



REGULATION NO. 2001/12

**ON THE ESTABLISHMENT OF A CODE OF MILITARY DISCIPLINE FOR THE
DEFENCE FORCE OF EAST TIMOR**

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, as reaffirmed in United Nations Security Council resolution 1338 (2001) of 31 January 2001,

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,

Recalling UNTAET Regulation No. 2001/1 of 31 January 2001 on the Establishment of a Defence Force for East Timor, as amended,

After consultation in the National Council,

For the purpose of establishing a Code of Military Discipline for the Defence Force of East Timor,

Promulgates the following:

Section 1
Definitions

Wherever used in the present Regulation, the following terms shall have the following meanings:

(a) “*accused*” means the *member of the Defence Force* subject to this *Code of Military Discipline* in respect of whom *disciplinary proceedings* are conducted into an alleged *breach of service discipline*.

(b) “*breach of service discipline*” means each of the acts or omissions described in Section 4 of the present Regulation, including the elements of each as provided in the annex attached hereto.

(c) “*charge*” means a formal accusation in the prescribed form, prepared at the direction of the *disciplinary officer*, that a *member of the Defence Force* subject to this *Code of Military Discipline* has committed a *breach of service discipline*.

(d) “*Chief of the Defence Force*” means the Chief of the Defence Force of East Timor as appointed by the Transitional Administrator pursuant to Section 4.2 of UNTAET Regulation No. 2001/1.

(e) “*Code of Military Discipline*” means this Code of Military Discipline for the Defence Force of East Timor as established in Section 2 of the present Regulation.

(f) “*Defence Force*” means the Defence Force of East Timor as established pursuant to UNTAET Regulation No. 2001/1, and includes both the Regular and Reserve components.

(g) “*disciplinary officer*” means:

(i) the *Chief of the Defence Force*; or

(ii) an officer not below the rank of Major appointed in writing by the *Chief of the Defence Force* to be a *disciplinary officer* for such period and with such provisos as the *Chief of the Defence Force* deems proper.

(h) “*disciplinary proceedings*” means the investigation into, hearing of and decision, under the present Regulation, on a allegation of a *breach of service discipline* and includes a review of any such decision.

(i) “*investigating officer*” means an officer, Chief Sergeant or Sergeant Major of the *Defence Force* tasked with the investigation of an alleged *breach of service discipline* pursuant to Section 6 of the present Regulation..

(j) “*member of the Defence Force*” means an officer or enlisted rank in either the Regular or Reserve component of the *Defence Force*.

Section 2 Code of Military Discipline

The Code of Military Discipline for the *Defence Force* of East Timor is hereby established.

Section 3 Application

3.1 All members of the Regular component of the *Defence Force* are subject to this *Code of Military Discipline* at all times.

3.2 Members of the Reserve component of the *Defence Force* are subject to this *Code of Military Discipline* whilst on duty.

Section 4
Breaches of Service Discipline

Any member of the *Defence Force* subject to this *Code of Military Discipline* who commits any of the following shall commit a *breach of service discipline* and shall be liable on conviction to any punishment laid down in Section 9 of the present Regulation:

- (a) the ill-treatment in any way of a *member of the Defence Force* of inferior rank or a subordinate;
- (b) the offering, in the course of duty, of inhumane or degrading treatment to another *member of the Defence Force*;
- (c) the causing or engaging in a disturbance or behavior in a disorderly manner;
- (d) behavior in an insubordinate manner;
- (e) whilst on watch or sentry duty either
 - (i) the engaging in misconduct, or
 - (ii) the failure to do one's duty;
- (f) disobedience of a lawful order;
- (g) disobedience of a lawful general order;
- (h) drunkenness if, owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances:
 - (i) unfitness to be entrusted with his duty,
 - (ii) unfitness to be entrusted with any duty which he was reasonably aware that he could be called upon to perform,
 - (iii) behavior in a disorderly manner, or
 - (iv) behavior in any manner likely to bring discredit on the *Defence Force*;
- (i) absence without leave;
- (j) avoidance of duty;
- (k) the making of a false statement concerning any official matter relating to the *Defence Force*;
- (l) without reasonable excuse, fighting with another *member of the Defence Force*;
- (m) the willful or by willful neglect damaging or causing damage to or the loss of any property of the *Defence Force*;
- (n) conduct prejudicial to good order or military discipline or behavior in a manner which brings discredit on the *Defence Force*.

Section 5

Arrest

5.1 Any *member of the Defence Force* subject to this *Code of Military Discipline* found committing a *breach of service discipline*, or reasonably suspected of committing or having committed a *breach of service discipline*, may be arrested in accordance with the provisions of this Section.

