



The Centre for Democratic Institutions

Study Tour to Australia

by

SRA. Cipriana Da Costa Pereira & SR. Leandro Isaac

Constituent Assembly Members, East Timor

15 - 19 October 2001

Report by

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INTRODUCTION

As part of his study tour in Australia and Papua-New Guinea Sra. Cipriana da Costa Pereira and Sr. Leandro Isaac, members of the East Timor Constituent Assembly, had discussions with a number of NSW Government and Parliamentary institutions, and with Transparency International. They were accompanied by John Wood as Facilitator for 15-17 October, and Roland Rich for the 18th October. Interpreting was provided by Sydney solicitor, Joaquim Fernandes.

Program

The program (see Appendix A) consisted of a meetings with the NSW Audit Office, the Chair and Secretary of the NSW Parliamentary Public Accounts Committee, the Office of the NSW Ombudsman, the Independent Commission Against Corruption, and Transparency International. There was also a program presented by the Diplomacy Training Program, University of NSW.

Preliminary Discussion

I discussed with Mr Lopes da Cruz his expectations for this leg of the Study Tour, and a number of matters that I felt worthy of consideration, based on my own experience within Australia and from discussions with ombudsmen in other countries. These included:

- the desirability, or otherwise, of having a Leadership Code to be administered by the Inspector General;
- the importance of ensuring real independence of the Inspector General, and any other office holders, through the system of appointment;
- whether the statutory base for the Office should be provided by a Constitution and Parliamentary legislation;
- that the lines of reporting ensure accounting to the Executive, Parliament, and the citizenry;
- whether there are areas where the Inspector General should have a determinative power as well as a recommendatory one; and
- whether the Inspector General should prosecute offences, for example under a Leadership Code, or only recommend charges be laid by the prosecuting authority.

TRANSPARENCY INTERNATIONAL

15 October 2001

Peter Rooke, a Director of Transparency International Australia (TI-A) and a Board Member of Transparency International (TI), described the issues that TI deals with around the world and the necessity for solutions to fighting corruption to come from the civil society. They have also worked in recent years to encourage other bodies, such as the World Bank, IMF, AusAID, to take corruption seriously. That they now do so is a contrast with a period not so long ago when those bodies may have said that this amounted to interfering in a country's politics.

TI considers that for success in a country it is crucial to have business on side.

He spoke of examples where TI had worked successfully with government agencies to further its aims. In Papua New Guinea they worked with the Education authority to develop education programs covering ethics, values, and corruption.

He spoke about TI's structure and organisation, with each national chapter being autonomous and electing an International Board supported by a secretariat based in Berlin. Every two years they provide a secretariat for the Global Anti-Corruption Conference.

Peter mentioned that TI's Source Book on National Integrity Systems had been translated into Bahasa and 300 copies printed in Jakarta, and that he had asked that some be sent to Dili.

David Mattiske, from TI, a communications expert talked about prevention of corruption in government procurement processes. He provided the participants with a summary of an *Integrity Pact* that can be used to govern the processes of contract tenders and bids (Appendix B).

In response to discussion, both TI members emphasised the importance of having anti-corruption mechanisms come from both the top down as well as from the bottom up. The East Timorese were very interested in the constitutional basis for watchdog agencies, and also how the Parliament can oversight those of its members with executive powers.

THE AUDIT OFFICE OF NSW

15 October 2001

The Deputy Auditor-General, Financial Audit, Tony Whitfield, outlined the functions of the Office, its establishment under the Public Finance and Audit Act, and its methods of operation.

The Auditor-General is appointed by the Governor upon the recommendation of the Executive, and has a non-renewable term of 7 years. The Auditor is only removable by a resolution of a joint meeting of both Houses of the Parliament.

There are two kinds of audit; audits of financial statements, and special audits, i.e. performance audits. There are about 450 entities subject to audit, which do not include local government (local government is within the jurisdiction of the Auditor-General in all other states in Australia). The Office has 230 staff.

Tom Jambrich, Assistant Auditor-General, Performance Audit, spoke of his area. About 12 performance audits are conducted each year, and these involve looking at the efficiency, economy, and effectiveness of an agency. Such audits take approximately nine months consisting of 3 months planning (including establishing the criteria against which the audit's assessment will be made); 3 months conduct of the audit; and 3 months report writing (including any comment from the agency). All reports must include the agency's response.

