

DEMOCRATIC REPUBLIC OF TIMOR-LESTE
MINISTRY OF INTERNAL ADMINISTRATION
NATIONAL DIRECTORATE OF THE TIMOR-LESTE POLICE

The
Honourable Minister of International Administration,
Democratic Republic of Timor-Leste

DATE: 23DEC2002

“Urgent
Having read the draft Regulation
carefully and attentively, I hereby
approve it, and recommend its
immediate implementation.

09-01-03

[Signed]
Rogério Lobato”

Subject: Transmission of the Regulation on discipline and other terms and
 conditions for the Timor-Leste Police Service.

I enclose herewith the above-referenced Regulation for your consideration
and approval.

With my best regards.

NATIONAL DIRECTOR OF THE TIMOR-LESTE POLICE

[Signed]
Paulo de Fátima Martins
Chief Superintendent

Cc: 1. Peter Miller
 UNPOL Commissioner

 2. Bill Johnson
 A/D Commissioner ETPS Dev.

**U N M I S E T****United Nations Mission of Support in East Timor****ON DISCIPLINE AND OTHER TERMS AND CONDITIONS FOR THE TIMOR
LESTE POLICE SERVICE (TLPS)****Section 1****Definitions**

“Allowance” means any compensation payable to an officer:

- (a) by reason of the officer having special skills and qualifications; and
- (b) which are being used by the officer in the performance of his/her duties.

"Appeal Board" means a person/s authorised to hear appeals of the decision of any Tribunal constituted under this directive.

"Investigating Officer" means a person who is authorised or appointed to investigate a complaint of misconduct made against a police officer.

“Minister” means the member of Government with responsibility for the police service.

"Offender" means a police officer against whom an allegation of misconduct has been alleged or who has been found guilty of misconduct.

“Office of Professional Standards” or “OPS” is the unit of the TLPS that is authorized to investigate and prosecute misconduct by members of the TLPS.

“Police Cadet” or “Cadet” carries the same meaning as stated in Section 1 of UNTAET Regulation 2001/22

“Police Commissioner” or “Commissioner” under this directive, refers to the person appointed to head the United Nations Police (UN POL) in consultation with the person appointed to head the Timor Leste Police Service (TLPS) until such time as the handover of the TLPS by former to the latter is completed in January 2004.

“Police officer” means a member of the Timor Leste Police Service.

“Publish” means to give information or opinion to a person either or in writing and including the use of telegraphic or electronic means; or causing to be shown or delivered in order that it may be heard, read or seen by any person.

“Remuneration” means both the salary and allowances paid to an officer.

“Recognized association” means the association recognized in law as the Collective Bargaining body representing police officers.

“Salary” means the amount of money assigned to a post or rank in the service.

“Standing Orders” means the written orders given by the Commissioner to police officers by any police officer for the efficient management of the police service.

"Tribunal" means a person authorised by the Commissioner to adjudicate allegations of misconduct

"Transfer," means the assignment of an officer from one police station, branch, district, section or unit to another.

Section 2

Supply of uniforms, equipment, etc

2.1 The TLPS shall be a uniformed police service, and in special circumstances the Commissioner may require police officers to wear uniform when off duty. The Commissioner may authorize police officers to wear plainclothes in the performance of certain stated duties.

2.2 The description of all items of uniform and the orders of dress to be worn by members of the service and by Police Cadets shall be set out in a directive. No badges, emblems or decorations other than those officially approved shall be worn with the uniform.

2.3 Subject to any other regulation or directive, the Commissioner may direct the issue of equipment, articles of bedding and other items to police officers in the performance of their duties.

2.4 The Commissioner shall cause records to be kept of all items, articles, or property issued to the police service and shall ensure their security, storage and accountability.

2.5 All items of government furniture in police stations, buildings, offices and quarters shall be maintained in good order and condition, and the responsibility for such shall rest with the senior officer in charge of the station, building or office or the occupant of the quarters.

2.6 When any item of furniture needs repair or replacement the appropriate ministry shall be notified to effect the necessary repairs or replacement.

2.7 A record shall be kept in a register of all found property that is lodged with the police service, in such a manner as the Commissioner may direct.

2.8 The Minister is responsible for making the items stated in this section available to the police service.

Section 3

Modes of leaving service

3.1 A police officer may leave the service by:

- (a) dismissal or removal in consequence of disciplinary proceedings, failing to fulfill the probationary requirements, unsatisfactory performance or inefficiency;
- (b) compulsory retirement;
- (c) voluntary retirement;
- (d) retirement for medical reasons;
- (e) resignation or abandonment;
- (f) the expiration or termination of an appointment for a specified period;
- (g) abolition of office;
- (h) any other mode provided for in a subsequent regulation or directive.

3.2 A police officer who wishes to resign from the service under subsection 3.1(e) shall give written notice to the Commissioner of his/her intention at least one month before the date on which the resignation is to take effect, but the Commissioner may waive the requirement of notice in whole or in part if he/she thinks fit. The Commissioner may accept a withdrawal of resignation if tendered in writing at any time before the date it takes effect.

3.3 A police officer who is absent from duty without leave or reasonable excuse for a period of 30 consecutive days may be declared by the Commissioner in writing to have abandoned his/her office under subsection 3.1(e) and the person thereupon ceases to be a police officer.

3.4 The procedures for all other modes stated in 3.1 will be given in a directive.

Section 4 **Acting Appointment**

In the case of any acting appointment the police officer shall be deemed to hold the rank of the post in which he/she is acting for the duration of the acting appointment.

Section 5 **Promotion**

The Commissioner shall promote police officers up to the rank of inspector using procedures and criteria established in an administrative instruction. Promotion from the rank of Superintendent up to the rank of TLPS Commissioner will be in accordance with a procedure approved by the Minister.

