



*In post conflict countries,
IDLO services make a
valuable contribution to
reconstruction and reform
with the aim of facilitating a
return to the rule of law and
civil society. To date,
assignments have been
carried out in numerous
countries, including Albania,
Bosnia and Herzegovina,
Croatia, Macedonia,
Cambodia, East Timor and
Rwanda.*

UPCOMING DLU:

SEPTEMBER:

*Lessons learned on the legal
implications of HIV/AIDS and
gender*

The International Development Law Organization (IDLO) actively participates in assisting states recovering from armed conflicts and is currently implementing programs in Afghanistan, the Democratic Republic of Congo, and East Timor. Research and preparatory work for technical assistance in Haiti, Nepal and Sudan is also underway. The lessons learned from these programs contribute to the ongoing improvement of IDLO's efforts in this field, and are offered here as guidance for the international community's intervention in the legal and judicial sector of post-conflict societies.

Guidelines

I. Post-Conflict Background:

The end of the Cold War marked the close of a bi-polar world order, characterized by the ideological battles between the East and West, and the possibility of global confrontation. While the chances for global confrontation have decreased, the likelihood of local conflicts has increased (FN 1). The nineties have witnessed the emergence of qualitatively new forms of armed conflict marked by specific features. These new wars are typically intra-state rather than inter-state (FN 2). This marked difference in the political landscape has generated more peacekeeping and humanitarian missions focused on the reconstruction of these post-conflict countries. At the center of these missions is the establishment of the rule of law, not only as a way to deal with past injustices, but also to address current practical problems, such as uncertain legal standards, and to promote the political, social and economic stability of the country (FN 3).

Various approaches are in place to address post-conflict reconstruction. Some organizations carry out assessments/surveys of the identified needs in any given post-conflict country and others address reconciliation issues. Some post-conflict reconstruction programs concentrate primarily on the capacity development of the country, which is the ability of countries, organizations and people to manage development on their own in a smooth, efficient and sustainable way. Capacity improvements are viewed as preconditions to achieving sustainable development impact, since its goal is to help developing countries make and carry out their own choices (FN 4). By pursuing capacity building activities, the donor community acknowledges that development does not take place by throwing money, projects and expatriates at problems, but rather by formulating comprehensive, long-term and country-specific strategies.

The complicated process of social and economic reconstruction, including strengthening business security and the investment environment, can only occur once a country has established the rule of law, which directly enhances the chances for long lasting peace. Yet, in order for the rule of law to become a reality, all components of the country's legal infrastructure must be developed, including the legal code, and the judicial, policing and penal systems. This construction often involves the revision and modernization of much of the previous legal and legislative infrastructure and sometimes the drafting of a new constitution.

DLRC Research & Publications Unit

DLRC Director
Yohannes Kassahun
ykassahun@idlo.int

Head, Research & Publications
Thomas McInerney
tmcinerney@idlo.int

Legal Editor
Rosemary Navarrete
rnavarrete@idlo.int

IDLO HEADQUARTERS

Via S. Sebastianello 16
00187 Rome, Italy
Tel: +39 06 6979261
Fax: +39 06 6781946
idlo@idlo.int
www.idlo.int

ASIA PACIFIC TRAINING CENTER

Glebe Court House
2, Talfourd Street
2037 Glebe NSW
Australia
Tel: +61 2 85856700
Fax: +61 2 85856767
aptc@idlo.int

AFGHANISTAN PROGRAM OFFICE

In front of Junction 2
Charah-i-Shar Pour
Kabul
idlo@idlo.int

In its approach towards post-conflict reconstruction, IDLO focuses exclusively on providing training and technical assistance towards achieving the medium-term objective of establishing a legal and judicial system. The following sections provide an overview of IDLO's most recent experiences in capacity building. In particular, the methodological issues implicated in this type of training, the scope of IDLO training activities, country findings, and future projects and objectives are identified.

II. Lessons Learned:

The overall objective of judicial reconstruction programs is to provide fair, trusted, predictable, and knowledgeable judiciaries capable of administering justice with the participation of the public, and which are comprised of judges who know the law and have the means to enforce it. Recent shortcomings and mixed results in judicial reconstruction lead to the conclusion that insufficient emphasis has been placed on the methodology of this endeavor. Despite the urgency connected with post-conflict situations, in order to be successful, judicial reconstruction programs must first answer threshold questions regarding appropriate methodologies to ensure the effectiveness of post-conflict assistance for reconstruction of the justice sector. In this respect, IDLO's past judicial training workshops and technical assistance in post-conflict situations (specifically in Afghanistan, East Timor, and Kosovo) have resulted in the identification of the following key concepts and issues in this sector.

