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SUMMARY

NATIONAL PARLIAMENT:

NATIONAL PARLIAMENT RESOLUTION No 21/2009 of May 28

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NATIONAL PARLIAMENT RESOLUTION No. 21/2009

of May 28

**APPROVES THE AGREEMENT BETWEEN THE DEMOCRATIC REPUBLIC
OF EAST TIMOR AND THE REPUBLIC OF INDONESIA ON
TRADITIONAL BORDER CROSSINGS AND REGULATED MARKETS**

Taking into consideration the traditional relationship between the Democratic Republic of East Timor and the Republic of Indonesia as neighboring countries;

Taking into consideration that a significant percentage of the population of both countries who live around border areas crosses the border often and habitually in order to obtain access to traditional markets or to visit family members and participate in traditional ceremonies;

Taking into consideration that both the Democratic Republic of East Timor and the Republic of Indonesia deem important to facilitate these border crossings so as to encourage strengthening the bonds between the families living on both sides of the border and to allow the frequency of traditional markets around the border, benefitting local commerce.

Therefore,

The National Parliament resolves hereby, under the terms of item *f*) of no. 3 of article 95 of the Constitution of the Democratic Republic of East Timor, to approve the *Agreement between the Democratic Republic of East Timor and the Republic of Indonesia on traditional border crossings and regulated markets*, signed in Jakarta on June 11, 2003. Copies of the original version in the English language and respective copy of the translation into the Portuguese language are hereby attached.

Approved on October 13, 2008

The President of the National Parliament,

Fernando La Sama de Araújo

Cleared for publication on October 17, 2008

The President of the Republic,

Dr. José Ramos Horta

Agreement on Traditional Border Crossings and Regulated Markets

between

The Government of the Democratic Republic of East Timor

and

The Government of the Republic of Indonesia

The Governments of the Republic of Indonesia and the Democratic Republic of East Timor (hereby designated as the “Parties”)

In pursuance of the already established friendly relations, in accordance with the Joint Communiqué entered by the Republic of Indonesia and the United Nations Transitional Administration in East Timor, signed in Dili on February 29, 2000.

Taking into consideration the need to create a legal framework to facilitate legitimate commercial activity, and

In accordance with paragraph 6 (six) of the Joint Communication of the Joint Ministerial Commission, on October 6, 2002, in which both parties agreed to develop the commitments agreed upon by the Joint Border Commission entered between the government of the Republic of Indonesia and the United Nations Transitional Administration in East Timor (UNTAET) as a Joint Border Commission, between the Republic of Indonesia and the Democratic Republic of East Timor;

The parties agree as follows:

Article 1

Definitions

1. For the purposes of this Agreement;

1. Indonesian Border Area means those *Kecamatan Perbatasan* limited in part by the Indonesian border or the East Timorese border, as stated in the provisions of Annex A;

2) East Timorese Border Area means the subdistrict, or equivalent, adjacent to the Western Border, under the terms described in Annex B of this Agreement. In the case of the Oecussi Border Area, it means the entire Oecussi area;

3) Border Point means a previously agreed location under the terms stated in article 7, where citizens residing next to the Border Areas may cross it for purposes related to this Agreement;

4) Border Crossing Authorization Card will consist in an authorization issued under the provisions of article 4 of this Agreement;

5) Traditional and Customary Purposes will designate activities such as social contacts or ceremonies including marriages and gardening, other forms of soil usage, fishing and other forms of water usage, customary border exchanges, and sports or cultural activities;

6) Border Residents are defined as people who, due to birth or marriage, have permanent residency or customary or traditional rights within the Border Area, under the terms by which it is defined;

7) Regulated Market designates a location in the border adjoining areas but inside the territory of any one of the parties, where citizens carrying Border Crossing Authorization Card Cards may engage in commercial activities in accordance with the applicable Laws and Regulations.

8) Indonesian Border Officer means an officer assigned to manage the border area and officially responsible for one Border Point under the terms foreseen in Article 7 of this Agreement;

9) East Timorese Border Officer means an officer assigned to manage the border area and officially responsible for one Border Point under the terms foreseen in Article 7 of this Agreement;

10) Issuing Officer designates an Immigration Officer of the Indonesian Government (GOI) stationed in Western Timor. In East Timor, Issuing Officer designates the coordinator of the subdistrict in the border subdistricts, or another competent officer of the District Administration;

11) Border Quarantine Zone designates an area in which all the rules and regulations related to quarantine issues are applied;

12) Traditional and Customary Border Commerce means:

- (a) Commerce that has been practiced by border area residents since times beyond records of recollection;
- (b) Commerce that has been developed in recent years so as to meet the needs of citizens residing in Border Areas;
- (c) Commercial Goods which are not forbidden by any one of the governments.