Section 6 **Personnel records**

6.1 There shall be one personnel file for each police officer, which shall be under the control of the Commissioner.

6.2 The personnel file shall contain -

- (a) a physical description of the officer including a photograph;
- (b) the name of the officer and his/her place and date of birth;
- (c) particulars of marriage (if any) and children (if any);
- (d) a record of previous service in government employment (if any);
- (e) a record of the results of examinations at which the officer was a candidate;
- (f) a record of service in the police service including particulars of all promotions, transfers, removals, injuries received, commendations, awards, punishments other than cautions, and the date of ceasing to be a member of the service with the reason, cause or manner thereof;
- (g) Any other details relevant to his/her functions as a police officer.

6.3 The officer in charge of the district in which the officer is serving shall keep a district inset sheet with comments (if any). On transfer of the police officer from that district or removal from the service, the inset sheet shall be sent directly to the Commissioner for placing in the personnel file of the officer or former officer, and in the case of a transfer a new inset sheet opened in the new district.

6.4 A police officer may request in writing to be shown his/her personnel file at a time convenient to the administration, but not later than one month after the request is made.

6.5 A police officer shall be informed in writing of any adverse reports or of any commendations that are made in his/her personnel file and has the right to challenge the contents of any such adverse report except when such report is the final result of disciplinary proceedings.

6.6 Where a challenge is made under 6.5 the Commissioner shall order an investigation into the matter and if satisfied that the adverse report is unjustified he shall cause it to be deleted from the personnel file of the officer making the challenge.

6.7 The personnel record of an officer who leaves the service shall be kept for such time as the Commissioner directs and may thereafter be destroyed in accordance with established rules.

Section 7

Certificate of service

7.1 A police officer who leaves the service shall on request be given a certificate of service stating his office and setting out the period of service and the reason, cause or manner for his leaving the service.

7.2 The Commissioner may append to any such certificate given under 7.1 any recommendation with respect to the officer's efficiency and conduct that he feels is justified in the circumstances.

7.3 A member who is dismissed from the TLPS is disqualified from being given a certificate of service.

Section 8

Service Orders

8.1 In addition to rules, directives and other orders that may be given to the police service by virtue of regulations or directives, written internal orders may be issued to Police Officers as follows:

- (a) Standing Orders by the Commissioner, or on the Commissioner's behalf by the UNPOL Deputy Commissioner for TLPS Development or a Sub Commissioner in the TLPS;
- (b) Orders issued by the officer in charge of a particular Section, district, unit, or branch in the service to the officers under his/her command.

8.2 In the case of conflict of orders the Commissioner's Standing Orders shall take precedence over all other internal orders. Regulations, directives and other orders issued by the Transitional Administrator shall take precedence over all internal orders.

8.3 The Commissioner shall bring all orders, regulations and other official publications affecting police officers to their attention by making them available in all police stations and other police offices concerned.

Section 9

Service Medal and Commendation

9.1 The Minister may award a medal to be known as a "Good Conduct Medal" to any police officer who has completed 10 years meritorious service in the police service, in such form and subject to such conditions as the Minister may direct.

9.2 The Commissioner may award a Letter of Commendation to any police officer that in his/her opinion shows courage, honesty, commitment, or otherwise performs excellently in the course of any duty, subject to such conditions as the Commissioner may set.

Section 10 **Allowances**

10.1 Where it is established that an officer possesses special skills and qualifications or is otherwise qualified to be paid an allowance, the Commissioner may determine, subject to such conditions as may be set, that the officer shall be paid, from the date specified in the determination, an allowance in the prescribed amount to compensate the officer, and the officer shall accordingly be paid the allowance.

10.2 The payment of the allowance will cease on the date when the officer is no longer performing the type of duties for which the allowance is applicable.

10.3 Whenever an officer who is being paid an allowance is promoted or transferred, the Commissioner shall review the payment of the allowance and in accordance with the rules shall:

- (a) continue to pay the allowance applicable to the rank or position the officer now holds; or
- (b) revoke the payment if he determines that the payment of such allowance is no longer applicable to the rank or position the officer now holds.

Section 11 **Collective Bargaining**

11.1 No more than one Registered Organisation shall be recognized by the Minister at any one time to represent police officers under the Collective Bargaining Process under any applicable law. The representative organisation will be the one that is proven to have a majority of police officers as its official members. The minister shall set up procedures for objectively determining the organization that has a majority of police officers as its members.

11.2 A police officer who is a member of any registered organisation in accordance with UNTAET Regulation 2002/5 must sign and submit his or her resignation to that organization before becoming a member of any other such organization. Failure to do so will invalidate the new membership, but shall not be deemed to be a disciplinary offence.

11.3 Until an organisation is registered in accordance with UNTAET Regulation 2002/05 and recognized by the Minister at subsection 11.1 above, the Commissioner shall appoint a committee comprising of representatives of all ranks elected by the members of the particular ranks to serve as the representative organisation.

11.4 The committee stated at subsection 11.3 shall comprise of one officer from each rank from Superintendent to Commissioner and no more than two officers from each of the other ranks in the police service. The committee members shall elect an executive comprising of a Chairman, Vice Chairman, and a Secretary/Treasurer.

11.5 Once an organisation has been registered and recognised in accordance with applicable law the committee named in subsections 11.3 and 11.4 shall be automatically dissolved and the Commissioner shall cause all of its records to be handed over to the registered and recognized organisation.

11.6 The Minister may withdraw recognition from a police representative organization whose registration is cancelled under Section 22 of UNTAET Regulation 2002/5, or no longer has a majority of police officers as its members.

Section 12 **General Code of Conduct**

12.1 Every police officer is expected to acquaint himself/herself with the written rules or orders relating to the performance of his/her duties as a police officer, and is expected to obey all such lawful rules or orders. He/she shall observe all posted rules or requirements relating to individual duty posts. While in the performance of official duties, officers should address each other in such manner as the Commissioner may direct.

12.2 A police officer shall carry out all lawful orders, and shall at all times punctually and promptly perform all appointed duties and attend to all matters within the scope of his office. Failure to obey a lawful order may, depending on the nature of the order and the refusal, be considered as insubordination.

12.3 Written or oral orders from a superior to a subordinate shall be in clear and understandable language, civil and professional in tone, and issued in accordance with service requirements. An officer who is in doubt regarding the nature or detail of any duty shall immediately seek clarification from the supervisor issuing the duty.

