



REGULATION NO. 2002/2

**ON ELECTORAL OFFENCES
IN RELATION TO THE ELECTION OF THE FIRST PRESIDENT**

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

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

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

Taking into account UNTAET Regulation No. 2001/2 of 16 March 2001 on the Election of a Constituent Assembly to Prepare a Constitution for an Independent and Democratic East Timor, and Regulation No. 2002/1 of 16 January 2002 on the Election of the First President of an Independent and Democratic East Timor,

Taking into account the provisions of UNTAET Regulation No. 2001/11 on electoral offences for the election of a Constituent Assembly,

For the purpose of ensuring that the election of the president is free, fair, safe and credible, with a secret ballot,

After consultation in the Constituent Assembly and the Council of Ministers,

Promulgates the following:

Section 1
Definitions

For purposes of the present Regulation, the following terms shall have the following meanings, unless a contrary intention appears:

Election means the election of the first President, pursuant to Regulation No. 2002/1

Officer of the IEC means a Commissioner of the Independent Electoral Commission appointed pursuant to Section 6 of Regulation No. 2002/1; the Chief Electoral Officer of the Independent Electoral Commission; a member of the staff of the Office of the Chief Electoral Officer; or any person employed by the Independent Electoral Commission, UNTAET, the East Timor Public Administration or the United Nations to undertake functions relating to the election to be conducted pursuant to Regulation No. 2002/1

Possess has the same meaning as that given to the word in UNTAET Regulation No. 2001/5 on Firearms, Ammunition, Explosives and Other Offensive Weapons in East Timor: “to have physical dominion or control, directly or indirectly. Possession occurs when someone has a thing on or about his person, or within premises or vehicles over which he has custody, control or easy access”

Voter means any person eligible to vote in the election of the first President, pursuant to Section 21 of Regulation No. 2002/1

Weapon means an object that may be used to threaten, attack or wound people, including a firearm, firearm imitation, ammunition, explosive or offensive weapon as defined in Regulation No. 2001/5, and also including a ceremonial or traditional weapon or club.

Infraction means a criminal infraction.

Section 2 Infringement of secrecy

2.1 It shall constitute an offence if a person:

- (a) at a polling centre interferes or attempts to interfere with a voter when marking his or her vote;
- (b) at a polling centre obtains or attempts to obtain information as to the candidate for which any voter at that polling centre is about to vote or has voted;
- (c) at a polling centre induces or attempts to induce any voter to make known to any person the candidate for which the voter has marked his or her vote; or
- (d) except with due authority, breaks or attempts to break the seal of a sealed packet which is being used by the Independent Electoral Commission (hereinafter: IEC) for the purpose of the election or opens such a packet.

2.2 A person who is requested by a voter to provide assistance in marking his or her ballot shall not be guilty of an infraction under subsection 2.1(a) or 2.1(b) unless such person communicates to any other person any information acquired by him or her while providing such assistance.

Section 3
Infringement of secrecy by electoral officials, observers, and agents

It shall constitute an offence if an officer of the IEC, or a duly accredited electoral observer or agent of a political party or independent candidate, communicates to any person any information acquired by him or her in the performance of his or her duties or functions:

- (a) as to the candidate for which any voter is about to vote or has voted;
- (b) as to the candidate for which a vote has been marked on any spoiled ballot paper; or
- (c) which is otherwise likely to defeat the secrecy of the voting.

Section 4
Possession of weapons inside or in vicinity of a polling or counting centre

4.1 On the date of the election, it shall constitute an offence if a person possesses a weapon in a polling centre, or possesses a weapon nearer than one hundred (100) metres from a polling centre.

4.2 It shall constitute an offence if a person possesses a weapon in a counting centre, or possesses a weapon nearer than one hundred (100) metres from a counting centre for the duration of the counting at that location.

4.3 The possession of a weapon outside a polling or counting centre where that weapon is an agricultural implement and is being utilised exclusively for agricultural purposes and in a non-threatening manner, does not constitute an offence pursuant to Section 4.1 or Section 4.2.

4.4 Section 4.1 and Section 4.2 do not apply to a member of the police or military who is acting in conformity with his or her duties. For the purposes of this Section, those duties include entering a polling station or counting centre at the request of an officer of the IEC.