Article 2

Establishment of Regulated Markets

2.1. The Parties may establish Regulated Markets in their respective territories located close to the Tactical Coordination line, under the terms of this Agreement.

2.2 All citizens residing in Border Areas under the established terms and carrying their Border Crossing Authorization Cards may cross the Tactical Coordination Line with the purpose of conducting commercial exchanges in one Regulated Market, under the terms stated in this Agreement.

Article 3

Traditional and Customary Crossing

The Parties will use a customs system under which nationals of both countries who are domiciled in the respective Border Areas may enter and travel freely within the Border Area of the other country for traditional or customary purposes, under the terms stated, provided that they carry in good faith their Border Crossing Authorization Cards, which will be issued by the Parties under the provisions of this Agreement.

Article 4

Border Crossing Authorization Cards

4.1. The Border Crossing Authorization Card will be issued at no cost, upon a request filed with the Issuing Officer at the Border Post with administrative jurisdiction over the location where the petitioner in Indonesia resides, as well as by the Issuing Officer in East Timor, to individuals who meet the following requirements:

- (a) He or she must be an Indonesian citizen or an East Timorese native who is at least seventeen years old or married;
- (b) He or she must reside in the Border Area of any one of the countries;
- (c) The entry into the Border Area of the other Party must be solely for traditional or customary purposes or for commerce activities in Regulated Markets;

(d) He or she must not be a citizen whose entry into the Border Area is prohibited, revoked or deemed undesirable by Immigration or other competent authority of any one of the Parties; and

(e) He or she must not be an individual subject to any criminal proceeding.

4.2 Regarding Article 4.3 of this Agreement, the details of each Border Crossing Authorization Card will be checked in detail by the appropriate authority of the location where the candidate resides and also, whenever deemed necessary, by the appropriate authority at any location where there are claims regarding rights of a traditional or customary source over the soils or waters.

4.3 Border Crossing Authorization Cards are issued individually, for each eligible person. Border Crossing Authorization Cards issued to any man or woman will automatically include his or her minor children. The names of the minor children will appear in the Border Crossing Authorization Card.

4.4 Border Crossing Authorization Cards will be issued simultaneously in Portuguese, Tetum, English and Indonesian Bahasa, and will include the following data:

- (a) Personal identification and photograph;
- (b) Date and location of issuance and expiration date;
- (c) Signature or fingerprint of the right thumb;
- (d) Location of residence.

4.5 Border Crossing Authorization Cards will be valid for multiple entries during a period of one year. Border Crossing Authorization Cards can be renewed by the Issuing Officer who issued the original Border Crossing Authorization Card.

4.6 The Parties must exchange formats for Border Crossing Authorization Card for East Timor and for Indonesia as soon as possible.

Article 5 **Scope of Application**

5.1 The provisions in these agreements will not apply to the following:

- (a) Indonesian nationals who are not residents of the Indonesian Border Area;
- (b) East Timorese nationals who are not residents of the East Timorese Border Area;
- (c) Carriers of Indonesia-issued Border Crossing Authorization Cards who wish to travel beyond the East Timorese Border Area or wish to cross the border for non traditional or customary purposes, instead of engaging in commerce in the Regulated Markets;

(d) Carriers of East Timor-issued Border Crossing Authorization Cards who wish to travel beyond the Indonesian Border Area or to cross the border for non traditional or customary purposes, instead of engaging in commerce in the Regulated Markets.

5.2 All laws and rules related to passports, visas, quarantine and immigration which are in effect in the territories of the Parties will be applicable to any movement of individuals not foreseen in this Agreement.

Article 6 **Location of Regulated Markets**

6.1 The location schedules for Regulated Markets are attached in the provisions of Annex C.

6.2 The location schedules for Regulated Markets may be amended by the Border Liaison Committee (*Comité de Ligação Fronteiriço*) or by using the appropriate diplomatic channels.

Article 7 **Entry and Exit through Designated Crossing Points**

7.1 All entries and exists due to tradition or customary reasons or for commercial activities in Regulated Markets must take place at the designated Crossing Points. The designated Crossing Points must coincide with the Junction Points and can be found listed in Appendix D.

7.2 The designated Crossing Points listed in Appendix D may be reviewed periodically by the Border Liaison Committee, pending approval of the Joint Border Committee (*Comité Fronteiriço Conjunto*).

Article 8 **Immigration**

8.1 The Border Crossing Authorization Cards issued under the terms of this Agreement will replace passports, visas and vaccination certificates for the purpose of border crossing, under the terms foreseen in this Agreement.

8.2 The requirements customarily used for immigration purposes do not apply to citizens who cross borders carrying Border Crossing Authorization Cards.

