

JOINT REGULATION

No. 13 of 1978

TO PUT INTO EFFECT the Resolution of the Representative Assembly No. 3 of 1978 passed the 20th day of April 1978 to provide for Judicial Reform in the New Hebrides.

MADE by the Resident Commissioners under the provisions of Articles 2:2 and 7 of the Anglo-French Protocol of 1914 and Articles 25 and 28:3 of the Exchange of Notes made at London the 15th day of September 1977 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic.

Scheduled  
Resolution  
put into  
effect.

1. The Resolution of the Representative Assembly No. 3 of 1978, set forth in the Schedule, is hereby put into effect.

Short  
title  
and  
commencement.

2. This Joint Regulation may be cited as the Courts Regulation 1978 and shall come into operation on the 15th day of December 1978.

ENACTED at Vila this 15th day of December 1978.

The Inspector-General  
on special duties,  
conferred with the powers  
of the Resident Commissioner  
for the French Republic in  
the New Hebrides.

Her Britannic Majesty's  
Resident Commissioner

J.J. ROBERT

A.C. STUART

RESOLUTION No. 3 of 1978

Providing for a Judicial Reform in the New Hebrides

The Representative Assembly of the New Hebrides, at its sittings on the 18th, 19th and 20th April, 1978, hereby resolves and decides, on the motion of the Chief Minister and in accordance with the Schedule to the Exchange of Notes of the fifteenth day of September 1977, to adopt the following measures:

PART I - DISTRICT COURTS

SECTION 1.- Establishment of District Courts

- (1) District Courts shall be established in each administrative district consisting of a single Judge appointed by the High Commissioners after consultation with the Co-Presidents of the Joint Court and with the concurrence of the Council of Ministers; any such Judge may only be removed from office by the same procedure.
- (2) In criminal matters where the maximum penalty provided for any offence charged exceeds one year, the District Court shall be composed of a Judge and two Assessors, at least one of whom shall be a native and each of whom shall have a deliberative vote.
- (3) Every decision of the Court shall be by a majority, in default of which, the decision of the Judge shall prevail.
- (4) The District Court shall be assisted by a Registrar and the necessary staff appointed by the Co-Presidents of the Joint Court; all the provisions of Section 10 relating to the staff of the Joint Court shall be applicable to the Registrar and staff of the District Courts.

SECTION 2.- Jurisdiction

The District Court shall have jurisdiction within its territorial limits:

A) In civil and commercial matters

- 1) irrespective of the status of the parties, in all proceedings concerning immovable property not being proceedings connected with the registration of title to land or proceedings where the registered owner of such title is a non-native;
- 2) in all proceedings concerning the status of persons in which all the parties are natives;
- 3) subject to paragraphs 1 and 2 above, in all proceedings to which any statutory corporation established under Article 4:2 of the Anglo-French Protocol of 1914 or a local community is a party;
- 4) in all other proceedings in which the only defendant to the principal action is a native, irrespective of the status of the plaintiff.

B) In criminal matters

- 1) in regard to any offence under Joint Regulations enacted under the provisions of Article 7 of the Anglo-French Protocol of 1914, and under Articles 24 and 28 of the Schedule to the Exchange of Notes of 15th September 1977, and municipal by-laws made under the said Regulations, irrespective of the status of the offender.
- 2) in regard to any offence under Joint Regulations enacted under the provisions of Article 8 of the Anglo-French Protocol of 1914 committed by natives.

C) In labour disputes

in all individual disputes between employer and employee under the Joint Labour Regulations irrespective of the status of the parties.

SECTION 3.- Law applicable.

- A) The District Court shall in all cases apply the provisions of Joint Regulations made under the Anglo-French Protocol of 1914 together with all subsidiary and local legislation made under such Regulations.

B) In civil and commercial matters in the absence of appropriate legislation referred to in subsection (A) and where the action is based on a contract or any other act or thing entirely within the purview of the law of one or other of the Signatory Powers to the Anglo-French Protocol of 1914, the law to be applied shall be the law under which the contract was concluded or the act or thing took place.

C) In default of the foregoing, the law applicable to the non-native plaintiff, if any.

D) In default of the foregoing, the Court shall decide according to substantial justice and the general principles of law and wherever possible according to native custom.