In addition the Parliament can request the Auditor-General to look at a particular matter.

The Office can also receive complaints under the Protected Disclosures Act, known as 'Whistle blower' protection legislation (49 last year).

During the session there were a number of questions about very practical issues relating to numbers of staff, administrative arrangements, as well as on the exercise of powers. The Office has a budget of \$20 million from fees for financial audits of agencies, and \$1.2 million from Treasury for performance audits. They also allocate \$1.2 million for writing reports to Parliament. They also occasionally bring in contractors to undertake financial audits, in order to benchmark what the Office does and how much it costs.

They produce better practice guides on a number of whole-of-government issues; e.g. corporate governance, handling sickness, fraud, and dealing with intellectual property.

In response to a question about what happens if an agency does not provide comment on the Recommendations in a report, it was pointed out that their legislation provides the agency with 28 days to provide the comment, after which the Auditor-General may proceed with the report to Parliament. They emphasised that the Auditor cannot question the **merit** of government policy, only its implementation.

In relation to how agencies implement recommendations, they said that they do follow up audits on recommendations that have been accepted by agencies (96% of all

recommendations).

NSW OMBUDSMAN'S OFFICE

16 October 2001

The Assistant Ombudsman, Greg Andrews introduced the program and the Deputy Ombudsman, Chris Wheeler, outlined the role of the organisation and the relationship between the Ombudsman and the other external review bodies such as the Independent Commission Against Corruption (ICAC), the Police Integrity Commission, the Auditor-General and the Administrative Review Tribunal. He also explained the role of the Parliamentary Committee which oversees the Office. This Committee can veto the appointment of the Ombudsman, and does occasional inquiries on various matters.

He discussed ombudsman issues such as corruption fighting v. complaint handling, and powers for complaint handling which include:

- Direct investigation;
- Oversight of investigation by agency;
 - Mandatory reporting; and
 - Selective reporting;
- Monitoring investigations by agency;
- Auditing investigations by agencies;
- Keeping systems under scrutiny;
- Alternative Dispute Resolution; and
- Informal resolution & preliminary inquiries.

He explained the findings that an Ombudsman can make, and the discretionary powers (especially NOT to investigate), and the importance of the 'own motion' powers. He then outlined reporting obligations.

He summarised the general approach as being to focus on solving the problem NOT on retribution; though police and child protection can have a more disciplinary outcome.

He went on to discuss the criteria they applied to determine priority for complaint handling. These are discussed in more detail in a paper he gave to the participants (Appendix C).

He then referred to essential elements that deserve consideration when establishing watchdog bodies (Appendix D).

Greg Andrews then spoke about the function and powers of the Office:

- Investigating individual complaints;
- Monitoring and auditing – systems and compliance (e.g. police complaints,

telecommunication interception, controlled operations, etc.; and

- A review/appeal function e.g. FOI and Witness Protection.

There was considerable interest in many issues, e.g. why politicians weren't in jurisdiction; powers to obtain injunctions to prevent decisions being made; reporting requirements; and priority setting.

David Watson outlined the purposes and general provisions of the Freedom of Information Act and the Ombudsman's role in external review of decisions made by agencies under the Act. There were questions regarding the rationale for charging for access, and on exemptions. He also briefly referred to the State's records legislation.

Laurel Russ, head of the Aboriginal Complaints Unit, then spoke of the various elements and priorities in their access and awareness program. They receive complaints from Aboriginal people; undertake access and awareness visits to remote Aboriginal communities; carry out ongoing consultation with the various stakeholders; and implement strategies to improve relations between all parties. She outlined some of the major factors used when doing access and awareness visits:

- recognise appropriate protocols for the culture;
- acknowledge the diversity of each community;
- have an awareness of, and sensitivity to, such diversity; and
- have experienced staff dealing with these communities.

The participants mentioned that there were 33 dialects among the 7-800,000 people in East Timor, but that there is a common traditional language. There is also a pretty common customary law throughout.

Vince Riordan, Police Team Manager, described the functions and operations of the unit. They receive some 5000 complaints about police matters (out of a total of approximately 10000. Of these 25-30% are declined; 25-30% are conciliated (e.g. for less serious, service type complaints); and 50-60% investigated (a more evidence focussed approach.

