is made on the basis that the TBA will have the necessary knowledge and ability to determine the best practice for all training of law graduates.

Further, the provisions of this Section are too prescriptive in terms of required training and the time that should take and, as noted in the General Comments, the TBA should have a broader delegation to allow it to deal with these matters in by-laws. This might allow for the more flexible and practical solutions to be put in place that may be necessary to allow for the many law graduates who cannot register as lawyers to more fully join the legal profession and contribute to the evolution of the Timorese legal system.

In addition, it is recommended that the TBA should be involved in overseeing the syllabus for undergraduate legal studies in Timor-Leste. Therefore, we suggest that the Ministry of Justice give consideration to working in consultation with the Ministry of Education to give consideration to this. Indeed, this is supported by Article 7 of the proposed law which outlines that public entities and private persons must cooperate with the organs of the TBA in the exercise of its functions.

#### **Article 47**

There are no comments on this Article.

#### **Article 48**

This Article concerns registration as a trainee lawyer and includes in 48(2) that individuals with degree from foreign universities that are 'officially' recognised or classed as equivalent may also register. At present there does not appear to be any official system for the recognition of foreign universities or how they might be classed. Reference to specific decision makers or standards, for example, the Minister of Education and UNESCO standards might be a clearer basis for the application of this provision. Indeed, it might be that the TBA would have a role in deciding equivalencies.

#### **Article 49**

The provision does not make explicit the link between the training requirements provided in the Law and the training regime, as established by the Ministry of Justice, at the Legal Training Centre, though it is fairly apparent that this is what is intended. There is reference in 49(2) to a "General Council" to set the training course commencement. Law 8/2012, Private Lawyers Act, will however be repealed by Article 67 of the draft law and nowhere in this proposed Law is a General Council established. Article 49(2) should refer generally to the TBA, as the organs of the TBA are not yet known, including their functions, powers and designations. Article 51(1) later does, however, make explicit that training is to be provided by the LTC and the intention may be to refer to the Pedagogical Council established in Law 4/2015, the third amending Law to Law 8/2012. Indeed, the effects of this Law may also need to be specifically safeguarded, as is already provided for in relation to the other amending laws by Article 61.

#### **Article 50**

This Article describes the competences of trainee lawyers. It is recommended that Article 50(2) which allows trainee lawyers to practice professional acts of specified types or within specified limits be amended to further require that any trainee lawyer is supervised at all times by their mentor.

#### **Article 51**

This Article describes the first stage of training for trainee lawyers. It is submitted that Article 51(1) should be amended to place full responsibility for the organisation and execution of the core subject course, which is to be both theoretical and practical in nature, with the TBA.

#### **Article 52**

This Article describes the second stage of training for trainee lawyers. Legal training, pursuant to Section II, has two components, theoretical and practical. Both of these require a focus on professional ethics. The recognition of this within Article 52(2)(d) which requires all law graduates to present a dissertation of professional ethics is commended. It is, however, submitted that greater clarity is needed within Article 52(3) as to who is to assess the individual assessment to be completed by the trainee lawyer. Also, Article 52(2)(c) sets out a requirement that every month a trainee lawyer shall forward to the TBA a copy of a pleading and an appeal statement. This is an unrealistic frequency given the limited number of judicial cases in Timor-Leste and the wide variety of work that trainees might be involved with. Therefore, Article 52(2)(c) could be amended so that within the 9 month internship period there is the requirement trainee lawyers need to submit two different pleadings in case it is not possible to submit an appeal statement. As per the general comments, however, this level of detail would be more appropriately dealt with in the TBA by-laws.

#### **Article 53**

There are no comments on this Article.

#### **Article 54**

Article 54 stipulates that it is the responsibility of the TBA to organise and carry out the continued professional development of lawyers. It is submitted that this Article, as currently stated, is rather restrictive as to the nature of the professional development to be carried out. The removal of 'focusing predominantly on themes arising from the development of the legal science, technological advances and the evolution of civil society' is recommended, so as not to limit the nature and type of continuing legal education to be provided to lawyers.

It is further recommended that the content for the continued professional development of lawyers, along with the structure of this program, should be determined by the TBA, and thereafter included and outlined within the Statute and/or by-laws of the TBA.

In addition, there should be a requirement that the Government shall provide financial support for legal professional training and continued legal education, as well as providing premises for the TBA offices and facilities. There will continue to be a need for financial support in a legal profession that has limited financial resources.

#### **Article 55**

Article 55(2) exempts categories of persons from the training requirements, however Article 55(2)(b) for instance, when it provides an exemption for jurists of 'renown merit' who 'demonstrate they possess sufficient knowledge' etc. still needs to specify who this is to be demonstrated to i.e. the decision maker, or any particular process for determining this.