A. Needs Assessment Stage:

Since modern legal and governance institutions cannot be delivered at the end of a gun barrel, a threshold question is the identification of the critical features necessary to give a technical assistance program a chance of success. Furthermore, assessment of the credibility—or potential for credibility—of the judiciary must be made prior to initiating programs to enhance judges' skills and knowledge. The design of successful programs depends on in-depth knowledge of the legal and judicial structure, as well as the culture, which can only be accomplished in consultation with civil society.

The following are critical threshold questions to address when assessing the state of legislation and the need for legal reform:

- The legality of the laws that judges are to apply: were the laws formulated by an undemocratic, illegitimate, or evil regime?
- Were judges obligated to uphold laws that permitted, instigated or justified crimes, genocide, ethnic cleansing, or ethnic or gender discrimination?
- Can judges, as part of their role in social reconstruction, retroactively apply the laws of the successor regime in order to prosecute those who collaborated with the previous undemocratic government in accordance with laws in force at the time?

It is essential to understand thoroughly the context in which a program of technical assistance will be implemented. For example, more thorough preliminary studies of accepted traditions and taboos could prevent resentment by local populations. Similarly, minimal knowledge of ethnic divisions that may have contributed to a recent conflict is needed in order to design and implement a technical assistance project.

Furthermore, since substantive and practical skills training is likely to result in changes of behavior and procedures, it is necessary to first understand why existing procedures have been customarily used. In fact, understanding and explaining the historical reasons for a particular behavior may provoke the participants themselves to modify their conduct, an outcome immensely preferable to changes imposed by instructors, especially if they are foreigners. Lastly, it is necessary to assess whether some issues that are relevant for the country as a whole are equally relevant in a particular region.

With the foregoing guidelines in mind, a program for judicial and prosecutorial reform can be designed based on data from the assessment efforts, thereby avoiding the misguided attempt to deliver a “ready-made system” also known as legal transplantation (FN 5). The practice of legal transplantation is based on the natural tendency to believe one’s system is necessarily superior to the pre-existing system in the country in question. According to this notion, “indigenous” legal infrastructures cannot meet the challenges of the modern global world and therefore, it is best to substitute “developing country” laws with those of an efficient modern state.

Another equally mistaken assumption is the belief that post-conflict countries do not have meaningful legal traditions and that legal transplants (although repeatedly denounced as counterproductive) can only be seen as progress. A remarkable example that exposed the fallacy of this assumption comes from war-torn Afghanistan. Empirical research carried out by IDLO prior to the launching of a major judicial training project in Afghanistan revealed that it was a country with a rich legal tradition.

B. General Legal and Judicial Reform

Certain structural and institutional changes may be necessary for the proper reconstruction of the country’s judicial and legal sector. For example, an independent bar is an essential element of an independent justice system, therefore, it is important to assess whether a country recently emerging from violent conflict is in a position to entertain such a concept. However, although a strong base of independent private practitioners is what most likely guarantees an effective, efficient, and fair justice system and reinforces the parallel independence of the judiciary, an evaluation must first be conducted to determine whether those qualified to serve as counsels, are indeed qualified. For instance, IDLO experience reveals that the right to counsel in criminal proceedings—including for those presumed guilty—is not widely understood. Many defendants in post-conflict countries lack counsel at trial. In such a context, it may be more important to create a core of jurists who comprehend their mandate, rather than focus on the degree of independence the bar association has with respect to the authorities.

C. General Guidelines

Judicial Sector

Judicial reconstruction projects necessitate a significant component of training for the judiciary, which as a sensitive area, susceptible to corruption and other unethical behavior, demands open and constructive assessment and enhancement. Irrespective of their level of jurisdiction or the state of their country’s development, judges tend to express initial reluctance to undergoing training. More than any other professionals, judges are extremely sensitive to the qualifications and personality of the experts called upon to train them. As a result, expert trainers must be highly qualified and exclusively recruited from among their peers.

