

On Transitional Rules of Criminal Procedure

UNTAET/REG/2000/30; 25 September 2000

As amended by 2001/25; 14 September 2001

ON TRANSITIONAL RULES OF CRIMINAL PROCEDURE

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 establishing provisional rules of criminal procedure in East Timor that provide for a fair and expeditious application of penal law,

Promulgates the following:

TRANSITIONAL RULES OF CRIMINAL PROCEDURE

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I. General Provisions

Section 1 **Definitions**

In the present regulation the following terms shall have the following meanings:

- (a) *Accused* means any person who has been indicted in court by the public prosecutor or the police in the specific circumstances defined in the present regulation.
- (b) *Appropriate medical qualifications* means specialized training and experience in one or more fields of health care such as medicine, nursing or emergency aid, on the part of a person who holds a professional license or certification in such field or fields in East Timor or another State, such that the person is able properly to perform tasks relevant to such field or fields as specified in the present Regulation.
- (c) *Arrest* means the act of taking a suspect or an accused into custody with or without a warrant of arrest from an Investigating Judge or under Section 19A.4 of the present regulation.
- (d) *Competence* means power and due legal authority to deal with a matter.
- (e) *Convict* means any person who has been tried by a court and found guilty in a final decision.
- (f) *Court* means any court of East Timor with jurisdiction to hear and decide cases in East Timor pursuant to UNTAET regulations, whether acting as a plenum or through a panel or an individual judge.
- (g) *Day* means a calendar day except when qualified as a working day
- (h) *Defense* means the accused and/or the legal representative of the accused.
- (i) *Detention* means the status of a suspect or accused who is in custody.
- (j) *Doctor* means any person who has completed a degree in medicine at a university level and is qualified to practice medicine in any State.
- (k) *Forensic pathologist* means a doctor duly certified to perform his or her forensic expertise in East Timor or any State.
- (l) *Ground* means the foundation or basis on which a decision is or may be taken.
- (m) *Interlocutory appeal* means the appeal, prior to final decision in the case, of a decision made by the Investigating Judge pursuant to Section 20.6, or of a decision made by a District Court pursuant to Section 20.11 or 20.12 of the present regulation.
- (n) *Investigations* means all the activities conducted by the public prosecutor under the present regulation for the collection of information and evidence in a case whether before or after the indictment has been presented.

- (o) *Jurisdiction* means the power of a court to hear and determine a criminal proceeding or the geographic area in which a court has power.
- (p) *Medical professional* means any person qualified to render medical care or assistance in any State.
- (q) *Minor* means any person under 18 years of age.
- (r) *Motion* means an application made to a court for purpose of obtaining an order in favor of the applicant.
- (s) *Nurse* is anyone qualified as such medical professional in any State
- (t) *Parties* means the prosecutor and the defense.
- (u) *Preliminary motion* means a motion raised prior to the commencement of the trial.
- (v) *Premises* means any land or building.
- (w) *Suspect* means any person against whom there exists a reasonable suspicion of having committed a crime.
- (x) *Victim* means a person who, individually or as a part of a collective, has suffered damage, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his or her fundamental rights through acts or omissions in violation of criminal law. By way of illustration and not limitation, a victim may be the spouse, partner or immediate family member of a deceased person whose death was caused by criminal conduct; a shareholder of a corporation with respect to criminal fraud by the administrators or Officers of the corporation; or an organization or institution directly affected by a criminal act.
- (y) *Warrant* means an order issued by the Investigating Judge upon a lawful request of the public prosecutor, which empowers law enforcement authorities to execute said order.

Section 2

Fair Trial and Due Process

2.1 All persons shall be equal before the courts of law. In the determination of any criminal charge against a person or of the rights and obligations of a person in a suit of law, that person shall be entitled to a fair and public hearing by a competent court established in accordance with UNTAET Regulations No 2000/11, No 2000/14 and No 2000/15.

2.2 Criminal justice shall be administered by the Courts according to the law. No person may be subjected to any kind of punishment except under the provisions prescribed by the law.

2.3 No person shall be subjected to arbitrary arrest or detention. No person shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as prescribed in the present regulation and other applicable UNTAET Regulations

2.4 Unless otherwise provided in the present regulation, service of documents, papers, notices or any other thing whose delivery is required under any provision of the present regulation shall be made in the following manner:

(a) Upon natural persons, if the recipient can be found in East Timor, by hand delivery to the recipient, in duplicate, by any person over 18 years of age who has no personal interest in the proceedings. The original shall be left with the recipient, who shall acknowledge service by signing the copy, which shall promptly be filed at the Court. If the recipient cannot read or write a thumb print shall suffice. If the recipient refuses to acknowledge service, service is nevertheless complete if the person making service certifies the refusal and the time, date and place of delivery. Such certification may be made on the copy which is filed at the Court.

(b) Upon natural persons, if the recipient cannot be found in East Timor, by affixing in a conspicuous manner to the premises of the last known address of the recipient in East Timor. Service under this subparagraph is complete if at least two persons, who are over 18 years of age and have no personal interest in the proceedings, witness the act and certify the time, date, place and manner of service. Such certification may be made on the copy which is filed at the Court.

(c) Upon a business or enterprise, by hand delivery in duplicate at any office or business location of the recipient, to any person over the age of 18 years who is employed by the recipient. Acknowledgment or certification shall be as provided for natural persons.

(d) Upon any other juridical person, by hand delivery in duplicate to any natural person associated with the recipient who is found at any office or other place of the recipient's activity, with acknowledgment or certification as provided for natural persons.

(e) By service upon the legal representative of any person, provided that the legal representative has entered an appearance at the Court on behalf of the recipient and has not thereafter been excused by the Court, according to the provisions for service upon natural or juridical persons, as may be appropriate. Acknowledgment or certification shall be as provided for natural persons.

Section 3 **Applicable Law**

A court shall decide every case submitted for its consideration in accordance with the present regulation and the applicable law as stated in UNTAET Regulation No 1999/1.

Section 4

Ne bis in Idem

4.1 No person shall be liable to be tried or punished in a court of East Timor for an offence for which that person has already been finally convicted or acquitted in accordance with UNTAET regulations.

4.2 No person who has been tried by another court for conduct proscribed under Sections 4 to 9 of UNTAET Regulation No. 2000/15 shall be tried by a court of East Timor 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 court; 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 5

Trial in the Presence of the Accused

5.1 No trial of a person shall be held *in absentia*, except in the circumstances defined in the present regulation. The accused must be present at the hearing conducted pursuant to Section 29 of the present regulation, unless the accused is removed from the court under the provisions of Section 49.2 of the present regulation.

5.2 If at any stage following the hearing provided in Section 29 of the present regulation the accused flees or is otherwise voluntarily absent, the proceedings may continue until their conclusion.

5.3 If at any stage the accused is removed from the court under the provisions of Section 49.2 of the present regulation, the proceedings may continue until their conclusion unless the court finds for good cause shown that the provisions of Section 49.2 of the present regulation no longer apply.

Section 6

Rights of the Suspect and Accused

6.1 All persons accused of a crime shall be presumed innocent until proven guilty in accordance with the law, the provisions of this and other UNTAET regulations.

6.2 Immediately upon arrest, the suspect shall be informed by the arresting police officers of the reasons for his or her arrest and any charges against him or her, and shall also be informed that he or she has the following rights:

(a) the right to remain silent and not to admit guilt, and that silence will not be interpreted as an admission;

- (b) the right to contact a relative or close friend and be visited by such person;
- (c) the right to contact a legal representative and communicate with him or her confidentially;
- (d) the right that a legal representative will be appointed if the suspect is unable to pay for a lawyer;
- (e) the right to be brought before an Investigating Judge within 72 hours upon arrest;
- (f) the right to be questioned in the presence of a legal representative, unless the right is waived; and
- (g) if the suspect is a foreign national, the right to contact diplomatic or consular officials of his or her country.

6.3 At every stage of the proceedings, the suspect and the accused shall be informed by the public prosecutor that he or she has the following rights:

- (a) the right to be assisted by and to communicate freely and without supervision with a legal representative of his or her own choosing and to have such legal representation provided to him or her without cost where the suspect does not have sufficient means to pay for it;
- (b) the right to be informed in detail, and in a language which he or she understands, of the nature and cause of the charges against him or her;
- (c) the right to have the free assistance of an interpreter if he or she cannot understand or speak one of the official languages of the court;
- (d) the right to have adequate time and facilities for the preparation of his or her defense;
- (e) the right to request the Public Prosecutor or Investigating Judge to order or conduct specific investigations in order to establish his or her innocence;
- (f) the right to be tried without undue delay;
- (g) the right to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as adverse witnesses;
- (h) the right not to be compelled to testify against himself or herself or to admit guilt, and that if he or she chooses not to speak in the proceeding, such silence will not be held against him or her in the determination of innocence or guilt;
- (i) the right to be free from any form of coercion, duress or threat, torture, or any other form of cruel, inhuman or degrading treatment or punishment;
- (j) the right to be in contact with close relatives and be visited by such persons.
- (k) the right, if under detention, to have, upon request, the grounds of his or her detention reviewed by a competent judge or panel of judges at regular intervals.

II. Criminal Jurisdiction

Section 7 **Powers of the Public Prosecutor**

7.1 The exclusive competence to conduct criminal investigations is vested in the Public Prosecution Service as provided for in UNTAET Regulation No 2000/16. The competent Public Prosecutor is the only authority empowered to issue an indictment, except as provided in Section 44.2 of the present regulation.

7.2 The Public Prosecutor shall direct criminal investigations in order to establish the truth of the facts under investigation. In doing so, the public prosecutor shall investigate incriminating and exonerating circumstances equally.

7.3 The Public Prosecutor shall have all appropriate means to ensure the effective investigation and prosecution of crimes. In doing so, the public prosecutor shall respect the interests and personal circumstances of victims and witnesses.

7.4 In particular, the public prosecutor may:

- (a) collect and examine evidence;
- (b) request the presence of and question persons being investigated, victims and witnesses; and
- (c) seek the cooperation of any authority in accordance with its respective competence.

7.5 In accordance with UNTAET Regulation No 2000/16, the police and any other competent body shall act under the direction and supervision of the public prosecutor.

7.6 The public prosecutor shall, at all times, fully respect the rights of persons as provided under the present and any other UNTAET regulation.