Article 9 **Duration of Trans-Border Visits**

9.1 Citizens of one Party who intend to enter the territory of the other Party under the rules of Border Crossing Authorization Cards will be allowed to remain in its territory for a maximum period of ten days. The Border Officers of any one of the Parties may grant an extension of this period of time, which will last up to ten additional days.

Article 10
Refusal or Prohibition to Entry

10.1 Upon request of Border Officers or other competent authorities, the Border Crossing Authorization Card must always be submitted for inspection, together with the corresponding identification document.

10.2 Any one of the Parties may refuse to allow entry to any citizen carrying a Border Crossing Authorization Card, if a Border Officer of any one of the Parties hereto has good reasons to believe the following:

(a) The Border Crossing Authorization Card was issued in violation of the provisions of this Agreement;

(b) The carrier of the Border Crossing Authorization Card is an undesirable person under the terms of the laws of any one of the Parties hereto;

10.3 Whenever the right of entry is refused to a citizen carrying a Border Crossing Authorization Card under the terms of article 10.2, the Authorization Card must be surrendered and returned to the issuing Officer.

10.4 Temporary entry prohibitions will also apply in special situations or contingencies claimed by any one of the Parties or both Parties.

Article 11
Repatriation and Confiscation

11.1 Citizens of one of the Parties who remain in the territory of another Party in violation of the provisions of this Agreement will be considered as being in that territory illegally and will be subject to all applicable legal provisions of a general nature.

11.2 Without detriment to other sanctions, the other Party may repatriate, in a manner which is appropriate to the circumstances of each case, any carrier of a Border Crossing Authorization Card that shows violation of the provisions of this Agreement.

Appendix 6
Agreement between the Governments of the Republic of Indonesia
and the Government of the Democratic Republic of East Timor
about Traditional Border Crossing and Regulated Markets

11.3 Whenever the carrier of a Border Crossing Authorization Card violates the terms of this Agreement, a Border Officer may confiscate the Border Crossing Authorization Card. The Border Officer must return the Authorization to the Issuing Officer, who may, if deemed convenient, retain the Authorization for a period of time not to exceed three months.

Article 12

Traditional and Customary Border Commerce

12.1 All citizens who comply with the process for Border Crossing Authorization Cards may conduct commercial activities of traditional and customary nature under the terms provided in this Agreement.

12.2 All the goods described in Annex E of this Agreement may be traded under traditional and customary ways in the Border Area (terrestrial). Such goods will not be subject to any duty or tariff. The Border Liaison Committee, whenever it deems necessary, may review the list of goods specified in Annex E.

12.3 The definition of traditional and customary commerce excludes all the goods restricted by the Government of the Republic of Indonesia and by the Democratic Republic of East Timor. The list of restricted goods may be modified periodically as described in Annex F. The Border Liaison Committee may periodically review the goods specified in Annex F.

12.4 The value of the goods transported by citizens carrying their Border Crossing Authorization Cards and entering the territory of the other Party to conduct traditional or customary commerce under the terms established in this Agreement must not exceed US\$50.00 or its equivalent in *Rupias*, per person, per day. Carriers of Border Crossing Authorization Cards may not cross the border more than one time per day, with different destinations.

12.5 Citizens carrying Border Crossing Authorization Cards may not take more than five heads of cows or any other four-legged animals per entry.

12.6 The movement of any goods beyond the goods allowed as per this Agreement in or out of the respective Border Areas is subject to the customs rules or to any other rules applicable by any one of the Parties and will be conducted through the designated entry or exit points.

12.7 Residents of Border Areas who do not comply with the provisions in this article may have their Border Crossing Authorization Cards suspended by a Border Officer or any other competent authority.

Article 13

Regulated Markets

13.1 Carriers of Border Crossing Authorization Cards may cross to the other Party's territory with the purpose of conducting commerce at a Regulated Market, at the designated locations, and may transport goods for commercial exchanges.

13.2 Commerce in the Regulated Markets is limited to goods which are not forbidden under the terms of the laws in effect in the territory where the Regulated Market is located. The list of restricted goods can be found attached as Annex F.

Article 14
Customs Procedures

14.1 At the time of entry in the territory of the other Party, citizens carrying their Border Crossing Authorization Cards must declare any goods that are subject to duties or taxes.

14.2 The usual customs procedures will apply to citizens carrying Border Crossing Authorization Cards at entry and at exit, whether they are entering or exiting the territory of any one of the Parties.

Article 15
Health and Quarantine

15.1 If special or contingency situations, including quarantine, are declared, the sanitary or quarantine authorities of both Parties may temporarily forbid or restrict the access to markets in the entire Border Area or part thereof. Vehicle traffic may also be restricted whenever deemed appropriate.

