



UNTAET

UNITED NATIONS TRANSITIONAL ADMINISTRATION IN EAST TIMOR *Administração Transitória das Nações Unidas em Timor Leste*

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6 March 2000

REGULATION NO. 2000/11

ON THE ORGANIZATION OF COURTS IN EAST TIMOR

The Special Representative of the Secretary-General (hereinafter: Transitional Administrator),

Pursuant to the authority given to him under United Nations Security Council resolution 1272 (1999) of 25 October 1999,

Taking into account United Nations Transitional Administration in East Timor (UNTAET) Regulation 1999/1 of 27 November 1999 on the Authority of the Transitional Administration in East Timor,

After consultation in the National Consultative Council,

For the purpose of regulating the functioning and organization of the courts during the period of the transitional administration in East Timor,

Promulgates the following:

I. General Provisions

Section 1 Judicial Authority

Judicial authority in East Timor shall be exclusively vested in courts that are established by law and composed of judges who are appointed to these courts in accordance with UNTAET Regulation No. 1999/3.

Section 2
Independence of the Judiciary

2.1 Judges shall perform their duties independently and impartially, and in accordance with applicable laws in East Timor and the oath or solemn declaration given by them to the Transitional Administration pursuant to UNTAET Regulation No. 1999/3.

2.2 Judges shall decide matters before them without prejudice and in accordance with their impartial assessment of the facts and their understanding of the law, without improper influence, direct or indirect, from any source.

2.3 In the decision-making process, any hierarchical organization of the judiciary or any difference among judges in grade or rank shall in no way interfere with the duty of the judge, whether exercising jurisdiction individually or acting collectively on a panel, to pronounce judgement in accordance with Section 2.2 of the present regulation.

2.4 While in office, judges and prosecutors shall be barred from accepting political or any other public office, or from accepting any employment, including for teaching law, participating in the drafting of law, or carrying out legal research on a part-time basis, unless for honorary unpaid purposes.

Section 3
Refusal of Justice

No judge may refuse to hear, try or decide a case that is brought before the court in accordance with the relevant procedural provisions.

Section 4
Courts in East Timor

The judiciary in East Timor shall be composed of District Courts, as determined by the present regulation, and one Court of Appeal.

Section 5
Applicable Law

5.1 In exercising their jurisdiction, the courts in East Timor shall apply the law of East Timor as promulgated by Section 3 of UNTAET Regulation No. 1999/1.

5.2 Courts shall have jurisdiction in respect of crimes committed in East Timor prior to 25 October 1999 only insofar as the law on which the offence is based is consistent with Section 3.1 of UNTAET Regulation No. 1999/1 or any other UNTAET regulation.

5.3 Courts shall have jurisdiction in respect of civil claims which arose in East Timor prior to 25 October 1999 only insofar as the law on which the claim is based is consistent with Section 3.1 of UNTAET Regulation No. 1999/1 or any other UNTAET regulation.

II. District Courts

Section 6
Subject Matter Jurisdiction of the District Courts

District Courts shall have jurisdiction in all matters as courts of first instance, subject to Section 10 of the present regulation.

Section 7
Territorial Jurisdiction of the District Courts

7.1 District Courts shall be established for the following locations in East Timor:

- (a) Dili, with jurisdiction for the Districts of Dili and Aileu;
- (b) Baucau, with jurisdiction for the District of Baucau, and the sub-districts of Lacle, Manatuto, Laleia and Laclubar within the District of Manatuto;
- (c) Los Palos, with jurisdiction for the District of Lautem;
- (d) Viqueque, with jurisdiction for the District of Viqueque, and the sub-districts of Soibada and Barique within the District of Manatuto;
- (e) Same, with jurisdiction for the Districts of Manufahi and Ainaro;
- (f) Maliana, with jurisdiction for the Districts of Bobonaro and Covalima;
- (g) Ermera, with jurisdiction for the District of Ermera and Liquica;
- (h) Oecussi, with jurisdiction for the District of Oecussi.

7.2 Each District Court shall exercise its functions and powers, as provided by law, on the territory of its area of jurisdiction. In the event that a District Court lacks jurisdiction over a case which comes before it, that District Court shall refer the case to the competent District Court of jurisdiction. Any dispute between two or more courts regarding the jurisdiction over a case shall be settled by the Court of Appeal.

