



UNTAET

UNTAET/REG/2001/2
16 March 2001

REGULATION NO. 2001/2

**ON THE ELECTION OF A CONSTITUENT ASSEMBLY
TO PREPARE A CONSTITUTION FOR AN INDEPENDENT AND
DEMOCRATIC 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,

Recalling United Nations Security Council Resolution 1338 (2001) of 31 January 2001 which acknowledges that it is the responsibility of the United Nations Transitional Administration in East Timor (UNTAET) to ensure free and fair elections in East Timor in collaboration with the East Timorese people,

Taking into account UNTAET Regulation No. 1999/1 of 27 November 1999 on the authority of the Transitional Administration in East Timor,

For the purpose of electing a constituent assembly to prepare a Constitution for an independent and democratic East Timor,

Encouraging the equal participation of women and men at all stages of the electoral and constitutional process, and undertaking to promote the full enjoyment by women of their civil and political rights,

After considering the recommendations of the National Council and of the Cabinet of the Transitional Government in East Timor,

Promulgates the following:

I: The Constituent Assembly

Section 1

Constituent Assembly for East Timor

1.1 In order to implement the decision of the people East Timor in the popular consultation of 30 August 1999 and so as to protect the inalienable human rights of the people of East Timor including freedom of conscience, freedom of expression, freedom of association and freedom from all forms of discrimination, there shall be a Constituent Assembly to prepare a Constitution for an independent and democratic East Timor. The Constituent Assembly shall be unicameral.

1.2 The election of the Constituent Assembly shall be governed by the present regulation and shall be free and fair, with universal adult suffrage and a secret ballot.

Section 2

Mandate of the Constituent Assembly

2.1 The Constituent Assembly shall prepare a Constitution for an independent and democratic East Timor.

2.2 The Constituent Assembly shall adopt a Constitution only by an affirmative vote of at least sixty (60) representatives of the eighty-eight (88) representatives elected pursuant to the present regulation.

2.3 The Constituent Assembly should adopt a Constitution within ninety (90) days of the first day of sitting of the Constituent Assembly.

2.4 In its deliberations, the Constituent Assembly should give due consideration to the results of the consultations conducted by any duly constituted Constitutional Commission or Commissions.

2.5 The Constituent Assembly will also consider such draft regulations as may be referred to it by the Transitional Administrator. In such circumstance, an affirmative vote of a simple majority of the Constituent Assembly would constitute the endorsement of such draft regulation.

2.6 The Constituent Assembly shall become the legislature of an independent East Timor, if so provided in the Constitution.

2.7 The Constitution shall enter into force on the date of East Timor's independence. Prior to the date of independence, the Constitution or relevant provisions thereof (such as

those pertaining to elections) may enter into force with the consent of the Transitional Administrator.

Section 3
Composition of the Constituent Assembly

The Constituent Assembly shall comprise eighty-eight (88) representatives elected in accordance with the present section. Such representatives shall be made up of:

- (a) thirteen (13) representatives, being one representative from each of the existing thirteen (13) administrative districts (hereinafter “districts”), namely:

Aileu
Ainaro
Baucau
Bobonaro
Cova Lima
Dili
Ermera
Lautem
Liquica
Manatuto
Manufahi
Oecussi
Viqueque;

and

- (b) seventy-five (75) representatives, being representatives elected on the basis of one single nationwide constituency.

Section 4
District representation

4.1 Each district in the territory of East Timor shall elect one representative who shall represent the district in the Constituent Assembly (hereinafter “district representative”).

4.2 Only residents of a given district, who registered as such in that district and are present in that district on polling day, shall be allowed to vote for that district’s representative.

Section 5

National representation

5.1 Seventy-five (75) representatives shall be elected on a nationwide basis (hereinafter, “national representative”) in accordance with the procedures prescribed in section 37 of the present regulation.

5.2 All persons eligible to vote, as defined in section 30 of the present regulation, who have registered in East Timor and who are present in East Timor on polling day may vote for the national representatives.