7.7 The public prosecutor shall be the authority empowered to keep the files of the case during the investigations.

Section 8

Replacement of the Public Prosecutor

8.1 A party to the proceedings may request the relevant District Prosecutor or Deputy General Prosecutor to replace the public prosecutor assigned to a case, where there are reasons to question the impartiality of the public prosecutor.

8.2 The public prosecutor assigned to a case shall request to the head of the respective public prosecutorial office to be replaced in any case where a party to a proceedings is a spouse, partner or relative up to the second degree of such prosecutor, or where such prosecutor has reasons to believe his or her impartiality may be doubted.

8.3 The replacement of a public prosecutor shall follow the procedure defined in Section 11.3 of UNTAET Regulation No 2000/16.

Section 9

Powers of the Investigating Judge

9.1 In accordance with Section 13 of UNTAET Regulation No. 2000/11, there shall be at least one Investigating Judge at every District Court in East Timor empowered to ensure that the rights of every person subject to a criminal investigation and the rights of any alleged victims of the suspected crime under investigation are respected.

9.2 As provided by law or UNTAET regulations, the Investigating Judge shall issue warrants or other orders lawfully requested by the public prosecutor whenever, in the course of a criminal investigation, there are reasonable grounds to do so as provided in the present regulation.

9.3 Except as otherwise provided in the present regulation, a warrant or order from an 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, including seizure or opening of mail;
- (g) intrusive body search;
- (h) physical examination, including the taking and examination of blood, DNA, samples, and other bodily specimens;
- (i) interception of telecommunication and electronic data transfer;
- (j) other warrants involving measures of a coercive character in accordance with the applicable law.

9.4 All warrants shall be issued in duplicate. The original shall be kept by the prosecutor and added to the file of the case; a copy will be furnished to the suspect or person concerned, except when to do so would endanger the results of the investigations.

9.5 In order to safeguard the rights of a suspect, as listed in Section 6 of the present regulation, the Investigating Judge shall prohibit any actions of the investigating authorities that are in violation of the rights of the suspect.

9.6 The Investigating Judge shall not interfere with the responsibilities of the public prosecutor in directing the criminal investigations, as defined in Section 7 of the present regulation.

9.7 Notwithstanding any other provision of law, any warrant or measure ordered by the Investigating Judge at the seat of the public prosecutor assigned to the case is valid and may be executed anywhere in East Timor without any further formal request to other judicial authorities.

9.8 A warrant or order issued by the Investigating Judge pursuant to Section 9.2 of the present regulation shall identify by name or official capacity the persons who are authorized to execute the warrant or order. Unless otherwise specified in the warrant or order, the following provisions shall apply:

- (a) A warrant or order for arrest of a suspect may be executed by any law enforcement officer anywhere in East Timor;
- (b) A warrant or order for detention or continued detention of a suspect may be executed by the warden of any official detention facility in East Timor;
- (c) A warrant for exhumation may be executed under the supervision and control of any official qualified as provided in Section 18.5 of the present regulation;

- (d) A warrant or order for forensic examination may be executed by any official qualified as provided in Section 18.5 of the present regulation;
- (e) A warrant or order for search of locations and buildings may be executed by any law enforcement officer in East Timor who is duly authorized by UNTAET regulations;
- (f) A warrant or order for seizure of goods or items may be executed by any law enforcement officer in East Timor who is duly authorized by UNTAET regulations;
- (g) A warrant or order for an intrusive body search may be executed by any person with appropriate medical qualifications as provided in Section 16.3 of the present regulation;
- (h) A warrant or order for physical examination, including the taking and examination of blood, DNA samples, and other bodily specimens may be executed by any person as provided in Section 16.5 of the present regulation;
- (i) A warrant for interception of telecommunication and electronic data transfer may be executed by the requesting prosecutor.

Section 10

Participation by Investigating Judge as Trial Judge

Participation in a case as an Investigating Judge does not disqualify a judge from sitting as a trial judge at later stages of proceedings in the same matter. All questions of judicial disqualification shall be addressed as provided in UNTAET Regulation 2000/11.

Section 11

Choice of Venue in Criminal Cases

11.1 Except where provided otherwise in a UNTAET regulation, the venue for proceedings in cases concerning crimes other than those defined in Section 9 of UNTAET Regulation 2000/11 shall be determined according to the following rules, and in the following priority:

- (a) First, the District Court which has jurisdiction in the area where the act was committed, as provided in Section 7 of UNTAET Regulation No 2000/11;
- (b) Second, the District Court which, at the time of the presentation of the public indictment, has jurisdiction in the area where the suspect lives or has his or her usual place of residence; and
- (c) Third, the District Court which has jurisdiction in the area where the suspect was arrested.

11.2 In cases of dispute between two or more District Courts regarding the jurisdiction of a case, the jurisdiction shall be determined by the Court of Appeal, as provided in Section 7.2 of UNTAET Regulation No 2000/11

11.3 If at any stage of the proceedings a court finds that it lacks jurisdiction over a case, that court shall, without any further delay, transfer the case to the competent court. The order of transfer shall be forwarded to the court to which the case is transferred and shall direct the prosecutor to transfer the case file to the competent prosecutor.

11.4 If the suspected crime is believed to have been committed on a vessel or aircraft that is registered in East Timor, the Dili District Court shall have jurisdiction. If the vessel or aircraft is not registered in East Timor, jurisdiction shall be determined by the court having jurisdiction over the first port of arrival in East Timor, and according to international norms.

Section 12 **The Victim**

12.1 A victim shall be accorded those rights provided in the present regulation, in addition to any other rights provided by law or other UNTAET regulations

12.2 The status of a person, organization or institution as a victim is not related to whether the perpetrator is identified, apprehended, prosecuted or convicted, and is independent of any familial relationship with the perpetrator.

12.3 Any victim has the right to be heard at a review hearing before the Investigating Judge, and at any hearing on an application for conditional release pursuant to Section 43 of the present regulation. In the exercise of this right, the victim may be represented in court by a legal representative. An individual victim has the right to be notified by the prosecutor, or by the police in proceedings pursuant to Section 44 of the present regulation, in advance of the time and place of review hearings referred to in Sections 20, 29.5 and 43 of the present regulation, provided that the victim has previously indicated in a reasonable manner to the court, prosecutor or investigating officer a desire to be so notified.

12.4 It is not required that the notification of a victim be written or that it be in strict accord with Section 2.4 of the present regulation; provided, however, that the notice is of a nature which is reasonable under the circumstances and is likely to convey actual notice of the proceedings in sufficient time to permit the exercise of the victim's rights. Defects in the notification of a victim at any stage shall not deprive the Court of jurisdiction to proceed.

12.5 A victim may request to the court to be heard at stages of the criminal proceedings other than review hearings.

12.6 The victim has the right to request the Public Prosecutor to conduct specific investigations or to take specific measures in order to prove the guilt of the suspect. The Public Prosecutor may accept or reject the request.

12.7 The Investigating Judge or a court may direct that several victims will be represented in the same case through a single representative.

12.8 The Public Prosecutor shall take reasonable steps to keep the victims informed of the progress of the case.

III. Investigations

Section 13 **Reporting of a Crime**

13.1 Any person may report orally or in writing to the Public Prosecutor or the police the commission of an act of a criminal nature. The reporting of such events is mandatory for public officers, insofar as they do not belong to the categories of individuals defined in Section 35.3(b) and (c) and obtained the information in the delivery of their services.

13.2 Whenever a crime is reported the relevant officer or Public Prosecutor shall make a record of the reported facts. After that statement is read to the reporting person, in a language that he or she understands, that person shall sign the record. If the person who reported the facts cannot read or write a thumb print shall suffice.

13.3 Following the report, the Public Prosecutor may, as appropriate, initiate an investigation and may for that purpose order the police to carry out the necessary measures.

13.4 Where the commission of a crime has been reported to the police, the relevant officer shall immediately submit a copy of the record to the competent Public Prosecutor. If the investigation is urgent in nature, the police may take immediate measures to obtain more information about the suspected crime and to ensure that evidence is not destroyed, falsified, lost or tainted prior to reporting the crime to the Public Prosecutor.

Section 14 **General Rules for Collection of Evidence**

14.1 The Public Prosecutor and the police shall strive to collect the most direct evidence.

14.2 The origin of any physical and documentary evidence to be presented at the trial shall be established for the record

14.3 In any interview of a victim of a crime under investigation:

- (a) the relevant officer shall advise the victim of the right to be notified of proceedings at which the victim has a right to be heard pursuant to the present regulation.
- (b) the relevant officer shall record the identity and contact information for any victim who indicates a desire to be so notified.
- (c) the proceedings shall be conducted by a female officer in cases of a female victim of a sexual assault, unless the victim does not object to a different procedure.

Section 15 **Search of Premises and Seizure of Items**

15.1 A warrant from the Investigating Judge shall be required to enter and conduct a search of premises, except in cases of urgency, as described below, where permission by the Investigating Judge cannot be previously obtained.

15.2 The public prosecutor shall request the Investigating Judge to issue a search warrant if there are reasonable grounds to believe that such search would produce evidence necessary for the investigation or would lead to the arrest of a suspect whose arrest warrant has previously been issued

15.3 A copy of the warrant shall be furnished to any person who resides or is present at the premises at the time the warrant is executed. Service according to Section 2.4 is not required. The warrant shall contain the following:

- (a) identification of the Investigating Judge and the case
- (b) identification of the locations and items to be searched;
- (c) the reason for the search;
- (d) any restrictive measures police officers are allowed to take during the search;
- (e) the authority to search for and seize particular items; and
- (f) the hours of its execution and the duration of its validity.

15.4 Searches shall normally be made during daylight hours. The public prosecutor may, however, request the Investigating Judge to authorize a night time search when there are reasonable grounds to believe that it is necessary for the effective execution of the warrant or for the safety of the persons involved in the search. Such grounds shall be recorded in the warrant.

15.5 The police conducting the search shall make a written record of the search. Photographs, films or tape recordings may be part of the record. The written record shall contain the following:

- (a) identification of the recipient of the warrant;
- (b) a detailed description of the premises;
- (c) a list and description of the objects, and any other items at the premises that may be relevant for the investigation;
- (d) a detailed list of the physical evidence seized during the search;
- (e) identification and signature of persons claiming the ownership or possession of seized evidence, if any; and
- (f) identification of the persons present at the premises and their physical conditions, if relevant.

