



REGULATION 2001/18

**ON THE AMENDMENT OF UNTAET REGULATION No. 2000/11
ON THE ORGANIZATION OF THE 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,

After consultation in the National Council,

For the purpose of amending UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) on the Organization of the Courts in East Timor,

Promulgates the following:

Section 1

1.1 Section 1 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation 2000/14) is amended by inserting, after the words “composed of” and before the word “judges”, the words “both East Timorese and international”.

1.2 Subsection 2.3 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation 2000/14) is amended by deleting the word “In”, first appearing, and inserting, before the words “the decision-making process”, the words “Notwithstanding the duty of judges to comply with appellate decisions from the Court of Appeal, in”.

1.3 Immediately following Section 2 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14), a Section 2A is inserted, as follows:

"Section 2A
Re-assignment of Judges

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

2A.2 After consultation with the President of the Court of Appeal and the Transitional Judicial Service Commission, the *Cabinet Member* for Justice may temporarily re-assign any judge to a particular position in the Department of Justice. This temporary assignment is made by a motivated decision and suspends the appointment as a judge. It does not constitute the acceptance of public office under Subsection 2.4 of the present Regulation.

(a) For the purposes of the present Regulation, “*Cabinet Member*” means an officer of the Cabinet appointed pursuant to Section 2 of the UNTAET Regulation No. 2000/23 on the Establishment of the Cabinet of the Transitional Government in East Timor.”

1.4 Subsection 9.1 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14), is amended by inserting after the words "composed of" the words "both international and East Timorese"

1.5 Subsection 9.2 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14), is deleted and a new Subsection 9.2 is substituted, as follows:

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

1.6 Subsection 9.3 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is deleted and a new Subsection 9.3 is substituted, as follows:

"9.3 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."

1.7 Subsection 9.4 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation 2000/14) is deleted.

1.8 Subsection 9.5 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation 2000/14) is renumbered as “9.4”.

1.9 Immediately following Section 9 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation 2000/14), a Section 9A is inserted, as follows:

"Section 9A
Judge Administrator

9A.1 There shall be a Judge Administrator in each District court to be appointed by the President of the Court of Appeal to serve for a renewable period of one year.

9A.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.

9A.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."

1.10 Subsection 10.3 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is amended by replacing the words "of the Court Presidency" by the words "with the President of the Court of Appeal".

1.11 Immediately following Section 10 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14), Section 10A is inserted, as follows:

"Section 10A
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."

1.12 Section 11 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is deleted in its entirety and a new Section 11 is substituted, as follows:

"Section 11
Panel of judges

11.1 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.

11.2 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.

11.3 The trials of all serious crimes named in Section 10 of the present Regulation shall be conducted by a panel of judges.

11.4 Relatives shall not sit as judges on the same panel."

1.13 Subsection 12.2 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is deleted.

1.14 Subsections 12.3 to 12.7 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation 2000/14) are accordingly renumbered: Subsection 12.3 is renumbered as "12.2" ; Subsection 12.4 becomes "12.3"; Subsection 12.5 becomes "12.4"; Subsection 12.6 becomes "12.5"; and Subsection 12.7 becomes "12.6". Further, in the Subsection 12.6 which is renumbered as "12.5", the reference to "12.4 and 12.5" becomes "12.3 and 12.4".

1.15 Subsection 12a.6 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is amended by deleting the words “District Court a review of ” and replacing them with “Court of Appeal to review”; and by deleting the sentence “A panel of the District Court shall decide on the review.”

1.16 Subsection 12a.7 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is amended by deleting the words “a panel of the District Court” and replacing them with the words “the investigating judge or the judge to whom the matter has been referred upon the filing of the indictment”.

1.17 Subsection 12a.8 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is amended by deleting the words “a panel of the District Court” and replacing them with the words “the investigating judge or the judge to whom the matter has been referred upon the filing of the indictment”.

1.18 Subsection 12a.12 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is amended by inserting, after the word “his”, the words “or her”; and by deleting the words “the decision of the panel of the District Court” and replacing them with the words “a decision” and inserting “Subsections 12a.6,” after the words “in accordance with”.

