

ANNEX I TO UNTAET/REG/2001/25

UNTAET/REG/2000/11; 6 March 2000

As Amended by

UNTAET/REG/2000/14,

UNTAET/REG/2001/18; 21 July 2001 and

UNTAET/REG/2001/25; 14 September 2001

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 both East Timorese and international judges who are appointed to these courts in accordance with UNTAET Regulation N° 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 Administrator 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 Judges, notwithstanding their rank or grade within the hierarchy of courts have to respect all decisions made by the Court of Appeal. Such decisions are binding and the independence of the individual judge is not affected.

Section 2A **Reassignment of Judges**

2A.1 Notwithstanding the appointment of judges to particular District Courts, the President of the Court of Appeal may, as appropriate, reassign any judge to another District Court.

2A.2 The Transitional Administrator, upon recommendation of the Transitional Judicial Service Commission and at the request of the judge concerned, may authorize a judge to take up another assignment where, in the opinion of the Transitional Judicial Service Commission, the other assignment is in accordance with the criteria provided in Section 2A.3.

2A.3 In deciding whether to recommend to the Transitional Administrator that a judge be authorized to take up another assignment, the Transitional Judicial Service Commission must be satisfied of all of the following:

- (a) that the other assignment will not undermine, or be reasonably perceived to undermine, the judicial independence or impartiality of the judge concerned;
- (b) that the judge concerned will not engage in work as a legal practitioner or as an employee of or consultant to a legal practice;
- (c) that the judge concerned will not accept a directorship for any organization whose primary purpose is profit-related, whether or not profit is actually realized;
- (d) that the judge concerned will not take part in any political activity or accept public office; and
- (e) that the judge concerned will not accept any financial gain or reward, other than royalties earned as an author.

2A.4 During any period of reassignment pursuant to Section 2A.2, the judicial authority of the judge concerned shall be suspended; however, he or she shall continue to receive judicial compensation as though the reassignment had not occurred.

Section 2 B
Incompatibility

2 B.1 The position of a judge is incompatible with any other professional activity, paid or unpaid, except the publication of articles and books.

2 B.2 The position of a judge is incompatible with the membership in the directorate of any governmental or non-governmental organization or company.

2 B.3 The position of a judge is incompatible with any political activity such as an office in a political party or in a public office.

Section 2 C
Leave

The Transitional Administrator may grant at the request of a judge and upon recommendation of the Transitional Judicial Service Commission a paid leave for a limited period of time up to six months. Any eventual professional activity during such a leave needs a formal explicit permission by the Transitional Administrator in accordance with Section 2A.2 of the present Regulation.

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.

I. District Courts

Section 6 **Composition of the District Courts**

6.1 Each District Court shall be composed of both international and East Timorese judges who are appointed to the respective court by the Transitional Administrator in accordance with Regulation No. 1999/3.

6.2 The judges may sit individually or in panels of three judges in accordance with the provisions of the present Regulation.

6.3 The number of judges at each District Court shall be determined by the President of the Court of Appeal based on the caseload of each court.

Section 6 A **Judge Administrator**

6A.1 There shall be a Judge in each District Court who is appointed Judge Administrators by the President of the Court of Appeal to serve for a renewable period of one year.

6A.2 The Judge Administrator for each District Court shall be responsible to the President of the Court of Appeal for all administrative matters of that court and shall submit periodic reports to the President of the Court of Appeal.

6A.3 In carrying out his or her functions each Judge Administrator shall report to the President of the Court of Appeal and shall be subject to his or her direction and control.

Section 7 **Territorial Jurisdictions of the District Courts**

7.1 Until such time as additional District Courts are established in East Timor, District Courts shall be established in the following locations:

- a) Baucau, with jurisdiction for the districts of Baucau, Lautem, Viqueque and Manatuto;

- b) Suai, with jurisdiction for Suai, Cova Lima, Bobonaro, Ainaro and Manufahi;
- c) Oecussi, with jurisdiction for Oecussi;
- d) Dili, with jurisdiction for the districts of Dili, Liquica, Ermera and Aileu.