Section 6 Rules of procedure

Upon its election, the Constituent Assembly shall elect a presiding officer, and shall make its own rules of procedure.

Section 7 Privileges and immunities

7.1 No representative, duly elected to the Constituent Assembly under the present regulation, shall be liable, either criminally or civilly, for any act or omission, if the matter or thing was done in the performance of his or her functions as a representative under the present regulation.

7.2 Unless immunity is specifically waived, by a simple majority present and voting, of the Constituent Assembly, no representative shall be tried in a court of law for any offence during the sittings of the Constituent Assembly. This provision shall not be construed as prohibiting a trial following the dissolution of the Constituent Assembly.

Section 8 Remuneration

A representative, duly elected to the Constituent Assembly under the present regulation, shall receive such remuneration as may be prescribed by the Transitional Administrator.

Section 9 Resignation

A representative, duly elected to the Constituent Assembly under the present regulation, may resign from office by submitting a resignation in writing to the presiding officer of the Constituent Assembly. The presiding officer shall immediately inform the Transitional Administrator of any such resignation.

Section 10

Replacement of representatives where a vacancy arises

In the event of a vacancy arising subsequent to the election, a replacement shall be appointed by the Transitional Administrator as soon as is practicable in accordance with the following:

- (a) where the representative to be replaced was elected as a district representative, a replacement shall be appointed having due regard to the electoral will of the district constituency in question as expressed at the election;
- (b)(i) where the representative to be replaced was elected as a national representative, then the replacement shall be the candidate next appearing on the political party list submitted at the election;
- (b)(ii) where there is no political party list or such list has been exhausted or that such political party has ceased to exist, the replacement shall be appointed having due regard to the electoral will of the national constituency as expressed at the election.

II: The Independent Electoral Commission

Section 11

Independent Electoral Commission

11.1 The Independent Electoral Commission (hereinafter, "IEC") is hereby established.

11.2 Electoral authority in East Timor shall be exclusively vested in the IEC which shall operate as an independent body and shall exercise its functions without regard to any improper influence, direct or indirect, from any source.

11.3 The IEC shall consist of voting Commissioners and a Chief Electoral Officer who shall be a non-voting member of the IEC.

Section 12

Period of operation of Independent Electoral Commission (IEC)

The IEC shall operate from the date of entry into force of the present regulation until such date, after the declaration of the results of the Constituent Assembly election, as may be prescribed by the Transitional Administrator.

Section 13 The Commissioners

13.1 Pursuant to section 11, the Commission shall be composed of the Chief Electoral Officer and five (5) voting Commissioners appointed by the Secretary-General of the United Nations Organization, two (2) of whom shall be East Timorese, and three (3) of whom shall be internationally recognized experts in electoral matters.

13.2 The Transitional Administrator shall publish the names of those appointed as Commissioners in the Official Gazette of East Timor as soon as is practicable.

13.3 Upon convening as the IEC, the Commissioners shall select one of their members as Chair of the Commission.

Section 14 Functions of the Independent Electoral Commission (IEC)

14.1 The IEC shall be responsible for the organization and conduct of the electoral process.

14.2 The IEC is responsible for the procedures, instructions, prescribed forms and guidelines for the electoral process made under the present regulation.

14.3 The IEC shall be responsible for the registration of political parties for the purposes of the present regulation.

14.4 The IEC is responsible for ensuring the prevention and control of election irregularities.

14.5 The IEC shall consider such electoral matters as may be referred to it by the Transitional Administrator.

14.6 The IEC may, on the basis of information received by it, or complaints made or referred to it, or on its own initiative, inquire into, and where appropriate, rule on, any matter or situation which may involve any person or entity whatsoever, in an act or omission constituting intimidation, obstruction, coercion, corruption, or the publication of

false information, or any other act or omission intended to or actually resulting in the obstruction or frustration of the preparation for, or the conduct of, free and fair elections in accordance with the present regulation.