E) Notwithstanding the foregoing, in proceedings to which Section 2(A)(3) applies the law applicable shall be in accordance with Section 13(B)(3).

SECTION 4. - Right of appeal.

There shall be a right of appeal to the Joint Court from the judgments of the District Courts:

A) In civil or commercial matters and in labour disputes if the matter in dispute exceeds 10,000 New Hebrides Francs (or the equivalent in Australian Dollars at the official rate of exchange) or where the value of the matter in dispute cannot be quantified.

B) In criminal matters

1) by the accused:

- against conviction and/or sentence if he pleaded not guilty;
- against sentence only, if he pleaded guilty;
- in all cases, on claims for damages, if any;

2) by the civil party intervening,

- only on the claim for damages.

SECTION 5. Revision

In addition, the judgments of the District Courts may be revised in accordance with Rules of Procedure by the Joint Court which shall either confirm them or vary them.

SECTION 6.- Procedure

The Co-Presidents of the Joint Court shall under the provisions of Section 14 make rules regulating the procedure to be observed in the District Courts and in matters of appeal and revision.

SECTION 7.- Keeping order in Court

The District Judge shall be responsible for keeping order in court in the same way as the President of the Joint Court. The District Court shall be competent in the same way and in accordance with the same procedure as the Joint Court to deal with contempt of court and of its members, officers, assessors or witnesses and also to impose the fine provided in Section 12(E) on assessors or witnesses who fail to appear.

SECTION 8.- Justices of the Peace

A) The Council of Ministers, on the joint nomination of the Resident Commissioners, may, having consulted the Co-Presidents of the Joint Court, appoint Justices of the Peace empowered to sit in all or part of the area of jurisdiction of the District Court in place of the District Judge. Each Justice of the Peace shall sit with assessors as provided by Rules of Procedure.

B) Justices of the Peace shall have jurisdiction:

- a) in civil and commercial matters
- 1) in all proceedings concerning status of persons;
- 2) in all other proceedings, not being proceedings relating to immovable property, where the value of the subject matter of the proceedings does not exceed 20,000 New Hebrides Francs (or the equivalent value in Australian Dollars at the official rate of exchange);
- 3) they shall also discharge the function of conciliators in all proceedings within the jurisdiction of the District Court and in particular in relation to disputes concerning land; where the parties to any such dispute agree upon

a settlement, the terms of the agreement shall be reduced in writing, signed by the Justice of the Peace and registered as a judgment in the relevant District Court Registry;

b) in criminal matters :

in respect of all offences punishable by a fine only or a sentence of imprisonment not exceeding six months or by both such fine and imprisonment.

c) The Justice of the Peace shall be responsible for keeping order in the court in the same way as the District Judge; however all offences in the nature of contempt of court referred to in section 12(D) and the imposition of fines provided for upon assessors or witnesses who fail to appear shall be within the competence of the District Judge.

d) All decisions of Justices of the Peace (including registered conciliations) shall be reviewed by the District Judge in accordance with Rules of Procedure.

SECTION 9.- Substitute for District Judge or Justice of the Peace

- A) If a District Judge is unable to act, the Co-Presidents of the Joint Court shall by order appoint another District Judge to act temporarily in his place.
- B) If a Justice of the Peace is unable to act, the District Judge for the District in question may by order appoint another Justice of the Peace in that District to act temporarily in his place.

PART II - JOINT COURT

SECTION 10.- Establishment of Joint Court

- A) A Joint Court, the judgments of which shall be final, shall be established consisting of two Judges who shall exercise jointly the functions and prerogatives of the President.

Each High Commissioner shall appoint a Judge of the Joint Court with the concurrence of the Council of Ministers.

B) The Court shall be assisted by a Chief Registrar and the necessary additional staff appointed jointly by the Co-Presidents.

C) The Chief Registrar and staff of the Joint Court shall be subject to the disciplinary powers of the Co-Presidents, who shall determine their conditions of service; however salaries may only be fixed and staff may only be dismissed, with the concurrence of the Council of Ministers.

D) At every trial the Joint Court shall be assisted by an assessor, having a deliberative vote, who shall be a native, irrespective of the status of the parties.