Until such time as conditions are met for the establishment of additional District Courts, the territorial jurisdiction of existing District Courts may be re-defined by UNTAET directive.

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. The Court of Appeal shall settle any dispute between two or more courts regarding the jurisdiction over a case.

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 **Subject Matter Jurisdiction of the District Courts**

8.1 District Courts shall have jurisdiction in all matters as courts of first instance, subject to Section 9 of the present regulation.

8.2 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 9 **Exclusive Jurisdiction for Serious Crimes**

9.1 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

9.2 With regard to the criminal offences listed in Section 9.1 (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.

9.3 The Transitional Administrator, after consultation with the President of the Court of Appeal, may decide to establish panels with the expertise to exercise exclusive jurisdiction vested in the court by Section 9.1 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.

9.4 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 10 **Legal Cooperation**

10.1 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-enactment 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.

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

Section 11 **Single Judges**

Unless otherwise expressly provided in this or in another UNTAET Regulation, a single judge shall hear and conduct the trial of any criminal or civil case.

Section 12
Panel of judges

12.1 Any criminal matter that carries a penalty of imprisonment exceeding five years shall be heard by a panel of three judges if the public prosecutor in the indictment or the accused person or his or her legal representative in the response, makes a request for trial by a panel.

12.2 In any civil matter in which the claim exceeds \$US 1000, either party may at any stage prior to the commencement of the trial request by application to the Court for the matter to be heard by a panel of three judges.

12.3 The trials of all serious crimes named in Section 9 of the present Regulation shall be conducted by a panel of judges.

12.4 Relatives up to second degree as well as spouses and partners shall not sit as judges in the same panel.

Section 13
Investigating Judge

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

II. 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 final judgements 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. The panel shall take its decisions by majority vote. The vote of each judge shall have equal weight.

15.3 Relatives up to second degree as well as spouses or partners shall not sit as judges on the same panel.

15.4 In the event of an appeal on a matter provided in Section 9 of the present regulation, the Transitional Administrator, after consultation with the President of the Court of Appeal, 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. 1999/3.

IV. Organs of the Courts and their Competencies

Section 16 **President of the Court of Appeal**

16.1 There shall be a President of the Court of Appeal.

16.2 The criteria and means of appointment of the President of the Court of Appeal will be set out in a Directive promulgated by the Transitional Administrator. Until the mentioned criteria and means of appointment shall have been so promulgated, the President shall continue to be appointed under the prior procedure and the mandate of the office shall include all the competencies given by the present Regulation.

16.3 Upon appointment of the President of the Court of Appeal, the Transitional Administrator shall designate one member of the Court of Appeal to carry out the functions of the President of the Court of Appeal in the event that the President of the Court of Appeal is unavailable or otherwise unable to exercise his or her functions.

Section 17 **Competencies of the President of the Court of Appeal**

17.1 The President of the Court of Appeal shall be responsible for the overall administration of the courts in East Timor. In particular, he or she shall have the competency to supervise the work of District Courts, submit to the Transitional Administrator an annual report on its activities as well as on the activities of all the other courts in East Timor.

17.2 For the purpose mentioned in Section 17.1, the President of the Court of Appeal shall have the power to issue Administrative instructions to all the courts in East Timor.

17.3 In every new calendar year, the President of the Court of Appeal shall prepare a precise plan outlining the general system of distribution of incoming cases to the judges of the court and the District Courts 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 President of the Court of Appeal shall have the responsibility of ensuring law and order within the court building and its premises.

17.5 Where a matter of administrative practice arises that has not been regulated by the present Regulation, the matter shall be decided by the President of the Court of Appeal.