14.7 The IEC shall adjudicate any dispute related to the electoral process including any dispute relating to the registration of political parties, eligibility of voters and candidates, and the validity of votes cast. All such decisions of the IEC are final. There shall be no appeal to any court or tribunal.

14.8 The IEC shall advise the Secretary-General of the United Nations Organization as to whether the criteria for a fair and free election have been met.

14.9 The IEC shall have the power to certify the results of the election and shall convey such results to the Secretary-General of the United Nations Organization through the Special Representative of the Secretary-General in East Timor.

14.10 Upon its establishment, the IEC shall make its own rules of procedure.

Section 15 Meetings of the Commission

15.1 The Special Representative of the Secretary-General shall convene the first meeting of the Commission. The Chair shall convene subsequent meetings and shall determine the time and venue of meetings of the Commission and prepare the agenda for the meetings after consultation with the other Commissioners and with the Chief Electoral Officer.

15.2 The Commission shall take decisions by consensus, when possible, and, in the absence of consensus, by a majority vote of the five Commissioners with voting rights. A Commissioner may cast his or her vote by proxy.

15.3 The quorum for meetings of the IEC shall be three members of the Commission.

15.4 The IEC shall hold meetings in open or closed session at its discretion and shall make a written record of its meetings.

Section 16 Replacement of Commissioners

16.1 A Commissioner shall hold office for the period of operation of the IEC.

16.2 A Commissioner may resign from office by submitting a resignation in writing to the Chair of the Commission.

16.3 Upon resolution of the IEC, the Commissioners may recommend to the Secretary-General of the United Nations Organization that a Commissioner be removed from the IEC, based on evidence indicating incapacity or incompetence, or that the Commissioner has undertaken an act which threatens to compromise the credibility of, or public trust in, the IEC.

16.4 In the event of resignation or removal from office or death of a Commissioner, a replacement Commissioner shall be appointed in accordance with the requirements of Section 13 of the present regulation.

Section 17 Chief Electoral Officer

17.1 There shall be a Chief Electoral Officer appointed by the Secretary-General of the United Nations Organization.

17.2 The Chief Electoral Officer shall have the role of chief executive officer of the IEC and shall be vested with such incidental powers as are proper and necessary for the exercise of his or her management and administrative functions.

17.3 The Chief Electoral Officer shall report to the IEC on a regular basis. He or she may designate a delegate to attend IEC meetings or to report to the Commissioners on his or her behalf.

17.4 Subject to the authority of the IEC, the Chief Electoral Officer shall develop procedures, instructions, prescribed forms and guidelines for the electoral process.

17.5 The Chief Electoral Officer may refer any dispute, complaint, appeal or matter concerning the electoral process to the Chair of the IEC, for inquiry, report or adjudication.

17.6 The Chief Electoral Officer shall determine procedures for the accreditation of election observers, and of political party agents or the agents of independent candidates, and shall be responsible for the granting of such accreditation.

Section 18 Staff of IEC

The IEC shall have such staff as it deems necessary for its proper functioning.

Section 19 Obligations of office holders, officials and staff of the IEC

19.1 All office holders, officials and staff of the IEC shall be independent and impartial in the exercise of their functions and shall be guided by the goal of ensuring a free and fair election reflecting the will of the people of East Timor.

19.2 All office holders, officials and staff shall refrain from any action which might impugn their neutrality or impartiality, and shall not, in the performance of their duties seek or receive instructions from any government, political party, candidate or any other authority or person.

19.3 All office holders, officials and staff shall refrain from any action which is likely to compromise the integrity of the electoral process.

III: Registration of Political Parties

Section 20

Registered party has right to nominate candidates

20.1 A political party which is registered pursuant to the present regulation may nominate candidates for election.

20.2 A political party which is not registered pursuant to the present regulation may not nominate candidates for election.

