



UNTAET/REG/2000/16
6 June 2000

REGULATION NO. 2000/16

**ON THE ORGANIZATION OF THE PUBLIC PROSECUTION
SERVICE IN 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,

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,

Taking into account Section 24 of UNTAET Regulation No. 2000/11 of 6 March 2000 on the Organization of Courts in East Timor,

After consultation in the National Consultative Council,

For the purpose of regulating and functioning of the Public Prosecution Service in East Timor,

Promulgates the following:

I. General

Section 1

Public Prosecution Service

1.1 The Public Prosecution Service in East Timor shall be composed of the public prosecution offices and public prosecutors as provided for under the present regulation.

1.2 The Public Prosecution Service shall be a constituent organ of the civil administration of East Timor and its relationship to the civil administration shall be established by the present regulation.

1.3 The present regulation shall establish the jurisdiction and powers that shall be vested

in public prosecution offices and public prosecutors.

1.4 The Public Prosecution Service shall cooperate, as appropriate, with the other organs and officials of the civil administration in East Timor, giving due regard to the protection of the rights of all persons under the law and in observance of the internationally recognized human rights standards as established by UNTAET Regulation No. 1999/1.

Section 2 Funding and Technical Assistance

The necessary funding and technical assistance for the Public Prosecution Service shall be provided by the Transitional Administrator.

Section 3 Prosecutorial Authority

3.1 Any public prosecutor shall be authorized to discharge the following functions:

- (a) to bring a criminal action before a competent court under the applicable law in East Timor as provided in Sections 2 and 3 of UNTAET Regulation No. 1999/1;
- (b) to exercise criminal investigative functions including, but not limited to, direction and supervision of the criminal investigations of the Police or any other competent body; and,
- (c) any other functions, as provided by law.

3.2 For the purposes of the present regulation, “public prosecutors” means any official who is duly authorized by the present regulation or any other UNTAET regulation to exercise the prosecutorial authority as defined in the present regulation.

Section 4 Impartiality of the Public Prosecutors

4.1 Public prosecutors shall perform their functions as established in the present regulation impartially and in accordance with the present regulation and the applicable laws in East Timor.

4.2 In exercising the prosecutorial authority as defined in Section 3 of the present regulation, public prosecutors shall act without bias and prejudice and in accordance with their impartial assessment of the facts and their understanding of the applicable law in East Timor, without improper influence, direct and indirect, from any source, whether within or outside the civil administration of East Timor.

II. Structure

Section 5 Public Prosecution Offices

5.1 The following public prosecution offices shall be established in East Timor:

- (a) Office of the General Prosecutor, corresponding to the Court of Appeal, with its seat in Dili. Within said Office of the General Prosecutor, there shall be two departments, headed respectively by the Deputy General Prosecutor for Serious Crimes and Deputy General Prosecutor for Ordinary Crimes.
- (b) Offices of the District Prosecutors, corresponding to the territorial jurisdictions of the District Courts established under Section 7 of UNTAET Regulation No. 2000/11 as amended by Section 2 of UNTAET Regulation No. 2000/14, and any subsequent UNTAET Regulation.

5.2 Each of the offices listed in Section 5.1 of the present regulation shall consist of designated public prosecutors, as appropriate.

5.3 Each of the offices listed in Section 5.1 of the present regulation shall be provided with general staff, as appropriate.

Section 6

Appointment and Conditions of Service of Public Prosecutors

6.1 The appointments of public prosecutors, both East Timorese and international, as defined in Section 5 of the present regulation shall be made by the Transitional Administrator in accordance with UNTAET Regulation No. 1999/3 or any subsequent regulation. Notwithstanding any provision to the contrary in any regulation, the appointment East Timorese public prosecutors shall be for an initial probationary period of no less than two (2) but no more than three (3) years.

6.2 During the initial probationary period of appointment, the Transitional Judicial Service Commission established under UNTAET Regulation No. 1999/3 shall solely monitor the performance of duties of every public prosecutor. The Commission shall monitor the professional conduct of each such official, including the integrity and dedication of such official, attendance, ability to cope with the workload, independence and impartiality in the discharge of the functions of the office, any interference with, or influence upon, the substantive decisions of the judges and panels of judges of the courts of law established pursuant to UNTAET Regulation No. 2000/11, UNTAET Regulation No. 2000/14, UNTAET Regulation No. 2000/15 and any subsequent UNTAET Regulation.