12.4 An officer who is given an order, which conflicts with any previous order, rule or instruction, shall bring this fact to the person issuing the countermanding order. If still so directed the latter order shall be obeyed, unless such order constitutes a criminal offence, in which case it shall be disobeyed. The supervisor issuing any countermanding order shall be responsible for any action taken in pursuance of that order.

12.5 A police officer shall conduct himself/herself at all times in a manner that does not bring discredit to the reputation of the police service.

12.6 In the discharge of his/her duties a police officer shall:

- (a) be courteous and polite both to members of the service and to members of the public;
- (b) avoid public expression of a political or sectarian opinion and adopt strict impartiality in all matters;

- (c) render all necessary assistance to members of the public who are making a complaint or seeking information

12.7 A police officer shall not be away from duty without leave or reasonable excuse. Illness, medical emergency or any other unusual circumstances that causes an officer to be absent from duty must be conveyed to his/her station, unit or section as soon as possible.

12.8 A police officer shall not leave the country without informing the Commissioner in writing or, in cases of emergency he/she shall inform a superior officer who shall report as soon as practicable in writing to the Commissioner.

12.9 A police officer is disqualified from:

- (a) membership in any representative parliament, and of any municipal or district representative council;
- (b) being an election official in any national or local elections, or acting for or on behalf of any candidate in any such election;

12.10 a police officer whether on duty, or on leave away from the service shall not within Timor Leste or otherwise:

- (a) publish any information or expressions of opinion on matters of national or international political controversy;
- (b) make private copies of or disclose to a member of the public or the press, documents, papers, files, electronic data, or any other information which may have come into the possession of the officer in an official capacity;
- (c) allow himself/herself to be interviewed on questions of public policy, internal security or police practices, or matters affecting the defense or military resources of Timor Leste or of any other country;

unless authorised to do so.

12.11 Subsection 12.10 above shall not apply:

- (a) where the information or opinion is published in the course of a lecture or address, the subject matter of which is approved by the Commissioner and is made or given at any place in the bona-fide pursuit of the professional activities of the police officer or;
- (b) Where the information or opinion is expressed in an article or other literary contribution, the subject matter of which is approved by the Commissioner, and is in a journal or other periodical or document prepared in pursuit of the profession mentioned above.

12.12 Except for any representations made by the recognized organisation, any official communication about matters affecting the police service that a police officer wishes to address to any government official or government department shall be forwarded through the Commissioner

12.13 A police officer shall not institute or take part in any procession, demonstration or public meeting other than religious and social functions without the written permission of the Commissioner. Nothing in this section shall affect the right of any police officer to participate

actively in any meeting called, or to sign any petition prepared by his/her recognised organisation on matters affecting the service, or to take part in any other activity of the organisation referred to in Section 11.

12.14 A police officer's whole time shall be at the disposal of the police service. Accordingly, a police officer shall not at any time without the prior approval of the Commissioner engage in:

- (a) any activity, occupation or undertaking which might in any way tend to impair his/her usefulness and efficiency as a police officer; conflict with the interests of the police service; or is inconsistent with his/her position as a police officer;
- (b) any trade or any professional, commercial, agricultural or industrial undertaking, or undertake private work for pay.

12.15 A police officer who is engaged in any of the activities described in 12.14:

- (a) shall within sixty days of the coming into operation of this directive, apply for approval from the Commissioner to continue to engage in such activities;
- (b) may continue to engage in such activities until notified of the Commissioner's non-approval of the application.

12.16 Notwithstanding the granting of approval under Subsection 12.15, the Commissioner may at any time after notice to the officer and after holding an inquiry, prohibit the officer from engaging in any activity stated in subsection above, if the Commissioner is of the opinion that the activity tends to impair the person's usefulness as a police officer, or conflicts with the interests of the service, or is inconsistent with the person's position as a police officer.

12.17 A police officer referred to in 12.14, 12.15 and 12.16 may appeal a decision of the Commissioner to the Minister. The decision of the Minister is final.

12.18 Unless he/she is specifically authorized to do so by this directive or any other law in force, no police officer is entitled to keep or use for his/her private benefit, any article or thing whatsoever, which has been supplied to him/her at public expense, but he shall hold every such article or thing at the order and disposal of the government.

12.19 A police officer shall answer all questions put to him/her during any official internal inquiry about his/her conduct or any matter relating to the performance of any duty, subject to the application of any applicable lawful privilege.

12.20 Officers shall immediately report to the Commissioner in writing if they have been arrested or summoned in court for any criminal offence.

12.21 Officers shall submit all reports for which they are responsible in a timely manner and must ensure that any report or statement made by them is accurate and complete. All comments, statements, opinions or conclusions contained in a report shall be supported by factual evidence to the extent possible. Officers shall not cause or support any alteration to a report or document after submission. Contrary or elaborating comments, if any, shall be appended to the initial report.

12.22 District Commanders and other supervisors are responsible for the maintenance of discipline within their areas of control and are to take action in accordance with established

disciplinary procedures.

12.23 Personnel are expected to adhere to the spirit and intent of all regulations, rules, and operational and administrative directives, and to interpret them with maturity, common sense and professionalism at all times. Ignorance of the rules will not be considered as a defence. Good and sufficient cause or reasonable excuses are among the defences that can be used in response to a disciplinary charge.

12.24 A police officer who without reasonable excuse does an act which:

- (a) Amounts to failure to perform in a proper manner any duty imposed on him/her as a police officer; or
- (b) Contravenes any of the provisions of Regulation 2001/22; or
- (c) Commits any of the prohibited acts contained in this directive; or
- (d) Contravenes any lawful order, written rule, or directive relating to the ETPS; or
Is otherwise prejudicial to the efficient conduct of the service or tends to bring discredit on the reputation of the service, whether on or off duty;
- (e) amounts to being an accessory to a disciplinary offence by aiding, abetting, or counseling the perpetrator before or after the commission of a disciplinary offence;

Commits a disciplinary offence, which may according to the circumstances be treated as either a minor or serious offence and dealt with in accordance with this directive, notwithstanding that the same act may also result in criminal prosecution.