Judicial reform must be approached with a coherent and comprehensive strategy. In other words, the administration of justice must be a seamless process that ensures that all stakeholders— from the police officer making the initial inquiry or arrest to the prison warden further to sentencing— are applying the same standards. Consequently, it is counterproductive to carry out parallel reforms without coordination. For example, a program to reform the police force by providing adequate equipment and training in standards of conduct and human rights awareness should be integrated with the revision of crime investigation rules and procedures as well as a rethinking of the role played by prosecutors or investigating judges. Such a seamless and comprehensive approach demands a change of attitudes among the donors themselves, as well as an end to the outdated practice of territorial allocation in which, for example, a development agency providing assistance for higher education is unaware and unconcerned with what is being done for secondary schooling.

Prosecutorial Sector

A program aimed at judicial and prosecutorial reform must address the needs of all stakeholders in the justice sectors. While training of judges and prosecutors is often given priority due to its critical role in the administration of justice, it is equally important to focus on court administrators and court clerks. All too often these categories of personnel are overlooked in spite of the major role they play in preventing court congestion and guaranteeing efficient, fair, and consistent management of cases.

Valid training of defense counsel must also be a priority. In market economy countries, fee-paying clients benefit from the investment defense counsel make in their professional education and training through value added to the service quality, whereas in developing countries and particularly in post-conflict areas, the concept of a fee-paying client is virtually non-existent. The majority of individuals accused of crimes cannot afford to pay for defense counsel. In such instances, judicial reform projects must also respond to this need and incorporate, alongside the training of the judiciary, the creation of a cadre of public defenders. This will ensure that those without the means may still obtain satisfactory legal support. Lastly, public defenders must also be trained in skills and substantive knowledge, but compensation given to them during this training must be carefully considered in order to avoid any discontent once this group falls under the public payroll. IDLO has taken this approach in East Timor and is currently considering the same for Afghanistan.

Timeliness of Interventions

Irrespective of whether the conflict has lasted 23 years as in Afghanistan, or much less as in East Timor, the population of post-conflict countries has suffered a great deal for much too long. As a result, they want and expect a speedy restoration of justice, which is nearly impossible, because a well-trained judiciary with the technical skills, knowledge and professional ethical values that characterize a transparent justice system cannot be delivered overnight. This is especially true when legal education has been neglected for long periods and ethical standards long forgotten. Even so, quick impact projects must be incorporated in the comprehensive judicial reform and reconstruction project. These quick impact projects are necessary to deliver tangible results that demonstrate to the citizens of war torn countries that efforts are ongoing and that, along with peace, security is immediately being restored and criminals efficiently prosecuted.

To this end, it is indispensable to include a number of modest, yet immediate and highly visible components within more ambitious long-range projects of capacity and institution building. One such component might be the creation of a pilot court that would benefit from quick rehabilitation of equipment and staff, not only with well-trained judges and prosecutors but also clerks, and which would serve as a model for what a restored justice system can become. Ample publicity of such a project could help keep the general public abreast of the short and long-term accomplishments, and patient for the wider and more comprehensive results of the project.

Monitoring of Training Programs

Although results are not quantifiable immediately, a few indicators of a functioning judiciary include statistics of cases, length of adjudication, and number of decisions appealed and revoked through the appellate process. However, indicators of the level of trust gained or regained by the judiciary are more difficult to come by. Nevertheless such information is essential, not only to secure sustained funding but, more importantly, to assess whether the methodology chosen is appropriate and providing the expected results.

The preceding list of issues illustrates the complexity of designing and implementing technical assistance in the judicial and prosecutorial sector. In fact, the difficulty of promoting democracy and good governance through conflict training intervention is well documented and results are far from certain. This reality has led some to label funds invested in rule of law projects as “venture capital” due to the enormous risks of failures, and the time needed to secure tangible results. Although post-conflict projects are inherently risky, failure must be prevented at all costs. While re-establishing respect for the rule of law is a difficult task, it is a task that development workers, donor agencies, consultants and civil society representatives must undertake with urgency. Moreover, immense caution and professionalism are imperative, since the failure to restore justice may, as an unintended consequence, be a catalyst for renewed civil unrest and social instability.

II. IDLO Background in Judicial and Prosecutorial Reform

The importance of re-establishing the rule of law in post-conflict countries, particularly where the United Nations has a

mandate to conduct peacekeeping operations, has been recognized by the United Nations Security Council during the 24-30 September 2003 session (FN 6). The IDLO technical assistance and research activities in post-conflict countries are helping to fulfill this mandate.

