



UNTAET/ORD/2001/1
5 February 2001

EXECUTIVE ORDER NO. 2001/1

**ON AN INTERIM PROCEDURE TO SETTLE DISPUTES ARISING FROM THE
TERMINATION OF LABOUR CONTRACTS**

The Special Representative of the Secretary-General (hereinafter: Transitional Administrator),

Pursuant to the authority given to him under United Nations Security Council Resolution 1272 (1999) of 25 October 1999,

Taking into account United Nations Transitional Administration in East Timor (UNTAET) Regulation 1999/1 of 27 November 1999 on the Authority of the Transitional Administration in East Timor,

For the purpose of establishing a procedure to solve disputes arising from the termination of labour contracts in East Timor until such time as UNTAET regulations provide for substantive and procedural rules to govern labour relations in East Timor,

After consultation with the Cabinet of the Transitional Government in East Timor,

Hereby orders the following

1. A National Committee for Arbitration of Labour Disputes (hereinafter: "The Committee") is hereby established to hear and decide disputes between employees and employers arising from labour contracts.
2. The Committee shall be independent in the discharge of its functions and shall be competent in cases of disputes arising from the termination of labour contracts in all branches of economic activity except in cases involving East Timor public employees.
3. The Committee shall have jurisdiction in all East Timor territory.
4. The Committee shall resolve cases submitted to its consideration applying the rules in the present Executive Order and the applicable law in East Timor as defined in Section 3 of UNTAET Regulation No. 1999/1.

5 The Committee shall be composed of five members, including a Presiding Officer, appointed by the Transitional Administrator. The Presiding Officer shall be recommended by the Division of Labour and Social Services of the Department of Social Affairs (hereinafter: “the Division”). He/she shall represent the public and shall be impartial between employers and employees. Two members shall represent the employees and two others shall represent the employers. Committee members shall be selected from a list of ten candidates, five from each sector, provided by the Cabinet Member in charge of Social Affairs within 15 days of the issuance of the present Executive Order.

6. Any three members of the Committee, as long as one of them is the Presiding Officer, can hear a case. Decisions shall be made by majority vote.

7 Until a future UNTAET regulation provides for a procedure to solve disputes arising from the termination of labour contracts, the following rules shall apply:

- a) An employee shall not be dismissed unless there is a valid reason for such dismissal connected with the capacity or conduct of the employee or based on the operational requirements of the undertaking, establishment or service. Every reasonable effort shall be made to prevent the dismissal of an employee.
- b) Actions or circumstances which shall not constitute valid reasons for terminating a labour contract include, but are not limited to, the following:
 - i. union membership or participation in union activities outside working hours or, with the consent of the employer, during working hours;
 - ii. seeking office as, or acting or having acted in the capacity of representative of the employees;
 - iii. the filing of a complaint or the participation in the proceedings against an employer involving an alleged violation of laws or regulations or recourse to the competent administrative authorities;
 - iv. race, color, gender, sexual orientation, marital status, family responsibilities, pregnancy, health status including HIV/Aids, religion political opinions, national extraction or social origin;
 - v. absence of work during maternity leave;
 - vi. age, subject to the law and practice regarding retirement; and
 - vii. absence from work due to compulsory military service or other obligations imposed by the law.
- c) If employment has to be terminated, the employer and the employee and/or their representatives, if any, shall conduct bilateral negotiations to reach consensus on the actions to be taken.
- d) If no consensus is reached, the parties or their representatives, jointly or separately, have the right to file a request for a procedure of conciliation/mediation with the Division, according to procedures specified by the Division and by the present Executive Order. The procedure for conciliation/mediation may only take place before the Division and it shall be aimed at complying with the principle that orders to make every reasonable effort to prevent the dismissal of an employee.
- e) Conciliation/mediation proceedings shall start within 7 days from the receipt of the request, in cases where the parties filed a joint request.