1.19 Section 12a of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) entitled “Detention”, which comprises Subsections 12a.1 through to 12a.12 inclusive, is further amended in respect of its numbering. The Section is renumbered by substituting an upper case “A” for the lower case “a”, such that Section 12a becomes “Section 12A” and, in each and every Subsection thereof, the lower case “a” in the numbering is replaced by the upper case “A”, with the result that Subsections 12a.1 through to 12a.12 inclusive, become Subsections 12A.1 through to 12A.12 inclusive. Accordingly, the reference in Subsection 12A.6 to “12a.3” becomes “12A.3”, and the references in Subsection 12A.12 to “12a.6” (by virtue of the preceding Subsection of the present Regulation), “12a.7” and “12a.8” become “12A.6”, “12A.7” and “12A.8” respectively.

1.20 Subsection 13.1 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is deleted and replaced by the following:

"13.1 All matters relating to the supervision and execution of a prison sentence shall be decided by the judge who pronounced the sentence or, in the event that such judge is no longer available or otherwise unable to exercise his or her functions, by such other judge as may be designated by the President of the Court to deal with such matters.

1.21 Subsection 13.2 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is amended by deleting the words from and including the word "panel" until the end of the Subsection, and inserting, after the words "with the", the words "judge who pronounced the sentence or, in the event that such judge is no longer available or otherwise unable to exercise his or her functions, by such other judge as may be designated by the President of the Court to deal with such matters.”

1.22 Subsection 15.2 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is amended by deleting the words from and including the words "as determined" through to and including the word "regulation", such that the amended Subsection 15.2 reads as follows:

“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.”

1.23 Subsection 15.4 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is deleted. Accordingly, existing Subsection 15.5 is renumbered as “15.4”.

1.24 Section 16 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is deleted in its entirety and replaced by the following:

"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.

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.”

1.25 Section 17 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is deleted in its entirety and replaced by the following:

"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 The President of the Court of Appeal shall have the power to issue Practice Directives 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 practice or proceedings arises that has not been regulated by the present Regulation, the matter shall be decided by the President of the Court of Appeal."

1.26 Subsection 18.1 and Subsection 18.2 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) are deleted and replaced by the following:

"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."

1.27 In Section 19 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14), the words "Presidency of the respective court" are replaced by "Judge Administrator".

1.28 In Section 20 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14), the word "Presidency" in Subsection 20.1 and Subsection 20.3 is replaced by "Judge Administrator" in each of the said Subsections. In Subsection 20.4, the words "majority vote by the Presidency" are replaced by "the Judge Administrator"; and the final sentence of Subsection 20.4 commencing "The challenged judge ..." is deleted.

1.29 Subsection 21.2 and Subsection 22.1 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) are amended by replacing the word "Presidency" with the words "Judge Administrator".

1.30 Subsection 22.2 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is deleted and replaced by the following:

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

1.31 Immediately following Subsection 22.3 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14), a Subsection 22.4 is added, as follows:

"22.4 The President of the Court of Appeal shall have the power 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."

1.32 Subsection 25.1 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is amended in the following manner: in the second sentence of the Subsection, the phrase "The panel of judges or, where applicable, the individual judge" is deleted and replaced by the phrase, "The individual judge or, where applicable, the panel of

judges”; and in the third sentence of the Subsection, the phrase “the panel of judges or individual judge” is deleted and replaced by the phrase “the individual judge or panel of judges”.

1.33 Subsection 25.3 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is amended by deleting the words from and including the words "the Presidency" through to the end of the Subsection, and inserting after the words "sanctioned by" the words "the presiding judge of the particular case"

1.34 Subsection 25.4 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is amended by inserting, after the words “deliberations of the” and before the words “panel of judges”, the words “judge or”.

1.35 Subsection 26.1 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is amended by inserting, after the words “hearing by a” and before the words “panel of judges”, the words “judge or”.

1.36 Subsection 28.2 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is deleted and replaced by the following:

"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 the 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 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."

