

TRUST TERRITORY OF THE PACIFIC ISLANDS  
Office of the High Commissioner

February 14, 1952

EXECUTIVE ORDER NO. 26

Subj: Interim Regulation No. 10-51 - Judiciary of the Trust Territory of the Pacific Islands.

Pursuant to the authority vested in me as High Commissioner of the Trust Territory of the Pacific Islands, the following is declared to be the law of the Trust Territory effective immediately:

ARTICLE I - JUDICIAL POWER

Section 1. Courts. The judicial power of the Trust Territory of the Pacific Islands shall be vested in a High Court for the Territory, a District Court for each administration district, and a Community Court for each municipality, or for individual communities therein if the District Administrator of the district in which the municipality is situated so determines.

Section 2. Territorial jurisdiction. The jurisdiction of the High Court shall extend to the whole of the Trust Territory of the Pacific Islands. The jurisdiction of a District Court shall extend to the whole of the administration district for which it is constituted, or any part thereof. The jurisdiction of a Community Court shall extend to the whole of the municipality or community for which it is constituted, or any part thereof.

Section 3. Jurisdiction over persons and offenses. A court may exercise personal jurisdiction in civil cases only over persons residing or found in the Trust Territory and who have been duly summoned or persons who voluntarily appear. Criminal cases shall be prosecuted and tried only in a court having territorial jurisdiction over the place where the crime was committed, except as provided in Interim Regulation 2-50.

ARTICLE II - HIGH COURT

Section 21. Justices; appointments. There shall be a Chief Justice of the Trust Territory and one Associate Justice. The Secretary of the Interior will appoint these officers. The Chief Justice shall preside at any session of the High Court which he attends. Whenever the Chief Justice is unable to perform the duties of his office or the office is vacant, his powers and duties

shall devolve upon the Associate Justice until such disability is removed or another Chief Justice is appointed and takes office.

Section 22. Divisions. The High Court shall consist of a Trial Division and an Appellate Division. The Trial Division shall consist of the Chief Justice and the Associate Justice, except that sessions of the Trial Division may be held by either judge alone. The Appellate Division shall consist of three judges assigned by the Chief Justice from the panel of temporary judges designated by the Secretary of the Interior pursuant to Section 23, two of whom shall constitute a quorum, provided that either the Chief Justice or the Associate Justice may also sit as a member of the three-judge Appellate Division, in a case which he has not heard as a judge of the Trial Division. The concurrence of two judges shall be necessary to a determination of any appeal by the Appellate Division of the High Court, but a single judge may make all necessary orders concerning any appeal prior to the hearing and determination thereof.

Section 23. Temporary Judges. The Secretary of the Interior shall from time to time designate at least three temporary judges, learned in the law, who shall be qualified to sit in the Appellate Division of the High Court during such period of time as the Secretary may designate.

Section 24. Original jurisdiction. The Trial Division of the High Court shall have original jurisdiction to try all causes, civil and criminal, including probate, admiralty and maritime matters and the adjudication of title to land or any interest therein.

Section 25. Appellate jurisdiction and review. The Appellate Division of the High Court shall have jurisdiction to review on appeal the decisions of the Trial Division of the High Court;

- (a) in all cases tried originally in the High Court;
- (b) in all cases decided by the High Court on appeal from a District Court involving the laws of the United States or the Bill of Rights of the Trust Territory; and
- (c) in all cases decided by the High Court on review of a District or Community Court decision under Section 82, in which the High Court has reversed or modified the decision so as to affect the substantial rights of the appellant.

The Trial Division of the High Court shall have jurisdiction to review on appeal the decisions of the District Courts in all cases and shall also have jurisdiction to review on the record as provided by Section 82 final decisions of the District Courts and the Community Courts in which no appeal is taken.