6.3 At the end of the probationary period, or at any given time before, the Transitional Judicial Service Commission, in accordance with UNTAET Regulation No. 1999/3, may recommend that the public prosecutor concerned be appointed for life, unless the performance of the functions of such official, as specified in Section 6.2 of the present regulation, was unsatisfactory, in which case such official shall be dismissed from the Public Prosecution Service.

6.4 The public prosecutors shall abide by and be guided by the Code of Ethics that may be promulgated pursuant to Section 15.1 of UNTAET Regulation No. 1999/3.

6.5 A public prosecutor appointed for life shall compulsorily retire when the age of sixty-five (65) years is attained. The conditions of service of public prosecutors appointed for life shall not be altered to their disadvantage during the term of their office, except as part of a uniform public economic measure.

6.6 A public prosecutor who has committed misconduct in office shall be subject to disciplinary measures as established in Section 13 of UNTAET Regulation No. 1999/3 or subsequent UNTAET directive.

6.7 The promotion and re-assignment of a public prosecutor shall take place only in accordance with Section 14 of UNTAET Regulation No. 1999/3. Notwithstanding this provision, the General Prosecutor, at his/ her discretion, may re-assign, up to a period of three (3) months, a public prosecutor in the interest of justice and/or when required by the present regulation, UNTAET Regulation No. 2000/15 or any other UNTAET regulation. If such re-assignment is necessary for a period exceeding three (3) months, the General Prosecutor shall inform the Transitional Judicial Service Commission, as established by UNTAET Regulation No. 1999/3, for appropriate action in accordance with that regulation.

6.8 While holding office, a public prosecutor shall be barred from accepting political office or any other public office, or from accepting any employment, including for teaching law, participating in the drafting of law, or carrying out legal research on a part-time basis, unless for honorary unpaid purposes.

6.9 Public prosecutors shall not disclose any information or personal data related to or obtained in the discharge of their functions, except where authorized by the General Prosecutor for public information or research purposes.

Section 7 Oath of Office

Upon appointment, the Transitional Administrator shall receive the oath or solemn declaration as provided by Section 11.3 of UNTAET Regulation No. 1999/3 from the public prosecutors.

Section 8 Remuneration

Public prosecutors shall be remunerated in accordance with an UNTAET directive. Such remuneration shall not be subject to any reduction during the period of service of the appointees, other than on account of general taxes and levies imposed equally upon all persons.

Section 9 Privileges and Immunities of Public Prosecutors

9.1 All public prosecutors shall enjoy such privileges and immunities as are provided by law.

9.2 No public prosecutor shall be liable, either criminally or civilly, for any act of commission or omission, if the matter or thing was done in good faith for the purpose of executing any provisions of any law. Such privilege shall not extend to acts of commission or omission arising out of intentional wrongful conduct or gross negligence.

Section 10
General Staff

Each public prosecution office as established by the present regulation shall have qualified general staff as deemed necessary for its proper functioning. The general staff attached to each such office shall exercise their functions under the direction and supervision of the principal officials of such offices.

Section 11
Replacement and Disqualification of Public Prosecutors

11.1 The replacement and disqualification of a public prosecutors from his/ her role in any criminal proceeding of the courts of law established under UNTAET Regulation No. 2000/11 or panels of judges thereof established under UNTAET Regulation No. 2000/15 shall be in accordance with the applicable law.

11.2 All public prosecutors shall request that they be replaced from the exercise of prosecutorial authority with respect to criminal investigative functions whenever they have reasonable reason to believe that their impartiality may be doubted. Such request shall be immediately forwarded to the District Prosecutor.

11.3 Whenever a replacement or disqualification of a public prosecutor pursuant to Sections 11.1 and 11.2 of the present regulation is required, the head of the respective public prosecutorial office shall appoint a suitable public prosecutor in place of such official. Whenever the replacement or the disqualification of a head of a public prosecutorial office is required or in case of his/ her replacement or disqualification by the Transitional Administrator, the authority to appoint a substitute shall vest in the General Prosecutor.

III. Functions

Section 12
General Prosecutor

12.1 The General Prosecutor shall be the principal official and administrative head of the Public Prosecution Service and of the Office of the General Prosecutor, with jurisdiction throughout the entire territory of East Timor. The Deputy General Prosecutor for Serious Crimes and Deputy Prosecutor for Ordinary Crimes, with respective jurisdictions as established in the present regulation, shall function as his/ her principal deputies.