Section 5
Disturbance of proceedings, obstruction of officers, and limits on campaigning

5.1 It shall constitute an offence if a person:

- (a) willfully obstructs or disturbs any proceedings undertaken by or authorized by the IEC, or obstructs or interferes with an officer of the IEC in the exercise of his or her powers or the performance of his or her duties and functions;
- (b) on polling day or the day before polling day, does any canvassing for votes, or erects any poster or structure other than as authorized by the IEC, at a polling centre or nearer than one hundred (100) metres from the polling centre;
- (c) on polling day or the day before polling day, uses any form of loudspeaker, other than as authorized by the IEC, or organises any rally, procession or demonstration of a political nature, or participates therein; or

(d) on polling day, sells, furnishes, buys, serves, or consumes alcoholic beverages at a polling centre or nearer than one hundred (100) metres from the polling centre prior to the end of voting at that location.

5.2 The wearing by a person of any item relating to a political party or candidate, including clothing or stickers, does not constitute an offence pursuant to Section 5.1 (b).

5.3 For the purposes of the present Regulation, any action or proceedings shall be deemed to be authorised by the IEC if they are undertaken pursuant to Regulation No. 2001/2, Regulation 2002/1, or any procedures, instructions, prescribed forms or guidelines for the electoral process issued by the IEC or the Chief Electoral Officer.

Section 6

Control of behaviour at polling and counting centres.

6.1 It shall constitute an offence if a person:

(a) while in a polling centre or a counting centre disobeys a lawful direction given by the officer of the IEC in charge of that centre;

(b) enters or remains in a polling centre or counting centre without the permission of the officer of the IEC in charge of the premises.

6.2 Section 6.1(b) does not apply to an officer of IEC, a duly accredited electoral observer or agent of a political party or independent candidate, or, in the case of a polling centre, a voter who enters the centre for the purpose of voting and remains no longer than is reasonably necessary for the purpose.

Section 7

Undue influence

It shall constitute an offence if a person, including a voter, employer, or officer of the IEC, directly or indirectly, by himself or herself or by any other person:

(a) uses violence, force or restraint, or inflicts any bodily, financial or psychological injury, damage, hazard or loss, or threatens to do any of the above

(i) for the purpose of inducing or compelling any person to vote or to refrain from voting at the election, or to vote in favour of or against a particular candidate, or on account of any person's having voted or not voted at an election, or

(ii) for the purpose of procuring the withdrawal of a candidate, or

(iii) for the purpose of impeding, hindering, or preventing the free exercise of the franchise by any voter, or

(b) makes use of any fraudulent device or contrivance for any of the purposes enumerated in (a).

Section 8
Bribery

8.1 It shall constitute an offence if a person gives or confers, or promises or offers to give or confer, any property or benefit of any kind to another person whether directly or indirectly, in order to influence or affect:

- (a) the vote of any person; or
- (b) any person's support of, or opposition to, a candidate.

8.2 It shall constitute an offence if a person asks for or receives, or agrees to ask for or receive, any property or benefit of any kind, whether for himself or herself or for any other person, for any of the purposes enumerated in Section 8.1.

8.3 A legitimate declaration of public policy or a promise of public action does not constitute an offence pursuant to Sections 8.1 or 8.2.

Section 9
Undue influence and bribery of officers

9.1 It shall constitute an offence if an officer of the IEC asks for, receives or obtains, or offers or agrees to ask for, receive or obtain, any goods, movable or immovable, or benefit, whether for himself or herself or for any other person, on an understanding that that good or benefit will influence or affect, in any manner, the result of the election.

9.2 It shall constitute an offence if a person gives or confers, or promises or offers to give or confer, any good, movable or immovable, or benefit to an officer of the IEC, or to the spouse of an officer of the IEC, a relative of an officer of the IEC in the first degree, or to any other intermediary in order to influence or affect the result of the election.

Section 10
Use of government resources

It shall constitute an offence if a candidate for election to the office of president uses government offices, facilities, equipment or means of transport for political or electoral campaign-related activities, except as provided by any program of government support to all candidates or authorized by the IEC for the security of the candidate.

