



ESTABLISHMENT OF A PRISON SERVICE IN EAST TIMOR

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REGULATION NO. 2001/23

ON THE ESTABLISHMENT OF A PRISON SERVICE IN EAST TIMOR

The Special Representative of the Secretary-General (hereafter: 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,

Taking into account UNTAET Regulation No. 2000/11 of 6 March 2000 on the Organization of the Courts in East Timor, as amended by UNTAET Regulation No. 2000/14 of 10 May 2000, and UNTAET Regulation No. 2000/30 of 25 September 2000 on the Transitional Rules of Criminal Procedure,

After consultation with the National Council of East Timor,

For the purposes of establishing Penal Institutions and providing for the effective management of Penal Institutions in East Timor,

Promulgates the following:

Section 1 **Definitions**

In this Regulation, unless the context otherwise require:

“*Cabinet Officer or Cabinet Member for Justice*” means the officer of the Cabinet of the Transitional Administration appointed pursuant to UNTAET Regulation No. 2000/23 who is responsible for Justice.

“*Detainee awaiting trial*” means a person who is remanded in custody awaiting trial;

“*Director*” means the Director of *Penal Institutions*;

“*Gazette*” means the Official Gazette of East Timor;

“*Inmate*” means a *prisoner* or a *detainee awaiting trial*;

“*Juvenile*” means any person under 18 years of age;

“*Oversight Team*” means the *Penal Institution* Oversight Team established under Section 9 of the present Regulation;

“*Penal Institution*” means a prison or a detention center or both;

“*Prisoner*” means a person committed to a *Penal Institution* pursuant to a sentence of a court.

PART I - GENERAL PRINCIPLES

Section 2 **Principles**

2.1 Every *Penal Institution* shall be operated:

(a) in accordance with International Human Rights Conventions as provided by Section 2 of UNTAET Regulation No. 1999/1 of 27 November 1999, as well as the United Nations Standard Minimum Rules for the Treatment of Prisoners, the United Nations Basic Principles for the Treatment of Prisoners, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Principles of Medical Ethics relevant to the Role of Health Personnel in the Protection of Prisoners and Detainees against Torture;

(b) in a manner that ensures respect for the special needs and protection for women and *juveniles*, guaranteeing their rights and well being and in accordance with the United Nations Convention on the Elimination of all forms of Discrimination against Women, United Nations Convention on the Rights of the Child, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

2.2 Every *Penal Institution* shall be operated in accordance with the following principles:

(a) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human being. The deprivation of liberty does not deprive the individual of fundamental human rights, except for those limitations that are demonstrably necessitated by the fact of incarceration.

(b) The provisions of this Regulation shall be applied at all times without discrimination on the basis of race, sex, colour, language, religion or belief, political or other opinion, national or social origin, property, disability, birth or any other status.

(c) The penitentiary system shall aim to the reformation and social rehabilitation of *prisoners*.

(d) No person under any form of detention or imprisonment shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.

(e) *Detainees awaiting trial* shall be subject to treatment appropriate to their status. Accordingly, *detainees awaiting trial* shall, save in exceptional circumstances, be segregated from convicted persons.

(f) *Juvenile* offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

(g) In a *Penal Institution* for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer. Women *prisoners* shall be attended and supervised only by women officers.

(h) Detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

(i) The physical and mental well being of *inmates* shall be ensured through sufficient standards of nutrition, hygiene, sanitation, recreation and physical exercise.

(j) *Prisoners* shall have access to the health services available without discrimination on the grounds of their legal situation.

(k) Any use of force by prison officers shall be a last resort, and shall be used only when necessary for the maintenance of order, security and safety of personnel and other *inmates*. Such force shall only be used in a manner proportionate to the present threat or action of an individual or group.

(l) Disciplinary measures shall only be imposed where necessary for the maintenance of order, security, and safety of people, and shall also be proportionate and with the proper authority.

Section 2 bis **Implementation of Programmes**

Subject to the availability of funds for that purpose, every *Penal Institution* under this Regulation shall implement the programmes of rehabilitation of *inmates*, work in prison, education and vocational training that may be established under the provisions of this Regulation.

PART II - INSTITUTIONAL ARRANGEMENTS

Section 3 **Penal Institutions**

3.1 The Transitional Administrator may, by notice published in the *Gazette*, establish *Penal Institutions*.

3.2 The places which at the coming into force of this Regulation are in use as *Penal Institutions*, namely, Becora Prison, Fatukero Prison and Baucau Prison shall each of them, without further notification, be a *Penal Institution* within the meaning of this Regulation.

3.3 Every notice of establishment of a *Penal Institution* under this Section or a revocation thereof shall take effect on the date specified in the notice.

Section 4 **Prison Service**

4.1 There shall be a Prison Service, which shall be part of the Public Service of East Timor Transitional Administration (ETTA) and any person employed in the Service shall be bound by this Regulation, other Regulations of UNTAET, and Rules, Orders and Code of Conduct of ETTA that may be applicable to members of the Public Service or Prison Service.