5.2 A *member of the Defence Force* subject to this *Code of Military Discipline* may be arrested by a *member of the Defence Force* of superior rank.

5.3 As soon as possible, but in any event no later than 24 hours following arrest, the arrested *member of the Defence Force* must be informed of the reasons for his arrest.

5.4 Within 24 hours of arrest, a *disciplinary officer* must be informed and must consider the necessity of retaining the *member of the Defence Force* in arrest, and the *disciplinary officer* shall order the release of the arrested *member of the Defence Force* unless he reasonably believes that if released:

(a) the arrested *member of the Defence Force* will absent himself or flee *disciplinary proceedings*;

(b) there is a risk that evidence will be lost, tainted or destroyed; or

(c) the arrested *member of the Defence Force* will commit further *breaches of service discipline* if released.

5.5 If, in accordance with Section 5.4 of the present Regulation, the *disciplinary officer* shall have determined the *member of the Defence Force* under arrest shall be further retained, the period of such further retention shall not exceed 24 hours, and the *disciplinary officer* must notify the local prosecutor of the arrest.

5.6 Before the expiry of the period of 48 hours of arrest, the *disciplinary officer* must have either released the *member of the Defence Force* under arrest from arrest under this Section or dealt with the allegation of the *breach of service discipline* upon which the arrest is based.

Section 6

Investigation of Breaches of Service Discipline

6.1 An allegation that a *member of the Defence Force* subject to this *Code of Military Discipline* has committed a breach of discipline shall be reported to a *disciplinary officer*, who shall investigate each such allegation and, in doing so, may task an *investigating officer*.

6.2 One or more *investigating officers* may investigate a *breach of service discipline*, which investigation shall be conducted in accordance with procedures for investigations of *breaches of service discipline* to be prescribed by the *Chief of the Defence Force* in subsequent administrative instructions.

6.3 If, as a result of an investigation conducted in accordance with this Section 6, the *disciplinary officer* determines to charge a *member of the Defence Force* with a *breach of service discipline*, *charges* shall be preferred in accordance with procedures for charging a

member of the Defence Force with a breach of service discipline to be prescribed by the *Chief of the Defence Force* in subsequent administrative instructions.

Section 7 Jurisdiction of Disciplinary Officers

7.1 The *Chief of the Defence Force*:

- (a) has jurisdiction over all *breaches of service discipline*, and
- (b) may impose any punishment provided in Section 9.1 of the present Regulation for such *breach of service discipline*.

7.2 A *disciplinary officer*:

- (a) has jurisdiction over all *breaches of service discipline* by *accused* junior in rank to the *disciplinary officer*, and
- (b) may impose any punishment provided in Section 9.1 of the present Regulation for such a *breach of service discipline*.

Section 8 Procedures at Disciplinary Hearings

8.1 *Disciplinary proceedings* are not judicial proceedings.

8.2 An *accused* shall be considered as innocent until proven guilty.

8.3 *Disciplinary officers* shall not be bound by technical rules of law or evidence and may inform themselves on any matter relevant to the alleged *breach of service discipline* as the *disciplinary officer* considers reasonably necessary for the purposes of the disciplinary hearing; provided, however,

- (a) the disciplinary hearing shall at all times be conducted in a manner that is fair and just; and
- (b) all evidence presented at a disciplinary hearing shall be given on oath or affirmation.

8.4 Disciplinary hearings shall be conducted in a manner that provides to the *accused* a full and fair opportunity to present a defence or explanation, and for that purpose and to that extent an *accused* is entitled:

- (a) to have the *charge* reduced into writing;
- (b) to have a copy of the *charge* before the disciplinary hearing commences;
- (c) to have the *charge* explained before the commencement of the disciplinary hearing by a superior officer or at the disciplinary hearing by the *disciplinary officer*;
- (d) to question witnesses called against the *accused* and persons whose statements are used against the *accused*;

- (e) to call and question witnesses on the *accused's* behalf;
- (f) to give evidence in his own defence, to provide an explanation of his actions and of mitigating factors and to have such evidence or explanation recorded in writing; and
- (g) to be represented by a *member of the Defence Force* of the *accused's* own choosing, provided that member is reasonably available and not connected with the investigation or conduct of the *disciplinary proceedings*.

8.5 A *disciplinary officer* may conclude that an *accused* is guilty of the *breach of service discipline* for which the *accused* has been subjected to a disciplinary hearing only if the *disciplinary officer*, considering all of the evidence available, is sure that each of the elements of the *breach of service discipline* as set forth in the annex attached hereto has been established.

8.6 The findings of the *disciplinary officer* in relation to each disciplinary hearing, and any punishment awarded in connection therewith, including determinations relating to defences, explanations and mitigating factors, shall be recorded in writing.