- f) In cases where only one party files the request, proceedings shall start within 7 days of the notification of the other party. If the notified party does not appear at the first scheduled session of conciliation/mediation, that party shall be notified of a new session to be held 7 days after the date established for the initial session. If the party fails again to be present, it shall be deemed that the process of conciliation/mediation has failed.
- g) The procedure for conciliation/mediation before the Division, whether successful or not, shall be completed within 15 days after its initiation. In cases where the procedure for conciliation/mediation is not successful, a party may file a request for arbitration before the Committee. The Division, if requested, shall submit a report of the conciliation/mediation efforts to the Committee.
- h) No party may file a complaint before the Committee without previously exhausting the conciliation/mediation instance before the Division.
- i) The Committee shall notify the parties of a hearing to be held within 30 days of the filing of the request for arbitration.
- j) Where a matter of practice or proceedings arises that has not been regulated by the present Executive Order and there is not an express rule from the applicable law that can be applied, the Committee shall decide the matter.
- k) Notices shall proceed as follows:
 - i. Notice to an employer shall be made by hand delivery, in duplicate, by a person authorized by the Division or the Committee at his/her office or business location, to the recipient himself/herself or to any person present who is employed by the recipient. The original shall be left with the recipient, or the person employed, who shall acknowledge receipt by signing the copy, which shall be added to the casefile. If the recipient cannot read or write a thumbprint shall suffice. If the recipient refuses to acknowledge notice, notice is nevertheless complete if the person making the notification certifies the refusal and the time, date and place of the delivery. Such certification can be made on the copy that is filed at the Division or the Committee.
 - ii. Notice for employees or their representatives shall be made by hand delivery at the addresses submitted in the request.
- l) Parties may be present or not at the hearing and may present their arguments and evidence in the order and in the manner established by the Committee. Members of the Committee shall have the right to question the parties and any witnesses presented by the parties, at any time during the hearing.
- m) Upon completion of the hearing, the Committee shall deliberate in private and shall decide the case. A written decision may be released upon the end of the deliberations in the same session. In complex cases, the Committee may within a maximum of 7 days schedule a session in order to release the written decision. Each party shall be given a copy of the written decision.
- n) Decisions of the Committee shall contain the following elements:

- i. the identities of the parties and members of the Committee participating in the hearing;
 - ii. an account of the events and circumstances of the case;
 - iii. an account of the facts the Committee considered proved or not proved and an account of the factual and legal grounds of those considerations;
 - iv. a finding on the fairness or unfairness of the dismissal of the employee or the claim related to the termination of the labour contract; and
 - v. if the Committee finds that the dismissal was unfair, an order to pay the amount of money that, at the Committee's satisfaction, remedies the unfair termination of the labour contract, pursuant to Paragraph 7 a) and b) of the present Executive Order, and/or the claim related to the termination of the labour contract. The amount ordered to pay for each concept shall not exceed the amount claimed by the employee for the respective concept.
- o) The decision of the Committee shall be deemed final if no party files a claim before the competent District Court within 15 days of the release of the written decision of the Committee.
 - p) In cases where the employer refuses to comply with the final decision of the Committee, the employee may request an order from the competent District Court so that the decision of the Committee be executed.
 - q) This procedure shall apply to all procedures for conciliation/mediation that are currently being processed at the Division.

8. The present Executive Order supersedes previous applicable only in respect of the rules referring to the administrative procedure for resolving claims arising from the termination of labour contracts and only to the extent that they conflict with the present Executive Order.

9 The Department of Social Affairs shall provide the necessary funding, technical and administrative support for the Committee. The Office of the Principal Legal Advisor shall provide legal advice to the Committee. Members of the Committee shall receive remuneration as determined by the Transitional Administrator.

10. Days in the present Executive Order mean calendar days.
11. The present Executive Order shall enter into force on 5 February 2001.

Sergio Vieira de Mello
Transitional Administrator