20.3 In accordance with the laws of East Timor as established by Section 2 and Section 3 of UNTAET Regulation No. 1999/1, persons in East Timor have the right to freedom of association, the right to peaceful assembly, the right to freedom of expression, the right to vote and to be elected and to take part in the conduct of public affairs, directly or through freely chosen representatives.

Section 21

Lodging an application

21.1 A political party may apply to the IEC for registration pursuant to the present regulation.

21.2 An application shall be lodged with the Chief Electoral Officer by the competent authority within a political party.

21.3 No fee shall be payable by a political party for lodging an application for registration.

Section 22

Information to be contained in application

An application shall be in writing in the manner prescribed by the IEC, and shall contain the following items:

- (a) a notice in the form prescribed in the Schedule to the present regulation (which is an integral part of the present regulation), stating that the political party applies for registration for the purpose of nominating candidates for election to a Constituent Assembly to prepare a constitution of an independent and democratic East Timor;
- (b) the full name, the acronym and the symbol of the political party;
- (c) the name, address, other contact information and signature or personal mark of the leader of the political party;
- (d) a written declaration signed by the leader and all other officers of the political party that they will continuously reside in East Timor for at least three (3) months prior to the date of the election, and that they are habitual residents of East Timor as defined in an UNTAET Regulation on civil registration;
- (e) the address or other contact information of one office of the political party in Dili to which all correspondence to the political party will be addressed;
- (f) the names, dates and places of birth, addresses, and signatures or personal marks of no fewer than five hundred (500) persons who are eligible to vote under the present regulation and who have not signed the registration application of another political party; and
- (g) the statutes of the political party, including the names of party officers and a description of the party's internal structure.

Section 23

Notification and publication of applications: objections

23.1 The Chief Electoral Officer shall, as soon as is practicable, notify the public, by entry in the Official Gazette of East Timor, newspaper advertisement, radio announcement and by notice display at each District Administration office of the receipt of an eligible application for registration, and shall make the application available for public inspection for a period of fourteen (14) days from the date of lodgment of the application.

23.2 A person eligible to vote may lodge an objection with the IEC to an application for the registration of a political party. The grounds upon which an objection may be lodged are limited to a claim that the items contained in the application are deficient or

inaccurate. Objections will not be considered more than fourteen (14) days after the lodgment of the application.

Section 24
Registration

24.1 A political party which has lodged an application for registration shall be deemed to be registered fourteen (14) days after the date of lodgment of the application, if the Chief Electoral Officer is satisfied

- (a) that there is no prima facie deficiency or inaccuracy in the items contained in the application;
- (b) that the political party does not have a name, acronym or symbol which is likely to incite hatred or violence;
- (c) that the political party does not have a symbol which is the same as or similar to the flag of another nation, any currently used military symbol or insignia, the Falintil symbol, or the National Council of East Timorese Resistance symbol; and
- (d) that the political party does not have a name, acronym or symbol which is the same as or similar to the name, acronym or symbol of a previously registered or previously established political party, such that confusion is likely to result in the minds of the East Timorese people.

24.2 In considering whether the criterion in Section 24.1(d) is met, the Chief Electoral Officer shall take into account the totality of the history and political circumstances surrounding the application for registration.

24.3 If the IEC is not satisfied that the criteria set out in Section 24.1 are met, it shall, within fourteen (14) days of the date of lodgment of the application, notify the political party which lodged the application. The party may cure any deficiency in the application at any time and may, in particular, propose a different name, acronym or symbol.

Section 25
Immaterial deficiencies

The IEC shall not reject an application for registration if it is satisfied on reasonable grounds that a deficiency or inaccuracy in the items contained in the application would not materially prejudice the purposes of the present regulation if the application were accepted.

Section 26
Registered party has legal identity

A political party which is registered pursuant to the present regulation shall operate as a legal entity in East Timor. A registered political party shall be capable of owning property, and shall be capable of suing and being sued.