15.6 If possible, the search will be made in the presence of the residents of the premises or persons present at the time of the search. Where there are no residents or persons present at the time of the search, the police may provide for at least one independent witness. Such witness shall sign the record. In case the witness cannot read or write a thumb print shall suffice.

15.7 If necessary for the ends of the investigation, and while the search is being made, the police are empowered to prohibit any of the persons present from leaving the location and may require others to be present.

15.8 The police may make use of force to enter the location in the following situations:

- (a) there is no response;

- (b) the inhabitants or persons present resist entry into the premises; or
- (c) the location is uninhabited or unoccupied.

15.9 A warrant shall not be required for the entry or search of premises or the seizure of property where the police have reasonable grounds to believe that evidence of a crime is located in or on the premises and that:

- (a) such evidence may be tampered with, removed or destroyed; or
- (b) it is necessary to safeguard or preserve the scene of a crime; or
- (c) the police are in hot pursuit of a suspect; or
- (d) there is an immediate danger to the safety or security of persons.

In any instance where a search of premises or the seizure of property is conducted without a warrant under the provisions of the present section, the report described in Section 15.5 of the present regulation shall be promptly submitted by the prosecutor to the Investigating Judge, who shall determine whether the requirements of the present section have been met.

Section 16

Search of Persons

16.1 No warrant shall be required to search a person in the following circumstances: a search conducted incident to an arrest for purposes of ensuring the safety of the officials involved or other persons in the immediate area; or if a police officer has reasonable grounds to believe that there is an object, the possession of which in itself constitutes a crime or is related to a criminal act, in the clothing or personal belongings of the person, or attached to the body of the person.

16.2 The search shall be made in a respectful manner. No person shall be searched by a police officer who is not of the same sex. If there is no police officer of the same sex as the suspect at the place at which the search is to take place, the police officer may authorize and instruct any suitable person of the same sex to perform the search.

16.3 A warrant shall be required for any intrusive search of the body of a person. The Investigating Judge shall issue such warrant only when there are reasonable grounds to believe that it is necessary for the collection of evidence and there are no other lawful means to obtain such evidence. The search shall be conducted by a doctor or other person with appropriate medical qualifications, under circumstances allowing for maximum privacy.

16.4 A warrant shall be required to collect any body specimen of the suspect. The Investigating Judge shall issue such warrant where there are reasonable grounds to believe that such measure is the only available method to collect the evidence required for the ends of the investigations.

16.5 In cases where the public prosecutor or the police requires a blood sample or any other body specimen, a warrant from the Investigating Judge shall not be required in circumstances where such warrant cannot be obtained within reasonable time for the purposes of preserving evidence necessary for the investigation. The police shall report such circumstances to the public prosecutor. The collection of samples or specimens pursuant to this subsection must be conducted by persons with appropriate medical qualifications.

16.6 A warrant from the Investigating Judge shall be required where an examination of the mental state of the suspect is necessary for the ends of the investigations.

Section 17 **Search of Mail**

17.1 A warrant shall be required to search, intercept or seize any written or electronic mail or to intercept, monitor or record telephonic or other electronic communication. Such warrants shall be valid for no more than thirty (30) days. The public prosecutor may, however, request the Investigating Judge to extend the validity of the warrant for a similar period if necessary to the investigation.

17.2 Police may proceed without a warrant to detain any mail whenever there are reasonable grounds to believe that it contains objects the possession of which in itself constitutes a crime, are related to a criminal act or are evidence of a criminal act. A warrant must be obtained in order to seize or open such mail, unless the requirements of Section 15.9(d) of the present regulation are met.

17.3 The measure defined in Section 17.2 of the present regulation shall be reported immediately to the public prosecutor, who shall request the necessary warrants from the Investigating Judge. If the seizure of mail takes place, a receipt shall be given to the postal or other official from whose custody it is taken.

Section 18 **Forensic Examinations and Exhumations**

18.1 Any person who believes that a death has occurred on property he or she owns or occupies, or who acquires knowledge that a member of his or her immediate family has died at any location, under circumstances described in Section 18.4 of the present regulation, shall report the death to the police, unless the person has actual knowledge that the police have already been notified.

18.2 Where the police acquire knowledge of a death which they have reasons to believe is a homicide, or whenever the death has occurred in the circumstances described in Section 18.4 of the present regulation, the police shall secure the area where the events leading to the death may have occurred and shall report the death to the public prosecutor and the forensic pathologist.

18.3 The police shall conduct a preliminary investigation of the circumstances surrounding the death and shall prepare a report summarizing all pertinent information within their knowledge pertaining the death, including any information concerning the identity of the deceased. After the police have gathered all the information necessary, they shall then remove the body and transfer it to the designated facility where an autopsy may be performed.

18.4 The Investigating Judge, at the request of the public prosecutor, shall issue a warrant for an autopsy to be performed by a forensic pathologist appointed by the court pursuant to

Section 18.5 of the present regulation, in all cases where the Investigating Judge finds that a death has occurred in any of the following circumstances:

- (a) the deceased died a violent or unnatural death;
- (b) the deceased died a sudden death, the cause of which is unknown;
- (c) the deceased died under suspicious or unusual circumstances;
- (d) the deceased died while under, or as a result of, or within 24 hours after the administration of, an anaesthetic administered in the course of a medical, surgical, or dental operation or procedure or an operation or procedure of like nature, other than a local anaesthetic administered solely for the purpose of facilitating a procedure of resuscitation from apparent or impending death; or
- (e) the deceased died in custody, in the course of police operations, while within or absent from a detention center or prison or while proceeding to such institution in the company of a police officer or other official.

18.5 The Investigating Judge shall appoint as a forensic pathologist a medical practitioner duly certified as a forensic pathologist in East Timor or any other country. The forensic pathologist shall then act as an independent expert of the court in examining deceased persons to assist in the criminal investigations of deaths.

18.6 In all cases where the Investigating Judge issues a warrant for an autopsy, the forensic pathologist shall perform the autopsy and shall make professional observations regarding:

- (a) the identification of the deceased;
- (b) the cause of the death of the deceased; and
- (c) the circumstances under which the death occurred, including an opinion as to whether the death occurred from natural causes, accident, suicide, homicide, or in an unknown manner.

18.7 In all cases where he or she performs an autopsy, the forensic pathologist shall issue a detailed report in accordance with professional standards including all of his or her observations and opinions. The report may include photographs taken by the forensic pathologist or under his or her supervision and may include exhibits, diagrams, or any other record which he or she deems appropriate. Whenever the forensic pathologist deems it to be necessary, he or she may request the prosecutor to conduct further investigation concerning the requirements established in Section 18.6, of the present regulation.

18.8 The forensic pathologist shall not issue any conclusion relating to the legal responsibility of any suspect or any other individual. The forensic pathologist shall submit the report required in section 18.7 of the present regulation to the public prosecutor and shall testify as to the contents of the report whenever requested by the court to do so. The forensic pathologist shall be immune from criminal or civil liability based on any opinion, observation, or testimony provided in his or her professional capacity.

18.9 Where a body has been inhumed without an autopsy, and such measure is necessary for the investigation of a criminal case, the Investigating Judge, at the request of the public prosecutor, the representative of the victim, the suspect or accused, may issue a warrant to exhume the body for an autopsy to be performed. No claim on the custody of the body shall be heard until the autopsy has been performed.

IV. Arrest and Detention

Section 19 **Crediting pre-trial Detention**

Any period spent in pre-trial detention in relation to an alleged crime, shall be credited against service of any subsequent sentence ordered in the same case.

Section 19A **Arrest Warrant**

19A.1 If there are reasonable grounds to believe that a person has committed a crime, the public prosecutor may request the Investigating Judge to issue a warrant for the arrest of that person in accordance with the rules established in the present section.

19A.2 The arrest warrant shall contain the following:

- (a) the name of the suspect and any other identifying information;
- (a) identity of the alleged victims;
- (b) a summary of the facts which are alleged to constitute a crime and a specific reference to the crime for which the arrest of the suspect is sought, including a reference to the relevant legal provisions at issue; and
- (c) the name and signature of the Investigating Judge.

19A.3 Upon arrest, the suspect shall be informed of his or her rights, in accordance with Section 6 of the present regulation, and shall be given a copy of the warrant.

19A.4 The police may arrest a suspect without a warrant when, in the course of ordinary law enforcement activities,

- (a) the suspect is found in the act of committing a crime; or
- (b) there are reasonable grounds to believe that the suspect has committed a crime and that there is an immediate likelihood that before a warrant could be obtained the suspect will flee or destroy, falsify or taint evidence, or endanger public safety or the integrity of the victims or witnesses; or
- (c) the police are in hot pursuit of a suspect immediately after commission of a crime and evidence of the suspect's participation in the crime is found in the suspect's possession.

19A.5 In cases defined in Section 19A.4 of the present regulation, the police shall immediately inform the public prosecutor of all circumstances and the restrictive measures applied, and shall submit the report to the public prosecutor without undue delay.

19A.6 Upon receipt of the report pursuant to Section 19A.5 of the present regulation, the public prosecutor may:

- (a) request the issuance of the corresponding warrants from the Investigating Judge, in accordance with the rules provided in the present regulation; or
- (b) continue the investigation, but order the suspect to be released from custody; or

(c) dismiss the case and order the suspect to be released from custody.

19A.7 Where a suspect is arrested and detained after a warrant has been issued, the public prosecutor may dismiss the case and request the Investigating Judge to order the release of the suspect in the following circumstances:

- (a) there is insufficient evidence that a crime has been committed;
- (b) the acts under investigation are found to be of non-criminal nature;
- (c) the period to investigate the crime (statute of limitation) has elapsed;
- (d) the suspect has already been tried by a court for the same offences and has been finally convicted or acquitted; or
- (d) there is sufficient evidence that a crime has been committed, but the evidence against the suspect is not sufficient and there is no reasonable possibility to bring additional evidence into the case.

19A.8 Where the case has been dismissed pursuant to Section 19A.6 or 19A.7 of the present regulation, the public prosecutor shall immediately notify the alleged victim of the dismissal of the case, in a manner meeting the requirements of Section 12.4 of the present regulation and that prevents undue danger to the safety, well-being and privacy of those who provided information to the prosecutor, so that the victim may exercise the rights defined in Section 25 of the present regulation.