7.3 For a transitional period and until otherwise determined by the Transitional Administrator, the judges appointed to the District Court in Dili shall have jurisdiction throughout the entire territory of East Timor.

Section 8
Legal Cooperation

8.1 Any District Court in East Timor shall cooperate with the request of another District Court to

- (a) interrogate witnesses who are registered or permanently accommodated in the area of the requested court's jurisdiction;
- (b) carry out at-the-scene examinations or re-enactments of crimes in the area of the requested court's jurisdiction;
- (c) serve summonses of the requesting court on witnesses in the requested court's jurisdiction;
- (d) serve decisions of the requesting court on individuals in the requested court's jurisdiction;
- (e) execute the decisions of the requesting court if the subject of dispute is located in the requested court's jurisdiction;
- (f) access files of the requested court for information purposes or decision.

8.2 The request may not be rejected except in the case of lack of jurisdiction of the requested court.

Section 9
Composition of the District Courts

9.1 Each District court shall be composed of judges who are appointed to the respective court by the Transitional Administrator in accordance with Regulation No. 1999/3.

9.2 The judges shall sit in panels of three judges, as determined by the plan of distribution of incoming cases pursuant to Section 35 of the present regulation, with equal votes. The panel shall take its decisions by majority vote.

9.3 Relatives shall not sit as judges on the same panel.

9.4 The number of judges at each District court shall be determined by the Transitional Administrator based on the caseload of each court.

9.5 The Transitional Administrator may decide to vest jurisdiction on matters of particular concern, including matters related to public administration, taxation, labor relations, land and property disputes, or serious criminal offences, exclusively into individual District Courts, where the interests and efficacy of justice so requires.

Section 10
Exclusive Jurisdiction for Serious Crimes

10.1 The District Court in Dili shall have exclusive jurisdiction over the following serious criminal offences:

- (a) Genocide
- (b) War crimes
- (c) Crimes against humanity
- (d) Murder
- (e) Sexual offences
- (f) Torture

10.2 With regard to the criminal offences listed in Section 10.1 (d) – (f) of the present regulation, the District Court in Dili shall have exclusive jurisdiction only insofar as the offence was committed in the period between 1 January 1999 and 25 October 1999.

10.3 The Transitional Administrator, after consultation of the Court Presidency, may decide to establish panels with the expertise to exercise exclusive jurisdiction vested in the court by Section 10.1 of the present regulation. Such panels shall be composed of both East Timorese and international judges, appointed to the Court in accordance with UNTAET Regulation No. 1999/3.

10.4 The establishment of panels with exclusive jurisdiction over serious criminal offences shall not preclude the jurisdiction of an international tribunal for East Timor over these offences, once such a tribunal is established.

Section 11
Individual Judge

11.1 In criminal matters that carry a maximum penalty of one year, as provided by law, and in civil law matters involving claims not exceeding US\$ 1000, the Presidency of the respective District Court may decide to assign the case to a judge of the respective court as an individual judge, for decision. The Presidency of the respective court shall establish individual judges where required by law.

11.2 If, in the course of the proceedings, the individual judge finds that the penalty may exceed one year or that the claim may exceed US\$ 1000, the case shall be referred to a panel of the same District Court.

Section 12

Investigating Judge

12.1 In criminal matters, there shall be at least one judge assigned as investigating judge at every District Court in East Timor.

12.2 The investigating judge shall have the powers defined in the Criminal Procedure Code and other relevant UNTAET regulations.

Section 13

Supervision of the Execution of Prison Sentences

13.1 The Presidency of each District Court shall assign all matters related to the supervision and execution of prison sentences to a panel of judges of that District Court, in accordance with Section 35 of the present regulation.

13.2 Prisoners may file complaints or requests related to the execution of their prison sentence, in writing, with the panel, or, where applicable, the individual judge, that pronounced the sentence.

III. Court of Appeal

Section 14

Jurisdiction of the Court of Appeal

14.1 There shall be established a Court of Appeal for East Timor. The court shall have its seat in Dili.

14.2 The Court of Appeal shall have jurisdiction to hear appeals of decisions rendered by any District Court in East Timor, and such other matters as are provided for in the present or any other UNTAET regulation.