Section 27

No registration during election period

The lodging of any application for registration of a political party will not be accepted any later than twenty-one (21) days prior to the commencement of the campaign period. The date of commencement of the campaign period shall be declared no later than thirty (30) days before the commencement of the campaign period.

Section 28

IEC to maintain Register

The IEC shall maintain a Register of registered political parties, which shall contain the registration applications of the parties. After the IEC ceases to consider objections, the lists of signatures given in support of those applications will not be included in the Register.

Section 29

Political parties to inform of change of information

Within fourteen (14) days of any material change with respect to information contained in the Register in relation to a registered political party, the competent authority within the political party shall inform the Chief Electoral Officer in writing of the change.

IV: Eligibility Criteria and Forms of Candidacy

Section 30

Eligibility of voters

The following persons, aged seventeen (17) years or above, shall be eligible to vote in the election for the Constituent Assembly:

- (a) persons born in East Timor,

- (b) persons born outside East Timor, but with at least one parent having been born in East Timor, and
- (c) persons whose spouses fall under either paragraph (a) or (b) above.

Section 31
Electoral Roll

In order to vote, an eligible voter must be included on the electoral roll established by the IEC.

Section 32
Eligibility of candidates

32.1 Any person who is eligible to vote, as defined in Section 30 of the present Regulation, shall be able to be a candidate for election to the Constituent Assembly.

32.2 A candidate for election as a district representative must be a resident of the constituency for which he or she is a candidate.

32.3 No person may be a candidate in the election for more than one constituency.

Section 33
Party candidates

33.1 Each registered political party wishing to participate in the election shall lodge with the IEC a list, in such order as that political party may determine, of up to seventy-five (75) nominees for election to the Constituent Assembly as national representatives.

33.2 Each registered political party wishing to participate in the election shall lodge with the IEC the name(s) of that political party's nominees for election to the Constituent Assembly as district representative(s), indicating the district for which each candidate is nominated.

33.3 Pursuant to sections 33.1 and 33.2, nominations of candidates of a registered political party for election as district or national representative(s) shall:

- (a) be made by the competent authority within that political party in the form prescribed by the IEC;
- (b) be lodged with the IEC prior to the declared nomination deadline; and

(c) be accompanied by a statement, in a form prescribed by the IEC, from each nominee, providing proof of eligibility and confirming that he or she is an eligible candidate, and is willing to be nominated by the political party in question.

33.4 A political party may only nominate a candidate for election to the Constituent Assembly if the candidate is affiliated with that party.

33.5 No person may be a candidate in the election for more than one political party.

Section 34 Independent candidates

34.1 A person seeking nomination to stand as an independent candidate for election as a national representative shall make such application to the IEC in the form prescribed by the IEC. Such application must be accompanied by no fewer than five hundred (500) signatures of individuals who are eligible to vote and who support that person's nomination.

34.2 A person seeking nomination to stand as an independent candidate for election as district representative shall make such application as prescribed to the IEC. Such application must be accompanied by no fewer than one hundred (100) signatures of individuals who are eligible to vote, who are residents of the district in which the person seeks nomination and who support that person's nomination.

V: Determining the Allocation of Seats

Section 35 Tallying vote results

When the number of votes recorded at the election for each political party or independent candidate has been tallied, the Chief Electoral Officer shall determine, in the manner provided in this part, the candidates who shall be elected.

Section 36 District representatives

The candidate with the highest number of votes in the district shall be the district representative. In the event that two candidates receive the same highest number of votes, the candidate to be awarded the seat shall be decided by the toss of a coin.

Section 37 National representation

37.1 For the purposes of this Section:

- (a) an independent candidate shall be deemed to be the candidate of a political party which has nominated only one candidate for election as a national representative; and
- (b) any votes recorded for that independent candidate shall be deemed to be votes recorded for that party.

37.2 In this Section, an “unexcluded party” means a political party which has not been excluded in accordance with the rules set out in subsection 37.4 under the heading “Stage 3”.