SECTION 11.- Presiding Judge

At the hearing the President of the Joint Court shall be:

- (a) if the accused is not a native, in criminal cases, the judge appointed by the Signatory Power of which the accused is a national or for the jurisdiction of which he has opted;
- (b) in civil or commercial cases, the Judge appointed by the Signatory Power whose law is applicable in each case;
- (c) where the provisions of paragraph (a) or (b) do not apply, the President shall be the Co-President agreed upon between the Co-Presidents or, in default of agreement, the Co-President chosen by lot.

SECTION 12.- Jurisdiction of the Joint Court

A) The Joint Court shall have jurisdiction throughout the Group to hear appeals and revise judgments from the District Courts in all cases provided for in this Resolution.

B) The Joint Court shall have original and final jurisdiction in:

- (a) all proceedings concerning registration of title to land or connected therewith,

- (b) all cases brought before it by mutual agreement between the parties,
- (c) proceedings between individuals and the Government of the New Hebrides or the Joint Administration or a local Authority arising out of the conduct of the Government, Administration or Authority not being criminal proceedings.

C) The presiding Judge shall be responsible for keeping order during all proceedings of the Joint Court and if any person creates a disturbance in the face of the Court the Judge may order his expulsion from the Court and his arrest and imprisonment for a period not exceeding 24 hours.

D) The Joint Court shall have jurisdiction in contempts of court whether committed in the face of the Court or otherwise, or of its members, including obstruction of its officers and interference with witnesses and may for any such offence order the immediate arrest of the offender and after due process sentence the offender to imprisonment for a term not exceeding 5 years or to a fine not exceeding 100,000 New Hebrides Francs or to both such fine and imprisonment.

If an offence which falls within the jurisdiction of another court is committed in the face of the Joint Court, the presiding Judge shall cause the offender to be arrested and draw up a record of the facts whereupon that record and the person arrested shall be remitted to that other court.

E) The Joint Court shall have jurisdiction to impose a fine not exceeding 10,000 New Hebrides Francs where an assessor or a witness shall without lawful excuse fail to appear.

SECTION 13.- Law applicable

A) In the case of appeals and revisions, the Joint Court shall determine the same in accordance with the law applicable in the District Court.



B) In the exercise of its original jurisdiction the law to be applied by the Joint Court shall be:

- 1) in proceedings referred to in Section 12(B)(a), the principles provided in the Anglo-French Protocol of 1914 and in this Resolution;
- 2) in proceedings referred to in Section 12(B)(b), the law of England or the law of France as agreed between the parties;
- 3) in proceedings referred to in Section 12(B)(c), the principles provided in this Resolution, and if there is no such provision and the action is based on a contract or any other act or thing entirely within the purview of the law of one or other of the two Signatory Powers to the said Protocol, the law under which the contract was concluded or the act or thing took place; otherwise:
  - a) in actions in which a non-native is a party, the law of the Signatory Power of which the non-native is a dependent;
  - b) in actions in which a native is a party, the law of one or other of the two Signatory Powers at the choice of the native;
  - c) in actions in which a British subject or optant and a native are parties, the law of England;
  - d) in actions in which a French citizen or optant and a native are parties, the law of France; and
  - e) in actions in which non-natives, being subjects or citizens of more than one of the two Signatory Powers to the Anglo-French Protocol of 1914, or such subjects or citizens and natives, are parties, the law of one or other of the Powers which shall be agreed by all the parties and if no agreement is reached, the law which the President of the Joint Court shall decide.

SECTION 14.- Procedure

In default of Joint Regulations made in that behalf the Co-Presidents of the Joint Court may, after consulting the Procurator-General, make Rules of Procedure for regulating all proceedings of whatsoever nature both in the Joint Court and in the District Court, which Rules of Procedure shall be published in the same manner as Joint Regulations.

PART III - GENERAL PROVISIONS

SECTION 15.- Assessors

The terms and conditions for the appointment of persons to serve as Assessors in the Joint Court and the District Courts shall be determined by the Council of Ministers which may also provide for conditions of service, allowances and disciplinary sanctions.

SECTION 16.- Fees and costs

The Council of Ministers shall prescribe the fees to be paid by the parties in all matters before the Joint Court or the District Court, together with the fees to be paid for the registration of title to land.

SECTION 17.- Representation

- A) Any party may be represented before the Joint Court and the District Court by an approved legal practitioner of his choice.
- B) Every legal practitioner shall be first approved by the Joint Court, which may suspend any such person from practice or withdraw his right of audience.
- C) Subject to the approval of the presiding Judge or Justice of the Peace any party may be represented ad hoc by a person other than an approved legal practitioner.