IDLO has contributed to the recovery and reconstruction efforts in a number of post-conflict countries, including Afghanistan, Albania, Bosnia Herzegovina, Cambodia, East Timor, Kosovo, Macedonia, and Rwanda. IDLO currently provides technical assistance and training services to the Transitional Government of Afghanistan to support the return of the war-torn country to the community of nations and the rule of law.

After the urgent initial phase of post-conflict reconstruction, IDLO continues to promote close cooperation with local counterparts to ensure the ownership, sustainable program design and acceptability of reform efforts for the community. Moreover, IDLO provides technical assistance and capacity building to ensure sustainability in constitutional legal development.

III. Scope of IDLO Activities in Judicial and Prosecutorial Reform:

IDLO technical assistance for post-conflict countries contributes to international community efforts to mitigate the effects of conflicts, particularly those resulting in the disruption of the administration of justice. The technical assistance that is critical to the reconstruction of the judiciary sector offered by IDLO is apolitical and based on the principle of respect for countries' sovereignty. Initiating an intervention in these post-conflict environments requires preliminary studies and initiatives, focusing specifically on the legislative framework and judicial capacity necessary for the reconstruction. Such requisite studies are in line with IDLO's competences and experience.

Accordingly, IDLO analysis and projects are normally developed through the following consecutive phases:

- Legal research and documentation on the political, legal, and judicial situations in post-conflict countries;
- Analysis and assessments of the training and technical assistance needs in identified fields, made in association with local representatives and/or multilateral or bilateral development agencies;
- Collection of the legislation and case-law in the post-conflict countries selected;
- Drafting project proposals and programs in the fields of legislation and capacity building of the members of the judiciary and legal professionals;
- Identification of contacts with local and international counterparts, experts and potential donors; and
- Assessment of the impact of the project post-completion.

IV. Recent Judicial Training and Prosecutorial Reform Activities and General Findings:

A. Afghanistan: Interim Training for the Afghan Judiciary 2003-present:

Following the U.S.-led military operation that deposed the Taliban regime in the fall of 2002, the starting point for rebuilding Afghanistan was the "Agreement on Provisional Arrangements in Afghanistan Pending Re-establishment of Permanent Institutions"—the Bonn Agreement—which established an Interim Afghan Authority, and provided the basis for an interim system of law and governance. The United Nations Assistance Mission in Afghanistan (UNAMA) was designed to be a "light footprint," that is, a minimalist mission with limited involvement to ensure space for Afghans to take the leading role in rebuilding their country (FN 6). As part of this plan, certain donors were selected as "Lead Nations" for particular sectors. For example, Italy, one of the first ten donor countries, was designated as "Lead Nation" to coordinate international assistance in the justice sector for Afghanistan (FN 8). It is in cooperation with Italy's Ministry of Foreign Affairs that IDLO designed and initiated its Interim Training Project aimed at adequately preparing Afghan judges and prosecutors.

The Interim Training Project consists of three main objectives: (1) provide training to a significant number of members of the judiciary in order to improve the equitable and expeditious handling of cases in the administration of justice in the country; (2) equip a specific number of members of the judiciary with the necessary training knowledge and skills to enable them to serve as trainers for others; and (3) provide assistance to the Afghan Judicial Reform Commission for the creation of a sustainable judicial training institution.

Notwithstanding the achievements of the Interim Training for the Afghan Judiciary, the experience gained during the first

seven months of the project suggests the following:

- The intense dislocation affecting Afghan society and need to enhance the capacity of the judiciary requires sustained attention in order for real progress to occur.
- The groups of participants are heterogeneous in terms of competencies, professional expertise, jurisdictions, age, rank and gender mix. As a result, if each target population were to receive training separately, the overall educational experience could be significantly enhanced.
- Enhancing the capacities of the legal education system is fundamental in order to durably improve the capabilities and skills of the legal profession and create the resources needed to support the reform process.
- Reforming the judicial system and enforcing the rule of law and human rights in a post-conflict country requires a strong presence of qualified defense attorneys; however, presently, the lack of independent lawyers before the courts in Afghanistan undermines the impact of the overall judicial reform efforts.
- In light of the lack of documentary resources in the Afghan courts and judicial offices, it is indispensable that legal materials and research tools be provided.
- A related problem is the lack of legal certainty with respect to the valid law in Afghanistan. IDLO has incorporated older Afghan legal texts in its training to make it more relevant to local conditions; however, the lack of definitive guidance on the validity of such laws makes it difficult to determine the efficacy of such efforts. Clarification and revision of statutory law is of central importance to the process of judicial capacity building.
- Allegations of widespread corruption in the formal justice system have undermined its legitimacy and improved the relative status of the traditional justice system. Thus, additional training on the independence and judicial ethics and other efforts to enhance the general level of professionalism of the judiciary is essential to building the legitimacy of the formal system.
- With respect to legislative reform, constitutional provisions demonstrate the need and importance of promoting a modern and professional judiciary. For example, the newly adopted constitution provides in Art. 3 that “no law can be contrary to the beliefs of the sacred religion of Islam” and in Art. 121 that “the Supreme Court on the request of the Government or the Courts shall review the laws, legislative decrees, international treaties and international covenants for their compliance with the Constitution and provide their interpretation in accordance with the law.”