19A.9 As soon as practicable after the time a suspect is placed in detention, the police shall notify the family of the suspect.

Section 20 **Review Hearing**

20.1 Within 72 hours of arrest, the Investigating Judge shall hold a hearing to review the lawfulness of the arrest and detention of the suspect. At this hearing the suspect must be present, along with his or her legal representative, if such a legal representative has been retained or appointed.

20.2 The review hearing shall be closed to the public, unless requested otherwise by the suspect and ordered by the Investigating Judge.

20.3 Pursuant to Section 6 of the present regulation, the Investigating Judge shall inform the suspect of the rights to which he or she is entitled during the investigations, including the right to legal representation.

20.4 The suspect may raise objections before the Investigating Judge concerning any allegation of ill treatment or violations of his or her human rights by police officers or other authorities, or the unlawfulness of his or her detention.

20.5 If the suspect makes a statement, the Investigating Judge, the public prosecutor and the legal representative of the suspect may ask pertinent questions to the suspect with respect to his or her statement. If the suspect makes a statement which includes an admission of guilt, the Investigating Judge shall proceed as provided in Section 29A of the present regulation

20.6 At the conclusion of the hearing the Investigating Judge may:

- (a) confirm the arrest and order the detention of the suspect;
- (b) order substitute restrictive measures instead of detention, as provided in Section 21 of the present regulation; or
- (c) order the release of the suspect.

20.7 The Investigating Judge may confirm the arrest and order the detention of the suspect when:

- (a) there are reasons to believe that a crime has been committed; and
- (b) there is sufficient evidence to support a reasonable belief that the suspect was the perpetrator; and
- (c) there are reasonable grounds to believe that such detention is necessary.

20.8 Reasonable grounds for detention exist when:

- (a) there are reasons to believe that the suspect will flee to avoid criminal proceedings; or
- (b) there is the risk that evidence may be tainted, lost, destroyed or falsified; or
- (c) there are reasons to believe that witnesses or victims may be pressured, manipulated or their safety endangered; or
- (d) there are reasons to believe that the suspect will continue to commit offences or poses a danger to public safety or security.

20.9 The Investigating Judge shall review the detention of a suspect every thirty days and issue orders for the further detention, substitute restrictive measures or for the release of the suspect.

20.10 Unless otherwise provided in UNTAET regulations, a suspect may be kept in pretrial detention for a period of no more than six months from the date of arrest

20.11 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, based on compelling grounds, extend the maximum period of pretrial detention by an additional three months

20.12 On exceptional grounds, and taking into account the prevailing circumstances in East Timor, for particularly complex cases of crimes carrying imprisonment 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 pretrial detention is reasonable in the circumstances, and having due regard to international standards of fair trial

20.13 Pursuant to United Nations 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 accord with the present regulation.

Section 21

Substitute Restrictive Measures

21.1 As an alternative to an order for detention, the Investigating Judge may order one or more of the following substitute restrictive measures, if he or she believes it is necessary to ensure the integrity of evidence related to the alleged crime or the safety or security of the victims, witnesses and other persons related to the proceedings:

- (a) house detention of the suspect, alone or under the custody of another person;
- (b) the submission of the suspect to the care or supervision of a person or an institution;
- (c) a regime of periodical visits of the suspect to an agency or authority designated by the Investigating Judge;
- (d) the prohibition of the suspect from leaving an area designated by the Investigating Judge;
- (e) the prohibition of the suspect from appearing at identified places or meeting a named individual; or
- (f) the prohibition of the suspect from staying in the family home, if the alleged crime is related to domestic violence.

21.2 The Investigating Judge may order that a monetary bond or other surety be posted to guarantee the appearance of the suspect or accused at subsequent proceedings, in an amount that the Investigating Judge determines, in addition to any substitute restrictive measures listed in Section 21.1 of the present regulation.

21.3 A monetary bond or other surety posted as provided in Section 21.2 of the present regulation shall be deposited with the Court and shall be forfeited if the Court finds that the conditions of the bond or surety have been violated. Any bond or surety not forfeited shall be refunded or returned if the Court finds that all conditions of the bond or surety have been met. Any forfeited bond or surety shall accrue to the consolidated budget of East Timor.

Section 22

Release of the Suspect

22.1 The Investigating Judge shall order the release of the suspect whenever the public prosecutor, in accordance with Section 19A.7 of the present regulation, dismisses the case or where as a result of the investigation the Investigating Judge finds that there are insufficient grounds to continue the detention.

22.2 Notwithstanding the release of a suspect made in accordance with Section 22.1, the public prosecutor may continue the investigation of the case until the expiration of the statute of limitation.

Section 23

Interlocutory Appeal

23.1 A decision of the Investigating Judge pursuant to Section 20.6 of the present regulation may be appealed to the Court of Appeal by any of the parties, according to procedure set forth in this Section.

23.2 In an appeal pursuant to Section 23.1 of the present regulation, the petitioner shall present a written petition to the Court of Appeal within ten days of the decision and shall immediately serve a copy upon the respondent. The Court shall summon the parties to a hearing within ten days of the receipt of the petition. The respondent may file a written statement with the Court at any time prior to the hearing and shall immediately serve a copy upon the petitioner. Service of the respective written statements and the summons shall be as provided in Section 2.4 of the present regulation.

23.3 Any evidence relevant to an appeal pursuant to Section 23.1 of the present regulation may be proposed by the parties in their respective written statements

23.4 The hearing shall be open to the public unless otherwise decided by the Court of Appeal. The parties shall be given the opportunity to present their arguments orally. Evidence, if any, shall be presented following, where appropriate, the rules established in Section 33 of the present regulation.

23.5 At the end of the hearing, the Court of Appeal shall decide and shall issue its decision in writing to the parties. The Court may confirm, reject or modify the decision from which appeal was taken.

23.6 If the ruling of the Investigating Judge is confirmed, the proceedings shall continue in accordance with the rules of the present regulation, as though the appeal had not been taken.

23.7 If the ruling of the Investigating Judge is rejected or modified, the Court of Appeal may:

- (a) order the release of the suspect unless indicted before the expiration of the term established in Section 20.10 of the present regulation, in cases pursuant to Section 20.11 of the present regulation;

- (b) order the release of the suspect or establish a date by which the indictment of the suspect must be presented, in cases pursuant to Section 20.12 of the present regulation;

- (c) order or modify substitute restrictive measures as provided in Section 21 of the present regulation.

23.8 Upon the decision, the Court of Appeal shall remand the case to the competent District Court. All decisions defined in Section 23.7 of the present regulation shall be executed by the District Court, except that an order for the release of the suspect or for modification of substitute restrictive measures shall be executed immediately upon its issuance by the Court of Appeal.

23.9 Appeal proceedings under the present Section shall not interrupt the course of the investigations.

V. Indictment

Section 24 **Presentation of Indictment**

24.1 Upon completion of the investigation, if the result so warrants, the Public Prosecutor shall present a written indictment of the suspect to the competent District Court. The indictment shall include:

- (a) the name and particulars of the accused;
- (b) a complete and accurate description of the crime imputed to the accused;
- (c) a concise statement of the facts upon which the accusation is made;
- (d) a statement identifying the provisions of law alleged to have been violated by the accused;
- (e) the identification of the victims, unless measures to protect the identity of the victims are being sought; and
- (f) a request for the trial of the accused.

24.2 Together with the indictment, the public prosecutor shall present to the court a list describing the evidence that supports the indictment.

24.3 When the indictment is presented to the court, the powers of the Investigating Judge terminate, except the powers of the Investigating Judge described in Section 9.3 (c) through (j) of the present regulation.

24.4 Upon presentation of the indictment to the court, the following must be made available by the prosecutor to the accused and his or her legal representative:

- (a) Copies of all documentary evidence intended to be offered by the prosecution at trial;
- (b) All statements in the possession of the prosecution of any witness whose testimony is intended to be offered by the prosecution at trial;
- (c) All information in any form in the possession of the prosecution which tends to negate the guilt of the accused or to mitigate the gravity of the offenses charged in the indictment;

24.5 Meaningful access to physical evidence in the possession of the prosecution shall be provided to the accused, his or her legal representatives and expert witnesses. Procedures for providing such access shall be as agreed between the parties or as ordered by the court.

24.6 If the Court finds that full compliance with Section 24.4 of the present regulation will likely lead to serious endangerment of the security of a witness or his or her family, the Court may permit disclosure of redacted or summarized descriptions of the affected material.

24.7 The duty of the prosecutor pursuant to Section 24.4 of the present regulation is a continuing duty, so that qualifying material coming later into possession of the prosecutor must immediately be made available to the accused and his or her legal representative.

Section 25

Proceedings by the Victim upon Dismissal

25.1 Upon receipt of the notification defined in Section 19A.8 of the present regulation, the alleged victim has the right to request a copy of the file of the case and proceed as provided in the present Section.

25.2 In cases defined in Section 25.1 of the present regulation, the alleged victim may file a petition with the General Prosecutor requesting that the dismissal of the case be reviewed. The General Prosecutor may confirm the dismissal of the case or may order another public prosecutor to continue the investigation.

VI. Public Trial

Section 26

Receipt and Notification of the Indictment

26.1 Upon receipt of the indictment by the Court, the case file shall be registered by the Registry of the Court. In accordance with Section 17.1 and 35 of UNTAET Regulation No 2000/11, the case file shall be forwarded by the Registry to the Panel of Judges or to an individual judge, according to UNTAET regulations and the plan of distribution of incoming cases.

26.2 The Registrar shall ensure that a notification is promptly served upon the accused and his or her legal representative. The notification shall include a copy of the indictment and the date upon which it was received by the Court, and shall inform the accused and legal representative that the defence has the right to submit a response to the indictment within forty five days of receipt of the indictment by the Court.

26.3 The response, if any, shall be filed at the Court and may include legal and factual observations of the accused with respect to the indictment, any preliminary motions the accused wishes to raise and a list of the evidence and witnesses to be presented by the defence during the trial.

