

Law No 35 of 1999 amending Law No 14 of 1970 on Judicial Power

General Considerations

- a. The judiciary is to be independent. A clear separation of judicial and executive functions must exist so that the judiciary stands alone and is free of government interference.
- b. According to Article 11(1) of Law No 14 of 1970 on Judicial Power, the organisational, administrative and financial affairs of the courts are to be controlled by their respective government departments.¹ These controls need to be brought into line with demands for change.
- c. Article 22 of Law No 14 of 1970 on Judicial Power, which deals with the jurisdiction of General Courts and Military Courts, must be changed.
- d. Given the above considerations, Law No 14 of 1970 on Judicial Power must be amended.

Relevant laws

1. Articles 5(1), 20(1), 24 and 25 of the 1945 Constitution
2. People's Deliberative Council Decree No X/MPR/1998 on State Policy on Reformation to Safeguard and Normalise National Life.
3. Law No 14 of 1970 on Judicial Power (State Gazette 1970 No 74, State Gazette Appendix No 2951)

Law Amending Law No. 14 of 1970 on Judicial Power

Article 1

Several provisions in Law No 14 of 1970 on Judicial Power (State Gazette 1970 No 74, State Gazette Appendix No 2951) are amended as follows:

Article 11 is amended as follows:

Article 11

- (1) The Supreme Court will control the organisational, administrative and financial affairs of the courts referred to in Article 10(1).²
- (2) The Supreme Court's control over the organisational, administrative and financial affairs [of these] will be further regulated in legislation which will take account of the special characteristics of these courts.

¹ The Ministry of Justice handled these affairs for the lower General and Administrative Courts, the Department of Religion for the Religious Courts and the Department of Defence and Security for the Military courts.

² The courts referred to in Article 10(1) of the Judicial Power Law are the General Courts (which have jurisdiction over most civil and criminal matters), the Religious Courts, the Military Courts and the Administrative Courts.

Article 11A is to be placed between Articles 11 and 12:

Article 11A

- (1) The organisational, administrative and financial affairs of the courts referred to in Article 11(1) will be gradually transferred, but completed within five years of the enactment of this law.
- (2) There is to be no time limit on the transfer of the religious courts' organisational, administrative and financial affairs.
- (3) The transfer of the religious courts' organisational, administrative and financial affairs will be regulated in a Presidential Decision.

Article 22 is to be amended as follows:

Article 22

A crime which can be heard in a General or Military Court will be heard in a General Court, unless the Chief Justice of the Supreme Court decides that it should be heard in a Military Court.

Article 40A is to be inserted between Articles 40 and 41:

Article 40A

Observing Article 40,³ all laws which implement Articles 11 and 22 [of the pre-amended Law on Judicial Power] remain in force until they are replaced.

³ Article 40 states that all existing laws dealing with judicial power which conflict with Law No 14 of 1970 on Judicial Power are invalid.

Elucidation to Law No 35 of 1999 amending Law No 14 of 1970 on Judicial Power

1. General

People's Deliberative Council Decree No X/MPR/1998 on State Policy on Reformation to Safeguard and Normalise National Life, particularly Chapter IV Part C on Law, stresses the need for legal reform to overcome the [current] legal crisis. A strict division between judicial and executive functions must be created by transferring the organisational, administrative and financial affairs of the courts from their respective departments to the Supreme Court.

This transfer must take place because it appears that the executive's administration of the courts has enabled power-holders to intervene in court processes, allowing collusion and negative practices to flourish. To create judicial independence, a number of laws dealing with the organisational, administrative and financial affairs of the courts must be amended. Law No 14 of 1970 must be the first.

The transfer will take place gradually over a five-year period.

To strengthen checks and balances between the courts and other institutions, attempts must be made to make court decisions transparent and available to the community. A Judge's Honour Council will be created to monitor judges' activities, provide recommendations on the recruitment, promotion and transfer of judges, and to compose a code of ethics for judges.

The amendments to Law No 14 of 1970 on Judicial Power cover:

- a. The transfer of the organisational, administrative and financial affairs of the courts from their respective departments to the Supreme Court;
- b. The transfer of authority from the Defence and Security Minister and the Justice Minister to the Chief Justice of the Supreme Court to determine which court should hear a case [that can be held in more than one court];
- c. Additions to the law:
 - i. The transfer is to take place gradually over five years, although there is no time period stipulated for the religious courts
 - ii. The laws dealing with Articles 11 and 22 remain valid [until new ones are made to implement the amendments]

2. Article by Article

Article 1

- (1) Sufficiently clear.
- (2) "Special characteristics of these courts" means:
 - (a) For example, the administration of military judges [by the Supreme Court] must accord with Law No 2 of 1988 on the Armed Forces and its provisions which regulate the Power of the Military War Court which decides cases at the first and final instances.

- (b) The religious court hears and decides cases on marriage, inheritance, wills, the transfer of property and donations.

Article 11A

- (1) Sufficiently clear
- (2) The organisational, administrative and financial affairs of the Religious Courts will remain under the authority of the Department of Religious Affairs until the transfer [to the Supreme Court] takes place.

Article 22

Essentially, the General Court’s power to hear cases involving military personnel, or police [who have alleged committed a crime with] civilians is an exception to the principle that people should be tried in courts which have specific jurisdiction over them.⁴

Because this is an exception, the general court’s authority [to hear a trial involving military personnel] is limited to a situation where there has been complicity to commit a crime [between military personnel and civilian(s)], as is regulated in Articles 55 and 56 of the Criminal Code.

This Law gives the Chief Justice of the Supreme Court the authority to choose the military court to hear a case which could be heard by either a military court or a general court. For example, if the crime is essentially military, but there is some civilian complicity, the case could be heard in a military court rather than a general court. If the case is heard in the military court, the bench should be made up of judges from the military court and the general court. In determining the composition of the bench, justice should be the main priority. During times of war where “exceptional” or “extraordinary” laws are in force, even if a crime is conducted by military personnel and a civilian(s), the member of the Army or police involved will be heard in the military court.

Article 40A

- (1) Sufficiently clear
- (2) Sufficiently clear

⁴ Generally, the military courts have exclusive jurisdiction over cases involving military personnel and the general courts over cases involving civilians.