15.2 The competent authorities of each one of the Parties may make decisions about which vaccination measures are necessary for citizens crossing the border in order to gain access to Regulated Markets or for traditional or customary purposes; and/or other measures deemed necessary, during the mentioned periods of time.

15.3 The competent authorities may make decisions about which procedures are appropriate for plants and animals transported to, or through, the respective Border Areas. In situations declared by sanitary authorities or other applicable authorities, the traffic of plants or raw meat next to Border Areas and/or through the border may be restricted or prohibited, under these conditions, if that is shown to be necessary.

15.4 In contingency situations, under the terms of this treaty, the Border Areas will be deemed Border Quarantine Zones.

15.5 Indonesian and East Timorese visitors to the regulated markets will be subject to the quarantine laws and rules, as well as to the prevailing restrictions foreseen hereby for special situations.

15.6 Residents of Border Areas are informed about the preventive and restrictive measures necessary for the protection of their own interests associated with quarantine, surveillance and control, which may be applied in pre-determined time intervals.

Article 16
Business Travel by Officers and Officer Communications

16.1 In order to manage the regimen foreseen in this Agreement, a system of communication between Border Officers of both parties will be established and may include schedules, if deemed necessary.

16.2 Although subject to the necessary approvals, to be regulated by procedures drafted under mutual agreement by the Parties hereby, Border Officers may travel to and through the corresponding designated Crossing Points within the Border Areas, provided that they are traveling for official business.

16.3 The Parties will facilitate the entry of transportation vehicles coming from the other Party into its own Border Area, for the purposes of official business visits by Border Officers of the other Party, at the previously designated Crossing Points.

Article 17 **Law and Order in Regulated Markets**

17.1 Law enforcement officers of any one of the Parties will be responsible for enforcing the law and the order of the Regulated Markets in their respective territories.

17.2 Law enforcement officers of any one of the Parties may restrict the number of people who cross the border to engage in commercial activity at a Regulated Market, as well as the number of people who will enter the Regulated Market area within its respective territory.

17.3 Law enforcement officers of the corresponding Party may conduct any security inspections deemed necessary on individuals and goods crossing the Tactic Coordination Line, whenever and wherever necessary.

17.4 Illegal and undesirable activities such as cock games and cockfights are prohibited within the Regulated Markets.

Article 18 **Applicable Law**

18.1 Indonesian citizens carrying Border Crossing Authorization Cards will be subject to all laws and rules in effect in that territory.

18.2 Any East Timorese citizen carrying a Border Crossing Authorization Card will be subject to the laws and rules applicable in the Indonesian territory during his or her stay in Indonesian territory.

Article 19 **Acquisition of Property by *Usucapião* (Long Possession) and Customary Use of Land and/or Water**

19.1 In the event of any disputes regarding the extent, nature or form of the traditional or customary use of soils or waters, the issue may be resolved, initially, by the *Comité de Ligação Fronteiriço* and subsequently, if necessary, by the *Comité Fronteiriço Conjunto*.

19.2 The final authority over soils and waters and their respective use will rest on the Party in which the soils or waters under dispute are located, in accordance with the applicable international standards and common practice.

Article 20 **Preliminary Application of the Agreement**

The Parties will conduct the appropriate diligence for the purpose of ensuring the appropriate advertising and educational campaigns in the Border Areas, so as to facilitate the application of this Agreement.

Article 21 **Resolution of Disputes**

21.1 Any dispute emerging from the interpretation or implementation of this Agreement will be resolved by way of a consultation process and mutual agreement, by the *Comité de Ligação Fronteiriço*.

21.2 If the *Comité de Ligação Fronteiriço* is unable to resolve the dispute, the matter will be forwarded to the *Comité Fronteiriço Conjunto*.

Article 22 **Amendments**

22.1 The Parties may at any time, by way of a consultation process and mutual agreement, amend this Agreement.

22.2 Each one of the Parties will notify the other Party about any changes regarding the procedures related to Regulated Markets.

Article 23 **Effective Date and Term**

23.1 This Agreement will become effective one hundred and fifty days after the date of its signature.

23.2 This Agreement will remain in force and producing all its effects, unless it is revoked, by mutual agreement and in writing, by both Parties; or denounced by any one of the Parties, three months after written notice to the other party.

In witness thereof the undersigned, duly authorized for this effect by the government of the Republic of Indonesia and the Democratic Republic of East Timor, hereby execute this Agreement:

Entered in duplicate, in Jakarta, on June 11 of the year two thousand and three

Signed in Jakarta, on June 11 of the year 2003

By the Government of the Democratic Republic of East Timor

Dr. José Ramos-Horta

By the Government of the Republic of Indonesia

Rini M. Sumarno Soewnadi

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