

## **REGULATION No. 1999/3**

### **On the Establishment of a Transitional Judicial Service Commission**

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,

For the purpose of establishing an independent judiciary in East Timor, and responding to the urgent need to provide judicial services,

Promulgates the following:

#### Article 1

#### The Transitional Judicial Service Commission

A Transitional Judicial Service Commission (hereinafter: the Commission) is hereby established to recommend to the Transitional Administrator candidates for provisional judicial or prosecutorial office, provide advice on the removal of judges or prosecutors, and prepare a Code of Ethics for judges and prosecutors.

#### Article 2

#### Composition and terms of office

2.1 The Commission shall be composed of five (5) individuals, three (3) of East Timorese origin and two (2) international experts.

2.2 The Commission shall be chaired by an East Timorese individual of high moral standing. It is not mandatory for the Chairperson to be a legal professional.

2.3 The other members of the Commission, both East Timorese and international, shall be distinguished legal professionals of high moral standing. They shall be independent and impartial. In the exercise of their functions, the members of the Commission shall at all times be guided by the transitional administration's goal to establish an independent and impartial judiciary and to build confidence in the rule of law.

2.4 The initial term of the members of the Commission shall be limited to six months from the day of appointment. This term shall be renewable. For the duration of their term, the members of the Commission shall not hold judicial or prosecutorial office in East Timor.

2.5 The East Timorese members of the Commission shall be appointed by the Transitional Administrator after consultations with relevant East Timorese interlocutors and social groups, and in accordance with the present regulation.

2.6 The Commission shall be independent in the exercise of its functions.

#### Article 3

#### Technical support and remuneration

3.1 The Transitional Administrator shall provide the funding and technical support of the Commission.

3.2 The members of the Commission shall receive remuneration to be determined by the Transitional Administrator.

Article 4  
Oath or solemn declaration

4.1 Upon appointment, the Transitional Administrator shall receive the following oath or solemn declaration from the members of the Commission:

"I swear (solemnly declare) that in carrying out the functions entrusted to me as a member of the Transitional Judicial Service Commission, I will perform my duties independently and impartially. I will, at all times, act in accordance with the dignity that the performance of my functions requires.

I will carry out my functions without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or all other status."

4.2 Upon completion of the oath, each member of the Commission shall submit a signed copy of the above declaration to the Transitional Administrator.

Article 5  
Removal of members of the Commission from office

5.1 If, at any point in time, the Transitional Administrator becomes aware of evidence that any of the members of the Commission has failed to meet the above principles or has violated the oath, the Transitional Administrator may remove such member from office and appoint a replacement, in accordance with the present regulation.

5.2 In case of resignation or death of a member, the Transitional Administrator shall appoint a new member to the Commission, in accordance with the present regulation.

Article 6  
Rules of procedure

The Commission shall adopt its own rules of procedure.

Article 7  
Sessions of the Commission

7.1 The Commission shall deliberate in plenary sessions. Its resolutions shall be valid if a quorum of at least four members is present.

7.2 The Chairperson shall convene plenary sessions of the Commission as and when necessary, but no less than once every month. Sessions shall also be convened at the request of the Transitional Administrator.

Article 8  
Review of applications

8.1 Upon public announcement by the Transitional Administrator, the Commission shall receive and review individual applications of legal professionals of East Timorese origin for provisional service in judicial or prosecutorial office.

8.2 Before determining an application, the Commission shall conduct an interview with each candidate.

Article 9  
Selection criteria

9.1 To apply for judicial or prosecutorial office, candidates shall submit their application directly to the Chairperson or through any UNTAET office in East Timor. The application shall contain the Commission's application form, a copy of the university diploma, and any additional documents, which may be necessary to certify relevant professional experience. The candidate shall be free to attach a letter of recommendation to the application.

9.2 It is mandatory that candidates have completed their legal training and hold a university degree in law, by a recognized university.