12.25 Without prejudice to the generality of this section, the acts stated in Sections 13 and 14 below are all offences against discipline.

Section 13 **Minor disciplinary Offences**

13.1 Malingering

Feigns or exaggerates any sickness or injury with intent to evade duty

13.2 Absence from duty without leave or being leave for duty

Without reasonable excuse is absent without leave from duty or is late for parade, court, or any other duty

13.3 Uncleanliness

Without reasonable excuse, is improperly dressed or is dirty or untidy in his/her person, clothing or accoutrements while on duty or in uniform in a public place.

13.4 Improperly dressed, attired or groomed

When on or being paraded for duty is not dressed, attired or groomed in accordance with department standards

13.5 Damage to clothing or other articles supplied

- (a) willfully or by carelessness causes any waste, loss or damage to any article of clothing or accoutrements, or to any book, document, record or other property of the service, issued

- to, used by or entrusted to him/her for the execution of duty
- (b) fails to report any loss or damage stated above, however caused

13.6 Disobedience to orders

Without good and sufficient cause disobeys, omits or neglects to carry out any lawful order, written or otherwise

13.7 Using any property or facilities of the service

Without prior written consent of the Commissioner, uses any property or facilities of the service for some purpose not connected with his/her official duties

13.8 Neglect of duty

- (a) without good and sufficient cause, omits to promptly and diligently attend to carry out anything that is his/her duty so to do;
- (b) idles or gossips while on duty;
- (c) fails to work his/her beat in accordance with orders, or leaves the beat, point or other place of duty without due permission or sufficient cause;
- (d) having left his/her place of duty with due permission or sufficient cause, fails to return promptly;
- (e) Chews or smokes tobacco in public view or in such a manner that may have an adverse effect on the professional image of the service;
- (f) conceals himself/herself while on duty except for law enforcement purposes;
- (g) Without consent of the Commissioner, conducts private business or enterprise while on duty;
- (h) by carelessness or by neglect permits a prisoner to escape;
- (i) when knowing where a suspect or accused is to be found, fails to report the same, or to make efforts to bring that person to justice;
- (j) fails to report any matter that it is his/her duty to report;
- (k) fails to report anything that he/she knows concerning a crime, or fails to disclose any evidence or information that he/she can give against a suspect of a crime;
- (l) omits to make any necessary entry in any official document or book;
- (m) without good and sufficient cause, while on sick leave, neglects or omits to carry out any lawful instructions of a police medical officer, or does any act or conduct that is calculated to retard his/her return to duty

13.9 Drinking or soliciting intoxicating liquor

While on duty:

- (a) drinks or receives from any other person any intoxicating liquor;
- (b) demands or endeavours to persuade any other person to give him/her, or to purchase or obtain for him/her any intoxicating liquor;
- (c) enters any premises used for selling or distributing liquor, or enters such premises in uniform while off duty;

except with good and sufficient cause, such as execution of law enforcement duties or with consent of a senior officer or other authority, express or implied.

13.10 Indebtedness

Incurring or defaulting on debts to an extent that may affect his/her usefulness, performance or impartiality as a police officer

13.11 Improper use or care of firearm or ammunition

Using or handling any firearm or ammunition in a manner that is contrary to the standards set out in the service.

Section 14
Serious disciplinary Offences

14.1 Conviction for a criminal offence

Being found guilty by a court of law of committing a criminal offence.

14.2 Discreditable conduct

Acting in a disorderly manner or in a manner prejudicial to discipline or reasonably likely to bring the discredit on the reputation of the service

14.3 Insubordinate conduct

Insubordination includes but is not limited to:

- (a) refusing to provide or disclose information or documents requested during the course of an internal inquiry that it is his/her duty to provide or disclose;
- (b) insubordinate words, act, or manner to a superior officer;
- (c) withholding any report or allegation against any police officer

14.4 Oppressive conduct

- (a) uses oppressive or tyrannical conduct towards a police officer junior in rank or service;
- (b) uses obscene, abusive, or insulting language or gestures to another police officer;
- (c) willfully or negligently makes any false complaint or statement against another police officer;
- (d) assaults another police officer

14.5 Drunkenness or Drug taking

- (a) While on duty or when required for duty is unfit through the taking of drink;
- (b) Being in possession of or using any illegal drug;
- (c) While on duty or when required for duty is unfit through the taking of any prescription drugs for non-medical reasons, or intentionally misusing a prescription drug.

14.6 Unlawful or unnecessary exercise of authority

- (a) without reasonable excuse makes any unlawful arrest, or conducts any unlawful search of any person;
- (b) uses any unnecessary violence to any person with whom he/she may be brought into contact in the execution of his/her duty;
- (c) is unnecessarily uncivil to a member of the public, or uses any obscene, abusive or insulting language or gesture to a member of the public;
- (d) harasses, intimidates or retaliates against any person who makes a report about his/her conduct.

14.7 Falsehood or deceit

- (a) knowingly makes or signs any false statement in any official document, book or register;
- (b) willfully or negligently makes any false, misleading or inaccurate statement, with intent to obstruct or hide the truth;

- (c) without good and sufficient cause destroys or mutilate any official document or record, or alters or erases any entry therein;
- (d) makes, signs or circulates any petition or statement, in respect of any matter concerning the service that he/she knows is partly or wholly false, or he/she has reckless regard as to the truth of the petition or statement

14.8 Breach of confidence

- (a) divulges any matter that it is his/her duty to keep secret;
- (b) gives notice, directly or indirectly, to any person against whom any warrant, summons or other legal process that has been or is about to be issued, with intent to prevent the lawful execution of such thing;
- (c) without proper authority, communicates to the public press or any unauthorised person about any matter connected to the service;
- (d) except as required by his/her duties or authorised by his/her supervisor, removes or copies any record or document of the service;
- (e) without proper authority or permission shows to any person outside the service any book, record or document that is the property of the service;
- (f) signs or circulates any petition, document or statement on any matter concerning the service except through the proper channel of correspondence to the Commissioner, or in accordance with any other approved method;

14.9 Corrupt practice

- (a) directly or indirectly receives any bribe;
- (b) fails to account for or to make a prompt and true return of any money or property received in his/her official capacity;
- (c) without the consent of the commissioner, directly or indirectly solicits or receives any gratuity or present, or anything which might compromise his/her impartiality;
- (d) places himself/herself under any pecuniary obligation to any person who holds a licence, permit or other thing where the police may have to report on or give evidence for the granting or renewal of same;
- (e) without the consent of the Commissioner agrees to be under a pecuniary or other obligation to any person in a manner that might reasonably affect the proper performance of his/her duties;
- (f) Improperly uses his/her position as a police officer for private gain or advantage.