Section 15
Composition of the Court of Appeal

15.1 The Court of Appeal shall be composed of judges appointed by the Transitional Administrator to the Court of Appeal in accordance with UNTAET Regulation No. 1999/3.

15.2 The judges shall sit in panels of three judges, as determined by the plan of distribution of incoming cases as provided for in Section 35 of the present regulation. The panel shall take its decisions by majority vote. The vote of each judge shall have equal weight.

15.3 Relatives shall not sit as judges on the same panel.

15.4 In cases of special importance or gravity, the Presidency of the respective District Court may decide, after hearing the parties to the proceedings, to establish a panel of five judges to hear the case.

15.5 In the event of an appeal on a matter provided in Section 10 of the present regulation, the Transitional Administrator, after consultation with the Court Presidency, shall establish a panel with the expertise to hear and decide such appeals. Such panels shall be composed of both East Timorese and international judges, appointed to the Court in accordance with UNTAET Regulation No. 1999/3.

IV. Organs of the Court and their Competencies

Section 16
Court Presidency

16.1 Each court in East Timor shall have a Presidency. The Presidency shall be composed of the Court President and two presiding judges.

16.2 The members of the presidency, including the Court President, shall be elected by a majority vote of all judges of the respective court. The members of the Presidency shall be elected for a term of three (3) years, and shall not be eligible for more than two (2) consecutive terms.

16.3 Upon election, the Court President shall designate one member of the Presidency to carry out the functions of the Court President in the event that the court president is unavailable or otherwise unable to exercise the functions of the Court President.

16.4 If the vote of any of the members of the Presidency is in contravention of law, each judge who was entitled to participate in the vote may challenge the vote by filing a written complaint with the Court of Appeal. If the vote concerns the election of the Presidency of the Court of Appeal, the complaint shall be filed with a different panel of the Court of Appeal.

Section 17
Competencies of the Presidency

17.1 The Presidency shall be responsible for the proper administration of the court, including the orderly and expeditious discharge of duties. In particular, it shall have the

competency to decide on the establishment and the composition of the panels of judges and the assignment of individual judges and investigating judges.

17.2 The Presidency shall make written recommendations to the Transitional Judicial Service Commission, through the Transitional Administrator, on the need for appointment of additional judges to the respective court.

17.3 For every new calendar year, the Presidency shall prepare a precise plan outlining the general system of distribution of incoming cases to the judges of the court for that year. The plan shall be published in the Official Gazette of East Timor.

17.4 Except where provided otherwise in the present regulation, the Presidency shall have the responsibility of ensuring law and order within the court building and its premises.

17.5 Where a matter of practice or proceedings arises that has not been regulated by the present regulation, the matter shall be decided by the Presidency.

Section 18 Presiding Judge

18.1 There shall be a Presiding judge on any panel of judges. The Presiding judge shall be appointed by the Presidency of the respective court.

18.2 The Presiding judge is responsible for the distribution and scheduling of cases within the panel and the conduct of hearings of the panel. For every case pending before the panel, the Presiding judge shall assign one judge to be the judge rapporteur to record the proceedings and to prepare the decisions of the panel.

18.3 The Presiding judge shall not give directions to the other judges of the panel on substantive matters of law, their assessment of the evidence, or their findings in a case.

18.4 The Presiding judge or, where applicable, the individual judge shall ensure order in the courtroom.

Section 19 Additional Judge

19.1 In cases of special importance or gravity, or of an expected duration of more than three consecutive trial days, the Presidency of the respective court may decide to assign an additional judge from a different panel of the same court to attend the trial sessions of a relevant panel.

19.2 The additional judge shall not have a vote and shall not participate in the proceedings, unless one of the three regular judges of the panel is unable to attend one or more of the trial sessions, due to illness, death or any other serious reason that prevents the regular judge from attending the trial sessions in this period.

Section 20

Disqualification of Judges

20.1 The Presidency may, at the request of a judge or a party to a proceeding, excuse that judge from the exercise of a function in any case in which the impartiality of the judge might reasonably be doubted on any ground.

20.2 A judge shall be disqualified from a case in accordance with the present section if that judge has previously been involved in any capacity in that case before the court.

20.3 A judge shall be obliged to request the Presidency to be excused from the exercise of a function in any case in which a party to the proceedings is a spouse or a relative of second degree of that judge.