9.3 In addition, the Commission shall be guided by the following criteria:

- (a) Legal competence, taking into consideration academic qualifications;
- (b) Relevant experience in a legal profession or as a civil servant;
- (c) Moral integrity and standing within the community.

9.4 The candidates shall make a declaration that in case of appointment they will take residence in East Timor.

9.5 The Commission may recommend additional selection criteria to the Transitional Administrator.

#### Article 10 Recommendation by the Commission

10.1 Upon completion of the review process, the members of the Commission shall comment, in writing, on the applications reviewed. In case of non-consideration, the comments shall be made available to the candidate.

10.2 In selecting candidates, the Commission should strive for consensus. If this is not possible, however, the Commission may only recommend a candidate who obtained the votes of three members.

10.3 The Chairperson shall subsequently recommend the selected candidate, in writing, to the Transitional Administrator for appointment to judicial or prosecutorial office.

#### Article 11 Appointment of judges and prosecutors

11.1 The Transitional Administrator shall appoint candidates to judicial or prosecutorial office, taking closely into consideration the recommendations of the Commission pursuant to section 10.3 of the present regulation.

11.2 The recommendation shall not prejudice the Transitional Administrator's final authority to reject a candidate recommended by the Commission, on grounds related to the fulfillment of the mandate given UNTAET under Security Council resolution 1272 (1999). The Transitional Administrator shall inform the Commission of such rejection in writing.

11.3 Upon appointment, the Transitional Administrator shall receive the following oath or solemn declaration from each judge and prosecutor:

"I swear (solemnly declare) that in carrying out the functions entrusted to me as a judge/prosecutor, I will perform my duties independently and impartially. I will, at all times, uphold the law and act in accordance with the dignity that the performance of my functions requires.

I will carry out my functions without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or all other status."

11.4 Upon completion of the oath, each judge and prosecutor shall submit a signed copy of the above declaration to the Transitional Administrator.

#### Article 12 Remuneration of judges and prosecutors

Judges and prosecutors shall receive remuneration in accordance with the remuneration scheme to be

determined by the Transitional Administrator.

Article 13  
Complaints regarding the professional performance

13.1 The Commission shall receive complaints regarding the professional performance of a judge or prosecutor. It shall review those complaints and, where appropriate, advise the Transitional Administrator on any action to be taken, including a recommendation for the removal of the judge or prosecutor from office.

13.2 The recommendation shall not prejudice the Transitional Administrator's final authority to decide on such removal from office.

13.3 Judges and prosecutors shall not be removed from office unless in case of:

- (a) Mental illness or physical incapacity which makes the performance of judicial or prosecutorial duties permanently impossible;
- (b) Serious violation of professional responsibilities, including the principles enshrined in the oath received by the Transitional Administrator;
- (c) Acceptance of bribes or other emoluments beyond the granted remuneration, as determined by the Transitional Administrator;
- (d) Acceptance of political or any other public office;
- (e) A determination of false information having been provided in the application for professional service in judicial or prosecutorial office.

13.4 The Commission, respecting the right of the respective judge or prosecutor to present evidence, shall not carry out the removal from office without prior hearing. In case of removal on grounds of mental illness or physical incapacity a medical attestation by two independent medical experts is required.

13.5 The Transitional Administrator may, as appropriate, carry out an additional inquiry.

Article 14  
Promotion and re-assignment of judges and prosecutors

14.1 The Commission shall make recommendations to the Transitional Administrator as for the promotion or re-assignment of a judge or prosecutor to different office.

14.2 The recommendations shall not prejudice the Transitional Administrator's final authority to reject such recommendation.

Article 15  
Code of Ethics for judges and prosecutors

15.1 The Commission shall submit, within three months of the appointment of its initial members, a Draft Code of Ethics for judges and prosecutors to the Transitional Administrator.

15.2 In carrying out this task, the members of the Commission shall consult, as appropriate, with other East Timorese and international experts.

Article 16  
Entry into force

The present regulation shall enter into force on 3 December 1999.

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*(Signed)*  
Sergio Vieira de Mello  
Transitional Administrator