

UNITED NATIONS
United Nations Transitional Administration
in East Timor



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Administration Transitoire des Nations es
au Timor Oriental

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REGULATION NO. 2001/28

ON THE ESTABLISHMENT OF THE COUNCIL OF MINISTERS

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, as reaffirmed in United Nations Security Council resolution 1338 (2001) of 31 January 2001,

Noting that paragraph 3 of resolution 1338 (2001) requests the Transitional Administrator to continue to take steps to delegate progressively further authority to the East Timorese people until authority is fully transferred to the government of an independent State of East Timor,

Taking into account United Nations Transitional Administration in East Timor (UNTAET) Regulation No. 1999/1 of 27 November 1999 on the Authority of the Transitional Administration in East Timor,

Taking into account the results of the election of a Constituent Assembly to prepare a Constitution for an independent and democratic East Timor,

For the purpose of establishing the Council of Ministers, with the aim of effectively governing East Timor during the transitional period, and

For the further purpose of establishing the East Timor Public Administration, with the aim of implementing the laws of East Timor, and the programs and policies of the Council of Ministers,

Promulgates the following:

Section 1
Establishment of the Council of Ministers

- 1.1 The Council of Ministers (hereinafter “Council of Ministers” or “Council”) is hereby established as the representative body of the Transitional Government.
- 1.2 The structure of the Transitional Government and its Council of Ministers shall be specified by the Transitional Administrator.
- 1.3 The Transitional Government shall be composed of a Chief Minister, Ministers, Vice-Ministers and Secretaries of State appointed by the Transitional Administrator, after appropriate consultation with the elected representatives of the people of East Timor.
- 1.4 The Council of Ministers shall be composed of the Chief Minister, Ministers and other members of the Transitional Government as the Transitional Administrator may appoint. On the basis of a decision of the Council of Ministers, the Chief Minister may propose to the Transitional Administrator changes in the structure of the Transitional Government and the Council.
- 1.5 The Council of Ministers and the Chief Minister are accountable to the Transitional Administrator.
- 1.6 The Chief Minister appointed by the Transitional Administrator shall not concurrently hold the position of Presiding Officer of the Constituent Assembly established under UNTAET Regulation 2001/2, but may be a representative in the Constituent Assembly.
- 1.7 The remuneration and other conditions of service of the Chief Minister, Ministers, Vice-Ministers and Secretaries of State shall be determined by separate instrument.

Section 2
Establishment of the East Timor Public Administration

The East Timor Public Administration is a public legal entity. It includes those departments and offices of the East Timor Transitional Administration, and any other organisational units specified by the Transitional Administrator by separate instrument, irrespective of whether such organisational units have been separately established by UNTAET Regulation.

Section 3
Functions and Powers of the Council of Ministers

- 3.1 The Council of Ministers shall have the following functions:
- (a) to formulate programs and policies for the East Timor Public Administration;
 - (b) to supervise the East Timor Public Administration;

- (c) to recommend draft regulations to the Transitional Administrator, for his consideration and referral to the Constituent Assembly pursuant to Section 2.5 of UNTAET Regulation No. 2001/2;
- (d) to recommend to the Transitional Administrator the promulgation of directives; and
- (e) to give advice to the Transitional Administrator on matters that the Transitional Administrator may refer to it.

3.2 The Council of Ministers shall have those executive powers that are necessary for the Council to perform its functions as specified in Section 3.1. The Council of Ministers shall have, in particular, the following powers, which it shall exercise on behalf of the East Timor Public Administration:

- (a) the power to institute legal proceedings, and the duty to defend legal proceedings, whenever proceedings are brought in the name of the East Timor Transitional Administration, the East Timor Public Administration, any organisational unit thereof, any official or employee thereof pertaining to acts or omissions in an official capacity, or in any case where defense by or in the name of the East Timor Public Administration is provided by UNTAET Regulation or Directive;
- (b) the power to acquire, hold and dispose of property, whether movable or immovable; and,
- (c) the power to enter into contracts and similar agreements; provided, however, that the Council of Ministers, or the individual members of the Council therein, shall not have authority to conclude any contract or similar agreement with an international State on behalf of East Timor.

3.3 For the purposes of this section, “contracts and similar agreements” shall include agreements with non-State parties for donor funding, as well as any other agreement with parties not domestic in East Timor; provided, however, that prior approval of the Council of Ministers is required for conclusion of such agreements by individual members of the Council. In this regard, Section 3.2 of UNTAET Directive 2000/5 is superseded to the extent that it is inconsistent with this section.

