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United Nations Transitional Administration
in East Timor



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au Timor Oriental

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REGULATION NO. 2000/15

ON THE ESTABLISHMENT OF PANELS WITH EXCLUSIVE JURISDICTION OVER SERIOUS CRIMINAL OFFENCES

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 No.1999/1 of 27 November 1999 on the Authority of the Transitional Administration in East Timor (hereinafter: UNTAET Regulation No. 1999/1),

Taking into account UNTAET Regulation No. 2000/11 of 6 March 2000 on the Organisation of Courts in East Timor (hereinafter: UNTAET Regulation No. 2000/11) as amended by UNTAET Regulation No. 2000/14 of 10 May 2000 (hereinafter: UNTAET Regulation No. 2000/14),

Recalling the recommendations of the International Commission of Inquiry of East Timor in their report to the Secretary-General of January 2000,

After consultation in the National Consultative Council,

For the purpose of establishing panels with exclusive jurisdiction over serious criminal offences as referred to under Section 10.1 of UNTAET Regulation No. 2000/11,

Promulgates the following:

I. General

Section 1

Panels with Jurisdiction over Serious Criminal Offences

1.1 Pursuant to Section 10.3 of UNTAET Regulation No. 2000/11, there shall be established panels of judges (hereinafter: "panels") within the District Court in Dili with exclusive jurisdiction to deal with serious criminal offences.

1.2 Pursuant to Section 15.5 of UNTAET Regulation No. 2000/11 there shall be established panels within the Court of Appeal in Dili to hear and decide an appeal on a matter under Section 10 of UNTAET Regulation No. 2000/11, as specified in Sections 4 to 9 of the present regulation.

1.3 The panels established pursuant to Sections 10.3 and 15.5 of UNTAET Regulation No. 2000/11 and as specified under Section 1 of the present regulation, shall exercise jurisdiction in accordance with Section 10 of UNTAET Regulation No. 2000/11 and with the provisions of the present regulation with respect to the following serious criminal offences:

- (a) Genocide;
- (b) War Crimes;
- (c) Crimes against Humanity;
- (d) Murder;
- (e) Sexual Offences; and
- (f) Torture.

1.4 At any stage of the proceedings, in relation to cases of serious criminal offences listed under Section 10 (a) to (f) of UNTAET Regulation No. 2000/11, as specified in Sections 4 to 9 of the present regulation, a panel may have deferred to itself a case which is pending before another panel or court in East Timor.

Section 2 Jurisdiction

2.1 With regard to the serious criminal offences listed under Section 10.1 (a), (b), (c) and (f) of UNTAET Regulation No. 2000/11, as specified in Sections 4 to 7 of the present regulation, the panels shall have universal jurisdiction.

2.2 For the purposes of the present regulation, "universal jurisdiction" means jurisdiction irrespective of whether:

- (a) the serious criminal offence at issue was committed within the territory of East Timor;
- (b) the serious criminal offence was committed by an East Timorese citizen; or
- (c) the victim of the serious criminal offence was an East Timorese citizen.

2.3 With regard to the serious criminal offences listed under Section 10.1(d) to (e) of UNTAET Regulation No. 2000/11 as specified in Sections 8 to 9 of the present regulation, the panels established within 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.

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

2.5 In accordance with Section 7.3 of UNTAET Regulation No. 2000/11, the panels established by the present regulation shall have jurisdiction (*ratione loci*) throughout the entire territory of East Timor.

Section 3 Applicable Law

3.1 In exercising their jurisdiction, the panels shall apply:

- (a) the law of East Timor as promulgated by Sections 2 and 3 of UNTAET Regulation No. 1999/1 and any subsequent UNTAET regulations and directives; and
- (b) where appropriate, applicable treaties and recognised principles and norms of international law, including the established principles of the international law of armed conflict.