14.10 Sexual Harassment

This is defined as

- (a) Conduct which is unwelcome and of a sexual nature that either directly or indirectly affects a person's work environment in any fashion.
- (b) A situation in which the condition of employment is based on compliance with or subject to such unwelcome sexual conduct
- (c) Any conduct of a sexual nature, which in and of itself creates a hostile or intimidating work environment.

14.11 Trafficking and prostitution of Women and Children

- (a) Prostitution means asking / accepting any kind of sexual service in return for some material gain;
- (b) Trafficking of women and children means the recruitment, transportation or movement of

women and children:

- I. Within or across borders;
- II. For financial or other gain;
- III. In which material deception, coercion, force, direct or indirect threats, abuse of authority, fraud, or fraudulent non disclosure is used;
- IV. For the purpose of placing somebody forcibly and against their will in exploitative, abusive or servile situation, such as forced prostitution.

14.12 Discriminatory Conduct

Acting in a Discriminatory manner against any person on grounds such as sex, sexual orientation, race, ethnic background, language, national or social origin, creed, religion, political or other opinion, association with a national minority, property, birth or all other status.

14.13 Sleeping on duty

Being found sleeping while on duty without permission or reasonable excuse.

Section 15

Powers and duties in disciplinary matters

15.1 A member of the public shall have the right to report the misconduct of any officer by making a oral or written complaint to any police station. The officer receiving the complaint shall record it in the official station register. Oral complaints shall be reduced to writing and read over to the complainant in a language he/she understands. The receiving officer shall sign and give a receipt of complaint to the person making the complaint. A complaint of misconduct by an officer against another officer shall be recorded in the official station register of the place where the misconduct is reported.

15.2 The Office of Professional Standards is hereby established. Officers assigned to the Office of Professional Standards of whatever rank, are authorised to investigate allegations of misconduct, and with respect to any ongoing inquiry, may interview any person, seize internal documents, and request reports and explanations from any officer, except for the Commissioner or Sub-Commissioner.

15.3 Subject to this directive, every officer of the rank of Senior Agent and above can be authorised to investigate any allegation of misconduct and when investigating such allegation shall have the same powers as an officer assigned to the Office of Professional Standards. An investigating officer must be senior in rank or service to the officer against whom the allegation is made.

15.4 Where it is alleged that an officer has committed a criminal offence, then before proceeding with a disciplinary investigation, it shall be ascertained from the Public Prosecutor whether he/she will prosecute the officer; if the Prosecutor states that criminal prosecution will be undertaken, then no disciplinary action will be commenced relating to the same offence. Nothing in this subsection will prevent the pursuing of a disciplinary charge for any non-criminal offence arising out of the alleged criminal offence, but such disciplinary charge will only take place after the criminal charge has been determined.

15.5 Evidence collected as part of any disciplinary inquiry can only be used in internal disciplinary proceedings involving the person charged, except where the offence is also a criminal offence, in which case it shall be made available to the Public Prosecutor.

15.6 The deadlines given in Sections 17 to 23 below for the submission of documents and completion of assignments shall be adhered to unless compelling circumstances do not permit. Failure by any person to adhere to the given deadlines for the completion of tasks or submission of documents in the disciplinary process will not affect the validity of the charge, but can lead to disciplinary action against the defaulter.

15.7 An officer who is charged with a serious offence shall not be permitted to take leave, other than sick leave or maternity leave, until the matter is determined.

15.8 All files and documents relating to any completed disciplinary matter shall be forwarded to the Office of Professional Standards for storing. This includes files of matters in which it has been decided that no further action would be taken. The office of Professional Standards will keep a database of all such records. Nothing will prevent the office from where the file was forwarded from keeping a copy in its records.

15.9 A penalty issued under Section 25 below for a disciplinary offence shall be placed in the convicted officer's personnel records, provided however that no appeal has been lodged or the appeal against the penalty has been dismissed under Subsection 22.3 below.

15.10 In all disciplinary matters the Standard of Proof shall be on a balance of Probabilities. The Rules of Evidence stated in Sections 34.1 and 2, 35.3 and 6, 36.1 to 36.5, and 37.1 and 2 of UNTAET Regulation 2000/30 shall apply, insofar as they are compatible with the procedures in this directive, or have not been specifically waived. Rules relating to the proof of documents are waived.

15.11 The disciplinary procedures stated in this directive shall not apply to the Commissioner or Sub-Commissioner, but the disciplinary offences shall apply. Until a procedure is established in any other law, the Minister shall establish procedures for dealing with any disciplinary complaint made against the Commissioner or Sub-Commissioner.

15.12 An officer cannot be tried or punished for any offence for which he/she has been previously found guilty or not guilty by a properly appointed tribunal.

Section 16

Composition of Tribunals and Appeal Boards

16.1 The Commissioner shall appoint a standing tribunal consisting of three officers to hear any serious offence.

16.2 The Commissioner shall appoint a tribunal in each district consisting of one officer to hear any minor offence.

16.3 The Commissioner shall appoint an officer of not less than the rank of Sub-Commissioner to act as a Standing Appeal Board for minor offences.

16.4 A Tribunal member, or Appeal Board member under Subsection 16.3, who is hearing a disciplinary offence shall be of a rank at least equivalent to the offender. The Commissioner may appoint another officer to replace a member of a Standing Tribunal or Appeal Board member who in any particular case does not fulfil the requirements of this subsection.