1.37 Paragraph (b) of Subsection 29.1 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is deleted and replaced by the following:

“(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 of the present Regulation.”

1.38 Paragraph (e) of Subsection 29.1 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is deleted

1.39 Subsection 29.2 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is amended by deleting the words "are subject to the same rights and duties defined in a", and inserting in their place the words "shall comply with the provisions of the".

1.40 Section 30 of UNTAET Regulation No. 2000/11 (as amended by Regulation No. 2000/14) is amended by replacing the words "Court President" by the words "President of the Court of Appeal".

1.41 Section 32 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is deleted in its entirety and replaced by a new section 32 as follows:

"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."

1.42 Section 35 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is deleted in its entirety and existing Section 36 is re-numbered as "Section 35".

1.43 Section 37 of UNTAET Regulation No. 2000/11 (as amended by UNTAET Regulation No. 2000/14) is re-numbered as "Section 36".

1.44 Immediately following Section 37 of UNTAET Regulation 2000/11 (as amended by UNTAET Regulation No. 2000/14) which, by operation of the preceding Subsection of the present Regulation, is renumbered as "Section 36", a new Section 37 is inserted, as follows:

"Section 37
Judicial Recess

Every year there shall be a two-week judicial recess in 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 2
Publication of Updated Engrossment

Annexed hereto for publication as an integral part of the present Regulation is an updated engrossment of UNTAET Regulation No. 2000/11 on the Organization of Courts in East Timor, as amended by UNTAET Regulation No. 2000/14 and by the present Regulation.

Section 3
Entry Into Force

The present Regulation shall enter into force upon signature.

Sergio Vieira de Mello
Transitional Administrator

UNTAET/REG/2000/11
6 March 2000
As Amended by
UNTAET/REG/2000/14 and
UNTAET/REG/2001/18
21 July 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 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 Notwithstanding the duty of judges to comply with appellate decisions from the Court of Appeal, 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 judgments 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 2A Re-Assignment of Judges

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

2A.2 After consultation with the President of the Court of Appeal and the Transitional Judicial Service Commission, the Cabinet Member for Justice may temporarily re-assign any judge to a particular position in the Department of Justice. This temporary assignment is made by a motivated decision and suspends the appointment as a judge. It does not constitute the acceptance of public office under Subsection 2.4 of the present Regulation.

(a) For the purposes of the present Regulation, “Cabinet Member” means an officer of the Cabinet appointed pursuant to Section 2 of the UNTAET Regulation No. 2000/23 on the Establishment of the Cabinet of the Transitional Government in East Timor.

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.

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 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 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 administrative 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

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 both international and East Timorese judges who are appointed to the respective court by the Transitional Administrator in accordance with Regulation No. 1999/3.

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

9.3 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.

9.4 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 9A Judge Administrator

9A.1 There shall be a Judge Administrator in each District court to be appointed by the President of the Court of Appeal to serve for a renewable period of one year.

9A.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.

9A.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 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 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 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 10A 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 11 Panel of judges

11.1 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.

11.2 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.

11.3 The trials of all serious crimes named in Section 10 of the present Regulation shall be conducted by a panel of judges.

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

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 A warrant from the Investigating Judge shall be obtained for the following measures:

- (a) arrest of a suspect;
- (b) detention or continued detention of a suspect;
- (c) exhumation;
- (d) forensic examination;
- (e) search of locations and buildings;
- (f) seizure of goods or items;
- (g) intrusive body search;
- (h) physical examination, including the taking and examination of blood and DNA samples;
- (i) interception of telecommunication and electronic data transfer;
- (j) other warrants involving measures of a coercive character in accordance with applicable law.

12.3 Where the suspect is apprehended in the act, and in cases of hot pursuit, police can proceed without a warrant from the Investigating Judge.

12.4 In other cases of urgency where permission by the Investigating Judge cannot be obtained, and if evidence is likely to be destroyed, tampered with or to disappear or if there is an immediate danger to the safety or security of persons, police can proceed without a warrant from the Investigating Judge.

