

# Mediation training for East Timorese public servants

By Tony Fitzgerald

In November 2000 Anglicare Top End, through its Resolve Mediation service, was approached by the Land and Property Unit of UNTAET (UN Transitional Administration in East Timor) to train its Timorese staff members in mediation and dispute resolution. The approach was made by former NT Chief Magistrate Ian Gray who headed the Unit at the time.

At present land tenure in East Timor is governed by an unmanageable hybrid of customary law, Portuguese law (the Portuguese came for sandalwood and departed after 400 years), Indonesian law (25 years of Indonesian occupation) and UN law. There is no Titles Office as the Indonesians during their exit from Timor destroyed it, together with the old Registry and all its records. The fledgling and under-resourced court system is unable to allocate a high priority to land tenure disputes.

The Unit is responsible for the management of land tenure and related land use problems in East Timor. It is envisaged that the Unit will eventually become the "Titles Office" of East Timor, but before that transition takes place a new titles Registry must be created – and this requires the resolution of many disputes.



*Trainees, interpreters and trainers. Back row: Jaime Lopes, Afonso Lopez, Lucas da Costa, Tony Fitzgerald, Gasper Benevides and Pat McIntyre. Front row: Thien Hawkes and Umi Rasmii (interpreters), Francisco da Silva. Antonio de Jesus, Francisco Amaral, Agapito da Cruz Xavier and Siobhan Campbell (interpreter).*

Timor has an agrarian-based economy, and stable management of land is absolutely essential to the well being of its society, its economy, and its people. Indonesia recognised this by giving its official sanction to customary Timorese title. The Unit realised that, in the absence of a viable dispute resolution system to handle fundamental land

disputes, there was a risk of widespread social disharmony and even violence.

Both the Unit and Resolve were aware that in the present climate an ideal opportunity existed (and still exists) to weave mediation into the Timorese dispute resolution fabric. The benefits of mediating disputes, rather than using some form of adversarial dispute resolution, are well documented. They include allowing the disputants to retain control of the dispute, maintenance of relationships through co-operative problem solving (of crucial importance in the area of ongoing land management), and significant savings in cost and time.

It was originally proposed to train ten Timorese employees of the Unit in Darwin. Indigenous Timorese trainees were targeted because of their ability to deal with local and cultural issues and their demonstrated interest in assisting their compatriots to resolve their own land disputes.

In the event eight trainees arrived for five days training in early December 2000 after two contracted TB. and were refused entry. They were a most

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*Ian Gray presents Afonso Lopez with his graduation certificate while Tony Fitzgerald (extreme left) and Peter Fisher (Director, Anglicare Top End) look on*

## **MESSAGE FROM EAST TIMOR**

NTWLA is proud to announce that our membership has now increased to sixty two. This was as a result of our recent membership drive and thanks to the efforts of Freida Evans (Secretary) and Sarah Hawke (Committee member).

At last our committee meeting it was agreed that \$500.00 should be donated to Kate Halliday to contribute to her expenses whilst she is undertaking volunteer work in East Timor. Kate has taken four months leave from her employment to work with a local organisation in East Timor known as Fokupers (Communication Forum for East Timorese Women). Kate has suggested that it be applied for specific purposes outside of support for her and we are presently looking at ways of achieving this.

Fokupers is based in Dili and provides a wide range of services including a women's shelter in Dili, an outreach support and counselling service to three towns in the districts, and education program and conducts research in violent crime committed against East Timor Women during the Indonesian occupation. The staff consists of about 15 Timorese, other locals and three international volunteers.

### **Message from East Timor**

Kate reports that her specific areas of involvement include issues in relation to domestic violence and the law. She values

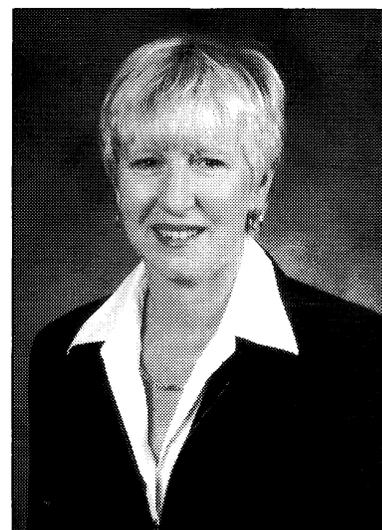
and is enjoying the opportunity to contribute to the development of a new nation and working towards improving the status of women.

Kate writes:

While Fokupers recognises the need to continually raise the issue of domestic violence, it is seeking to do this in partnership with other non-government organisations as they believe it is not simply a women's issue, but rather an issue which men must be concerned with. It is also aware that campaigning on domestic violence may leave them vulnerable to allegations that they are bringing about the fragmentation of families and are applying standards which are not culturally appropriate for East Timor.

The irony is that recent history in East Timor has resulted in increased awareness of the importance of maintaining and promoting human rights, Fokupers is educating the community that according to women their human rights means protecting them from all forms of violence whether that violence is categorized as political or domestic.

Over the last week I have reviewed the criminal procedure regulation passed by UNTAET in September 2000. In many respects the regulation is quite progressive as it includes specific rights for victims of crime including the right to obtain a copy of the prosecution file if a charge is dismissed (withdrawn) prior to trial and the right to request a review of such a decision. I will be assisting Fokupers to



*Jacqueline Presbury, NTWLA President*

produce resource material for its staff and volunteers on criminal procedure and victims rights. I will also be assisting Fokupers to more effectively advocate on behalf of its clients with police and prosecutors.

### **Next issue**

Britt Lardelli has volunteered (or was she co-opted?) to contribute next month. She has undertaken to write an article focusing on indigenous issues, which coincidentally is in keeping with the theme of the annual patron's reception sponsored by NTWLA patron Her Honour Justice Sally Thomas, "Indigenous Women and the Law."

### **Bouquets**

Congratulations go to Lisa Yeu Ming Wong and Deborah Kay Matheson who were admitted to practice on Tuesday 5 June 2001.

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## **Mediation Training for East Timorese Public Servants**

impressive and spirited group of indigenous Timorese men – ranging from young recent law graduates (Indonesian educated) to public servants who had worked for many years in the Indonesian civil service in East Timor. All were committed to the advancement of their nation, but under no illusion as to the daunting nature of their brief. In the East Timorese context, where land tenure is fundamental to the way of life, they were interested in the potential of dispute resolution through mediation to indirectly benefit through enhanced community harmony other sectors of Timorese society.

Training lasted for five days in the 'Harbour

Room' of Christ Church Anglican Cathedral on the Esplanade. Devised and presented by Darwin-based trainers and stalwart members of the Law Society's ADR Committee Tony Fitzgerald (Co-ordinator Resolve) and Pat McIntyre (mediator and barrister), the course consisted of formal instruction, role plays, observation of the Supreme and Magistrates Courts in session, and observation of an actual mediation using Resolve's closed-circuit TV system.

The trainees' language of choice was 'Bahasa Indonesia' which was managed with the able assistance of a tag team of two brilliant interpreters – Umi Rasmi, a Darwin-based Indonesian woman, and Siobhan

Campbell, a Dili-based Australian woman.

The trainees were enthusiastically received by members of Darwin's Timorese community – members of which attended the graduation ceremony and dinner, provided the venue for the ceremony (the Portuguese Timor Social Club), catered for the dinner, and arranged for the trainees to appear live on Community Radio. Total costs of the project were met jointly by Anglicare and the Unit. The course was well received and it is expected that Resolve will be invited to observe the trainees in action in Timor sometime in 2001.