16.5 The Commissioner may at any time revoke the appointment of a tribunal member without cause.

16.6 If at any time prior to the hearing of a disciplinary matter the Commissioner receives a written request by the offender, and is satisfied that there is a conflict of interest or likelihood of bias, he shall:

- (a) In the case of a one-person Tribunal appoint another officer to hear the case;
- (b) In the case of a three-person Tribunal replace one of the members with another officer.

16.7 The request stated in Subsection 16.6 can only be made once for a particular disciplinary matter, even if the matter involves more than one offence arising from the same complaint.

16.8 Until some other law establishes an Appeal Board for serious offences, the Minister will establish an ad-hoc body of three persons for hearing appeals in such cases. It shall consist of the following:

- (a) An officer from the office of the Inspector-General selected by the Head of that department;
- (b) Two senior UN Police officers selected by the Commissioner.

16.9 Where before the hearing of a serious offence or appeal is completed and any member of a three-person tribunal, or an Appeal Board member under Subsection 16.7 is granted sick leave for an indefinite period, the Tribunal or Board may continue to hear the matter and come to a conclusion in the absence of the member, provided that the tribunal shall not be constituted of less than two members.

16.10 Where before the hearing of a minor offence is completed the Tribunal or Appeal Board member hearing the matter is granted sick leave for an indefinite period, the Commissioner may appoint another officer to rehear the case.

Section 17

Procedure for Minor Offences

17.1 Where an allegation of a minor offence is made against an officer, the person receiving the complaint shall forward it to the Officer in Charge of Discipline in the district. If the offender is based in another district the complaint shall be forwarded to the district where the offender is stationed where it will be dealt with by the Officer in Charge of Discipline in that district.

17.2 On receiving the complaint stated in subsection 17.1 the officer in charge of discipline shall immediately investigate or appoint another officer to investigate the complaint.

17.3 The investigating officer shall with proper dispatch:

- (a) Inform the alleged offender of the complaint in writing in sufficient detail so that he/she understands it/them and request a written explanation from the offender;
- (b) Investigate the complaint and collect all necessary evidence;
- (c) Interview persons, including the offender if necessary, and record relevant statements,. Interviews must always be conducted in a manner that ensures fairness and objectivity and that interviewees are not subjected to degrading, insulting, or inhumane treatment;
- (d) Take possession of any exhibit relating to the offence.

17.4 If after investigation the Investigating Officer decides that no offence has been committed or that there is insufficient evidence, he/she shall make a record of such finding and submit the finding to the Officer in Charge of the district.

17.5 If the Investigating Officer decides that an offence has been committed he/she shall immediately submit the charge/s to the Tribunal for hearing.

17.6 The Investigating Officer shall submit a copy of the charge to the offender together with copies of all documents, or shall show the offender any other type of physical evidence that will be tendered in evidence at the hearing, including any written explanation the offender might have given under subsection 18.3. Failure to provide the copies or show the other type of evidence shall result in the evidence being barred from use at the hearing.

17.7 All Tribunal hearings under this section shall be determined after consideration of the written record and without calling witnesses or taking oral evidence.

17.8 On receiving the charge/s the Tribunal shall request the offender and complainant to submit all documents or other evidence relating to the case to him/her within 3 days. The offender may rely on any representations made at the investigation stage and may submit additional representations to the Tribunal. The Tribunal can request written clarification of any document or evidence tendered if considered necessary to reach a decision.

17.9 If the Investigating Officer fails to submit the requested documents within the period stated in Subsection 17.8, the Tribunal will dismiss the charge/s. If the offender fails to submit the requested documents in Subsection 17.8 the Tribunal will proceed to hear the matter without them.

17.10 The Tribunal shall examine the evidence presented and can decide that:

- (a) The case is not proven and dismiss the charges;
- (b) The case has been proven, and impose any one of the penalties in Section 25.1 (a) on the offender;
- (c) The offence is a serious one; stop the hearing and refer the matter to the Office of Professional Standards to be dealt with as such.

17.11 The Tribunal shall within 14 days, inform the offender in writing of the decision made and shall serve him/her any document/s related to the decision. The Tribunal shall transmit the file relating to the matter and a copy of the decision to the Office of Professional Standards for filing.

Section 18

Procedure for Serious Offences

18.1 When an allegation of a serious offence is made against an officer, the officer receiving the complaint must make a record of it in the official station register and forward it to the Officer in Charge of the district where the complaint is made. The Officer in Charge of the district shall forward the complaint to the Office of Professional Standards for investigation.

18.2 On receiving a complaint in Subsection 18.1 the Office of Professional Standards shall with proper dispatch:

- (a) Inform the alleged offender in writing of the allegation/s in sufficient detail so that he/she understands it/them and request a written explanation from the offender;
- (b) Investigate the complaint and collect all necessary evidence;
- (c) Interview persons, including the offender if necessary, and record relevant statements. Interviews must always be conducted in a manner that ensures fairness and objectivity and that interviewees are not subjected to degrading, insulting, or inhumane treatment;
- (d) Take possession of any exhibit relating to the offence.

18.3 If during the investigation, the Office of Professional Standards decides that the allegation is false or that there is insufficient evidence to lay a disciplinary charge, the Officer in Charge will make a recommendation to the authorised senior officer to close the case file. If the receiving officer agrees with the recommendation he/she shall cause the alleged offender to be informed of the decision in writing. If the receiving officer believes that a disciplinary charge should be laid, he/she may instruct the Office of Professional Standards to charge the offender for the offence.

18.4 If the Office of Professional Standards decides that there is sufficient evidence to lay a disciplinary charge, or is instructed to do so under subsection 18.3, the Office shall:

- (a) inform the offender in writing of the charge/s; and
- (b) at the same time give him/her copies of all documents, including any written explanation the offender might have given under Subsection 18.2 (a); or
- (c) show the offender any other type of physical evidence that will be tendered at the hearing.

18.5 Failure to provide the copies or show the other type of evidence stated in 18.4 shall result in the evidence being barred by the tribunal.

18.6 The Office of Professional Standards shall forward a copy of the charge/s to the tribunal for hearing and shall act as complainant in the matter.