Section 26. Special judges for murder cases. The High Commissioner shall from time to time appoint for definite specified terms two or more special judges of the High Court for each administration district to sit in the Trial Division of the Court in the trial of murder cases. When a murder case is assigned for trial the judge of the High Court assigned to preside at the trial shall assign two of the special judges appointed for the district in which the trial is to take place to sit with him in the trial thereof. The special judges shall participate with the presiding judge in deciding, by majority vote, all questions of fact and the finding and sentence but the presiding judge alone shall decide all questions of law involved in the trial and determination of the case.

Section 27. Assessors. A judge presiding in the Trial Division of the High Court may select one or more assessors to sit with him at the trial of any case to advise him in regard to the local law and custom which may be involved but not to participate in the determination of the case.

Section 28. Sessions. Sessions of the Appellate Division of the High Court shall be held at Truk and at such other places and at such times as the Chief Justice may determine by rule or order from time to time. Sessions of the Trial Division shall be held, if practicable, four times in each year in each administration district pursuant to rules or orders promulgated by the Chief Justice from time to time.

Section 29. Court of record; seal. The High Court shall be a court of record and shall have a seal, which shall be kept in the custody of the Clerk of Courts at Truk and a duplicate original of which shall be kept in the custody of the Clerk of Courts for each other district.

ARTICLE III - DISTRICT COURTS

Section 31. Judges; appointment; tenure; salary. The District Court for each administration district shall consist of a presiding judge and may include one or more associate judges, all of whom shall be appointed by the High Commissioner for definite specified terms, subject to removal by the Trial Division of the High Court for cause after hearing. When the presiding judge of a District Court is not otherwise an officer or employee of the government of the Trust Territory he shall receive a salary to be fixed by the High Commissioner, which salary shall not be diminished during his term of office. The High Commissioner may appoint a special judge of the High Court appointed for a district pursuant to Section 26 to serve also as presiding or associate judge of the District Court for the district.

Section 32. Assignment of associate judges. If associate judges have been appointed for a District Court one or more of them shall be assigned by the presiding judge of the District Court from time to time to sit in the court for the hearing and determination of particular cases or proceedings pursuant to the rules of procedure prescribed for the court by the Chief Justice of the Trust Territory.

Section 33. Jurisdiction. Each District Court shall have original jurisdiction, concurrently with the Trial Division of the High Court, in all civil cases where the amount claimed or value of the property involved does not exceed \$1,000 except admiralty and maritime matters and the adjudication of title to land or any interest therein (other than the right to immediate possession), and in all criminal cases involving offenses against the laws of the Trust Territory including generally recognized local customs where the maximum punishment which may be imposed does not exceed a fine of \$1,000 or imprisonment for one year or both. Each District Court shall have jurisdiction to review on appeal the decisions of the Community Courts of the district in all cases, civil and criminal.

Section 34. Sessions. Each District Court shall hold its sessions from time to time at the headquarters of the district or elsewhere therein as its business and the public interests may require and as the rules of procedure prescribed for it by the Chief Justice of the Trust Territory may direct.

Section 35. Record to be filed with Clerk of Courts. The presiding judge of the District Court shall promptly make, or cause to be made, and file with the Clerk of Courts for the district a record of each case heard and decided by the court.

ARTICLE IV - COMMUNITY COURTS

Section 41. Judges; appointment; tenure. The Community Court for each municipality or community therein shall consist of a presiding judge and may include one or more associate judges, all of whom shall be appointed by the District Administrator of the district in which the municipality is located, upon nominations made as provided in Section 42, for definite terms specified by him, subject to removal by the Trial Division of the High Court for cause after hearing. The Trial Division of the High Court may suspend a judge of a Community Court for cause.

Section 42. Nomination of judges. The presiding judge and associate judge or judges of a Community Court shall be nominated by popular vote or otherwise as the District Administrator of the district in which the municipality or community concerned is located deems most in accord with the wishes of the people of the municipality or community and consistent with the proper administration of justice. If nominations are to be made by popular vote, the offices of judge shall be voted for separately and not as incidental to any other office. The District Administrator shall give due consideration to all nominations made for the office of judge of a Community Court. He shall not be bound to appoint a person nominated if he is not satisfied that the nominee is properly qualified for the appointment, but he may in that case appoint a qualified person without further nomination. Wherever the District Administrator deems it practicable in view of the wishes of the people of the municipality or community and of the number of qualified persons available he shall appoint as judges of the Community Court only persons who hold no office in the executive branch of the government of the municipality or the Trust Territory.