Section 27

Motions

27.1 Preliminary motions may be raised prior to the commencement of the trial. Such motions are those which:

- (a) allege defects in the form of the indictment;
- (b) seek severance of counts joined in one indictment or separate trials in cases of co-accused; or
- (c) raise objections based upon refusal of a request for assignment of counsel

27.2 After the case is assigned to a panel or judge, any party may at any time lodge a motion with the court, other than a preliminary motion as described in the preceding subsection, for appropriate relief. Motions for appropriate relief may be oral or written at the discretion of the Court

27.3 Decisions on motions, except as provided in Sections 23 and 27.4 of the present regulation, are not subject to interlocutory appeal. The granting of a motion to dismiss the case for any reason shall be deemed a final decision in the case and shall be subject to appeal as provided in Part VII of the present regulation.

27.4 The Court of Appeal may grant leave to immediately appeal from a decision on a motion where:

- (a) the decision from which appeal is sought would cause such prejudice to the case of the party seeking leave to appeal as could not be cured by the final decision of the trial;
- (b) the issue on which appeal is sought is of general importance to proceedings before the courts of East Timor; or,
- (c) upon other good cause being shown by the party seeking leave to appeal.

Section 28

Public Character of Trials

28.1 Trial hearings shall be open to the public.

28.2 The court may exclude the public from all or part of a hearing in circumstances where:

- (a) qualified information of national security may be disclosed; or
- (b) it is necessary to protect the privacy of persons, as in cases of sexual offences or cases involving minors; or
- (c) publicity would prejudice the interest of justice.

28.3 The measures described in Section 28.2 of the present regulation shall not interfere or be inconsistent with the rights of the accused and the principle of fair trial.

Section 29

Preliminary Hearing

29.1 Upon receipt of the response of the defence provided in Section 26.3 of the present regulation, or upon the expiration of the term defined in Section 26.2 of the present regulation, the court shall summon the parties to a preliminary hearing to be held within twenty days thereafter.

29.2 At the hearing described in Section 29.1 or 44.5 of the present regulation, the court shall:

- (a) satisfy itself that the accused has read or has had the indictment read to him or her and understands the nature of the charges against him or her;
- (b) ensure that the right of the accused to counsel has been respected;
- (c) rule on any motions or requests for evidence or additional investigation, or if the accused has failed to file any motions or requests, ensure that the accused understood his or her rights in that regard;
- (d) afford the accused the opportunity to make a statement concerning the charges, which may include a plea of not guilty or an admission of guilt as to all or any portion of the charges; and,
- (e) determine what evidence and witnesses the defence would intend to present to the court.

29.3 Upon reviewing the requests for evidence presented by the parties, the panel of judges or the judge shall issue any necessary rulings and, after consultation with the parties, set a date for trial.

29.4 The accused or his or her legal representative may request the court for an extension of time to prepare the case and, if necessary for the defence, to present additional evidence.

29.5 At their own motion or at the request of the accused or his or her legal representative, the panel of judges or the competent judge, shall assess the necessity of the detention of the accused in accordance with Section 20 of the present regulation and may order any measure consistent with Section 20.6 of the present regulation.

Section 29A

Proceedings on an Admission of Guilt

29A.1 Where the accused makes an admission of guilt in any proceedings before the Investigating Judge, or before a different judge or panel at any time before a final decision in the case, the court or judge before whom the admission is made shall determine whether:

- (a) The accused understands the nature and consequences of the admission of guilt;
- (b) The admission is voluntarily made by the accused after sufficient consultation with defense counsel; and
- (c) The admission of guilt is supported by the facts of the case that are contained in:
 - (i) The charges as alleged in the indictment and admitted by the accused;
 - (ii) Any materials presented by the prosecutor which support the indictment and which the accused accepts; and
 - (iii) Any other evidence, such as the testimony of witnesses, presented by the prosecutor or the accused.

29A.2 Where the court is satisfied that the matters referred to in Section 29A.1 of the present regulation are established, it shall consider the admission of guilt, together with any additional evidence presented, as establishing all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the accused of that crime.

29A.3 Where the court is not satisfied that the matters referred to in Section 29A.1 are established, it shall consider the admission of guilt as not having been made, in which event it shall order that the trial be continued under the ordinary trial procedures provided in this Regulation.

29A.4 Where the Court is of the opinion that a more complete presentation of the facts of the case is required in the interests of justice, taking into account the interests of the victims, the court may:

- (a) Request the prosecutor to present additional evidence, including the testimony of witnesses; or
- (b) Order that the trial be continued under the ordinary trial procedures provided in this Regulation, in which event it shall consider the admission of guilt as not having been made.

29A.5 Any discussions between the prosecutor and the defense regarding modification of the charges, the admission of guilt or the penalty to be imposed shall not be binding on the court.

Section 30 **Trial Proceedings**

30.1 All judges who are required to participate in the final decision of the case must be present at all sessions of the trial.

30.2 On the date and time determined in accordance with Section 29.3 of the present regulation, the competent judge shall call upon the parties, shall verify their identities; shall enter such information into the record and shall declare the trial open.

30.3 Where the hearing is before a panel of judges, in accordance with Section 18.2 of UNTAET Regulation No. 2000/11, the Presiding judge shall identify one judge of the panel as the judge rapporteur. The judge rapporteur shall have primary responsibility for preparation of the final written decision in the case.

30.4 The Court shall confirm that the accused has read or has had the indictment read to him or her and understands the nature of the charges, that the right of the accused to counsel has been respected, shall remind the accused of his or her right to remain silent, and shall determine what statements or admissions, if any, the accused will make regarding the crimes alleged. If the accused makes an admission of guilt, the Court shall proceed as provided in Section 29A of the present regulation.

30.5 Where the accused decides to make a statement, the Court may question him or her about the statement. The Court may then invite the Public Prosecutor and legal representative of the accused for additional questions.

30.6 The Public Prosecutor and the legal representative of the accused may object to any question posed by each other on grounds of relevancy or if the question is designed to embarrass or harass the witness. The Court shall decide on such objections as they are raised.

30.7 The accused shall be given the opportunity to address the Court regarding any issue raised during the hearing, provided that such issue is relevant to the proceedings.

30.8 The accused shall sit beside his or her legal representative and may consult with him or her throughout the hearing without any restriction.

Section 31 **Record of Proceedings in Criminal Cases**

The court shall make a record of all the proceedings. In all proceedings pursuant to the present Regulation, the record shall contain:

- (a) the time, date and place of the hearing;
- (b) identity of judges, parties, witnesses, experts and interpreters, if any;
- (c) a shorthand, stenographic or audio recording of the proceedings. Recorded media shall be used as necessary during further proceedings to produce transcripts and otherwise facilitate the functions of reviewing authorities. Recorded media shall be preserved until the later of
 - (i) six months following the conclusion of all appeals or expiration of the time within which an appeal may be taken; or
 - (ii) six months following the full release of the accused from post-trial confinement;
- (d) any matter that the court so orders or the parties request to be recorded; and
- (e) the decision of the court and, in case of conviction, the penalties.

Section 32 **Amendment of an Indictment**

32.1 After the indictment has been presented and prior to the commencement of the trial, the Public Prosecutor may amend the indictment only with leave of the Court.

32.2 After the trial has begun and prior to final decision in the case, the Court may, at the request of the prosecutor, allow amendment of the indictment if the Court determines that the evidence at trial establishes qualification of the crime or crimes which is different than that which appears in the indictment. The accused and his or her legal representative have the right to be immediately informed by the Court of the new qualification of the criminal offence for which he or she may be convicted.

32.3 In circumstances defined in Sections 32.1 or 32.2 of the present regulation, the accused, if he or she so requests, must be granted a delay in the proceedings to prepare his or her defence with respect to any new matters alleged, and to propose and examine new evidence.

32.4 The accused shall not be convicted of a crime that was not included in the indictment, as it may have been amended, or of which the accused was not informed by the judge. For

purposes of the present subsection, a crime which is a lesser included offense of an offense which is stated in the indictment shall be deemed to be included in the indictment.

Section 33 **Presentation of Evidence**

33.1 Each party is entitled to call witnesses and present evidence. The presentation of evidence shall be directed by the Individual Judge or Presiding Judge. Unless otherwise ordered, evidence at trial shall be presented in the following sequence:

- (a) the statement of the accused, if he or she chooses to make a statement;
- (b) evidence of the prosecution;
- (c) evidence of the defence;

33.2 After the defence has presented its case the prosecution shall be given the opportunity to respond to the defence evidence. The defence will then be allowed to reply to the prosecution. The court shall call any additional witnesses it wishes to hear or evidence that it wishes to be presented after the parties have completed their submissions.

33.3 Evidence shall be presented in the most direct manner possible, subject to the other sections of the present regulation.

33.4 A statement or confession made by the accused before an Investigating Judge may be admitted as evidence, if the Court finds that any admission of guilt contained in such a statement was made in compliance with the provisions of Section 29A.

Section 34 **Rules of Evidence**

34.1 The Court may admit and consider any evidence that it deems is relevant and has probative value with regard to issues in dispute.

34.2 The Court may exclude any evidence if its probative value is substantially outweighed by its prejudicial effect, or is unnecessarily cumulative with other evidence. No evidence shall be admitted if obtained by methods that cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings, including without limitation evidence obtained through torture, coercion or threats to moral or physical integrity.

34.3 In cases of sexual assault:

- (a) no corroboration of the victim's testimony shall be required;
- (b) consent shall not be allowed as a defence if the victim:
 - (1) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or

(2) reasonably believed that if the victim did not submit, another person might be so subjected, threatened or put in fear;

(c) before evidence of the victim's consent is admitted, the accused shall satisfy the court, *in camera*, that the evidence is relevant and credible;

(d) prior sexual conduct of the victim shall not be admitted as evidence.

Section 35 **Witnesses**

35.1 All persons summoned to testify in a criminal case are required to do so. Witnesses shall be notified as provided in Section 2.4 of the present regulation. The court shall consider measures for the protection of witnesses where necessary. Such measures may include, but shall not be limited to, the conduct of *in camera* proceedings and the protection of a victim's identity.

35.2 The following persons are not required to testify: The spouse or partner, the parents, children or relatives of the accused within the second degree.

35.3 The following categories of persons are able to testify only with the consent of the accused:

- (a) A duly ordained priest or monk when summoned to testify in relation to information revealed by the accused during the course of religious duties rendered by that priest or monk to the accused;
- (b) A lawyer when summoned to testify in relation to information provided by the accused as his or her client; and
- (c) A medical professional when summoned to testify in relation to information obtained from the accused in the delivery of his or her services to the accused. For purposes of the present section, the term "medical professional" includes, without limitation, medical doctors, psychiatrists, psychologists, counsellors, and their professional assistants.