3.2 In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

II. Serious Criminal Offences

Section 4 Genocide

For the purposes of the present regulation, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Section 5 Crimes Against Humanity

5.1 For the purposes of the present regulation, "crimes against humanity" means any of the following acts when committed as part of a widespread or systematic attack and directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in Section 5.3 of the present regulation, or other grounds that are universally recognized as

impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the panels;

- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

5.2 For the purposes of Section 5.1 of the present regulation:

- (a) "Extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (b) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (c) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (d) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (e) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (f) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (g) "The crime of apartheid" means inhumane acts of a character similar to those referred to in Section 5.1, committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- (h) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

5.3 For the purpose of the present regulation, the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Section 6 War crimes

6.1 For the purposes of the present regulation, "war crimes" means:

- (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) Wilful killing;
 - (ii) Torture or inhuman treatment, including biological experiments;
 - (iii) Wilfully causing great suffering, or serious injury to body or health;
 - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (vii) Unlawful deportation or transfer or unlawful confinement;
 - (viii) Taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
 - (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural

environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict;
- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Section 5.2 (e) of the present regulation, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (iii) Taking of hostages;
- (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Section 6.1 (c) of the present regulation applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (v) Pillaging a town or place, even when taken by assault;
- (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Section 5.2 (e) of the present regulation, enforced sterilization, and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions;
- (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
- (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (ix) Killing or wounding treacherously a combatant adversary;
- (x) Declaring that no quarter will be given;
- (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest,

and which cause death to or seriously endanger the health of such person or persons;

- (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Section 6.1 (e) of the present regulation applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

6.2 Nothing in Section 6.1 (c) and (e) of the present regulation shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Section 7 Torture

7.1 For the purposes of the present regulation, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession, punishing him/her for an act he/she or a third person has committed or is suspected of having committed, or humiliating, intimidating or coercing him/her or a third person, or for any reason based on discrimination of any kind. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

7.2 This Section is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

7.3 No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

Section 8 Murder

For the purposes of the present regulation, the provisions of the applicable Penal Code in East Timor shall, as appropriate, apply.

Section 9 Sexual Offences

For the purposes of the present regulation, the provisions of the applicable Penal Code in East Timor shall, as appropriate, apply.

Section 10 Penalties

10.1 A panel may impose one of the following penalties on a person convicted of a crime specified under Sections 4 to 7 of the present regulation:

- (a) Imprisonment for a specified number of years, which may not exceed a maximum of 25 years. In determining the terms of imprisonment for the crimes referred to in Sections 4 to 7 of the present regulation, the panel shall have recourse to the general practice regarding prison sentences in the courts of East Timor and under international tribunals; for the crimes referred to in Sections 8 and 9 of the present regulation, the penalties prescribed in the respective provisions of the applicable Penal Code in East Timor, shall apply.
- (b) A fine up to a maximum of US\$ 500,000.
- (c) A forfeiture of proceeds, property and assets derived directly or indirectly from the crime, without prejudice to the rights of *bona fide* third parties.

10.2 In imposing the sentences, the panel shall take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

10.3 In imposing a sentence of imprisonment, the panel shall deduct the time, if any, previously spent in detention due to an order of the panel or any other court in East Timor (for the same criminal conduct). The panel may deduct any time otherwise spent in detention in connection with the conduct (underlying the crime).

III. General Principles of Criminal Law

Section 11

Ne bis in idem

11.1 No person shall be tried before a panel established by the present regulation with respect to conduct (which formed the basis of crimes) for which the person has been convicted or acquitted by a panel.

11.2 No person shall be tried by another court (in East Timor) for a crime referred to in Sections 4 to 9 of the present regulation for which that person has already been convicted or acquitted by a panel.

11.3 No person who has been tried by another court for conduct also proscribed under Sections 4 to 9 of the present regulation shall be tried by a panel with respect to the same conduct unless the proceedings in the other court:

- (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the panel; or
- (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

Section 12

Nullum crimen sine lege

12.1 A person shall not be criminally responsible under the present regulation unless the conduct in question constitutes, at the time it takes place, a crime under international law or the laws of East Timor.

12.2 The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.

12.3 The present Section shall not affect the characterization of any conduct as criminal under principles and rules of international law independently of the present regulation.

Section 13

Nulla poena sine lege

A person convicted by a panel may be punished only in accordance with the present regulation.

Section 14

Individual criminal responsibility

14.1 The panels shall have jurisdiction over natural persons pursuant to the present regulation.

14.2 A person who commits a crime within the jurisdiction of the panels shall be individually responsible and liable for punishment in accordance with the present regulation.