18.7 Within 14 days of receiving the complaint, the Tribunal shall inform the officer in writing of:

- (a) The offence/s for which he/she is charged;
- (b) His or her right to retain a lawyer to represent him or her before the tribunal;
- (c) The right to plead guilty or not guilty in writing to the charge;
- (d) The right to request a documentary or an oral hearing, such request being made within 3 days of receiving the notice from the tribunal.

18.8 If the offender states his guilt in writing, the Tribunal shall, unless there is evidence that the plea is coerced, accept the plea and submit its findings to the Commissioner as if hearing of the matter has been completed.

Section 19

Conduct of documentary hearing in serious offences

19.1 If the offender requests a documentary hearing under Section 18.7, the Tribunal shall by written notice request the complainant and offender to submit all documents or other evidence relating to the case to him/her within 3 days. The offender may rely on any representations made at the investigation stage or may submit additional representations to the Tribunal. The Tribunal can seek clarification on any documents or evidence submitted, if considered necessary to come to a conclusion.

19.2 If the Investigating Officer fails to submit the requested documents within the period stated in Subsection 19.1, the Tribunal will dismiss the charge/s. If the offender fails to submit the requested documents in Subsection 19.1 the Tribunal will proceed to hear the matter without them.

19.3 The Tribunal shall examine the documents and evidence presented and can decide:

- (a) That the case is not proved and dismiss the charge/s;
- (b) That the case is proven, and impose any one of the penalties in Section 26.

Section 20

Conduct of Oral hearing in serious offences

20.1 If after receiving the notice stated in Section 18.7, the alleged offender requests an oral hearing, or fails to respond to the notice, the Tribunal shall inform the offender and the complainant in writing of the date, time and place where the matter will be heard.

20.2 The offender shall be allowed to state the names and addresses of any witness to relevant facts that he/she desires to give evidence on his/her behalf at the hearing.

21.3 A witness in a disciplinary matter who is a police officer shall be ordered to attend the hearing of the matter, and any witness who is not a police officer shall be given due notice of the date and time of the hearing and that his/her attendance is desired.

20.4 At the hearing the offender will be asked to enter a plea of guilty or not guilty to the charge/s. If the offender pleads guilty the Tribunal shall accept the plea and submit its findings to the Commissioner as if hearing of the matter has been completed.

20.5 If the offender pleads not guilty, the hearing will proceed in the following manner:

- (a) The offender shall have the right to be represented by a lawyer or by another officer;
- (b) The offender shall have the right to call witnesses on his/her behalf;
- (c) The prosecution will present its case, followed by the case for the defence;

- (d) The case for the prosecution shall be presented by an officer from the Office of Professional Standards;
- (e) The offender can present his/her case personally or through the person representing him/her;
- (f) Each party shall have the right to examine his/her own witnesses and cross-examine witnesses called by the other side;
- (g) A record shall be kept of the hearing, using the best means available to obtain an accurate record of the proceedings;
- (h) Everyone involved in the proceedings must apply mutual respect and professionalism. Badgering of witnesses or abuse of anyone will not be permitted;
- (i) The Tribunal may postpone a hearing from time to time if there are good reasons for doing so.

20.6 At the close of the prosecution's case the offender can submit to the tribunal that there is no case to answer, at which stage the Tribunal can:

- (a) Accept the submission and dismiss the charge; or
- (b) Reject the submission and call on the defence to present its case.

20.7 Nothing in subsection 20.6 will prevent the defence from holding that a no-case submission under Subsection 20.6 (a) represents its defence to the charge, and offer no other evidence. In such circumstances the Tribunal can place whatever weight to the defence that the facts dictate.

20.8 Failure to mount a defence to the charge/s before a Tribunal does not relieve the complainant of the duty to prove the case, except where the offender pleads guilty to the charge/s.

20.9 At the completion of the case of both parties the Tribunal shall either immediately or within 7 days, give both parties written notice of the decision. At least two members of the Tribunal must agree for the offender to be found guilty of the charges. If the verdict is guilty, the Tribunal, in addition to giving written notice to the parties must submit its findings to the Commissioner.

20.10 The Tribunal file must be retained in case the offender lodges an appeal. At the expiration of the period for lodging an appeal and if no appeal is lodged, the Tribunal must transmit the file or copies of it to the Office of Professional Standards for filing.

20.11 If the offender does not attend the hearing under Subsection 20.4 without reasonable excuse, the hearing may be proceeded with and concluded in his/her absence, provided however that the complainant attends.

20.12 Where the offender is absent without reasonable excuse and it becomes impossible to comply with the procedures stated in Subsections 20.4, 20.5 and 20.6, the Tribunal can modify it to suit the particular circumstances

20.13 If the Tribunal receives good reason for the absence by or on behalf of the offender, the hearing shall be postponed to a later date.

20.14 The absence of the offender from the hearing under this section shall not in itself constitute

a disciplinary offence

20.15 If the complainant is absent without reasonable excuse the Tribunal shall postpone the hearing to a later date and inform the Office of Professional Standards and the offender of the postponement date. If the complainant is absent for a second time without reasonable excuse the Tribunal shall dismiss the charge against the offender.

20.16 When the Commissioner receives a finding of guilt from a Tribunal under Subsection 20.9, he/she shall immediately inform the offender in writing that he/she must within 48 hours of receiving notice submit any points in mitigation that he/she wishes.

20.17 At the expiration of the period stated in Subsection 20.16, the Commissioner shall within 7 days, study the findings of the Tribunal and any points in mitigation submitted by the offender. The Commissioner shall then impose one of the penalties stated in Section 25.2 on the offender and shall inform the offender in writing of the penalty imposed and the reason/s for it.

Section 21 **Appeal in disciplinary Offences**

If an offender is found guilty of any disciplinary offence by a Tribunal and wishes to lodge an appeal against the decision, he/she must within 7 days of being notified submit a written appeal on the prescribed form to the relevant Appeal Board under Section 16 above, against the finding of guilt or the penalty imposed, or both.