35.4 No witness may be compelled to incriminate himself or herself. If it appears to the Presiding Judge that a question asked of a witness is likely to elicit a response that might incriminate the witness, the Judge shall advise the witness of his or her right not to answer the question.

35.5 No witness may be compelled to incriminate the witness' spouse or partner, parents, children, or relatives within the second degree.

35.6 A minor shall not take a formal oath or affirmation prior to testifying, provided that the court is satisfied that the minor understands his or her obligation to testify truthfully.

35.7 The provisions of subsection 35.3 of the present regulation apply at all stages of investigative, trial and post-trial proceedings, and apply also to the benefit of victims and all other persons. For purposes of the present subsection, anyone who is questioned at any stage of proceedings by any party or investigator, by the representative of any party or investigator, or by a judge shall be deemed to be a witness. No witness whose testimony pertaining to the

accused would require the consent of the accused under subsection 35.3 of the present regulation may be questioned concerning the same categories of information pertaining to any other person except with the consent of the person to whom the information pertains. No disclosure of information protected under the present subsection or subsection 35.3 of the present regulation may be compelled in any form.

Section 36 **Witness Testimony**

36.1 Witnesses shall be heard directly by the Court, unless for good cause the Court determines that a different procedure may be used. Any procedure for the presentation of witness testimony must take account of the rights of all parties to a fair hearing.

36.2 Prior to testifying, a witness shall take the following oath or affirmation: "I solemnly swear or affirm that the testimony I shall give to this court in this trial, shall be the truth, the whole truth and nothing but the truth". A witness may use the sacred texts of his or her faith to take the oath.

36.3 On exceptional grounds, the Court may allow the statement of a witness or expert witness to be admitted in evidence or may allow the presentation of the evidence of a witness by deposition, video-link testimony, or any other method it deems appropriate, in the following circumstances:

- (a) the witness or expert witness has died or is otherwise permanently incapable of testifying in court due to his or her physical condition or health; or
- (b) the prosecutor and accused and legal representative agree with such proceeding; or
- (c) the direct interrogation of the witness or expert witness can not be expected due to the inaccessibility of that person or due to the distance of the domicile of that person or place of current residence from the place of the hearing and taking into consideration the importance of the statement of that person for the trial; or
- (d) it is provided in the present regulation.

36.4 Prior statements of a witness may be used to refresh the recollection of the witness who made them. If the recollection of the witness cannot be refreshed, the prior statements may be used as substantive evidence.

36.5 A witness who has not yet testified shall not be present in the court room. A witness shall not be permitted to discuss his or her testimony with another witness or with other interested persons before testifying. A witness who has heard the testimony of another witness shall not automatically be disqualified from testifying.

36.6 Unless otherwise determined by the court, witnesses shall be examined first by the court, then by the party calling the witness, then the opposing party. The Presiding Judge shall allow other judges of the panel to pose additional questions to the witness.

36.7 The Presiding Judge shall exercise control over the mode and order of questioning witnesses, so as to make the presentation of evidence effective for the ascertainment of the truth, avoid needless consumption of time and to ensure that experts and witnesses are questioned without pressure and without violation of their personal dignity.

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

36.9 If a witness, expert or other person summoned to a trial does not appear, the Court may issue an order that the person be produced to the Court by the Public Prosecutor. The proceedings may be suspended for such purpose.

Section 37 **Other Evidence**

37.1 Physical or documentary evidence collected during the investigations may be presented to a witness during his or her testimony so that the witness can identify such evidence and testify as to its relevance. The court may decide whether documentary evidence shall be read out in court either partially or entirely.

37.2 The court, on its own motion or on request by a party, may order the re-enactment of the crime scene. In that case, the court and the parties shall be present at the location of the crime.

Section 38 **Final Statements**

38. After all evidence has been presented and considered, the Court shall close the presentation and hearing of evidence and shall request the Public Prosecutor to make his or her closing statement. Thereafter, the accused or his or her legal representative shall be allowed to make a closing statement.

Section 39 **Decision**

39.1 After the hearing is completed, the Court shall begin deliberations in private. The Court shall decide in accordance with Section 6.2 of UNTAET Regulation No 2000/11. The Court shall pronounce on the guilt or innocence of the accused. If the accused is found guilty, the Court shall state the qualification of the crime and its penalty.

39.2 If the accused is found guilty, the Court in its discretion may receive additional evidence from the parties before determining the appropriate penalty.

39.3 The Court shall prepare a final written decision. The final written decision shall be registered by the Registrar as an official entry into the court file. The written decision shall contain the following elements:

- (a) the identification of the Court, the identity of the judges and the identification of the parties;

- (b) an account of the events and circumstances of the case tried by the Court;
- (c) an account of the facts that the court considered proved and facts that were not proved;
- (d) an account of the factual and legal grounds of those considerations;
- (e) a finding in relation to the innocence or guilt of the accused identifying the section applied of the penal legislation;
- (f) an order relating to the penalty if the accused is found guilty;
- (g) an order relating to the costs of the trial;
- (h) an order relating to the disposal of physical evidence seized during the investigations;
- (i) an order pursuant to Section 50.2, if applicable;
- (j) an order pursuant to Section 52.2, if applicable; and
- (k) the signatures of all judges.

39.4 The court may release its written decision upon the end of deliberations in the same session or schedule a separate session for the release of its written decision, within a maximum of 20 days. Each party shall be given a copy of the written decision.

VII. Appeals

Section 40 **Appeal from Final Decisions**

40.1 A party may appeal to the Court of Appeal a final decision of a District Court rendered pursuant to Section 39.4 of the present regulation, or any other order of an inferior court which constitutes the final disposition of a case to which the present regulation applies, or any order whose appeal under this Section is provided by any UNTAET regulation, on one or more of the following grounds:

- (a) a violation of the rules of the criminal procedure;
- (b) a violation of the procedural or substantive rights of the accused;
- (c) inconsistency within grounds of the decision;
- (d) material error of law or fact.

40.2 A party shall commence an appeal by filing a Notice of Appeal with the court of first instance. The Notice of Appeal shall be filed no more than ten (10) days after the appealed decision is released. If no Notice of Appeal is filed within this period, the party is deemed to have waived his or her right to appeal and the decision of first instance shall be final. The assertion of a cross-appeal pursuant to Section 40.4 of the present regulation does not require filing of a Notice of Appeal.

40.3 A party who has filed a Notice of Appeal shall file a written appeal statement with the court of first instance within thirty days after the filing of its Notice of Appeal. If no written appeal is filed within this period, the party concerned is deemed to have withdrawn the appeal, and the decision of first instance shall be final.

40.4 After a written appeal is filed, the Registrar of the court of first instance shall establish an appeal file and shall notify the respondent. The respondent has thirty (30) days from the receipt of the notification to file a response to the appeal. The response may include a cross-appeal and shall be filed in the same manner as the written appeal statement. If the response includes a cross-appeal, the Registrar shall notify the appellant, who shall have fifteen (15) days to file a response to the cross-appeal.

40.5 The appeal or cross-appeal statement shall include the following, any or all of which may also be included in a response:

- (a) the identities of the parties;
- (b) a summary of the case, including a copy of the order from which appeal is taken;
- (c) the grounds for the appeal;
- (d) the evidence to be presented, if any;
- (e) the remedy sought; and
- (f) a designation of those portions of the record which are suggested by the submitting party for review by the Court of Appeal.

40.6 The notifications provided in Section 40.4 of the present regulation shall follow the procedure established in Section 2.4 of the present regulation.

40.7 After receipt of the response to the appeal and cross-appeal, if any, or after the periods allowed for such responses have expired, the Registrar of the court of first instance shall prepare the designated portions of the record and shall forward the case file and designated portions of the record to the Court of Appeal.

40.8 The cost of preparation of the designated portions of the record shall be deemed a cost of the appeal.

40.9 Upon receipt of the case file by the Court of Appeal, the Court of Appeal is competent with regard to all matters concerning the detention of the accused, until final disposition of the appeal. Upon final disposition of the appeal, the case may be remanded to the court of first instance for such further proceedings as may be ordered. After remand, if the accused continues under detention, the court of first instance is competent with regard to such matters.

Section 41

Proceedings in the Court of Appeal

41.1 The Court of Appeal shall set a date for a hearing of the appeal and shall notify the parties following the procedure established in Section 2.4 of the present regulation.

41.2 If there is no complaint in relation to evidence, the appeal may proceed on the record of evidence produced in the District Court. If new evidence has arisen that was not known to the moving party at the time of the prior proceedings and could not have been discovered through the exercise of due diligence, the Court of Appeal may, upon motion of the party, allow the presentation of such evidence or examination of witnesses at the appeal hearing. The costs of evidentiary proceedings shall be deemed costs of appeal and shall be calculated in the same manner as in first instance proceedings.

41.3 If witness testimony is ordered by the Court of Appeal, witnesses offered by the appellant shall be examined first, followed by the examination of witnesses offered by the respondent. A witness shall be questioned first by the Court, then by the party calling the witness, followed by the other party and then any further questions by the Court.

41.4 The decision of the Court of Appeal shall confirm, overrule or modify the decision of the District Court, giving regard to the provisions of Section 55 of the present regulation, and shall determine responsibility for the costs of appeal. If the decision of the court of first instance is not confirmed, the Court of Appeal may alter or amend the decision of the court of first instance or, in appropriate cases, order the initiation of new proceedings by the court of first instance.

41.5 A decision of the Court of Appeal shall contain the same elements as defined in Section 39.3 of the present regulation and shall address each issue raised by the appellant; provided, however, that the Court of Appeal may summarily dismiss any appeal, issue or claim for relief it finds to be patently frivolous or without merit. The Court of Appeal shall also assign responsibility for the costs of appeal; provided, however, that no portion of the costs may be assessed against an accused unless the Court finds that the assessed portion relates only to issues raised by the accused which are patently frivolous.

41.6 Where the appeal of the accused is dismissed, the Court of Appeal shall not modify the decision of the court of first instance such as to impose a greater penalty upon the accused.

41.7 The public prosecutor may withdraw an appeal by presenting a written statement to the Court of Appeal. The legal representative of the accused shall not withdraw an appeal without the written consent of the accused. In cases of joint accused, the withdrawal of one appellant does not affect other appellants.