3.4 The exercise of the powers enumerated in this section is subject to:

- (a) applicable law in East Timor as provided in Section 3 of UNTAET Regulation No. 1999/1, including the present regulation; and
- (b) such further conditions as may be specified by the Transitional Administrator.

Section 4
Functions and Powers of the Chief Minister and Individual Council Members

4.1 Each member of the Council shall have such powers as are necessary to exercise authority over those organisational units of the East Timor Public Administration that are assigned to his or her respective portfolio by the Transitional Administrator.

4.2 The exercise of the powers enumerated in this section is subject to:

- (a) applicable law in East Timor, including the present regulation; and
- (b) prior approval of the Council of Ministers, where applicable; and
- (c) such further conditions as may be specified by the Transitional Administrator.

4.3 The members of the Council are accountable to the Chief Minister in the exercise of the powers specified in Section 4.1. The Chief Minister may recommend to the Transitional Administrator that he revoke the power delegated to any member of the Council that is exercised contrary to the limitations specified in Section 4.2

4.4 The Chief Minister shall be responsible for relations of the Council of Ministers with the Transitional Administrator. The Transitional Administrator shall be regularly consulted in the performance by the Council of its functions. The Transitional Administrator shall be advised of the issues for the decision of the Council and have the opportunity to express his views on those issues. The Transitional Administrator has the authority to propose issues for consideration by the Council and to address the Council on those issues.

Section 5
Meetings of the Council of Ministers

5.1 Meetings of the Council of Ministers shall be chaired by the Chief Minister, and, in his or her absence, by a member of the Council of his or her choosing.

5.2 A quorum of half of the members of the Council, plus one, is required in order for the Council of Ministers to meet and make decisions. The arrangements relating to absent members of the Council shall be specified in a separate instrument.

5.3 The decisions of the Council of Ministers shall be made by consensus whenever possible, and otherwise by the majority vote of the Council. Each Minister shall have one vote. In the event of a tie, the Chief Minister shall vote, and this shall be the deciding vote. Members of the Council who are not Ministers shall only have a right to vote on issues within their area of responsibility, and shall only be counted in the quorum established in Section 5.2 in respect of such issues.

5.4 The Council of Ministers shall have the authority to invite persons, including competent officials of the East Timor Public Administration, to provide necessary and pertinent information as and when required for the transaction of its business.

5.5 Upon adoption, a decision of the Council of Ministers shall be deemed to have been endorsed by all members, and they shall be bound by such decision. Ministers shall be accountable to the Chief Minister, as chair of the Council, for the effective and efficient implementation of Council decisions.

5.6 Decisions of the Council of Ministers are subject to the review and approval of the Transitional Administrator, following due consultation. Absent such review and approval, decisions of the Council of Ministers shall have no effect.

Section 6 **Privileges and Immunities of Members of the Council**

6.1 Members of the Council shall enjoy such privileges and immunities as are provided by law.

6.2 No member of the Council shall be liable, either criminally or civilly, for any act of commission or omission, if the matter or thing was done or omitted in good faith for the purpose of executing any provisions of any law. Such privilege shall not extend to acts of commission or omission arising out of intentional wrongful conduct or gross negligence.

Section 7 **Non-disclosure**

All persons who participate in meetings of the Council of Ministers shall declare in writing that they shall keep confidential all matters of confidential nature that come to their knowledge in the performance of their functions and duties as established by the present regulation. Such restriction shall apply also after separation from office.

Section 8 **Conflict of Interest**

8.1 Members of the Council of Ministers, unless otherwise exempted by the Transitional Administrator, shall make written declarations of all commercial and financial interests or activities undertaken for financial gain by themselves or by their spouses, if any. Such declaration:

- (a) shall be submitted within a period of one (1) month from the date of the acceptance of appointment as members of the Council;
- (b) shall be updated as and when required; and,
- (c) shall be recorded in a Register of Interests (hereinafter "Register") which shall be maintained by the Transitional Administrator.

8.2 The information contained in the written declaration made by members of the Council of Ministers and recorded in the Register as required by Section 8.1 of the present regulation shall be treated as confidential and may only be disclosed as provided for by law. The

Transitional Administrator shall establish the conditions and circumstances under which the information provided within the Register may be released to other officials.