Section 11
False statements

11.1 It shall constitute an offence if a person makes or submits any statement under Regulation No. 2001/2, Regulation 2002/1, or the present regulation containing any information or allegation which he or she knows to be false.

11.2 It shall constitute an offence if a person prints, publishes, broadcasts or distributes, or causes, permits or authorizes to be printed, published, broadcast or distributed, any matter or

thing in relation to the electoral process which the person knows to be false and which is intended to mislead or deceive a voter.

11.3 The printing, publication, broadcast or distribution of any matter or thing which relates only to the public policy, political activity or promises of public action of a political party or candidate, or which relates only to the professional or personal qualifications or characteristics of a candidate, does not constitute an offence pursuant to Section 11.2.

Section 12
Offences relating to voting procedures

It shall constitute an offence if a person:

- (a) applies for a ballot paper in the name of some other person whether living, dead or fictitious, or records a vote in the name of any such person;
- (b) for the purpose of having a ballot paper issued to her or him, knowingly produces to any officer a registration card or other document which has been altered with intent to deceive, or any document purporting to be but not being a registration card or other document;
- (c) having previously voted at the election, votes again, or attempts to vote again, either in their own name or in the name of another;
- (d) forges or counterfeits or fraudulently destroys any ballot paper or any official mark on any ballot paper;
- (e) without due authority, supplies any ballot paper to any person;
- (f) without due authority, possesses more than one ballot;
- (g) without due authority, places any thing other than a ballot in any ballot box;
- (h) without due authority, takes out of any polling centre any ballot paper whether blank or completed;
- (i) without due authority, destroys, takes, opens, uses or otherwise interferes with any ballot box, voting compartment, instrument, form, document or other equipment used or intended for use at any polling centre;
- (j) without due authority, destroys, mutilates, defaces or removes any notice exhibited as authorized by the IEC; or
- (k) causes a disturbance at any polling centre.

Section 13
Interference with vote counting or conveyance of results

It shall constitute an offence if a person fraudulently interferes, or attempts to interfere, with the process of counting votes by an officer of the IEC.

Section 14
Official misconduct in relation to vote counting

14.1 It shall constitute an offence if an official of the IEC opens or destroys a ballot box or removes or destroys its contents purposely and without due authority, or through negligence enables any other person to open or destroy a ballot box or remove or destroy its contents.

14.2 It shall constitute an offence if an official of the IEC charged with the duty of reading or recording the vote on a ballot deliberately omits to read the vote recorded on the ballot, misreads the vote recorded, or reads a name when no vote was recorded by the voter.

14.3 It shall constitute an offence if an official of the IEC charged with the duty of tallying votes on an official tally sheet deliberately fails to record votes reported to them, deliberately records such votes erroneously, or records votes where no such votes have been cast.

Section 15
Incitement to violence

It shall constitute an offence if a person advocates national, racial or religious hatred that constitutes incitement to hostility or violence relevant to the election.

Section 16
Complaints

16.1 Any person may present to the police a complaint in relation to an alleged offence pursuant to the present Regulation.

16.2 The IEC or the police may, at their own initiative or following a complaint pursuant to Section 16.1, file a report to the Public Prosecutor in relation to an alleged offence pursuant to the present Regulation.

Section 17
Penalties

17.1 A person who commits any offence pursuant to Section 2, Section 4, Section 5, or Section 6 of the present Regulation shall be punished with a term of imprisonment of up to one (1) year, or a fine of up to \$500, or both.

17.2 A person who commits any offence pursuant to Section 7, Section 8, Section 10, Section 11, Section 12 or Section 13 of the present Regulation shall be punished with a term of imprisonment of from one (1) month to two (2) years, or a fine of up to \$1,000, or both.

17.3 A person who commits any offence pursuant to Section 3, Section 9, Section 14, or Section 15 of the present Regulation shall be punished with a term of imprisonment of from one (1) year up to five (5) years, or a fine of up to \$5,000, or both.

Section 18
Period of operation

The present Regulation shall apply only to acts or omissions committed from the date of its entry into force until the declaration of the results of the election.

Section 19
Entry into force

The present Regulation shall enter into force on the date of its signature.

Sergio Vieira de Mello
Transitional Administrator