8.7 If, at any stage of the *disciplinary proceedings*, before any punishment has been imposed, the *disciplinary officer*, of his own motion or at the request of the *accused*, determines that in the interests of justice he should not deal with the *charge*, then he may transfer the matter to another *disciplinary officer*.

Section 9 Punishments for Breaches of Service Discipline

9.1 The *disciplinary officer*, taking into account such factors as may be relevant in determining the same, may impose the following punishments, listed in descending order of severity, on a *member of the Defence Force* found guilty of committing a *breach of service discipline*:

- (a) detention for a period not exceeding 7 days;
- (b) confinement to barracks for a period not exceeding 7 days;
- (c) a fine not exceeding the equivalent of 2 days' pay;
- (d) stoppage of leave for a period not exceeding 7 days;
- (e) extra duties for a period not exceeding 7 days; or
- (f) reprimand,

provided, however, that at any disciplinary hearing addressing more than one *breach of service discipline*,

- (g) the total period of detention may not exceed 28 days;
- (h) the total period of confinement to barracks may not exceed 28 days;
- (i) the total fine imposed may not exceed the equivalent of 8 days' pay;

- (j) the total stoppage of leave imposed may not exceed 28 days; and
- (k) the total number of extra duties imposed may not exceed 28 days;

and, provided further, that detention may only be imposed for a member below the rank of Sargento Ajudante.

9.2 The *Chief of the Defence Force* may, by subsequent administrative instruction, make rules in relation to punishments for *breaches of service discipline*.

Section 10 Review of Decisions in Disciplinary Proceedings

10.1 The *Chief of the Defence Force* may, of his own motion or at the request of any *member of the Defence Force* affected by the decision emanating from a disciplinary hearing, review such decision and, if he deems proper in the interests of justice to do so, may:

- (a) disallow any finding of guilt; or
- (b) impose any punishment less than that imposed by the decision

and, for the purposes of a review, may suspend the carrying out, or the continuance, of any punishment imposed.

10.2 The Transitional Administrator or his civilian delegate may, of his own motion or at the request of any *member of the Defence Force* affected by the decision emanating from a disciplinary hearing, review a decision of the *Chief of the Defence Force* in connection with such *disciplinary proceedings* and, if he deems proper in the interests of justice to do so, may:

- (a) disallow any finding of guilt; or
- (b) impose any punishment less than that imposed by the decision

and, for the purposes of a review, may suspend the carrying out, or the continuance, of any punishment imposed.

10.3 When a *member of the Defence Force* affected by a decision emanating from a disciplinary hearing requests a review under Sections 10.1 or 10.2 of the present Regulation,

- (a) the request must be made in writing within 30 days of the completion of the disciplinary hearing, and
- (b) further proceedings in connection with such *disciplinary proceedings* shall be stayed until such time as the requesting the review shall have been completed.

Section 11 Administrative Instructions

11.1 The Transitional Administrator may issue administrative instructions and other instruments prescribing all matters that are necessary or convenient to be prescribed in connection with the implementation of the present Regulation.

11.2 The *Chief of the Defence Force* may issue administrative instructions, not inconsistent with this Regulation, on matters relating but not limited to:

- (a) the appointment of *members of the Defence Force* as *disciplinary officers* to exercise disciplinary powers as set out in this Regulation;
- (b) the rank of *members of the Defence Force* that a *disciplinary officer* may exercise disciplinary power over in accordance with this *Code of Military Discipline*;
- (c) the procedures to be followed in the investigation of *breaches of service discipline*;
- (d) the procedure for charging an *accused* with a *breach of service discipline*;
- (e) the procedure for a disciplinary hearing into a *breach of service discipline*;
- (f) the number and combination of punishments that may be imposed by a *disciplinary officer*; and
- (g) the consequences of any punishment listed in Section 9 of the present Regulation.

Section 12 Reference of Matter to Civil Authorities

12.1 If, in the course of any *disciplinary proceedings*, the *disciplinary officer* shall form the opinion that a *member of the Defence Force* may have committed a civil criminal offence, the *disciplinary officer* shall as soon as practicable advise the appropriate civil law enforcement or judiciary authorities of that opinion and the reasons for it.

12.2 If, following notification to civil authorities pursuant to Section 12.1 of the present Regulation, the *disciplinary proceedings* should conclude prior to the conclusion of the civilian criminal justice process with respect to the alleged civil criminal offence, no decision of the *disciplinary proceedings* shall in any way constitute a defence or other impediment to such civilian criminal justice proceedings.

Section 13 Entry into Force

The present Regulation shall enter into force upon signature.