B. East Timor-Judicial Training Program 2000-present:

In 1999, East Timor voted overwhelmingly to become independent from Indonesia. After terrible post-independence violence in East Timor in 1999 and the restoration of order by a multinational force, the United Nations was faced with a soon-to-be-independent state with no remaining infrastructure. Accordingly, the U.N. Security Council Resolution 1272 mandated a new mission, the U.N. Transitional Administration in East Timor (UNTAET), which was endowed with overall responsibility for the administration of East Timor and capacity building for self-government. One of the first items on the agenda was the establishment of rule of law in East Timor, since it was viewed as vital to the success of the mission because according to the U.N. it “sets a precedent for the future and can be a central factor in the long-term development of democracy, economic development and respect for human rights” (FN 9).

In the aftermath of the political strife, fewer than ten lawyers remained in East Timor, no East Timorese had ever held the position of judge or prosecutor under Indonesian rule, and the field of prospective attorney candidates grew to include only sixty novices, thus intensive training of the legal community was made a priority. It is in this context that IDLO initiated its judicial training activities in May of 2000, which utilized a participatory form of training that involved simulation exercises and group discussions based on issues of particular interest. Approximately half of the courses conducted focused on criminal law and procedure, and the remaining on civil law and procedure. The program also drew on the applicable law in East Timor, which consisted of UNTAET regulations, Indonesian law, and applicable international human rights conventions.

The objective of the new phase of Prosecutorial Training in East Timor (February-December 2004) is to provide all prosecutors of newly independent East Timor with the required practical skills and substantive knowledge to enable them to efficiently discharge their functions. Specifically, the training program for prosecutors is intended to ensure greater homogeneity, efficiency, and coherency of prosecutorial techniques and methodology across the courts, which would contribute to a fair, independent, and predictable administration of justice in East Timor consistent with internationally

accepted human rights and fair trial standards. Training in East Timor has revealed the following impediments faced by the judicial and prosecutorial sector.

- Despite the judges' law degrees, many of the participants lacked knowledge of some of the most basic principles of law.
- Language was identified as a major obstacle to participant understanding, especially when coupled with the lack of legal knowledge. The inability to provide proficient interpretation of complex legal terminology between the two official languages, Portuguese and Tetum, has also been a concern. Continued training for judges to address a mounting backlog of cases, inconsistent rulings of illegal orders and the frequent ignoring of legal orders issued by judicial authorities, as well as lack of capacity, knowledge, and skills by judges is needed.
- The absence of effective case and court management systems ensure an efficient use of available resources as well as a transparent system of justice in East Timor needs to be addressed.

C. Kosovo-Practical Judicial and Prosecutorial Training Program 2002-2003:

When NATO forces bombed Kosovo in 1999 pushing back the Serbian army, the international community was forced to confront a power vacuum, given that the vast majority of the administrators, judges, civil servants, police, and other essential public servants who had helped run Kosovo had fled with the retreating Serbian army (FN 10). Another challenge faced was the lack of justice, as illustrated by the "open admissions by Albanian judges that they apply different standards—if not entirely different laws—against Serbian defendants, and undue deference accorded by some UNMIK (U.N. Mission in Kosovo) officials to the local power structure dominated by Albanian hard-liners and a lack of understanding about how ethnic bias affected the judiciary" (FN 11).

In 2002, IDLO commenced a program of training and technical assistance in the rule of law field in Kosovo with the assistance of USAID. The project was managed through a cooperative process in which USAID and the Kosovo Judicial Institute shared decision-making. The objective of the program was to bring all existing judges and prosecutors to a minimally acceptable level of competence in practical skills. Specifically, the project focused on certain practical skills that are considered the cornerstones of the capacity-building process. During the IDLO Kosovo-Practical Judicial and Prosecutorial Training Program 2002-2003, the instructors were able to identify several deficiencies, and areas for further intervention in Kosovo.