Section 22 **Procedure for hearing an appeal**

22.1 On receipt of a Notice of Appeal, the relevant Board shall inform the offender and the complainant in writing of the date, time, and place of hearing of the appeal. The date of the hearing should not be later than 30 days from the date of receipt of the Notice of Appeal, but if circumstances do not permit then as soon as possible thereafter.

22.2 During the hearing stated in Subsection 22.1 the offender may be represented by another officer and the complainant by an officer from the Office of Professional Standards. The procedure shall be as follows:

- (a) The appeal will not be a rehearing of the case and must be based on the evidence presented at the Tribunal hearing;
- (b) The Board will call on the offender to make an oral presentation of his/her case, after which the representative of the other side will be called upon to respond;
- (c) The board can ask questions and seek comment from the parties to clarify any issue raised in the hearing;
- (d) The hearing can be adjourned from time to time if circumstances so warrant.

22.3 After hearing the submissions as stated in Subsections 22.2 the Board shall either:

- (a) allow the appeal and revoke the penalty;
- (b) dismiss the appeal and confirm or vary the penalty

22.5 The Board shall provide the offender and the Commissioner with a written result the appeal and reason/s for the decision. All such appeals will be final.

Section 23 **Reassignment or Suspension**

23.1 The Commissioner may temporarily reassign an officer accused of an offence from his place of duty during an investigation or hearing of any disciplinary offence, if he believes it is necessary to prevent an escalation of the incident or to protect the impartiality or completeness of the investigation or hearing. Nothing in this section shall be used or interpreted as a penalty under Section 25.

23.2 Where an officer has been or is about to be:

- (a) charged with a serious disciplinary offence;
- (b) indicted for a criminal offence

and the Commissioner is of the opinion that the public interest or reputé of the service requires it, he/she may order the offender in writing to cease to report for duty and to cease forthwith to perform the functions of a police officer, until further notice from the Commissioner.

23.3 The effective date of the suspension stated in subsection 23.2 shall be the date when the Commissioner signs the suspension notice.

23.4 An officer who is suspended under subsection 23.2 shall continue to receive such portion of his pay as the Commissioner may determine after considering the personal situation of the officer, but shall not be less than one-half.

23.5 If no charges are laid or if the officer is exonerated of the charge/s for which he/she was suspended, the officer shall receive the full amount of pay withheld during the period of suspension.

23.6 If the officer is convicted of the charges for which he/she was suspended, then in addition to any penalty that may be imposed by a tribunal or court, the withheld amount will not be returned to the officer.

Section 24 **Other Disciplinary Offences**

24.1 A police officer who is acquitted of a criminal offence shall not be disciplined in respect of that offence, but nothing in this subsection shall prevent him/her from being disciplined in respect of any other charge arising out of his/her conduct in the matter, unless such charge is substantially the same as that in respect of which he/she had been acquitted.

24.2 Conviction in court for a criminal offence shall be considered as being found guilty of a serious offence. On receiving an official court record the Commissioner shall impose a penalty under Section 25 on the offender. The offender can appeal the decision in accordance with Section 21 of this directive.

24.3 If the officer is sentenced to imprisonment for a criminal offence without the option of paying a fine, and where no appeal is pending, the Commissioner on receiving an official court record shall impose the penalty stated under Section 25 (2) (a). The offender shall not receive any salary or allowance from the date of the conviction. There shall be no appeal of this decision.

24.4 Not all minor disciplinary breaches need to be followed by formal disciplinary action. For any minor breach where the offender states his default in writing, the Investigating Officer can decide that the offender be given a warning and a note made in the official station register. Such warning shall not be considered or treated as a disciplinary conviction.

24.5 The Commissioner may in any minor case decide that disciplinary charges will not be pursued and may take some other action other than disciplinary action under this directive.

24.6 If the Commissioner believes that the justice of the case demands it he/she can remove any disciplinary conviction from the file of an officer:

- (a) After three years in the case of a serious offence;
- (b) After one year in the case of a minor offence

Section 25

Penalties

25.1 A Tribunal shall impose no more than two of the following penalties on an officer found guilty of committing a minor disciplinary offence:

- (a) Fine not to exceed 4 days base pay; or
- (b) Removal from position held; or
- (c) Transfer to another section, unit or district; or
- (d) Prevention of special assignment/s; or
- (e) Written reprimand

25.2 Except as otherwise provided at Section 24.2 and 24.3, the Commissioner shall impose one of the following penalties on an officer found guilty of committing a serious disciplinary offence:

- (a) Dismissal from the service; or
- (b) Reduction/demotion in rank; or
- (c) Fine not to exceed 10 days base pay; or
- (d) Suspension from duty for a period not exceeding one month and on not less than half pay, and the withheld portion of pay shall not be returned to the offender; or
- (e) No more than two of the penalties stated in Subsection 25.1 (b) to (e).

25.3 Where a fine is imposed on an offender, the amount of such fine shall be deducted in a manner specified at the time the penalty is imposed.

Section 26

Termination for inefficiency

26.1 Notwithstanding the provisions of this directive, the Commissioner may terminate the appointment of an officer of grounds of inefficiency or unsatisfactory performance on the basis of

a number of adverse reports.

26.2 Where the Commissioner wishes to terminate the appointment of an officer under Subsection 26.1, he/she shall inform the officer in writing of the intention and give the reason/s thereof.

26.3 Within 30 days of receiving notice that termination of his/her appointment is being considered, the officer can make representations on his own behalf in writing to the Commissioner concerning the intended termination.

26.4 The Commissioner shall consider the representations made by the officer under Subsection 26.3 and may cause an investigation to be carried out into any aspect of the representations.

26.5 After considering the representation made by the officer and any facts discovered the Commissioner can make a decision to:

- (a) terminate the appointment of the officer; or
- (b) drop the consideration of termination; or
- (c) defer any decision for a period of three months to monitor any improvement in the performance of the officer, after which he can decide as at (a) or (b) in this subsection.

Section 27

Strike conditions and limits

The Minister shall by notification in the Official Gazette set out the conditions and limits to be observed by police officers while on strike in the pursuance of an industrial relations action or claim, if the security and safety of the public so demands or to protect public equipment and facilities, and may stipulate the maximum percentage of officers who can be on strike at any one time.