Sergio Vieira de Mello
Transitional Administrator

ANNEX TO UNTAET REGULATION 2001/12

ELEMENTS OF BREACHES OF SERVICE DISCIPLINE

The elements of each of the *breaches of service discipline* set out in Section 4 of the present Regulation are set forth below:

Section 4(a): ill-treatment in any way of a *member of the Defence Force* of inferior rank or a subordinate

Elements:

1. an act that amounted to ill-treatment; and
2. the act was committed by a superior rank on an inferior rank; and
3. the superior rank (*accused*) knew the victim was inferior in rank; and
4. the superior rank (*accused*) deliberately carried out the act; and
5. the superior rank (*accused*) knew that the act amounted to ill-treatment.

Section 4(b): offering, in the course of duty, inhumane or degrading treatment to another *member of the Defence Force*

Elements:

1. the *accused* was in the course of his duty; and
2. the *accused* EITHER
 - (i) deliberately threatened inhumane or degrading treatment, OR
 - (ii) carried out an inhumane or degrading actto another *member of the Defence Force*; and
3. the *accused* knew the victim was a *member of the Defence Force*.

Section 4(c): causing or engaging in a disturbance or behavior in a disorderly manner

Elements

1. the *accused* EITHER
 - (i) caused a disturbance, OR
 - (ii) became involved in a disturbance, OR
 - (iii) behaved in a disorderly manner; and
2. the *accused* acted in such a manner deliberately.

Section 4(d): behavior in an insubordinate manner

Elements

1. the actions OR words of the *accused* were insulting or disrespectful to superior rank; and
2. the actions OR words of the *accused* were used in the presence of the superior; and
3. the *accused* knew that the superior was his superior; and
4. the *accused* deliberately spoke or acted in such insulting or disrespectful manner.

Section 4(e): while on watch or sentry duty, either engaging in misconduct or the failure to do one's duty

Elements

1. the accused was on sentry duty OR on watch; and
2. the accused EITHER
 - (i) deliberately engaged in misconduct, OR
 - (ii) the accused failed to carry out a duty whether deliberately or by neglect.

Section 4(f): disobedience of a lawful order

Elements

1. an order was given to the *accused*; and
2. the order was lawful; and
3. the *accused* was aware of the order having been given to him; and
4. the *accused* deliberately or by neglect did not obey the order.

Section 4(g): disobedience of a lawful general order

Elements

1. a general (or written) order was given which applied to the *accused*; and
2. the order was lawful; and
3. the *accused* was aware of the order having been made and of it applying to him; and
4. the *accused* deliberately or by neglect did not obey the order.

Section 4(h): drunkenness

Elements

1. the *accused* knowingly took alcohol OR drugs; and
2. as a result thereof the *accused* EITHER
 - (a) was unfit to be entrusted with his duties, OR
 - (b) was unfit to be entrusted with any duty that he was reasonably aware he could be called upon to perform, OR
 - (c) behaved in a disorderly manner, OR
 - (d) behaved in a manner likely to bring discredit on the Defence Force.

Section 4(i): absence without leave

Elements

1. the *accused* was required to be at his place of duty; and
2. the *accused* was not at his place of duty; and
3. the *accused* later returned to his place of duty; and
4. the *accused* did not have a reasonable excuse for being away from his place of duty.

Section 4(j): avoidance of duty

Elements

1. the *accused* had a duty to perform; and
2. the *accused* was aware of that duty; and
3. the *accused* did not perform that duty; and
4. the *accused* did not perform the duty either deliberately or by neglect.

Section 4(k): making of a false statement concerning any official matter relating to the *Defence Force*

Elements

1. the *accused* made a statement about official *Defence Force* matters; and
2. the *statement* was false in a significant way; and
3. the *accused* knew that the statement was false at the time he made it.

Section 4(l): fighting with another *member of the Defence Force*

Elements

1. the *accused* was involved in a fight; and
2. the *accused's* involvement in the fight was deliberate; and
3. the fight was with another *member of the Defence Force*; and
4. the *accused* did not have a reasonable excuse for fighting.

Section 4(m): damaging or losing, or causing damage or loss of, property of the *Defence Force*

Elements

1. the *accused* lost OR damaged property of the *Defence Force*, and
2. that loss or damage resulted from EITHER
 - (i) the deliberate acts of the *accused*, OR
 - (ii) the willful neglect of the *accused*.

Section 4(n): conduct prejudicial to good order or military discipline or which discredits the *Defence Force*

Elements

1. an act or omission by the *accused*; and
2. such act or omission was EITHER
 - (i) likely to prejudice good order or military discipline, OR
 - (ii) caused discredit to the *Defence Force*; and
3. the *accused* was aware, at the time of such act or omission, that the same EITHER
 - (i) was likely to prejudice good order or military discipline, OR
 - (ii) would discredit the *Defence Force*.