14.3 In accordance with the present regulation, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the panels if that person:

- (a) commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
- (b) orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
- (c) for the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
- (d) in any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the panels; or

- (ii) be made in the knowledge of the intention of the group to commit the crime;
- (e) in respect of the crime of genocide, directly and publicly incites others to commit genocide;
- (f) attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under the present regulation for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

Section 15 Irrelevance of official capacity

15.1 The present regulation shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under the present regulation, nor shall it, in and of itself, constitute a ground for reduction of sentence.

15.2 Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the panels from exercising its jurisdiction over such a person.

Section 16 Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under the present regulation for serious criminal offences referred to in Sections 4 to 7 of the present regulation, the fact that any of the acts referred to in the said Sections 4 to 7 was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

Section 17 Statute of limitations

17.1 The serious criminal offences under Section 10.1 (a), (b), (c) and (f) of UNTAET Regulation No. 2000/11 and under Sections 4 to 7 of the present regulation shall not be subject to any statute of limitations.

17.2 The serious criminal offences under Section 10.1 (d) to (e) of UNTAET Regulation No. 2000/11 and under Sections 8 to 9 of the present regulation shall be subject to applicable law.

Section 18
Mental element

18.1 A person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the panels only if the material elements are committed with intent and knowledge.

18.2 For the purposes of the present Section, a person has "intent" where:

- (a) In relation to conduct, that person means to engage in the conduct;
- (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

18.3 For the purposes of the present Section, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.

Section 19
Grounds for excluding criminal responsibility

19.1 A person shall not be criminally responsible if, at the time of that person's conduct:

- (a) the person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;
- (b) the person is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the panels;
- (c) the person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;
- (d) the conduct which is alleged to constitute a crime within the jurisdiction of the panels has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:
 - (i) made by other persons; or
 - (ii) constituted by other circumstances beyond that person's control.

19.2 The panel shall determine the applicability of the grounds for excluding criminal responsibility provided for in the present regulation to the case before it.

19.3 At trial, the panel may consider a ground for excluding criminal responsibility other than those referred to in Section 19.1 of the present regulation where such a ground is derived from applicable law. The procedures relating to the consideration of such a ground shall be provided for in an UNTAET directive.

Section 20

Mistake of fact or mistake of law

20.1 A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.

20.2 A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the panels shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in Section 21 of the present regulation.

Section 21

Superior orders and prescription of law

The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if a panel determines that justice so requires.

IV. Composition of the Panels and Procedure

Section 22

Composition of the Panels

22.1 In accordance with Sections 9 and 10.3 of UNTAET Regulation No. 2000/11 the panels in the District Court of Dili shall be composed of two international judges and one East Timorese judge.

22.2 In accordance with Section 15 of UNTAET Regulation No. 2000/11 the panels in the Court of Appeal in Dili shall be composed of two international judges and one East Timorese judge. In cases of special importance or gravity a panel of five judges composed of three international and two East Timorese judges may be established.

Section 23

Qualifications of Judges

23.1 The judges of the panels established within the District Court in Dili and the Court of Appeal in Dili shall be selected and appointed in accordance with UNTAET Regulation No. 1999/3, Section 10.3 of UNTAET Regulation No. 2000/11 and Sections 22 and 23 of the present regulation.

23.2 The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to judicial offices. In the overall composition of the panels due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

V. Other Matters

Section 24 Witness Protection

24.1 The panels shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the panels shall have regard to all relevant factors, including age, gender, health and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children.

24.2 Procedures regarding the protection of witnesses shall be elaborated in an UNTAET directive.

Section 25 Trust Fund

25.1 A Trust Fund may be established by decision of the Transitional Administrator in consultation with the National Consultative Council for the benefit of victims of crimes within the jurisdiction of the panels, and of the families of such victims.

25.2 The panels may order money and other property collected through fines, forfeiture, foreign donors or other means to be transferred to the Trust Fund.

25.3 The Trust Fund shall be managed according to criteria to be determined by an UNTAET directive.

Section 26 Entry into force

The present regulation shall enter into force on 6 June 2000.

Sergio Vieira de Mello
Transitional Administrator