- The instructors indicated the need for more training on human rights, since both the judges' and prosecutors' knowledge was very limited. Specifically, more practical training in human rights is needed for these groups to obtain a firmer understanding of the concepts of "due process" and "fair trial," as well as the connection between "due process" and "fair trial." Further practical training is also required for judges to be able to determine when their laws are in breach of international conventions on human rights and how to make reasoned decisions as a result of such breaches.
- Most judges, due to their legal tradition, do not consider case law as having a role in their legal system, nor do they see the importance of a predictable system based on case law. While case law is not binding, the judges would benefit from a deeper understanding of how previous decisions can be used as a training resource in law schools, educating the judiciary, as well as harmonizing decisions made by the courts. Moreover, the judicial and prosecutorial sectors also need to appreciate that harmonizing decisions has a value in itself by both securing the protection of human rights, as well as attracting investors who demand predictable legal enforcement of contracts before contemplating opening businesses.
- Since the majority of the judges view their role as applying the law, rather than interpreting it, they sometimes refer to commentaries drafted by the legislature, and Supreme Court decisions for interpretation. In order to further enhance the judiciary and legal system in Kosovo, it is vital that both lawyers and judges receive more in-depth training on legal research and interpretation than what was feasible during the IDLO training. Furthermore, it is of paramount importance that the lawyers also be included in such training.
- In order to improve the accessibility of court decisions, resources need to be allocated for the printing and distributing of judgments. Not only should more Supreme Court judgments be published, but also full opinions, rather than extracts, which were found to be mostly incomprehensible when read out of context. Judgments from other courts also need to be published to inform judges on other courts' rulings in similar cases, and thereby achieve the harmonization of the decisions.
- There appears to be no general understanding as to what the applicable law in civil matters is. The civil court judges

seemed reluctant to apply new laws or UNMIK regulations, and found reasons to continue to apply the old laws.

- The association of judges must be enhanced and equipped to provide the judicial community with valuable training, guidance, and resources. Special attention should be placed on the management of the judges' association's lobbying skills, which would enable them to argue effectively for the improvement of the working conditions of its members. They should also be encouraged to cooperate with judges' associations in other countries in order to exchange input and ideas from more advanced associations.
- In a post-conflict situation, re-establishing the judiciary is one of the most important tasks in creating a society based on the rule of law. Nonetheless, training for lawyers is equally important due to the role lawyers can play in making courts more efficient and reducing caseload. Another reason why enhancing the legal community is crucial for the development of the country is that competent lawyers are essential to attracting foreign investment, as investors need to discuss their possible contracts with experts on local law.

Observations on deficiencies and capacity gaps in the Kosovar legal infrastructure were also accompanied by criticism of the overall design of the U.N. reconstruction mission. According to those active in Kosovo during this time, the failure of the UN to address the lawmaking process quickly and effectively could have been foreseen (FN 12) With the aim of learning from past experience and obtaining a better understanding of the legal deficiencies involved, the following are reflections from other training counterparts that reveal similar obstacles and challenges encountered during the post-conflict re-establishment of the legal system in Kosovo: (FN 13).

- **Applicable law:** in a post-conflict situation, the first lesson learned is that the process of defining the immediately applicable law and establishing an accepted lawmaking process should be undertaken prior to the next post-conflict administration. The next administration should deploy with these strategies in place;
- **Judicial infrastructure and personnel:** It is unrealistic to rely on local physical and personnel capacity when the foundation of basic legal knowledge and administration has been decimated. Therefore, an interim period should be recognized, during which the international community should be prepared to use well-trained international jurists while local personnel are identified and trained; and
- **Accountability for war crimes:** in the wake of violent ethnic conflict, war crimes and crimes against humanity cannot be treated in the same manner as standard criminal cases. There is a particular urgency and complexity that surrounds crimes committed in the course of ethnic conflict. There is also a short timeframe in which important information must be gathered before it is lost. The international community's response to these challenges has the ability to quell or exacerbate residual tensions within the local community (FN 14).