VIII. Execution of Orders and Decisions

Section 42 **Court Orders and Sentences**

42.1 Any order or decision of a court shall be executed by the competent authorities immediately upon the release of the written decision of the court. It is the responsibility of the public prosecutor to notify other competent authorities of their duties pursuant to this Section.

42.2 A decision declaring the acquittal of an accused shall result in his or her immediate release or in the cancellation of any restrictive measure.

42.3 Upon final disposition of the case, including any appeal, the competent court shall determine whether any objects seized during the proceeding will be returned to the person who owns or possessed the objects, or whether they will be confiscated. If confiscation is ordered, the Court shall determine whether the objects will be destroyed or auctioned. Revenues from auction shall accrue to the consolidated budget of East Timor.

42.4 Where an accused is convicted and the penalty established is a term of imprisonment, the Court shall inform the convict the content of the penalty, its duration and the place where the convict will be imprisoned. The convict shall also be informed of the rights and legal benefits to which he or she is entitled according to law.

42.5 The Court shall discount from the term in prison the time the convict spent under pretrial detention in respect of the crime for which the convict has been convicted. Prison sentences shall be supervised and executed by a District Court in accordance with Section 48 of the present Regulation. The convict may present any claim to the Court in relation to the violation of his or her rights.

42.6 Where the penalty established is a term of imprisonment, the convict shall be imprisoned immediately, unless otherwise ordered. The court shall remand the convict to the custody of competent authorities for transfer to the place where the convict shall be imprisoned. A file including the sentence shall be forwarded to the correctional authorities.

42.7 Correctional authorities shall administer the rules and conditions of confinement in accordance with international human rights standards and UNTAET Regulations.

42.8 Where an accused is convicted and the penalty established is a fine, such fine shall be payable to the Court at a date to be pronounced by the Court. The court shall take into account the financial condition of the accused and shall establish an appropriate term and method for the payment of the fine. Revenues from the payment of fines or the forfeiture of property shall accrue to the consolidated budget of East Timor.

42.9 Penalties in the form of fines and imprisonment are mutually independent. A fine shall not be converted into a penalty of imprisonment, and a penalty of imprisonment shall not be converted into a fine. A penalty in the form of fine may be executed on any property of the convict wherever situated.

42.10 Any party may, within five days of the date of release of the written decision, claim miscalculations or typographical errors in the period of imprisonment or in the amount of a fine, or in other provisions of the decision. Where the Court finds that there has been such an error, it shall order immediate corrections.

Section 43

Conditional Release After Trial

43.1 Upon request by the convict or his or her legal representative, and after a hearing, a court may order the conditional release of a convict who has been sentenced to a term of imprisonment where:

- (a) two thirds of the term of imprisonment has been completed;
- (b) a favorable report on the conduct of the convict has been presented to the court by correctional authorities; and
- (c) the convict poses no danger to public security or safety.

43.2 An order for conditional release under the present Section may include any measure that may promote the peaceful integration of the convict into society, including one or more of the following:

- (a) a prohibition on the convict to appear in specified places;
- (c) a prohibition on the convict from associating with persons identified in the order;
- (c) a prohibition on the convict from leaving the jurisdiction of the court without previous authorization from the court; or
- (d) a requirement that the convict appear regularly before the court or other designated authorities for a certain period of time.

43.3 Conditional release shall terminate if the convict commits a crime or violates any of the conditions established in the order for conditional release. Upon termination of conditional release under the present subsection, the convict shall immediately continue his or her original term of imprisonment.

43.4 Where a court finds that a convict is determined by medical authorities to be in the terminal phase of an illness, the court may order that the convict be conditionally released on humanitarian grounds.

43.5 Conditional release under the present Section may not be continued beyond the date on which the convict would have been eligible for unconditional release had the entire term of imprisonment been completed.

IX. Expedited Trial

Section 44 **Procedure in Specified Cases**

44.1 Where the crime is one for which the maximum penalty does not include a period of imprisonment in excess of five years, the Public Prosecutor shall request an expedited trial to the competent District Court. In such cases, the Public Prosecutor shall indict the suspect and submit the case to the court within 21 days of the suspect's arrest. Where the suspect is under detention, the request for an expedited trial shall be made within forty eight hours of the detention.

44.2 Where the crime is one for which the maximum penalty does not include a period of imprisonment in excess of one year the police may bring the case directly before a Judge, and shall request an expedite trial. Where the suspect is under detention, the request for an expedited trial shall be made within forty eight hours of the detention.

44.3 In cases defined in Sections 44.1 and 44.2, the case shall be assigned to an Individual Judge as provided in the plan for distribution of incoming cases.

44.4 The public prosecutor or the police shall submit to the Individual Judge, together with the request for an expedited trial, a report indicating the suspected crime and its legal qualification, a summary of the facts and the available evidence to be presented at the hearing.

44.5 Where the Individual Judge decides that the maximum penalty for the suspected crime at issue does not include a penalty exceeding five years of imprisonment, the Individual Judge shall order an expedited trial according to the following rules:

- (a) The Individual Judge shall summon the suspect to a hearing within twenty-one days of his or her notification by the public prosecutor or the police. The notification, as appropriate, shall follow the procedure established in Section 2.4 of the present regulation.
- (b) A copy of the report of the public prosecutor or the police shall be attached to the notification.
- (c) Immediately after the notification of the suspect, the Individual Judge shall notify the alleged victim of the day and time of the hearing, following the procedure described in Section 12.4 of the present regulation. The alleged victim has the right to request to be heard at the hearing.
- (d) The suspect or his or her legal representative may propose relevant evidence to the Individual Judge before the hearing.
- (e) At the hearing, the suspect shall be assisted by a legal representative of his or her own choosing or by a legal representative appointed by the court where the suspect does not have sufficient means to pay for a legal representative of his or her own choosing. The Investigating Judge shall comply with the requirements of Section 29.2 of the present regulation.
- (f) The public prosecutor or the police shall present orally the charges. The accused may exercise his or her right to remain silent. The accused or his or her legal representative may also present the arguments of the defence. Any admission of guilt made by the accused in the hearing shall be subject to the requirements of Section 29A of the present regulation.
- (g) Evidence shall be presented following the rules established in Sections 33 through 37 of the present regulation.
- (h) The Individual Judge may issue a final decision in the case at the end of the hearing or may schedule a separate session within two days after the end of the hearing to announce a final decision. The final decision shall conform to the requirements of Section 39.3 of the present regulation. A copy shall be given to the accused and his or her legal representative.
- (i) Appeals from final decisions may be taken as provided in Part VII of the present regulation.
- (j) With respect to procedural matters not provided in the present Section, the ordinary procedure prescribed elsewhere in the present regulation shall be followed.

44.6 Under no circumstances shall an Individual Judge order an expedited trial for a crime carrying a penalty exceeding five years of imprisonment.

44.7 Nothing in this Section shall be applied in a manner to prejudice the right of the accused to prepare and present a defence, or to obtain and present the testimony of witnesses and other evidence as provided for other cases in the present Regulation.

X. Juvenile Jurisdiction

Section 45 **Minors**

45.1 For the purposes of the present regulation, any person under 18 years of age shall be deemed a minor. A minor under 12 years of age shall be deemed incapable of committing a crime and shall not be subjected to criminal proceedings. A minor between 12 and 16 years of age may be prosecuted for criminal offences only in accordance with such rules as may be established in subsequent UNTAET regulations on juvenile justice; provided, however, that minors between 12 and 16 years of age may be prosecuted under the provisions of the present regulation for any offence which under applicable law constitutes murder, rape, or a crime of violence in which serious injury is inflicted upon a victim.

45.2 For the purposes of the present regulation, the relevant time for determining the age of a person is the time at which the suspected crime was committed.

45.3 A minor shall not be detained or imprisoned unless as a measure of last resort and for the shortest appropriate period of time.

45.4 A minor over 16 years of age may be prosecuted following ordinary rules of criminal procedure; provided, however, that the court in which any minor is tried shall safeguard the rights of the minor, in accord with the United Nations Convention on the Rights of the Child, and shall consider his or her juvenile condition in every decision made in the case.

45.5 A hearing in which the accused is a minor shall not be open to the public. No information that may lead to the identification of the minor shall be published.

45.6 Where a minor is detained, physical restraint may be used only in exceptional cases and only when it is manifestly apparent that physical restraint is necessary for the security of the minor or of another person. Physical restraint measures shall be in proportion to the circumstances. Such restraint measures should not cause humiliation or degradation, and shall be used restrictively and only for the shortest possible period of time.

45.7 A minor under 16 years of age shall not be detained by the police where the minor is arrested on suspicion of a crime involving public order and where the arrest was made as part of the ordinary law enforcement activities of the police. Where a minor is arrested the police shall take the minor to the home address of the minor and shall inform the parents, guardian or closest relative about the suspected crime.

45.8 The parents, guardian or closest relative of a minor who has been arrested are entitled to participate in any criminal proceedings and may, if necessary, be required by the court to attend any criminal proceedings in the interest of the minor.

45.9 The court may prohibit the participation of the parents, the guardian or the closest relative in any criminal proceedings if there are reasonable grounds to believe that such exclusion is necessary in the interest of the minor.

45.10 A restriction on the personal liberty of a minor shall be imposed by a court only after careful consideration of the age and special needs of the minor, the gravity of the offence, and the needs of the society. A restriction on the personal liberty of a minor shall not be imposed

by a court if there is another appropriate measure.

45.11 Minors who are detained shall be accorded the following special considerations:

(a) A minor who is detained or imprisoned shall be kept separated from adults who are detained or imprisoned, and shall, if possible, be detained or imprisoned in different facilities.

(b) All minor offenders placed in detention shall be given special attention as to their personal needs, taking into account that the personal needs of young female offenders require special accommodation. Under no circumstances shall minor female offenders receive less care, protection, assistance, treatment and training than males.

45.12 A minor who is convicted of an offense for which a sentence to a term of imprisonment is allowed by law shall be considered for a variety of lesser sentencing dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programs and other alternatives to institutional care.

45.13 Where a crime was committed by a minor and an adult together, the minor may be tried separately from the adult, by the same court. The decision of the court shall be issued in a session which shall not be open to the public.

