

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE REPUBLIC OF INDONESIA

AND

THE UNITED NATIONS TRANSITIONAL ADMINISTRATION IN EAST TIMOR

REGARDING

COOPERATION

IN LEGAL, JUDICIAL AND HUMAN RIGHTS RELATED MATTERS

The Republic of Indonesia and the United Nations Transitional Administration in East Timor (hereinafter referred to: "the Parties"),

Recognizing the importance of cooperation between the Republic of Indonesia and the United Nations Transitional Administration in East Timor (hereinafter referred to: "UNTAET") in legal, judicial and human rights related matters,

Recalling Security Council Resolution 1272 (1999) of 25 October 1999, whereby UNTAET is endowed with the overall responsibility for the administration of East Timor and is empowered to exercise all legislative and executive authority, including the administration of justice,

Fulfilling the commitment made in the Joint Communiqué of 29 February 2000 between the Minister of Foreign Affairs of the Republic of Indonesia and the UNTAET Transitional Administrator,

Pending the conclusion of an agreement between the Republic of Indonesia and the state of East Timor, once independent, regarding mutual assistance in legal, judicial and human rights related matters as well as regarding extradition,

Reaffirming their commitment to hold accountable the perpetrators of serious violations of international humanitarian and human rights law in East Timor,

Determined to provide due process during the investigation, prosecution and trial of individuals within their respective jurisdictions and to more effectively combat cross border crime,

Reaffirming also their support for the investigative efforts of the National Human Rights Commission of Indonesia (KOMNASHAM),

Taking into consideration the recommendations of the Indonesian Commission for Human Rights Violations in East Timor (KPP-HAM) of 31 January 2000 and the International Commission of Inquiry on East Timor of 31 January 2000,

Guided by General Assembly Resolution 45/117 of 14 December 1990, adopting a Model Treaty on Mutual Assistance in Criminal Matters, and General Assembly Resolution 45/116 of 14 December 1990, adopting a Model Treaty on Surrender,

Hereby agree for the period of the transitional administration by UNTAET to facilitate cooperation in the following matters:

Section I
Scope of Application

1.1 The Parties shall, in accordance with the present Memorandum of Understanding, afford to each other the widest possible measure of mutual assistance in investigations or court proceedings in respect of offences the prosecution of which at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.

1.2 Mutual assistance to be afforded in accordance with the present Memorandum of Understanding, in particular Section 11 of the Memorandum of Understanding, shall include:

- (a) Taking evidence or statements from persons;
- (b) Assisting in the availability of detained persons or others to give evidence or assist in investigations;
- (c) Ensuring service of judicial documents;
- (d) Executing arrests, searches and seizures;
- (e) Facilitating transfer of persons;
- (f) Facilitating participation of forensic experts in exhumations;
- (g) Ensuring participation of representatives of authorities in legal proceedings;
- (h) Examining objects and sites;
- (i) Facilitating access to information;
- (j) Providing information and evidentiary items;
- (k) Providing originals or certified copies of relevant documents and records.

Section 2
Judicial Matters

With respect to judicial matters, the requested Party, in accordance with Section 11 of the present Memorandum of Understanding, shall ensure that

- (a) Subpoenas and summons issued by authorities of the requesting Party be served on witnesses within the jurisdiction of the requested Party;
- (b) Court decisions, including warrants, titles, court orders, judgements and verdicts, from authorities of the requesting Party be served on individuals or entities within the jurisdiction of the requested Party;
- (c) Warrants for Arrest be enforced by the competent authorities of the requested Party;
- (d) As deemed necessary by an authority from the requesting Party, reenactments at crime scenes be carried out within the jurisdiction of the requested Party, allowing for the participation of the parties to the legal proceedings at issue, their counsel, and of representatives of the relevant authorities of the requesting Party;
- (e) As deemed necessary by an authority of the requesting Party, evidence be taken from witnesses, expert witnesses and suspects by the relevant authorities of the requested Party;
- (f) As deemed necessary by an authority of the requesting Party, witnesses who are expected to provide essential testimony are present in courts of the requesting Party;
- (g) Other evidence be taken by relevant authorities of the requested Party or made available to relevant authorities of the requesting Party.