20.4 Any question as to the disqualification of a judge shall be decided by majority vote by the Presidency. The challenged judge shall be entitled to present comments on the matter but shall not take part in the decision.

Section 21 Court Registry

21.1 There shall be a Registry at every court in East Timor.

21.2 The Registry shall have responsibility for the receipt of documents to be filed in the court, for organizing court documents and ensuring security of court documents, and for such other functions as are permitted by an UNTAET regulation or directive. The staff of the registry shall exercise these responsibilities under the direction of the Presidency.

21.3 The staff of the Registry shall have legal and administrative skills, and shall be appointed by the Public Service Commission, pursuant to UNTAET Regulation No. 2000/3.

Section 22 Court Staff

22.1 Each court in East Timor shall have such qualified staff as may be required for the proper functioning of the court and the discharge of the responsibilities of its judges. The court staff shall exercise these responsibilities under the direction of the Presidency.

22.2 Each panel of judges or each individual judge shall be assisted during the trial sessions by a member of the court staff.

22.3 The court staff shall be selected by the Public Service Commission, pursuant to UNTAET Regulation No. 2000/3.

Section 23 Translation Service

Courts shall provide translation and interpretation services in every case where a party to the proceedings, or a judge, or a witness, or expert witness does not sufficiently speak or understand the language spoken in that court.

Section 24
Prosecution Service

A Prosecution Service shall be established within the jurisdiction of every District Court in East Timor in accordance with applicable law.

V. Hearing

Section 25
Hearings

25.1 Hearings of the court and deliberations, generally, shall take place at the seat of the court which has jurisdiction to hear the case, pursuant to Section 7.1 of the present regulation. The panel of judges or, where applicable, the individual judge may decide to hold hearings of the court in places other than at the seat of the court if this is in the interest of justice. In making the decision, the panel of judges or the individual judge shall be guided by the particular circumstances of the case and their responsibility to facilitate equal access to justice.

25.2 The hearings of the court, including the pronouncement of the decision, shall be public, unless otherwise determined by the present regulation or by law, insofar as the law is consistent with Section 3.1 of UNTAET Regulation No. 1999/1.

25.3 Radio and television broadcasting within the courtroom is prohibited, except for the broadcast of a final judgement in appropriate cases, as sanctioned by the Presidency after consultation with the Presiding judge of the panel at issue.

25.4 The deliberations of the panel of judges shall remain confidential.

Section 26
Transcript of Proceedings

26.1 The court shall ensure that, in each hearing by a panel of judges, a transcript of the proceedings are taken and that the transcript is made available, on request, to all parties to the proceedings, including their legal counsel. In all other cases the individual judge shall take, as appropriate, notes of the proceedings and submit them to the files.

26.2 Upon request, the transcript shall be made available to the public, unless a determination has been made under Section 25.2 of the present regulation that the hearing shall not be public.

Section 27
Legal Representation at Hearings

27.1 A party to a proceeding before a court in East Timor has the right to a legal representative of its own choosing.

27.2 UNTAET shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within the territory of East Timor, without any discrimination based on sex, race, color, language, religion, political or

other opinion, national, ethnic or social origin, association with a national minority, property, birth or any other status.

VI. Rights and Duties of Judges

Section 28 **Tenure**

28.1 After an initial period of no less than two (2) but no more than three (3) years, judges shall be appointed for life.

28.2 During the initial period, the performance of duties of every judge shall be solely monitored by the Transitional Judicial Service Commission. With regard to the independence of each judge, the Commission shall only monitor the professional conduct of the judge, including the judge's integrity and dedication, regular attendance in court, ability to cope with the workload, impartiality shown in dealing with the cases, without any interference with, or influence upon, the substantive decisions of the judge.

28.3 At the end of the initial period, or at any given time before, the Transitional Judicial Service Commission, in accordance with UNTAET Regulation No. 1999/3, may recommend that the judge be appointed for life, unless the performance of the duties of that judge, as specified in Section 28.2 of the present regulation, was unsatisfactory, in which case the judge shall be dismissed from judicial service.