SECTION 18.- Official languages

The official language of the Joint Court and of the District Court shall be English or French.

SECTION 19.- Execution of judgments

- A) Within the Group the execution of judgments of the Joint Court and of the District Court shall be subject to the supervision of the Procurator-General provided by Rules of Procedure made under Section 14.
- B) The prerogative of mercy shall be exercised by the Resident Commissioners jointly.
- C) The remission of penalties and the grant of conditional release therefrom shall be exercised by the Chief Minister according to law.

PART IV - THE PUBLIC PROSECUTOR'S DEPARTMENT

SECTION 20.- Procurator-General and Public Prosecutor's Department

- A) There shall be a public prosecutor's department with general powers to institute and carry on public prosecutions before the Joint Court and District Courts, together with such other proceeds as are provided for in this Part.
- B) A Procurator-General responsible for directing the public prosecutor's department shall be appointed by the Council of Ministers on the nomination of the Resident Commissioners.
- C) The Procurator-General may delegate all or any of his powers to one or more substitutes subject to his authority as superior officer and to be appointed for that purpose by the Council of Ministers on the nomination of the Resident Commissioners made after consultation with him.
- D) The public prosecutor's department shall have such staff as are necessary.
- E) Substitutes and staff of the department shall be subject to the disciplinary authority of the Procurator-General, so, however, that no substitute or member of such staff may be dismissed other than by the Council of Ministers acting on the advice of the Resident Commissioners.

SECTION 21.- Functions

- A) The public prosecutor's department shall control and direct investigation into all criminal offences, and for this purpose, may give all necessary instructions to each Division of the New Hebrides Constabulary, cause further enquiries to be made and issue such warrants as may be required.
- B) The public prosecutor's department shall determine such offences as are to be prosecuted and shall conduct the same before the proper court of competent jurisdiction.
- C) On the hearing of every criminal prosecution the Procurator-General or one of his substitutes shall appear and be heard, and for this purpose may be represented by an officer of the New Hebrides Constabulary appointed in that behalf by him where the offence is punishable by a fine or by imprisonment for a term not exceeding one year or by both such fine and imprisonment.
- D) In criminal matters, the Procurator-General or one of his substitutes shall make submissions in all cases subject to revision by the Joint Court, for which purpose he may request the court to exercise its jurisdiction in revision in any case where the exercise of such jurisdiction by the Joint Court is not obligatory.
- E) The Procurator-General shall be responsible for the execution of all judgments of the Joint Court and of each District Court and for that purpose may give such instructions as he considers necessary and issue such warrants as may be required to any officer of the New Hebrides Constabulary or to any public officer especially appointed for the purpose.
- F) The Procurator-General shall supervise the execution of sentences of imprisonment and of fines and shall supervise prisons and other places of detention.
- G) The Procurator-General shall personally give his advice prior to any exercise of the prerogative of mercy or any remission of sentence, or any conditional release.

SECTION 22.- Private prosecutions

- 1) Notwithstanding the powers of the Public Prosecutor's Department provided in this Resolution, any party, who has been injured as a result of a criminal offence, may institute and carry on criminal proceedings in accordance

with Rules of Procedure made under Section 14.

2) The Public Prosecutor's Department may join in, but may not in any event stop, such proceedings.

PART V - TRANSITIONAL PROVISIONS

SECTION 23. The provisions of the Anglo-French Protocol of 6 August 1914 and of the Exchanges of Notes subsequent thereto in so far as they are not inconsistent with the provisions contained in this Resolution shall continue to apply. Such provisions and in particular those of Article 20 of the Protocol shall be read and interpreted conformably with the present Resolution.

SECTION 24.- Pending proceedings

1) All proceedings pending before the Native Court or the Court of First Instance on the coming into operation of this Resolution shall without further formality be transferred to the District Court having jurisdiction in any such matter.

2) All proceedings pending before the Joint Court on the date of coming into operation of this Resolution in matters which on that date cease to be within the jurisdiction of that Court shall continue and be determined by that Court as if this Resolution had not been enacted.

SECTION 25.- Short title and commencement

This Resolution may be cited as the Courts Resolution, 1978 and shall come into operation thirty days after its publication in the New Hebrides Gazette.