Section 43. Assignment of judges. If associate judges have been appointed for a Community Court they may individually hold separate sessions of the court when assigned to do so by the presiding judge or two or more of them may sit together in sessions of the court when so assigned by the presiding judge. When two or more judges sit together in a Community Court the presiding judge, or, in his absence, the oldest judge present shall preside and the decision of the court shall be determined by majority vote of the judges present.

Section 44. Assignment of other judges. Any judge of a Community Court may be invited by the presiding judge of another Community Court to sit in that court either for the hearing and determination of a particular case or cases or for a specified period of time and, if willing and able to accept, the judge so invited shall have all the powers of an associate judge of that Community Court for the hearing and determination of the cases or during the period specified.

Section 45. Jurisdiction. Each Community Court shall have original jurisdiction, concurrently with the Trial Division of the High Court and the District Court, in all civil cases where the amount claimed or value of the property involved does not exceed \$100 except admiralty and maritime matters and the adjudication of title to land or any interest therein (other than the right to immediate possession), and in all criminal cases involving offenses against the laws of the Trust Territory including generally recognized local customs where the maximum punishment which may be imposed does not exceed a fine of \$100 or imprisonment for six months, or both.

Section 46. Record to be filed with Clerk of Courts. As promptly as possible after the final decision of a case in a Community Court the presiding judge shall make, or cause to be made, and send a record of the case, in the form prescribed by the rules of procedure adopted by the Chief Justice of the Trust Territory, to the Clerk of Courts for the district in which the court was held.

#### ARTICLE V - CONCURRENT JURISDICTION

Section 51. High Court. Although the Trial Division of the High Court has original jurisdiction concurrently with the District and Community Courts in all cases within the original jurisdiction of the latter courts it need not exercise that jurisdiction in any case which it determines can be promptly and properly tried in the District or Community Court having jurisdiction but may transfer the case to that court for trial and determination.

Section 52. District Court. The District Court shall exercise its original jurisdiction in all cases in which it has concurrent jurisdiction with a Community Court and which can be heard by it with convenience to the parties and witnesses and without undue delay.

Section 53. Transfer of cases. Any case brought in the Trial Division of the High Court or a District Court may be transferred by the court in which it has been brought to any other court which has jurisdiction to try it. Any case brought in a Community Court may be transferred by the court in which it has been brought to the Trial Division of the High Court or the District Court having jurisdiction with the consent of the court to which it is transferred. Any case

brought in a District Court or Community Court may be transferred to the Trial Division of the High Court by order of the Trial Division of the High Court. Upon receiving a certified copy of an order of the Trial Division of the High Court making such a transfer the District or Community Court shall take no further action on the merits of the case, but may make orders of a temporary nature which justice may require and which are not inconsistent with the orders of the Trial Division of the High Court.

#### ARTICLE VI - PUNISHMENTS

Section 61. Previous convictions. Before imposing sentence upon any person found guilty of a criminal offense, evidence of good or bad character, including any prior criminal record of the defendant, may be received and considered by the Court.

Section 62. Fines. Where an offense is made punishable by fine the court imposing the fine may give such directions as appear to be just with respect to the payment of the fine and in default of payment of the fine or any part thereof may order the defendant to be imprisoned for such period of time as the court may direct. However, no defendant shall be imprisoned for a longer period of time than that fixed by law for such offense.

Section 63. Orders as to residence. The High Court may, in lieu of or in addition to other lawful punishment, direct that a person found guilty of a criminal offense by it shall establish his place of residence within a specified area and maintain it there for a period of time not exceeding the maximum period of imprisonment which may be imposed for the offense.