Bruce Barbour visited briefly and warmly welcomed the group, congratulated them on their election and offered assistance.

Greg Andrews explained the provisions of the Public Disclosures Act dealing with the protections available to Whistleblowers. Criminal sanctions apply to breaches by agencies, with a reversal of the onus of proof applying. The complainant only has to prove that they made a protected disclosure and that they suffered damage. However, the whistleblower can only go public if they have previously made a complaint to one of the nominated offices, i.e. Ombudsman, Auditor-General, ICAC, or the CEO of the agency.

NSW INDEPENDENT COMMISSION AGAINST CORRUPTION

17 October 2001

Commissioner Irene Moss welcomed the delegation and congratulated them on their election, and asked in what way ICAC could assist. She outlined the general powers and functions of the Commission. She indicated the accountability lines for her organisation, including appearing before a Parliamentary Committee twice a year. There is also an external Operations Review Committee which reviews every matter declined, to ensure a proper reason has been given.

Stephen Osborne, Chief Investigator, outlined the Commission's investigatory functions. They can put together a criminal prosecution brief that is given to the Director of Public Prosecutions for consideration. They often start with a private hearing to clarify the matters at issues, and to test the relevance of witnesses. Because of their coercive powers and the inapplicability of the rules of evidence, information gained in hearings cannot be used against witnesses in a prosecution. Giving false evidence is an offence. They have the power to intercept telecommunications and to place listening devices.

Any person can make a complaint, and every head of an agency has an obligation to report any allegations of corruption to ICAC; they have an own motion power; and Parliament can refer a matter (although it is up to the Commissioner to determine whether to investigate).

They undertake preliminary enquiries prior to the Commissioner approving formal investigation when powers can be used. They have jurisdiction over all public officials (except police officers - subject to the Police Integrity Commission) and can enter all public offices without warrant (except Parliament), and can apply for a search warrant to enter any other premises.

The same Parliamentary Committee that oversees the Ombudsman also oversees ICAC, and the Ombudsman has jurisdiction over them.

Yvonne Miles, Acting Director, Corruption Prevention, Education and Research, outlined the findings of some research undertaken with non-English speaking background people in Australia; one of the key findings being that they are unfamiliar with corruption fighting bodies. She believed that telling stories of why corruption is bad, and stories of hearings and what they involve for a corrupt person, are far more effective than expensive videos. ICAC has invested a lot in education materials for schools about ethics and ethical principles.

FURTHER BRIEFING AND DISCUSSION

17 October 2001

A session was held with John Wood who sought questions from the participants about the visits so far, and provided clarification and expansion where necessary. We discussed the different emphases required between corruption prevention and maladministration; what might be the minimum requirements for constitutional guarantees; and some of the issues involved in having the Inspector General administering a leadership code.

John then outlined some of the international developments and systems. The participants agreed that close oversight of provincial and regional administration would be very important, as there could be very powerful cliques formed.

There were queries about how they could obtain further assistance when necessary to help detail the more detailed legislation required. John indicated that he was sure that requests addressed to Australia and to CDI would be favourably considered.

NSW PARLIAMENTARY PUBLIC ACCOUNTS COMMITTEE

17 October 2001

We met the Chairman of the Committee, Joseph Tripodi MP, Opposition member, Catriona Hodgkinson MP, and the Committee Manager, David Monk. Mr Tripodi congratulated the participants on their election, and then outlined the role and function of the Public Accounts Committee (PAC) and its importance as an accountability and scrutiny mechanism. Whilst discussing the close working relationship with the Audit Office, he emphasised the independence of that body. Under its legislation, the PAC conducts a 3 yearly review of the Audit Office, and also follows up recommendations of the Auditor-General in reports to the Parliament to ensure that the government responds to them.

He also spoke of the importance of the media in acting as a safeguard against the Executive Government diminishing the role or resources of such institutions. One of the other strengths of the PAC was its bipartisan nature.

Ms Hodgkinson also supported the importance of the bipartisan nature of the Committee, and said that ensuring transparency in accounting was crucial.

He closed by offering any information or assistance that would be helpful.

Mr Tripodi gave the example of a hearing into the Grains Board of NSW as a good model for getting to the bottom of mismanagement. He also emphasised that the Committee can not look at policy, just the implementation of that policy.

He closed by wishing the participants good luck.