Section 18 **Presiding Judges of District Court Panels**

18.1 There shall be a Presiding Judge on each panel who will be the judge to whom the case was initially distributed.

18.2 Each Presiding Judge shall conduct the proceedings 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 Judges for District Court Panels**

19.1 In cases of special importance or gravity, or of an expected duration of more than three consecutive trial days, the Judge Administrator 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.

19.3 Final decision shall be taken in accordance with Section 30.1 of UNTAET Regulation 2000/30. The same procedure shall apply also for non criminal cases.

Section 20
Disqualification of Judges

20.1 The President of the Court of Appeal on the level of the Court of Appeal, or the Judge Administrator on the level of the District Court may, at the request of a judge of the respective court or a party to a proceeding, excuse that judge from the exercise of a function in any case in which impartiality of the judge might reasonably be doubted on any ground..

20.2 Except as provided in Section 10 of UNTAET Regulation 2000/30, 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 of the Court of Appeal shall be obliged to request the President of the Court of Appeal, and a judge of any District Court shall be obliged to request the Judge Administrator, to be excused from the exercise of any function in any case in which a party to the proceedings is a spouse, partner or a relative of second degree of that judge.

20.4 Any question as to the disqualification of a judge shall be decided on the level of the Court of Appeal by the President of the Court of Appeal, on the level of a District Court by the Judge Administrator of the respective District Court.

20.5 In case of any suggestion of disqualification of a Judge Administrator, matters shall be decided by the President of the Court of Appeal.

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 Judge Administrator or the President of the Court of Appeal.

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 Judge Administrator or the President of the Court of Appeal.

22.2 Each individual judge or panel of judges shall be assisted during proceedings by such court staff as may be necessary.

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

22.4 The President of the Court of Appeal shall have the powers to assign and re-assign court staff to any court or office as deemed necessary for an equitable distribution of human resources and for work expediency.

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. **Hearings**

Section 25
Hearings

25.1 Hearings of the court and deliberations, generally, shall take place at the seat of the court that has jurisdiction to hear the case, pursuant to Section 7.1 of the present regulation. The individual judge or, where applicable, panel of judges may decide to hold hearings of the court in places other than at the seat of the court if this in the interest of justice. In making the decision, the individual judge or panel of judges 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 presiding judge of the particular case.

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

Section 26 **Record of Proceedings**

26.1 The court shall ensure that, in each hearing by a judge or panel of judges, written or recorded notes of the proceedings are taken and made available, on request, to all parties to the proceedings, including their legal counsel.

26.2 Upon request, the record 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.

26.3 Additional requirements pertaining to records of proceedings in specific categories of cases may be established by other UNTAET Regulations.

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, in observance of UNTAET Regulation 2001/24, 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 but no more than three years, judges shall be appointed for life.

28.2 During the initial period referred to in Subsection 28.1, the performance of duties of every judge shall be monitored by an experienced judge, as nominated by the President of the Court of Appeal, who shall have the duty to give guidance and supervise judges in their initial period. The experienced judge shall only monitor the professional conduct of the judge, including the judge's integrity and dedication, attendance, ability to cope with the workload, independence and impartiality shown in dealing with the cases, without interference, or influence upon, the substantive decisions of the judge. The experienced judge shall submit periodic reports to the Transitional Judicial Service Commission every six months in order to evaluate the performance of the judge on the aforementioned criteria. Prior to submission of a report to the Commission, the judge concerned must be accorded an opportunity to comment on the report.

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 may be re-assigned or appointed to another court in East Timor, where the interests of justice so require, by the President of the Court of Appeal in accordance with Section 2A.1 of the present Regulation;
- (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.

29.2 All judges shall comply with the provisions of the 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 President of the Court of Appeal 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 UNTAET Regulation No. 1999/3.

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 **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 36 **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 Directive.

Section 37 **Judicial Recess**

Every year there shall be a two-week judicial recess of the work of the courts. The dates of the recess will be determined by the Cabinet Member for Justice, on the recommendation of the President of the Court of Appeal.

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 6 March 2000.

(signed)
Sergio Vieira de Mello
Transitional Administrator