Section 64. Restitution, compensation, or forfeiture. If a defendant is convicted of wrongful or unlawful sale, purchase, use or possession of any article, or of a wilful wrong causing damage to another, the Court may, in lieu of or in addition to other lawful punishment, order restitution or compensation to the owner or person damaged or the forfeiture of the article to the Trust Territory or a municipality thereof.

Section 65. Padlocking. If a defendant is convicted of an offense involving the sale of a harmful article or the operation of

an unlawful business, the court may, in lieu of or in addition to other lawful punishment, order that the place of sale or business be vacated or closed for a specified time.

Section 66. Suspension of sentence. The court which imposes a sentence upon a person convicted of a criminal offense may direct that the execution of the whole or any part of a sentence of imprisonment imposed by it shall be suspended on such terms as to good behavior and on such conditions as the court may think proper to impose. A subsequent conviction by a court for any offense shall have the effect of revoking the suspension of the execution of the previous sentence unless the court otherwise directs.

#### ARTICLE VII - ADMINISTRATION, RULES AND PROCEDURE

Section 70. Supervision; rules. The Chief Justice of the Trust Territory shall have administrative supervision over all the courts of the Trust Territory and their officers, and he may make rules not inconsistent with law, regulating the pleading, practice and procedure, in the several courts of the Trust Territory and the conduct of the business thereof.

Section 71. General powers of courts. Each court of the Trust Territory shall have power to issue all writs and other process, make rules and orders and do all acts, not inconsistent with law and with the rules made by the Chief Justice of the Trust Territory, as may be requisite for the due administration of justice, and, without limiting the generality of the foregoing powers, may grant bail, accept and forfeit security therefor, make orders for the attendance of witnesses with or without documents, make orders for the disposal of exhibits and punish contempt of court. The High Court may admit qualified persons as attorneys at law to practice in all the courts of the Trust Territory and may, for cause, discipline or disbar them.

Section 72. Acts outside territorial jurisdiction. Any action taken by a court or judge thereof outside the Trust Territory or the territorial jurisdiction of the court shall be valid and effective within the Trust Territory to the same extent as if taken within the Trust Territory and within the territorial jurisdiction of the court.



Section 73. Disqualification of judges. No judge shall hear or determine or join in hearing and determining an appeal from the decision of a case or issue decided by him. No judge shall sit in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to participate in the hearing and determination of the case.

Section 74. Clerks of Courts and other officers. The Chief Justice of the Trust Territory shall appoint a Clerk of Courts for each administration district who shall act as Clerk of the High Court when held in the district and of the District Court for the district. The Chief Justice may also appoint such other officers and employees of the courts as he deems necessary, and may remove any clerk or other officer or employee.

Section 75. Utilization of native inhabitants. Native inhabitants of the Trust Territory shall be employed as judges, officers and employees of the courts to the maximum extent consistent with proper administration.

Section 76. Compensation of officers and employees. The rates of compensation of special judges of the Trial Division of the High Court, associate judges of the District Courts, presiding and associate judges of the Community Courts, assessors, clerks of courts and other officers and employees of the courts shall be fixed by the Chief Justice of the Trust Territory, with the approval of the High Commissioner, and shall be paid out of funds appropriated or allotted to the Judiciary of the Trust Territory.

Section 77. Power to administer oaths. Each judge and clerk of courts shall have authority to administer oaths and affirmations and take acknowledgments of deeds, mortgages and other instruments, and exercise all other powers of a Notary Public.

Section 78. Sessions to be public. The proceedings of every court shall be public, except when otherwise ordered by the court for good cause.

Section 79. Rights of Defendants. Every defendant in a criminal case before a court of the Trust Territory shall be entitled:

(a) To have in advance of trial a copy of the charge upon which he is to be tried;

(b) To consult counsel before the trial and to have an attorney at law or other representative of his own choosing defend him at the trial;

(c) To apply to the court for further time to prepare his defense, which the court shall grant if it is satisfied that the defendant will otherwise be substantially prejudiced in his defense;

(d) To bring with him to the trial such material witnesses as he may desire or to have them summoned by the court at his request;

(e) To give evidence on his own behalf at his own request at the trial, although he may not be compelled to do so; and

(f) To have the proceedings interpreted for his benefit when he is unable to understand them otherwise.