12.2 The exercise of the prosecutorial authority as defined in Section 3 of the present regulation and such incidental powers as are necessary to exercise such prosecutorial authority shall be exclusively vested in the General Prosecutor.

12.3 In his/ her capacity as the principal officer and the administrative head of the Public Prosecution Service, the General Prosecutor shall be responsible for the overall management of such service and ensuring the due exercise of its functions. The General Prosecutor shall be vested with such incidental powers as are necessary to exercise such administrative and management functions.

12.4 The General Prosecutor shall directly report to the Transitional Administrator with respect to matters relating to the general administration of the Public Prosecution Service, including budgetary and staffing functions. On matters of legal policy and coherence, the

Transitional Administrator may, as appropriate, issue guidance to the General Prosecutor. Nothing in this Section affects or derogates from the independent authority of the General Prosecutor in respect of the preparation, institution and conduct of investigations or proceedings pursuant to the prosecutorial authority vested in the office pursuant to Section 3 of the present regulation.

12.5 Certain prosecutorial authority vested in the General Prosecutor shall be delegated to subordinate public prosecutors as provided for in the present regulation.

12.6 Nothing in Section 12.5 of the present regulation affects or derogates from the authority of the General Prosecutor to appear in person in or to take over of any investigations and proceedings directed or carried on by a subordinate public prosecutor.

12.7 For administrative purposes, certain management and administrative functions vested in the General Prosecutor under Section 12.3 of the present regulation shall be assigned to subordinate public prosecutors by the present regulation or any subsequent regulation.

12.8 Notwithstanding Sections 12.5 and 12.7 of the present regulation, the General Prosecutor may delegate prosecutorial authority and management and administrative functions vested in his/ her office to any other official of the Public Prosecution Service.

12.9 In exercising the supervisory, management and administrative functions of the office as established in Section 12.3 of the present regulation, the General Prosecutor may furnish guidelines to the subordinate public prosecutors with respect to the preparation, institution and conduct of any investigation or proceedings, including guidelines as to the exercise of specific functions, and on matters of general administration, including budgetary and staffing functions.

12.10 The General Prosecutor shall be assisted by one or more public prosecutors in the discharge of his/ her functions.

12.11 The General Prosecutor shall submit, on a quarterly basis, a comprehensive written report of the work of the Public Prosecution Service as defined in the present regulation to the Transitional Administrator.

Section 13

Experts

13.1 In exercising the functions of the office, the General Prosecutor may, as appropriate, consult with and retain the services of East Timorese and international experts. Such experts shall be members of the Public Prosecution Service, without having prosecutorial authority as defined in the present regulation.

13.2 Experts shall be appointed directly by the General Prosecutor.

Section 14

Deputy General Prosecutor for Serious Crimes

14.1 The Deputy General Prosecutor for Serious Crimes shall be the principal official in

charge of the Department of Prosecution of Serious Crimes. The Office of the Deputy General Prosecutor for Serious Crimes may be held by the General Prosecutor in addition to his/ her substantive appointment.

14.2 The Deputy Prosecutor General for Serious Crimes shall directly report to and be supervised by the General Prosecutor with respect to the exercise of the authority vested in him/her under the present regulation and any other UNTAET regulation. In the exercise of the functions of the office, the Deputy General Prosecutor for Serious Crimes shall be subject to such guidelines as the General Prosecutor may furnish pursuant to Section 12.9 of the present regulation.

14.3 The Deputy General Prosecutor for Serious Crimes shall serve as the principal public prosecution official for the investigation and prosecution of serious crimes. For the purposes of the present regulation, “serious crimes” means the offences against the laws of East Timor as defined in UNTAET Regulation No. 2000/11 and UNTAET Regulation No. 2000/15.

14.4 The Deputy General Prosecutor for Serious Crimes shall have the exclusive prosecutorial authority to direct and supervise the investigation and prosecution of serious crimes in the competent courts as defined in UNTAET Regulation No. 2000/11 and UNTAET Regulation No. 2000/15.

14.5 In the exercise of the prosecutorial authority as defined in Sections 14.2 and 14.3 of the present regulation, the Deputy General Prosecutor for Serious Crimes shall have jurisdiction throughout the entire territory of East Timor.

14.6 The Deputy General Prosecutor for Serious Crimes shall have such staff as may be necessary to enable him/her to effectively investigate and prosecute serious crimes. Such staff shall include, but not limited to, one or more public prosecutors and a Prosecution Support Unit consisting of East Timorese and International experts, as necessary.