#### **Article 56**

This Article describes the registration of foreign lawyers in Timor-Leste and their exercise of the legal profession. The requirement is that only foreign lawyers from countries that offer equal privileges to Timorese lawyers can register and practice in Timor-Leste, which would be extremely limiting. The importance of ensuring foreign lawyers must meet certain

requirements prior to registering and practising in Timor-Leste is recognised, however, such a restriction may result in a reduction in the number of foreign lawyers officially registered and practising in Timor-Leste and an increase in the number of foreign lawyers who are unofficially practising in Timor-Leste. However, Article 56(2) could be framed for cases not covered by the preceding sub-Article, so that the TBA shall be responsible to undertake the necessary steps in order to confirm the stipulated requirements. Also, it may be justified that foreign lawyers be required to undergo and successfully pass public examinations organized to that end by the TBA. It should be clear that the OATL has the right but also the responsibility to verify the fulfillment of foreign lawyers registration requirements, including to supervise the public examinations for such purpose.

It is also recommend that the foreign lawyers should work in collaboration with Timorese lawyers, although the TBA would be able to provide for specific mentoring requirements in this regard, within its Statute.

#### **Articles 57-59**

There are no comments on these Articles.

#### **Article 60**

Article 60 provides for a prohibition in one paragraph i.e. 'the operation of an office or chambers, whatever its legal form, providing legal services or legal advice to third parties is prohibited' and then in the following paragraph providing that 'offices consisting exclusively of lawyers, law firms and legal advice chambers arranged by the TBA and Public Defender are exempt from the provisions in the preceding paragraph'. It may be clearer if this was one provisions e.g. 'only when offices or chambers consist exclusively of lawyers, law firms or law chambers shall they be able to provide legal services or legal advice'.

#### **Article 61**

This Article needs to be extended to include the last amending law, Law No 4/2015, which has come into effect after this draft Law was first approved by the Council of Ministers. That amending law continued the transitional provisions that allowed for law graduates who had not yet attended the legal professional training under the LTC to practice law. and should they obtain 5 years of experience, to obtain full registration without the need to attend training at the LTC. It also allowed for foreign lawyers to practice without the requirement of having passed an exam in Timorese law, and this exam has indeed not been administered for many years. It is noted that the transitional period under the most recent amending law will expire on 31 December 2016. In the absence of the passage of this proposed Law, consideration would need to be given to whether a further amending law would be required in order that some Timorese law graduates presently performing functions as lawyers since 2012, when the first amending law came into effect, would have sufficient experience (e.g. 5 years) so that they no longer needed to attend the LTC. The consequence of not extending the amending laws would be that some law graduates would not be fully covered by the transitional arrangements and this could result in depriving the justice system of the human resources it relies upon to function and overburdening the LTC with relatively experienced lawyers now required to undergo the training.

Also, an effort could be made to publicise the closing of the opportunity to be registered as a lawyer on the basis of the transitional regulations, in order to extend the role of registered lawyers for the inaugural meeting of the Timorese Bar Association to include as many lawyers as possible.

Article 61 could also expressly state that it safeguards the rights acquired by (i) Timorese lawyers registered with the LTC under the law, (ii) foreign lawyers who have passed the examinations organized in accordance with the Law No. 11/2008 and (iii) trainee lawyers who currently attend the training course under the law. Otherwise, this provision can be interpreted in the sense that the new law only safeguards the rights of lawyers acquired under the transitional regime.

#### **Article 62**

There are no comments on this Article.

#### **Articles 63 and 64**

It is suggested that tighter time frames are adopted to put the TBA in place. At present Article 63(2) provides that the General Assembly may not take place until up to 90 days after publication of the law and then Article 64 provides for the first elections for the remaining “organs” of the TBA be held three months after the first General Assembly. Cumulatively this might mean that there is no functioning TBA for up to 6 months from the Law coming into operation. Either all the necessary elections could be held at the first General Assembly or a shorter time thereafter, for instance, 30 days.

#### **Articles 65-68**

There are no comments on these Articles.

#### **Further comments**

A definitions section determining the meaning of “law graduate”, “lawyer”, “trainee lawyer”, “professor”, “doctor of law” may be justified as an alternative to providing sufficient definition in the provisions in which these terms are utilised.

**In conclusion**, it is noted that JSMP and IBAHRI held consultative workshops for Timorese and foreign registered lawyers in Timor-Leste with additional attendance by civil society organisations with a legal focus. Much of the feedback from those workshops is reflected in this submission. Nevertheless, it would be a fair characterisation that the draft law is generally uncontroversial and that the overarching concern of the legal professional community is that the Law be put in place as soon as possible.

End.