UNIVERSITY OF NEW SOUTH WALES: DIPLOMACY TRAINING PROGRAM

18 October 2001

Accompanied by Mr Roland Rich, Director of the Centre for Democratic Institutions, Sra. Cipriana da Costa Pereira and Sr. Leandro Isaac, members of the East Timor Constituent Assembly, called on the Diplomacy Training Program of the UNSW for further discussions. Joan Staples, Executive Director of DTP, met the delegation and introduced them to members of the DTP Board including Professor Paul Redmond, Dean of the Faculty of Law, Amanda Cornwall, a senior policy officer at the Public

Interest Advocacy Centre in Sydney and Louise Sylvan, the Vice-President of Consumers International and the Chief Executive of the Australian Consumers' Association.

The purpose of this meeting was to provide the delegation with a civil society perspective. The delegation had met a number of government and regulatory bodies and it was important that the delegation also have a view from the citizen's perspective. This meeting would therefore complement the discussions with Transparency International.

Sr Leandro Isaac explained the difficulties of completing the Constitution is just 90 days, half of which had already passed. The aim was to establish a sustainable democracy in East Timor and therefore the citizens' support was crucial. Sra Pereira explained that they had been engaged in the liberation struggle for many years and the task of building a democracy in East Timor was suddenly upon them. There were so many issues that they had to come to grips with.

A number of important issues were discussed in the course of this three-hour meeting. There was a detailed discussion on the concept of separation of powers and the critical need for the judiciary to be independent of the Executive and Legislative branches of government. The limited capacity in this area was a serious problem. It would take time to build up the judiciary.

There was also discussion on community means of settling disputes not requiring full judicial involvement. In urban areas, specialized tribunals can be established to deal with small claims, consumer complaints, landlord and tenant disputes etc. In rural areas, village mediators were particularly cost effective means of resolving disputes by traditional means and thus maintaining good relations between the parties.

There was a critical need for freedom of information if a sustainable democracy was to be developed in East Timor. One lesson from others' experience is that the confidentiality exemptions had to be carefully limited. The type of document or the classification on the document should not be a sufficient reason to limit disclosure but the contents of the document may provide such a reason. Ideally, a judge should make the decision if the matter is in dispute. There was also an issue of who should pay for the system; the user (through a fee system) or the taxpayer. Whatever system is in place, ultimately it only works well if the leadership wants it to work.

There was also discussion of consumer rights and Ms Sylvan provided examples of consumer protection provisions in various Constitutions in the region.

Discussion turned to the essential work of civil society to protect democracy. One had to work on the premise that governments have a tendency to abuse power. Civil society had to work as a pressure group together with a free media to keep a close watch on government. The problem of sustaining NGOs had to be considered. While it was important for NGOs to have strong links in their communities, in a poor country like East Timor making its transition to democracy, foreign support for civil society was probably a necessary component. The East Timor delegation recalled the attempts in the Suharto years by the authorities to try to control foreign contacts with local NGOs. This was not seen as a good precedent.

The issue of human rights protection was also critical. The delegation explained that the CNRT had been very conscious of the need to respect human rights and in 1997 had drafted a Charter of Human Rights. This would now need to be reflected in the Constitution. East Timorese, as victims of human rights abuses were very conscious of this requirement. It was noted that if the East Timor Constitution followed the Portuguese model, then international treaties would become self-executing under East Timor law. Therefore, one means of ensuring the best framework for protection of human rights was for East Timor to become a party to the six basic UN human rights treaties.

The delegation concluded that there were many issues it would have to examine closely in drafting the new Constitution. There was a view that the timetable set by the UN was too short and that perhaps the Constitution should be provisional initially. Mr Rich noted that Professor Yash Ghai would be assisting the East Timor Assembly as a constitutional expert. Professor Ghai was very experienced in this field and would provide invaluable guidance.

CONCLUSION

As with the visit of the Inspector General, all with whom discussions were held agreed that the functions and independence for an Inspector General should be embodied in the country's Constitution and spelt out in legislation. There was a general consensus that while they should avoid a proliferation of institutions, it was sensible for the Auditor-General's financial auditing function to be separate from the inspection/ombudsman/anti-corruption functions.