#### ARTICLE VIII - APPEAL AND REVIEW

Section 81. Appeals. Any appeal authorized by law may be taken by filing a notice of appeal with the presiding judge of the court from which the appeal is taken, or with the Clerk of Courts for the district in which the court was held, within thirty days after the imposition of sentence or entry of the judgment, order or decree appealed from, or within such longer time as may be prescribed by rules of procedure adopted by the Chief Justice of the Trust Territory under Section 70. As promptly as possible after a notice of appeal from a Community Court is filed with the presiding judge thereof, he shall send the notice of appeal (with the record of the case if it has not already been forwarded) to the Clerk of Courts for the district in which the court was held. Promptly after a notice of appeal is filed in his office the Clerk of Courts shall give notice of it to the presiding judge of the court appealed to.

Section 82. Review. The Trial Division of the High Court shall review on the record every final decision of the District Courts and the Community Courts in which no appeal has been taken.

Section 83. Powers on appeal or review. The High Court on appeal or review and the District Court on appeal shall have power to affirm, modify, set aside, or reverse the judgment or order appealed from or

reviewed and to remand the case with such directions for a new trial or for the entry of judgment as may be just. The findings of fact of the Trial Division of the High Court in cases tried by it shall not be set aside by the Appellate Division of that court unless clearly erroneous, but in all other cases the appellate or reviewing court may review the facts as well as the law. In a criminal case the appellate or reviewing court may set aside the judgment of conviction and, if the defendant has appealed, or requested a new trial, order a new trial, or may commute, reduce (but not increase) or suspend the execution of, the sentence.

Section 84. Stay of execution. Pending review or the hearing and determination of an appeal, execution of the judgment, order or sentence of a court, except a sentence of death, will not be stayed unless either the appellate or reviewing court or the trial court orders a stay for cause shown and upon such terms as it may fix. No sentence of death shall be executed unless and until confirmed by the Secretary of the Interior.

Section 85. Decisions of Appellate Division of High Court final until action by Congress. Unless and until the Congress of the United States provides for an appeal to a court created by Act of Congress, the decisions of the Appellate Division of the High Court shall be final. When and if the Congress of the United States provides for an appeal from any decisions of the courts of the Trust Territory to a court created by Act of Congress, any right of appeal herein granted from such decisions to the Appellate Division of the High Court shall cease.

#### ARTICLE IX - GENERAL PROVISIONS

Section 91. Present appointments continued. The Secretary of the Interior has appointed the present Chief Justice and Associate Justice of the Trust Territory, respectively, to the positions of Chief Justice and Associate Justice established by this regulation. The present Justice Courts and Community Courts are respectively constituted District Courts and Community Courts under this regulation. The judges, officers, and employees of the present Justice Courts are appointed to similar positions on or with the respective District Courts, to serve until their successors are appointed and take office. The judges, officers, and employees of the present Community Courts are appointed

to similar positions on or with the respective Community Courts constituted by this section, to serve until their successors are appointed and take office. The present Clerks of Courts are appointed to similar positions under this regulation, to serve until their successors are appointed and take office.

Section 92. Laws and regulations amended. All laws and regulations of the Trust Territory in which appear the words "Associate Justice", "Court of Appeals", "District Court" or "Justice Court" are amended by striking out these phrases and inserting in lieu thereof the words "Judge", "Appellate Division of the High Court", "Trial Division of the High Court" or "District Court", respectively.

Section 93. Laws and regulations repealed. Chapter 11 of Interim Regulation No. 4-48, Interim Regulation No. 1-49, as amended by Executive Order No. 15, Section 2 of Proclamation No. 2, as contained in Executive Order No. 8, and all other laws and regulations inconsistent herewith are repealed.



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Elbert D. Thomas, High Commissioner  
of the  
Trust Territory of the Pacific Islands