Section 3
Forensic Matters

3.1 In accordance with Section 11 of the present Memorandum of Understanding, the Parties shall ensure that forensic experts and, as appropriate, other relevant experts and authorities from the jurisdiction of the requesting Party can participate in exhumations and forensic examinations carried out within the jurisdiction of the requested Party.

3.2 Any information resulting from such exhumations or examinations shall be made available to the authorities of the requesting Party.

Section 4
Participation in Proceedings

4.1 The Parties shall ensure that lawyers registered with a bar association in the jurisdiction of the requesting Party be admitted and enabled to cooperate along with a lawyer who is registered with a bar association in the jurisdiction of the requested Party, in legal proceedings within the jurisdiction of the requested Party.

4.2 Representatives of authorities of the requesting Party shall be admitted, in accordance with Section 11 of the present Memorandum of Understanding, to be present at the relevant legal proceedings within the jurisdiction of the requested Party. As appropriate, the competent authorities of the requested Party may afford representatives of authorities of the requesting Party the right to participate in investigative and prosecutorial proceedings.

Section 5
Notification of Arrest, Indictment, Verdict

The Parties shall promptly notify each other of any arrests of, indictments of or verdicts against residents from the jurisdiction of the respectively other Party.

Section 6
Access to Information

6.1 The requested Party shall facilitate access of authorities of the requesting Party to information that is relevant to an investigation, prosecution or trial, including physical evidence, records, archives, data, and documents, including laws or legal texts that are related to those proceedings.

6.2 Subject to Section 11.3 of the present Memorandum of Understanding, the requested Party may deny access to such information on exceptional grounds, including that granting access would jeopardize the conduct or success of an investigation, or conflict with the security of witnesses.

6.3 The Parties shall ensure that such information will not be disclosed to the public or to any unauthorized third party before the commencement of the primary trial to which the information relates. Violations of this obligation shall be punished in accordance with the applicable laws of each Party. The authorities of the requested Party may specify, in each individual case, the rights and obligations of the requesting Party in respect of the confidential nature of the requested information.

Section 7
Cross-Border Crime

7.1 Each Party shall make available to the other Party any information that may be necessary to enhance the capacity of that Party to combat cross-border related crime more effectively.

7.2 The Parties shall notify each other of any intent or necessity to investigate and prosecute cross-border related crime or violations.

7.3 The relevant law enforcement agencies of both Parties shall cooperate closely in cases of cross-border related crime or violations.

Section 8
Witness Protection

8.1 In the event that witnesses or expert witnesses from the jurisdiction of the requested Party testify before or are interrogated by authorities of the requesting Party, within the jurisdiction of the requesting Party, the requesting Party shall ensure the physical protection of the witnesses or expert witnesses while being within the jurisdiction of that Party for the purpose of giving testimony or being interrogated.

8.2 A witness or expert witness who testifies to or is interrogated by authorities of the requesting Party shall not be criminally prosecuted or detained while being within the jurisdiction of that Party, nor shall the freedom of that witness or witness expert be restricted in any other way, unless for the purposes of their physical protection.

8.3 Freedom from criminal prosecution shall not apply where a person responds to a court summons of the requesting Party on criminal charges against that person, or where that person remains for more than seven (7) days within the jurisdiction of the requesting Party without relation to the requested testimony or interrogation.

Section 9
Transfer of Persons

9.1 The Parties undertake to transfer to each other all persons whom the competent authorities of the requesting Party are prosecuting for a criminal offence or whom these authorities want for the purposes of serving a sentence.

9.2 For the purpose of the present Memorandum of Understanding, criminal offences for which a person may be transferred are offences that are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a maximum period of at least two (2) years, or by

a more severe penalty, as well as crimes against humanity. Where the request for transfer relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, a transfer shall only be carried out if a period of at least six (6) months of such sentence remains to be served.