8.3 Members of the Council of Ministers shall not accord preferential treatment or special consideration to any person or entity, whether by act or omission.

8.4 In situations of possible or perceived conflict of interest between the official functions and private interests of a member of the Council of Ministers,

- (a) the member concerned shall disqualify himself or herself from any decision-making related to such matter;
- (b) in the event of any uncertainty, the member concerned shall refer the matter to the Chairperson, or if the member concerned is the Chairperson, to the Transitional Administrator, for a determination as to whether the circumstances require disqualification of such member. The decision of the Chairperson, or the Transitional Administrator, where applicable, shall be final.

8.5 At no time shall members of the Council of Ministers use property belonging to the East Timor Public Administration or UNTAET, or information acquired in their official capacities, for activities unrelated to their official functions and duties.

8.6 Within a stated period, as defined by the Transitional Administrator, after separation from government service, former members of the Council of Ministers shall obtain the permission of the Transitional Administrator prior to accepting paid or unpaid employment or consultancy assignments from business or private concerns that are in a financial relationship with the East Timor Public Administration or UNTAET.

8.7 Any member of the Council of Ministers who knowingly or recklessly violates any of the previous subsections shall be subject to appropriate disciplinary and administrative measures as determined by the Transitional Administrator.

Section 9 **Code of Conduct**

The Transitional Administrator may promulgate a Code of Conduct pertaining to the members of the Transitional Government.

Section 10 **Oath or Solemn Declaration**

10.1 Upon appointment, the Chief Minister, and each Minister, Vice-Minister and Secretary of State shall make the following oath or solemn declaration before the Transitional Administrator:

" I swear (or solemnly declare) that in carrying out the duties entrusted to me as a member of the Transitional Government of East Timor,

I respect and will act in accordance with the outcome of the popular consultation of 30 August 1999,

I will promote the development of democratic institutions for an independent East Timor and support the work of the United Nations Transitional Administration in East Timor,

I will actively participate in the work of the Transitional Government and, at all times, promote respect for human rights, the rule of law, and democratic principles.

I will perform my duties without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property or birth.”

10.2 Having made the oath or the solemn declaration specified in Section 10.1, the Chief Minister, and each Minister, Vice-Minister and Secretary of State shall submit a signed copy of such oath or declaration to the Transitional Administrator.

Section 11 **Manual of the Council of Ministers**

The Council of Ministers shall determine its own procedures, which shall be specified in the Manual of the Council of Ministers. The Manual shall be developed in consultation with the Transitional Administrator.

Section 12 **Secretariat**

The Council of Ministers will be assisted in the performance of its functions by a Secretariat. The Secretariat will administer the procedures specified in the Manual of the Council of Ministers.

Section 13 **Authority of the Transitional Administrator**

Nothing in the present regulation shall derogate from the legislative authority and ultimate executive authority of the Transitional Administrator as established by United Nations Security Council resolution 1272 (1999) of 25 October 1999 and resolution 1338 (2001) of 31 January 2001, and UNTAET Regulation No. 1999/1.

Section 14 **Transitional Provision**

14.1 Upon the entry into force of the present regulation, UNTAET Regulation

2000/23 shall no longer apply, and the Cabinet established pursuant to UNTAET Regulation No. 2000/23 shall be dissolved.

14.2 All references in UNTAET Regulations, Directive and other official documents to:

- (a) “East Timor Transitional Administration” or “ETTA” shall henceforth be read as references to the East Timor Public Administration;
- (b) “Cabinet”, the “ETTA Cabinet” and the “Transitional Cabinet” shall henceforth be read as references to the “Council of Ministers”, excluding references to “Cabinet” in the preamble to existing UNTAET Regulations and Directives which shall be retained;
- (c) “Cabinet Member”, “member of the Cabinet”, “Cabinet officer” and “officer of the Cabinet” shall henceforth be read as references to a “member of the Council of Ministers”, and this shall apply to all plural and derivative forms;
- (d) “Cabinet portfolio” shall henceforth be read as references to “portfolio within the Council of Ministers”; and
- (e) “Cabinet Secretariat” shall henceforth be read as references to the “Secretariat to the Council for Ministers”.

Section 15
Entry into Force

The present regulation shall have entered into force on 14 September 2001.

Sergio Vieira de Mello
Transitional Administrator