45.14 A warrant for an intrusive search of the body, as defined in Section 16.3 of the present regulation, may be issued in relation to a minor only where it is necessary, and shall require the presence of the parents, guardian or closest relative of the minor and shall be executed in a manner that fully respects the rights of the minor.

45.15 Until a separate minors panel is created by law, the President of the Court of Appeal and the head of the respective prosecutorial office, whenever possible, shall ensure the appointment of the same group of judges and prosecutors to conduct proceedings in cases where minors are suspects.

Section 46 **Investigative Procedure**

46.1 Where, the police have information that the suspect of a crime that does not carry a sentence of imprisonment exceeding five years is a minor, they shall report the case immediately to the public prosecutor and, at the same time, to the parents, guardian or closest relatives of the minor. Where the alleged crime carries a sentence of imprisonment of more than five years the police shall inform only the public prosecutor. The police shall inform both the Public Prosecutor and the parents, guardian or closest relatives of any coercive measure taken in respect of the minor.

46.2 The Public Prosecutor shall question a minor only when the parents, guardian or relatives of a minor and the legal representative of the minor are present, unless otherwise ordered by the Court or Investigating Judge.

46.3 A minor is entitled to all of the rights of an accused as set forth in Section 6 of the present regulation.

46.4 At the review hearing the minor and the legal representative of the minor shall be accompanied by the parents, guardian or closest relatives of the minor. The Investigating Judge shall safeguard the rights of the minor.

XI. Habeas Corpus

Section 47 **Procedure**

47.1 A person is entitled to be immediately released from any unlawful arrest or detention by means of the *habeas corpus* proceeding defined in the present Section. The proceeding defined in the present Section is available to a petitioner at any time, independent of any criminal proceeding.

47.2 In the present regulation, 'unlawful arrest or detention' means any arrest or detention made in violation of this or other UNTAET Regulations.

47.3 The Dili District Court has jurisdiction to decide any petition filed pursuant to the present Section. Any person acting on behalf of the arrested person or detainee and, if necessary, assisted by a legal representative, may file a petition for *habeas corpus* before any court in East Timor. If the petition is filed in any court other than the Dili District Court, the petition shall be immediately transferred to the Dili District Court from the court in which it was filed. The petition shall contain the following information; provided, however, that a petition submitted without the assistance of a legally trained representative shall not be rejected because of formal defects:

- (a) an identification of the arrested person or detainee;
- (b) a summary of the case;
- (c) a statement of the grounds for the request;
- (e) a statement of the specific rules violated; and
- (f) a statement of the authority under which the arrest or detention was made.

47.4 Upon receipt of the petition, the Registry of the court shall forward the petition to the Registry of the court for assignment of the matter to an individual Judge as provided in the plan for distribution of incoming cases, and to the public prosecutor. The Judge shall conduct a hearing of the case within 24 hours of assignment of the case, after notice to the petitioner and to the person whose release is being sought. The case shall be assigned to a judge who has had no prior participation in regard to the matter.

47.5 After hearing the petitioner and the public prosecutor, the court shall decide the matter in the same session.

47.6 The decision of the court shall contain the following information:

- (a) an identification of the arrested person or detainee;
- (b) a summary of case;

- (c) a statement of the legal grounds for the admission or rejection of the petition; and
- (d) the appropriate orders.

47.7 If the court orders the release of the arrested person or detainee, the order shall be executed immediately, and the public prosecutor shall order an investigation of the matter.

XII. Final Provisions

Section 48

Supervision of the Execution of Prison Sentences

48.1 All matters relating to the supervision and execution of a prison sentence shall be decided by the presiding judge of the panel or the individual judge who pronounced the sentence. In the event that such judge is no longer available or otherwise unable to exercise his or her functions, the Judge Administrator will designate a judge to deal with such matters.

48.2 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, with such other judge as may be designated by the President of the Court to deal with such matters.

Section 49

Control of Proceedings

49.1 Any court in East Timor may exclude any person from the courtroom in order to protect the right of the accused to a fair trial or to maintain the dignity and decorum of the proceedings.

49.2 A court may order the removal of an accused from the courtroom and continue the proceedings in the absence of the accused if the accused has persisted in disruptive conduct following a warning that such conduct may result in the removal of the accused from the courtroom.

49.3 Any person who:

- (a) being a witness before the court, willfully refuses or fails to answer a question after being ordered by the court to do so;
- (b) discloses information relating to proceedings in knowing violation of an order of the court;
- (c) without excuse fails to comply with a summons or order to appear or produce documents or other evidence before the court;
- (d) threatens, intimidates, coerces, injures, offers a bribe to, or in any other way interferes with a witness in proceedings before a court, an official of the court, or any other person with the intention of preventing that other person from complying with an obligation under an order of the court; or,
- (e) in any manner knowingly and willfully interferes with the administration of justice by the court,

is guilty of contempt and shall be punished as hereinafter provided, according to the principles of due process.

49.4 The penalty that may be imposed on a person found in contempt under the present Section is imprisonment not to exceed 1 year, a fine not to exceed U.S.\$1,000, or both.

49.5 If it appears to the Court that proceedings pursuant to the present Section are warranted, the Court shall notify the person against whom the proceedings may be taken of the nature and facts of the occurrence, and shall order such person to show cause why such proceedings should not be taken and a penalty imposed. The Court shall promptly receive any submission offered by the person before determining the disposition of the matter. If the court imposes a penalty, the person may take an appeal under the procedures of Part VII of the present Regulation. In such an appeal, the judge who imposed the penalty shall be deemed to be the respondent.

Section 50

Claim for Compensation by the Alleged Victim

50.1 Independent from the commencement or completion of a criminal proceeding, an alleged victim may claim compensation for damages or losses suffered or inflicted by a suspected crime by filing a civil action before a competent court.

50.2 As a part of its disposition of a criminal case in which the accused is convicted of an offense as to which there are victims, and notwithstanding any separate civil action which goes forward pursuant to Section 50.1 of the present regulation, the Court may include in its disposition an order that requires the accused to pay compensation or reparations to the victim in an amount determined by the Court. Any payment made by an accused to a victim in compliance with such an order shall be credited toward satisfaction of any civil judgment also rendered in the matter.

50.3 The procedure to be followed and the evidence to be heard in making the Court's determination concerning compensation or reparations to victims pursuant to section 50.2 of the present regulation may be regulated in a separate UNTAET directive.

Section 51

Variation of Time Limits

51.1 Any of the time limits referred to in this regulation, may, upon good cause being shown, be enlarged or reduced by the competent court.

51.2 For good cause shown, the competent court may recognize as validly done any act done after the expiration of a time prescribed by this regulation or prescribed by an order of the same or an inferior court, on such terms as are just.

Section 52
Compensation for Miscarriage of Justice

52.1 Where a conviction is reversed on the basis of newly discovered evidence, which shows a miscarriage of justice, and where the evidence was not concealed by the convict, the convict may be compensated in accordance with a separate UNTAET directive.

52.2 Any person who is subjected to unlawful arrest or detention shall be entitled to compensation in an amount and from a source of public funds which are allocated to the administration of justice, to be determined by the competent court. An award of compensation pursuant to the present section may be made as a part of the final disposition of a criminal case involving the claimant, or by means of a separate civil action.

Section 53
Costs of Proceedings

53.1 The costs of a criminal proceeding shall be accounted and registered by the Court.

53.2 In a case in which the accused is found guilty, the Court shall consider the circumstances of the convict and the crime of which the convict was found guilty, and may order the convict to pay all or part of the costs of the criminal procedure. Revenues collected pursuant to this Section shall accrue to the consolidated budget of East Timor.

53.3 A witness whose attendance is ordered by the Court shall be compensated for his or her reasonable expenses. Expenses reimbursed pursuant to the present section shall be included in the costs of the criminal proceedings. The entitlement of a witness for reimbursement is independent of the court's decision under Section 53.2.

Section 54
Construction with Other Authorities

54.1 The present regulation supersedes sections 3, 4 and 5 of UNTAET Regulation No. 2000/14 and Section 11 of UNTAET Regulation No. 2000/15.

54.2 The present regulation takes precedence over Indonesian laws on criminal procedure; provided, however, that any point of criminal procedure which is not specified in the present regulation shall be governed by applicable law as provided in Section 3 of UNTAET Regulation 1999/1.

54.3 In cases whose investigations commence on or after the entry into force of the present Regulation, this Regulation shall apply at all stages of the proceedings.

54.4 In cases whose investigations have already commenced prior to the entry into force of the present regulation, the provisions of the present regulation shall apply to all proceedings taken after entry into force of the present regulation. Acts incident to prior proceedings, so long as they complied with the law then in effect as defined in UNTAET Regulation 1999/1, shall be deemed valid, unless the Court finds that the prior proceedings were in violation of fundamental standards of fairness and due process with respect to the rights of the accused.

54.5 On points of criminal procedure not prescribed in the present regulation, internationally recognized principles shall apply. Any time limit for the accomplishment of an act which is not prescribed in the present regulation, including such other law as may be applicable pursuant to subsection 54.2 of the present regulation, shall be five days, unless the competent court shall have established a different period.

Section 55 **Nullity of Prior Acts**

55.1 Upon any judicial consideration of the validity of an earlier act of any official or authority, an earlier act found to be in violation of a rule of criminal procedure shall be deemed a nullity if the law or UNTAET regulations so provide. If the law or UNTAET regulations do not provide that the violation results in the nullity of the act, the act shall be deemed irregular.

55.2 An act which meets any of the following criteria is a nullity which cannot be remedied without new proceedings, and may be found by a court at any stage:

- (a) Where a participating judge was not present at all sessions of the matter where the presence of all participating judges is required;
- (b) Where there was no investigation or indictment by the prosecutor, except as provided in Part IX of the present Regulation;
- (c) Where the suspect, the accused or legal representative were absent from proceedings where their presence is required by law or UNTAET regulations;
- (d) Where the proceedings were conducted without jurisdiction;
- (e) Where the proceedings were of a type not authorized by law;
- (g) Where the suspect or accused had no legal advisor or interpreter when such were required by law.

55.3 All irregular proceedings not included in Section 55.2 of the present regulation may be remedied, provided there was a timely objection, or if the reviewing court finds that there were justifiable grounds for failure to object.

Section 56 **Entry into force**

The present regulation shall enter into force on 25 September 2000.

(signed)
Sergio Vieira de Mello
Transitional Administrator