9.3 Each Party shall have the right to refuse a request for such transfer if the carrying out of legal proceedings by authorities of the requesting Party would not be in the interest of justice.

9.4 When reviewing a request for transfer, the Parties shall be guided by the principle that individuals shall be generally held responsible in the jurisdiction where the crime at issue was committed. If the requested Party, in accordance with Section 9.2 of the present Memorandum of Understanding, refuses to transfer a person, that Party shall be obliged to submit the case to its own competent authorities for prosecution.

Section 10 Procedures of Transfer

10.1 After being satisfied that the transfer would be in the interest of justice, the requested Party shall apprehend the person whose transfer has been requested and shall immediately notify the requesting Party of the apprehension.

10.2 The requested Party may, as appropriate, request the assistance of the requesting Party in facilitating the practical arrangements of the transfer.

10.3 Upon transfer of the apprehended person to the jurisdiction of the requesting Party, the legal counsel of that person may make legal representations in a court of justice of the requesting Party in regard to the transfer.

10.4 The Parties shall inform each other of the general procedural requirements of a transfer, in accordance with domestic necessities and internationally recognized standards.

Section 11 Requests

11.1 In seeking cooperation in legal, judicial or human rights related matters, the requesting Party shall submit a written request in accordance with the provisions of the present Memorandum of Understanding.

11.2 The request shall indicate:

- (a) The requesting authority;
- (b) The requested authority;
- (c) The names and address of the parties to a legal proceeding;
- (d) The names and address of the legal counsel, where applicable;
- (e) The nature, the reasons and the subject of the proceedings with a summary of the facts and a precise indication of the charges, where applicable;
- (f) A detailed specification of the action that is requested and the individuals concerned.

11.3 In the event of a denial of a request for assistance, as provided in Sections 6.2 and 9.2 of the present Memorandum of Understanding, the requesting Party shall be informed of the reasons for such denial in writing.

Section 12 Practical Arrangements

During the period of the transitional administration of UNTAET, any requests for cooperation shall be submitted through the Representative Office of the Republic of Indonesia in Dili and the UNTAET Office in Jakarta respectively to the Attorney General of the Republic of Indonesia or the UNTAET Transitional Administrator.

Section 13 Costs of Legal Assistance

Except where explicitly agreed otherwise, the costs of affording legal assistance as provided in the present Memorandum of Understanding shall be borne by the Party in whose jurisdiction the act incurring the expenses is afforded.

Section 14 Enforcement

14.1 The Parties are committed to ensuring full enforcement of requests for cooperation in the above matters by the competent law enforcement agencies and authorities in their respective jurisdictions, in accordance with the provisions of the present Memorandum of Understanding.

14.2 Where necessary for the implementation of the present Memorandum of Understanding, the Parties commit themselves to passing legislation or amending existing legislation.

Section 15
Amendments and Settlement of Disputes

15.1 Amendments to the present Memorandum of Understanding may be submitted by either Party and shall be adopted only with the concurrence of both Parties.

15.2 Any dispute, controversy, and differences as to the interpretation or implementation of the present Memorandum of Understanding shall be settled amicably through consultation or negotiation between the Parties.

Section 16
Entry into Force

The obligations and arrangements provided for in the present Memorandum of Understanding shall take effect upon signature of both of the undersigned.

“In witness whereof the undersigned have signed the present
Memorandum of Understanding”

Done at Jakarta
on this fifth day of April
in the year of 2000
in two original texts in English

Done at Dili
on this sixth day of April
in the year of 2000
in two original texts in English

for the Government of the
Republic of Indonesia:

for the United Nations
Transitional Administration
in East Timor:

Signed

Signed

Marzuki Darusman

Attorney General of the
Republic of Indonesia



Sergio Vieira de Mello

Transitional Administrator
UNTAET