V. Future IDLO Activities:

In addition to conducting ongoing judiciary and prosecutorial training activities in Afghanistan, the Democratic Republic of Congo, and East Timor, IDLO is currently working on creating and implementing future post-conflict training programs specifically for Haiti, Sudan, and Nepal. IDLO also intends to:

- expand its role as the critical source for research and analysis regarding legal systems in the geographic areas where the potential for violent conflict exists;
- provide this information to the international community in support of efforts to avert conflict or, in the event of conflict, to contribute to rapid post-conflict recovery, reconstruction and establishment of the rule of law; and
- implement major technical assistance projects by the establishment of a recognized model for providing technical assistance and setting standards of global best practice in post-conflict situations.

The IDLO Distance Learning and Research Center is also planning to conduct distance learning videoconference sessions on Post-Conflict Judicial and Prosecutorial Reform principles and guidelines. The sessions shall include prominent experts in this field, as well as target countries for which the IDLO lessons learned in this area would be particularly useful. The extent and effectiveness of such activities will depend on the support and contributions from the donor community, states, and IDLO partner organizations.

Citations:

1. Ivan Simonovic, *Post-Conflict Peace Building: The New Trends*, 31 INT'L J. LEGAL INFO. 251 (2003).
"It has been estimated that conflicts between countries killed approximately 220,000 people during the Nineties, representing a drop of nearly 2/3 from the 1980s. During the same period, however, around 3.6 million people died in internal conflicts, while the number of refugees and internally displaced persons increased by 50." *Id.*
2. *Id.*
3. The international community has recognized institutional reform of the legal infrastructure in post-conflict countries as essential in creating the foundation for stability, peace and prosperity. See the U.N. Agreement on Provisional in Afghanistan Pending the Re-establishment of Permanent Government Institutions available at <http://www.unama-afg.org/docs/bonn/bonn.html> (last visited May 19, 2004). *But see* Stephen Golub, *Beyond Rule of Law Orthodoxy*, Carnegie Endowment Working Paper No. 41, Rule of Law Series, Democracy and Rule of Law Project (Washington D.C.: Carnegie Endowment for International Peace, October 2003) available at <http://www.ceip.org/> (last visited May 31, 2004) (discussing law and development's rule of law orthodoxy, a set of ideas, activities, and strategies geared toward bringing about the rule of law, as a means toward ends such as economic growth, good governance, and poverty alleviation, and its misguided focus on law, lawyers, legal reform, and government institutions, particularly judiciaries). See also Frank Upham, *Mythmaking in the Rule of Law Orthodoxy*, Carnegie Endowment Working Paper No. 30, Rule of Law Series, Democracy and Rule of Law Project (Washington D.C.: Carnegie Endowment for International Peace, September 2002).
4. Bossuy, J., *Capacity Development: How can Donors do it Better?* European Centre for Development Policy Management Brief No. 5 (Maastricht 1995).
5. See Daniel Berkowitz et al, *The Transplant Effect*, 51 AM. J. COMP. L. 163 (2003) (discussing the phenomenon of legal transplantation, and its efficacy).
6. Documents S/PV. 4833 and S/PV. 4835 are available on the United Nations web site.
7. United States Institute of Peace, *Special Report: Establishing the Rule of Law in Afghanistan* (2004) available at <http://www.usip.org/pubs/specialreports/sr117.pdf> (last visited May 7, 2004). Attesting to the lawless state of Afghanistan, the report states "that the rule of law has never been strong, and after 23 years of warfare, it has been displaced almost completely by the "rule of the gun." Moreover, the discontinuity of regimes over the last quarter century has resulted in a patchwork of differing and overlapping laws, elements of different types of legal systems , and an incoherent collection of law enforcement and military structures." *Id.*
8. The Lead Nations for other key sectors include: U.S. for military forces, Germany for police, Japan for the disarmament of militia groups, and the U.K. for the fight against Narco Trafficking.
9. Megan A. Fairlie, *Affirming Brahimi: East Timor Makes the Case for a Model Criminal Code*, 18 AM. U. INT'L L. REV. 1059 (2003).
10. Jacob S. Kreilkamp, *U.N. Post Conflict Reconstruction*, 35 N.Y.U.J. INT'L L. & POL. 619 (2003).
11. *Id.* at 12.
12. Betts et al, *The Post-Conflict Transitional Administration of Kosovo and the Lessons Learned in Efforts to Establish a Judiciary and Rule of Law*, 22 MICH. J. INT'L L. 371 (2001).
13. *Id.*
14. *Id.* at 6-8.