37.3 A reference in this section to the number of vacancies to be filled is a reference to the number 75, minus the total number of candidates of excluded parties who have already been elected.

37.4 The number of candidates elected from each political party is to be determined in accordance with the following rules.

Stage 1

For each unexcluded party, calculate or recalculate (as the case requires) the ratio (A/B), where:

A represents the number of votes recorded for the political party concerned; and

B is determined by dividing the total number of valid votes recorded for all the unexcluded political parties which have nominated candidates for election as national representatives by the number of vacancies to be filled (disregarding any remainder).

Go to Stage 2.

Stage 2

Determine if any unexcluded political party has nominated a number of candidates smaller than the ratio (A/B) calculated or recalculated in relation to the party at Stage 1.

If there are any such parties, go to Stage 3.

If there are no such parties, go to Stage 4.

Stage 3

If an unexcluded political party has nominated a number of candidates smaller than the ratio (A/B) calculated or recalculated in relation to the party at Stage 1:

- (a) all of the party's candidates are elected; and
- (b) the party is thereupon excluded.

Unless all vacancies have been filled, go to Stage 1.

Stage 4

Substage 1

For each unexcluded party, the number of candidates elected shall be calculated in accordance with the formula:

$$X = (A/B) + C$$

in which:

X represents the said number;

A represents the number of votes recorded for the political party concerned;

B is determined by dividing the total number of valid votes recorded for all the unexcluded political parties which have nominated candidates for election as national representatives by the number of vacancies to be filled (disregarding any remainder).

C represents the value 1 if a seat is allocated to the political party concerned in terms of Substage 2, and the value 0 if no seat is so allocated to the political party concerned,

and any remainder obtained in calculating the value of (A/B) is disregarded except for the purposes of Substage 2, in which such remainder shall be referred to as unallocated votes.

Substage 2

If, when the value of (A/B) has been determined in terms of Substage 1 for each unexcluded political party, the number of seats represented by the aggregate of all such values is less than the number of vacancies to be filled, the number representing the shortfall shall be allocated on the basis of one seat each to an equal number of political parties, being those political parties having the greatest numbers of unallocated votes.

Substage 3

If, in the application of the provisions of Substage 2, only one seat remains to be allocated and two or more political parties have an equal number of unallocated votes, and such political parties have more unallocated votes than any other political party that has not been allocated a seat at that Substage, the remaining seat shall be allocated to that political party with the equal number of unallocated votes that has received the lowest total number of votes in the election.

VI: Miscellaneous

Section 38 Interpretation

In the present regulation, unless the contrary intention appears:

“constituency” means a geographical area forming an electorate for the election of representatives for the purposes of the present regulation;

“independent candidate” means an individual seeking election to the Constituent Assembly, who is not nominated as a candidate of any political party;

“IEC” means the Independent Electoral Commission established under Section 11 of the present Regulation;

“registered political party” means political party registered under the present regulation;

“resident” means a person who can provide his or her address as being in one of the thirteen (13) districts of East Timor, as listed in Section 3 of the present regulation.

Section 39 Entry into force

The present regulation shall enter into force upon the date of promulgation.

Sergio Vieira de Mello
Transitional Administrator

SCHEDULE TO UNTAET REGULATION NO. 2001/2

NOTICE OF APPLICATION FOR REGISTRATION OF A POLITICAL PARTY

**For the nomination of candidates for election to a Constituent Assembly to prepare a constitution for
an independent and democratic East Timor**

Pursuant to Section 22 (a) of UNTAET Regulation No. 2001/2 On the Election of
a Constituent Assembly to Prepare a Constitution for an Independent and Democratic
East Timor,

I,

.....
.....

(name of person authorized by the competent authority within the political party applying for registration)

on behalf of

.....
.....

.....
.....

(name of political party)

apply for the registration of the political party mentioned above, for the purpose of nominating candidates for election to a constituent Assembly to prepare a constitution of an independent and democratic East Timor.

.....
.....

(signed / personal mark inscribed, and dated)