12.5 Where a person is arrested without warrant under circumstances referred to in sections 12.3 and 12.4, the police officer shall at the earliest possible opportunity submit a report to the Public Prosecutor, who shall obtain the warrant of the Investigating Judge without delay.

12.6 Within 48 hours of arrest, the suspect shall be brought before the Investigating Judge. The Investigating Judge may order the release of the suspect, with or without conditions, or order his or her detention. In accordance with section 27.1 of UNTAET Regulation No. 2000/11, a suspect has the right to have legal representation at the hearing.

Section 12A
Detention

12A.1 Pre-trial detention shall only be ordered for crimes that carry more than one year of imprisonment under the law.

12A.2 In ordinary circumstances, a person suspected of having committed a crime may be held for questioning for an initial period of up to 48 hours within which the person shall be brought before a judge or released.

12A.3 The Investigating Judge shall review the detention of a suspect every 30 days and issue orders for the further detention or for the release of the suspect.

12A.4 Unless otherwise provided in UNTAET Regulations, a suspect may be kept in detention for a period of up to six months from the date of arrest.

12A.5 A request of the Public Prosecutor for further detention may be granted by the Investigating Judge where there is evidence of the suspect's participation in a crime, and if there is reason to believe that the suspect may abscond, or to protect the safety of a witness or a victim, or to prevent the tainting or loss of evidence, or if there is a risk that the suspect may repeat the criminal act, or on grounds of public safety or security.

12A.6 A suspect or his or her representative may request the Court of Appeal to review the decision of the Investigating Judge made pursuant to section 12A.3.

12A.7 Taking into consideration the prevailing circumstances in East Timor, in the case of a crime carrying imprisonment for more than five years under the law, the investigating judge or the judge to whom the matter has been referred upon the filing of the indictment may, at the request of the Public Prosecutor and if the interest of justice so requires, and based on compelling grounds, extend the detention by an additional three months.

12A.8 On exceptional grounds, and taking into account the prevailing circumstances in East Timor, for particularly complex cases of crimes carrying an imprisonment sentence of ten years or more under the law, the investigating judge or the judge to whom the matter has been referred upon the filing of the indictment may, at the request of the Public Prosecutor, order the continued detention of a suspect, if the interest of justice so requires, and as long as the length of pre-trial detention is reasonable in the circumstances and having due regard to international standards of fair trial.

12A.9 A request for continued detention must contain the reasons justifying further detention.

12A.10 Pursuant to Security Council resolutions 1264 (1999) and 1272 (1999) and taking into consideration the prevailing circumstances in East Timor, all warrants for detention issued by the Investigating Judge or Public Prosecutor prior to the coming into force of the present Regulation shall be deemed valid and in accordance with the present Regulation.

12A.11 The period spent in detention in relation to the alleged crime, shall be taken into account when ordering subsequent detention.

12A.12 A suspect or his or her representative may lodge an appeal with the Court of Appeal against a decision taken in accordance with Subsections 12A.6, 12A.7 or 12A.8. The President may assign a single judge to hear and determine the appeal.

Section 13 Supervision of the Execution of Prison Sentences

13.1 All matters relating to the supervision and execution of a prison sentence shall be decided by the judge who pronounced the sentence or, in the event that such judge is no longer available or otherwise unable to exercise his or her functions, by such other judge as may be designated by the President of the Court to deal with such matters.

13.2 Prisoners may file complaints or requests relating to the execution of their prison sentence, in writing, with the judge who pronounced the sentence or, in the event that such judge is no longer available or otherwise unable to exercise his or her functions, by such other judge as may be designated by the President of the Court to deal with such matters.

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. 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 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

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.

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 The President of the Court of Appeal shall have the power to issue Practice Directives 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 practice or proceedings 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 Judge

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 Judge

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.

Section 20
Disqualification of Judges

20.1 The Judge Administrator 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 Judge Administrator 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 the Judge Administrator.

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.

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.

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 is 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
Transcript of Proceedings

26.1 The court shall ensure that, in each hearing by a judge or 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 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 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 administrative 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