

## **Special Panel Delivers its own Decision on the Applicable Law**

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The furore regarding whether the law of Indonesia, or of Portugal, should be the applicable subsidiary law in East Timor took a new twist today when the Special Panel for Serious Crimes, a Division of the Dili District Court responsible for Crimes Against Humanity trials stemming from the violence of 1999, weighed into the debate by issuing their own opinion on the issue.

In a summary of decision delivered earlier today, a three member panel of the Court (Judges Maria Natercia Perreira (Presiding, East Timor), Sylver Ntukamazina (Burundi) and Siegfried Blunk (Germany) decided that the Court of Appeal's recent decision on the question of "the applicable "subsidiary law" in East Timor was not binding in the case before them, and that the "subsidiary law which should correctly be applied in circumstances where there is no East Timorese, nor UNTAET law governing the matter, is Indonesian law. This decision accords with what has until recently been accepted as common wisdom in East Timor's courts, but puts the Special Panel directly at odds with the Court of Appeal (East Timor's superior court) which last week delivered a bombshell ruling that Portuguese, and not Indonesian law should be applied in such cases.

The issue is a critical one for the courts because East Timor is yet to promulgate its own laws in relation to most aspects of everyday life, and Indonesian laws continue to be used extensively in the East Timorese courts. Examples include East Timor's continued use of the Indonesian Criminal Code and Indonesian laws governing real estate, property transfers, and commercial matters.

The courts' use of Indonesian laws is founded on Article 3 of UNTAET Regulation No. 1/1999 which states, in effect, that the law in East Timor shall be "the laws applied in Timor-Leste prior to 25 October 1999" except where the subject matter is covered by UNTAET regulations or law promulgated by the East Timorese authorities post-independence, and provided that such subsidiary law does not conflict with international human rights standards. Conventional wisdom, at least until last week, had always been that the term "the laws applied in Timor-Leste prior to 25 October 1999" referred to Indonesian law by virtue of Indonesia's status at the de facto occupying administration in Timor-Leste between 1975 and 25 October 1999.

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