14.7 The General Prosecutor for Serious Crimes may delegate management and administrative functions in his/ her office to any subordinate public prosecutors attached to his/ her office.

Section 15

Deputy General Prosecutor for Ordinary Crimes

15.1 The Deputy General Prosecutor for Ordinary Crimes shall be the principal official in charge of the Department of Prosecution for Ordinary Crimes. For the purposes of the present regulation, “Ordinary Crimes” means all offences against the laws of East Timor with the exception of serious crimes as defined in UNTAET Regulation No. 2000/11 and UNTAET Regulation No. 2000/15.

15.2 The Deputy Prosecutor General for Ordinary Crimes shall directly report to and be supervised by the General Prosecutor with respect to the exercise of the authority vested in him/her under the present regulation and any other UNTAET regulation. In the exercise of the functions of the office, the Deputy General Prosecutor for Ordinary Crimes shall be subject to such guidelines as the General Prosecutor may furnish pursuant to Section 12.9 of the present regulation.

15.3 Under the General Prosecutor, the Deputy General Prosecutor for Ordinary Crimes shall be responsible for the overall management of the Offices of the District Prosecutors as

established in the present regulation and the supervision of the District Prosecutors, and shall be responsible for ensuring the due exercise of the functions vested in said officials.

15.4 The Deputy General Prosecutor for Ordinary Crimes shall be vested with such incidental powers as are necessary to exercise the functions as established in Section 15.3 of the present regulation.

15.5 In exercising the supervisory, management and administrative functions of the office as established in Section 15.3 of the present regulation, the Deputy General Prosecutor for Ordinary Crimes may issue administrative instructions and operating guidelines to any Office of the District Prosecutors or to the public prosecutors and general staff attached to such offices.

15.6 The Deputy General Prosecutor for Ordinary Crimes shall be assisted by one or more public prosecutors in the discharge of his/ her functions.

Section 16 District Prosecutors

16.1 The Office of the District Prosecutor shall be headed by the District Prosecutor and shall consist of such public prosecutors as appropriate.

16.2 The District Prosecutors shall report to the General Prosecutor through the Deputy General Prosecutor for Ordinary Crimes with respect to the discharge of the functions of their respective offices. In the exercise of the functions of the office, the District Prosecutors shall be subject to such guidelines as the General Prosecutor and the Deputy General Prosecutor for Ordinary Crimes may respectively furnish pursuant to Sections 12.9 and 15.5 of the present regulation.

16.3 The Deputy General Prosecutor for Ordinary Crimes shall be the immediate supervising official of the District Prosecutors as established by the present regulation.

16.4 The District Prosecutors shall exercise the prosecutorial authority relating to criminal investigations and criminal proceedings of the respective District Courts, with the exception of directing and supervising the investigation and prosecution of serious crimes as defined in UNTAET Regulation No. 2000/11 and UNTAET Regulation No. 2000/15 which shall be exclusively vested in the Deputy General Prosecutor for Serious Crimes as established in Section 14 of the present regulation.

Section 17 Obligatory Referral in Cases of Serious Crimes

17.1 Whenever a serious crime, as defined in UNTAET Regulation No. 2000/11 and UNTAET Regulation No. 2000/15, has occurred in their respective jurisdictions, the District Prosecutors shall immediately notify the Deputy General Prosecutor for Serious Crimes of such serious crime. The notification so required of the District Prosecutors shall provide the fullest information and documentation relating to such serious crimes. In no case shall the District Prosecutors initiate criminal investigations of such serious crimes, whether on their own or by directing the police authorities to do so.

17.2 Within their respective jurisdictions, the District Prosecutors shall facilitate and

extend, as appropriate, their fullest cooperation to the Deputy General Prosecutor for Serious Crimes with respect to the investigation and prosecution of serious crimes.

Section 18

Administration of the Offices of District Prosecutors

18.1 The District Prosecutors shall be vested with management and administrative functions relating to their respective offices.

18.2 The District Prosecutors shall be vested with such incidental powers as are necessary to exercise the prosecutorial authority and management and administrative functions as established in the present regulation.

18.3 Each of the District Prosecutors shall be assisted by one or more public prosecutors in the discharge of his/ her functions.

Section 19

Entry into Force

The present regulation shall enter into force on 6 June 2000.

Sergio Vieira de Mello
Transitional Administrator