



INTERNATIONAL DEVELOPMENT LAW INSTITUTE
INSTITUT INTERNATIONAL DE DROIT DU DEVELOPEMENT

PN-ACK-897

108203

**training
on**

INVESTIGATING JUDGES' TECHNIQUES

(DILI - IV)

**December 11-15, 2000
Dili, East timor**

TRAINING REPORT

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ACKNOWLEDGEMENTS

This Training Workshop was made possible by a
Grant from the

USAID

The International Development Law Institute

in collaboration with

UNTAET

would also like to express gratitude to the following organizations and/or persons which
have contributed to the preparation and implementation of this workshop:

Mr. Michel Bonnieu

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Investigating judges' techniques

WORKSHOP OVERVIEW

IDLI selected for this training on Investigating techniques, judge Michel Bonnieu, who is an Investigating judge in France and teaches at French school for Magistrate (ENM). Mr. Nejib Boussedra, Program Legal Counsel from Rome was asked to be the course manager.

Mr Bonnieu approach was very interactive. He would explain the theoretical aspects of the notions, give an example or more of cases he dealt with and then ask them to identify in their codes and in the UNTAET regulations the steps that each of prosecutors and investigating judges has to take if similar facts were to happen in East Timor.

Judge Bonnieu presented diagrams of the organization of the judiciary in criminal matter in some civil countries, the role of prosecution and the role of investigating judges. He explained the logic behind that organization and then asked Timorese judges to complete virgin diagrams according to UNTAET regulations applicable in East Timor. Judges discovered then that the role and statutes of investigating judges in East Timor are not similar to those presented and that some confusion exists between prosecutor's role and investigating judge's role.

The expert explained the following day relationship between investigating judge and prosecutors and between investigating judge and police officers in charge of investigating mission.

Some exercises were proposed to participants at the end of the session and they were asked to think of them and present their relevant remarks.

In fact these exercises was misleading and indeed they were. Participants asked autopsy although it was not necessary. After explanation, participants agreed on that and the expert explained the difference between autopsy and a forensic examination.

He then asked participants to draft terms of reference for the doctor in charge of the examination. This exercise gave him the possibility to emphasis on the importance for investigating judge to identify the most precisely parts of the body to be taken of and stored for further examination.

He explained that autopsy in most cases must be followed by a toxicology exam and an Ana path exam.

At the end of the session, judge Bonnieu explained the relevance of medical secrecy on investigation and advised participants to improve confident relationship rather than confrontation.

The following day, the expert focused on the day-by-day duties of an investigating judge. He explained that investigating judge is in charge of serious offenses to persons, to the state and to properties. Misdemeanors are not of his competence.

He stressed on the fact that investigating judge is neutral in the administration of evidence of culpability or innocence explaining that this matter focuses in fact one major difference between inquisitor procedure in civil law countries and accusatory procedure in common law system.

He explained the importance of notification of charges to the suspect and the indictment he has to write in that sense. He also presented some tasks that one investigating judge cannot do by himself such as forensic examination, psychiatric analysis or gathering of evidence. In the other hand he presented other tasks that must be done by the investigating judge himself such as protecting the presumption of innocence, information of the suspect of his rights, decision to open or close a file, qualification of the charges.

Some limits to the powers of an investigating judge were presented i.e necessity to hold meetings in presence of all the lawyers involved, communication of the results of expertise to all parties, appeal of all his decision...

The fourth and fifth day were dedicated to the presentation of a very famous European case of a serial killer that involved French judiciary, English and Portuguese judiciaries. The expert presented the facts on a chronological basis, explained each step he took and asked participants to find in UNTAET regulations legal basis that allow them to do the same or to do it in a different way. These two days were really interactive and participants had to be involved in the work progress.

Collaboration between investigating judge and other parties were i.e. police, agencies, medical staff was analyzed in real case and in UNTAET regulations. The expert also emphasized on the collaboration between French judiciary and English and Portuguese judiciaries and explained to participants the means of such collaboration.

VISITING INSTRUCTORS

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Néjib Boussedra, a Tunisian and French national, is a graduate of the University of Aix-en Provence Law School where he obtained his degree (Maîtrise), post-graduate degree (DEA) and PhD (Doctorat, 1980) in Private Law.

Prior to joining IDLI as Program Legal Counsel in February 2000, he was a Professor of Law at the Graduate Institute for Commercial Studies (IHEC) of the University of Tunis. M. Boussedra was also vice-dean at the IHEC from 1983 through 1988.

As well as his University commitments, he maintained his own law practice in Tunis and specialised in business law, corporate law, bankruptcy and banking law.

Over the last ten years he has taught regularly in IDLI courses and seminars as a visiting instructor.

He was involved in the drafting of several Tunisian laws, in particular on privatisation, stock exchange markets and bankruptcy.

* * *

Name : Michel **BONNIEU**
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Investigating judge at the Tribunal de Grande Instance de châteauroux, Michel Bonnieu is also a teaching in law at the university of Orléans (France). Following an experience of ten years abroad (Ghana, Bangladesh, Indonesia, Uganda, Syria) as a diplomat for the Ministry of Foreign Affairs in France, Michel Bonnieu entered the Ecole Nationale de Magistrature as an auditeur de justice.

Michel Bonnieu is specialized on the subjects of international and European law at the Ecole Nationale de Magistrature, having acquired a solid education on the penal and criminal matters thanks to his participation in several seminars (European study Center of Strasbourg, European Law academy of Trêve, Court of Justice of the European communities, Court of Appeal of Bourges. He is currently a member of the Criminal Science International Superior Institute of Syracuse, for which he acts through interventions in conferences, and of the World Justice Information Network.

Michel Bonnieu has published several articles on penal law and on the function of the «Investigating judge » in French and English.

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PARTICIPANTS
December 11-15, 2000

Name	Title
1. Mr. Alvaro Maria Freitas	Public Defender
2. Mr. Hipolito Exposito M. Santa	Private Lawyer
3. Mrs. Olga B. Nunes	Public Defender
4. Mr. Sergio de J. Hornai	Public Defender
5. Mr. Domingo Maria Serments	President of the Court
6. Mrs. Jacinta c. de Costa	Judge
7. Mr. Alexander Cortenul	Investigating Judge
8. Mr. Aderito A.P. Tilman	Judge
9. Mr. Marçal Mascarenhas	Prosecutor
10. Mr. Jose de Tosta Ximenes	Judge
11. Mr. Jaoa H. de Carvalho	Investigating Judge
12. Mrs. Delia Jimdade	Prosecutor
13. Mr. Cavei Xavier	Defender
14. Mr. Antonio Helder P. Docosan	Judge
15. Mr. Cirilo Jose Cristouao	Judge
16. Mr. Rui Pereira dos Santos	Judge
17. Mr. Aleino de Tanjo Barris	Prosecutor
18. Mrs. Lisette Quintao	Public Defender