Section 29 **Rights, Duties and Prohibitions**

- 29.1 Upon appointment for life, every judge shall enjoy the following guarantees:
- (a) A judge shall be removed only in the cases provided for in Section 13.3 of UNTAET Regulation No. 1999/3 or Section 28.3 of the present regulation upon recommendation of the Transitional Judicial Service Commission;
 - (b) A judge shall be re-assigned or appointed to another court in East Timor with their consent and where the interest of justice so requires, and in accordance with Section 14.1 of UNTAET Regulation No. 1999/3;
 - (c) A judge shall be remunerated in accordance with the salary scheme determined by an UNTAET directive for the East Timor administration; the remuneration shall not be subject to any reduction other than due to general taxes and levies imposed equally on all citizens;
 - (d) A judge shall be appointed for life, with compulsory retirement at the age of 65; the conditions of service shall not be altered to their disadvantage during their term of office, except as part of a uniform public economic measure, after consultations with representatives of members of the judiciary;
 - (e) A judge shall be independent in the conduct of their office and on all matters of law, notwithstanding the competence of the Presidency, as defined in

Sections 20.1 and 31.1 of the present regulation, and the Transitional Judicial Service Commission, in accordance with UNTAET Regulation No. 1999/3.

29.2 All judges are subject to the same rights and duties defined in a Code of Ethics, as prepared by the Transitional Judicial Service Commission, pursuant to Section 15 of UNTAET Regulation No.1999/3.

Section 30
Disclosure of Information

Judges shall not disclose any information or personal data related to or obtained in the discharge of their functions, except where authorized by the Court President for public information or research purposes.

Section 31
Privileges and Immunities

31.1 Judges shall enjoy such privileges and immunities as are provided by law.

31.2 In particular, judges shall not be liable or otherwise responsible for any adverse effects or any damage caused by any of their acts or omissions committed in the course of the discharge of their functions, except where such effects or damage are caused by intentional and wrongful conduct.

Section 32
Disciplinary Measures

A Judge who has committed misconduct in office shall be subject to disciplinary measures, as defined in an UNTAET regulation. The measure shall not interfere with the independence of the judge, as provided in Section 2 of the present regulation.

Section 33
Remuneration of Non-judicial Staff

Registrars and court clerks shall receive remuneration in accordance with the salary scheme determined by an UNTAET directive for the East Timor administration.

VII. Administrative matters

Section 34
Financial and Technical Support

During the transitional period, UNTAET shall provide the necessary financial and technical support to the courts in East Timor.

Section 35
Distribution of Incoming Cases

35.1 Everyone has the right to be tried by the panel of judges, or where applicable the judge, that has previously been determined by a plan of distribution of incoming cases.

35.2 Pursuant to Section 19.3 of the present regulation, the Presidency shall make a precise plan for every new calendar year indicating the distribution of incoming cases to the judges of the court. The Presidency shall decide by majority vote. The further requirements of the plan shall be regulated in an UNTAET directive, pursuant to Section 6 of UNTAET Regulation No. 1999/1.

35.3 The plan constitutes an act of judicial autonomy to ensure the fair distribution of work among the judges of a court and to facilitate transparency in the distribution of cases. The plan shall be binding on all judges and each Presidency for the duration of its term. It shall not be subject to individual assignments of cases in circumvention of the present provision and may only be changed in case of death, retirement or removal of a judge, or, exceptionally, where the workload of a panel or an individual judge requires that the plan be changed in the interest of justice, except in the cases provided for in Section 20 of the present regulation.

35.4 Before adopting the plan, the Presidency shall give each judge of the respective court the opportunity for a hearing.

35.5 The plan shall be published in the Official Gazette of East Timor.

Section 36 Working Languages

The working languages of the courts in East Timor, during the transitional period, shall be, as appropriate, Tetum, Portuguese, Bahasa Indonesia, and English.

Section 37 Seal

Each court shall have a seal, bearing the court's insignia, for sealing writs and other official documents of the respective court, as determined by an UNTAET administrative directive.

Section 38 Official Insignia

No court in East Timor shall bear any political insignia other than the insignia of the United Nations and UNTAET. Political manifestations within the court building are not permitted.

Section 39 Implementation

The Transitional Administrator may promulgate such other UNTAET regulations and directives as are necessary for the implementation of the present regulation.

Section 40
Entry into force

The present regulation shall enter into force on [] 2000.

Sergio Vieira de Mello
Transitional Administrator