It is evident that assistance will be needed for helping draft their legislation in due course. Similarly the Inspector General clearly needs continuing assistance. Training will be of the greatest importance, and this should cover complaint handling, corruption investigation techniques, and administrative investigation techniques. Australian institutions have offered assistance in this regard, and it would be better sooner than later. Because of the lack of English language skills within the Inspector General's office, such training should be done with an interpreter, rather than waiting for the staff to improve their English.

As I noted in the report following the Inspector General's visit, it is critical to note that an institution such as the Inspector General is normally given only one chance by the public. If it fails because of insufficient resources or inadequate powers, it will be difficult to regain public confidence.

In due course it would also be useful for the Inspector General and/or Constituent Assembly members to visit and observe accountability institutions in Thailand.

RECOMMENDATION

It is recommended that:

1. assistance for developing provisions to be included in legislation establishing the office and functions of the Inspector General be offered to the Constituent Assembly and the UN Transitional Administration; and
2. assistance for training staff of the Inspector General's staff be offered in due course

APPENDIX 1: PROGRAM
East Timor Constituent Assembly Members' Tour
15 - 18 October 2001

Monday	10.00-13.30 Meeting with Peter Rooke, and David Mattiske, Transparency International, Savoy Hotel Peter Rooke 9326 1737	14.30 - 16.00 NSW Audit Office Level 11, 234 Sussex Street, Sydney	Deputy Auditor-General Tony Whitfield Jan Briggs 9285.0108
Tuesday	10.00 - 15.00 NSW Ombudsman's Office	Greg Andrews, Assistant Ombudsman, 9286 1002	
Wednesday	10.00-12.30 Briefing and discussion: John Wood at Savoy Hotel	14.00-16.00 NSW Independent Commission Against Corruption Irene Moss, Commissioner Barbara Carmichael 9318 5823	16.00-17.00 Mr Joseph Tripodi MP, Chair, NSW Parliamentary Public Accounts Committee David Monk, Committee Manager, PAC, 9230 263
Thursday	12.30-17.00 Consumer Protection and Civil Society discussions,	Joan Staples, DTP, UNSW; Louise Sylvan, ACA; Amanda Cornwall, PIAC.	
Friday	Report Writing by participants		

APPENDIX 2: STUDY TOUR CONTACTS

<p>NSW Audit Office Web: www.audit.nsw.gov.au</p>	<p>Tony Whitfield, Deputy Auditor-General</p>	<p>GPO Box 12, SYDNEY NSW 2001 Tel: 61-2-9285 0107 Fax: 61-2-9285 0188 Email: tony.whitfield@audit.nsw.gov.au</p>
	<p>Tom Jambrich, Assistant Auditor-General</p>	<p>Tel: 61-2-9285 0051 Fax: 61-2-9285 0060 Email: tom.jambrich@audit.nsw.gov.au</p>
<p>Transparency International Australia Web (Australia): www.transparency.org.au Web (International): www.transparency.de</p>	<p>Peter Rooke, Board Director</p>	<p>PO Box A2327 Sydney South, NSW 1235 Tel: 61-2-9326 1737 Fax: 61-2-9326 1737 Email: (office): prooke@transparency.org.au</p>
<p>Parliamentary Public Accounts Committee</p>	<p>Joseph Tripodi MP, Chairman; David Monk, Committee Manager</p>	<p>Public Accounts Committee, Parliament House, Macquarie Street, SYDNEY NSW 2000 Tel: 61-2-9230 2631 Fax: 61-2-9230 2831 Email: pac@parliament.nsw.gov.au</p>
<p>NSW Ombudsman's Office www.nswombudsman.nsw.gov.au</p>	<p>Bruce Barbour, Ombudsman; Greg Andrews, Assistant Ombudsman</p>	<p>Level 24, 580 George Street, SYDNEY NSW 2000 Tel: 61-2-9286 1000 Fax: 61-2-9283 2911 Email: GAndrews@nswombudsman.nsw.gov.au</p>
<p>NSW Independent Commission Against Corruption www.icac.nsw.gov.au</p>	<p>Irene Moss, Commissioner; Stephen Osborne, Chief Investigator; Grant Poulton, Director, Corruption Prevention and Education</p>	<p>GPO Box 500, REDFERN, NSW 2001 Tel: 61-2-9318 5999 Fax: 61-2-9699 8067 Email: gpoulton@icac.nsw.gov.au</p>

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