4.2 The duties of the Service shall be:

(a) to do all work that is necessary for the good administration of *Penal Institutions* in East Timor in accordance with the provisions of the present Regulation;

(b) to keep all statistics and information relevant for planning and administration of *Penal Institutions*; and

(c) to participate in the process of recruitment of Prison Officers in accordance with the provisions of Section 1 of UNTAET Regulation No. 2000/3.

4.3 All the provisions of this Regulation and all rules or orders, which may at any time be made in pursuance of this Regulation shall extend to all persons who at the coming into force of this Regulation are serving lawfully as Prison Officers as if such persons had been appointed under this Regulation, and previous service under any law shall be deemed to be service under this Regulation.

Section 5 **Director of Penal Institutions**

5.1 There shall be a Director of *Penal Institutions* who shall be appointed by the *Cabinet Member for Justice*. The *Director* shall be the head of the Prison Service and subject to the direction or control of the *Cabinet Member for Justice*, be responsible for the general administration of this Regulation.

5.2 The functions of the *Director* shall include:

(a) proposing policies on the management of *Penal Institutions* and ensuring that approved policies on the management of *Penal Institutions* are implemented;

(b) developing national programmes for training of Prison Officers to ensure the highest degree of professionalism and arranging for the recruitment and training of suitable persons as Prison Officers;

(c) preparing the budget of the Prison Service and managing all the funds allocated to the Service;

- (d) commissioning or undertaking research on good administration of *Penal Institutions*, parole systems and models of rehabilitation;
- (e) establishing and implementing such programmes of rehabilitation, work in prison, education and vocational training for *inmates* as are necessary for their eventual reintegration into society upon release, subject to the availability of funds for that purpose;
- (f) preparing a Jail Manual in the relevant languages that clearly describes and explains the provisions of this Regulation and the Rules made thereunder and their practical implementation;
- (g) establishing an equitable mechanism for the distribution of income that may be generated from such work programmes that may be established taking into consideration international labour standards;
- (h) proposing rules for the internal administration of *Penal Institutions*;
- (i) establishing a procedure for the classification of *inmates* and assessment of *prisoners*; and
- (j) such other functions in relation to this Regulation as the *Cabinet Member for Justice* may from time to time determine.

5.3 In the exercise of his or her duties, the *Director* shall be assisted by such number of staff as is necessary for the effective and efficient implementation of the provisions of this Regulation.

5.4 The *Director* may delegate to any Manager of a *Penal Institution* appointed pursuant to Section 6 any of the powers and functions of the *Director* subject to the same terms and conditions of the rules of delegation provided under Section 8.

5.5 A delegation of authority under this Section shall only be effective if the instrument of delegation is approved and countersigned by the *Cabinet Member for Justice*.

5.6 The *Director* shall submit an annual report to the *Cabinet Member for Justice* on the management and state of the *Penal Institutions*.

Section 6 **Manager of Penal Institution**

6.1 There shall be appointed by the *Cabinet Member for Justice*, a Manager for each *Penal Institution* established under this Regulation.

6.2 The Manager of a *Penal Institution* shall:

- (a) be responsible for the control, supervision and general administration of the institution to which he or she is appointed manager;

- (b) be responsible for the safety, and security of the *inmates* and any person lawfully in the institution and the institution itself;
- (c) be responsible for ensuring order and discipline in the institution;
- (d) make recommendations for the adoption of rules for the internal management of the institution;
- (e) ensure that the programmes for rehabilitation, work in prison, education and vocational training for which the funds are provided are implemented bearing in mind the special needs of each *inmate*; and
- (f) have such other functions in relation to this Regulation as the *Director* may determine.

Section 7 **Prison Officers**

7.1 Every Manager of a *Penal Institution* shall be assisted in the performance of his or her functions by such number of Prison Officers as are necessary to provide for the order, security and discipline in the institution.

7.2 The Civil Service and Public Employment Service shall in accordance with the procedure laid down in Section 1 of UNTAET Regulation No. 2000/3 appoint such persons with the prescribed qualifications and character as Prison Officers within the Prison Service.

7.3 The Prison Officers and other persons working in *Penal Institutions* shall be bound by a Code of Conduct to be provided in an UNTAET Directive.

Section 8 **Delegation of Authority**

8.1 (a) The Manager of every *Penal Institution* may delegate to any Prison officer, by instrument in writing signed by him or her, all or any of the powers conferred to him or her by this Regulation.

(b) The instrument of delegation shall only become effective and valid if it is countersigned by the *Director* indicating his or her approval to the delegation of the authority and the terms of such delegation.

8.2 For the purposes of this Regulation, the exercise of a power by a delegate under this Section shall be deemed to be the exercise of the power by the Manager.

8.3 A delegation under this Section, may be made to a specified person or to the holder or holders of a specified office or class of offices.

8.4 A delegation under this Section may be:

(a) made subject to such conditions, qualifications or exceptions as are set out in the instrument of delegation; and

(b) revoked or varied by instrument in writing signed by the Manager.

8.5 Where under this Regulation the exercise of a power of the Manager is dependent upon the opinion, belief or state of mind of the Manager in relation to a matter and the power has been delegated under this Section; the power may be exercised by the delegate upon the opinion, belief, or state of mind of the delegate in relation to that matter.

8.6 The Manager may exercise a power notwithstanding that he or she has delegated its exercise under this Section.

Section 9 **Penal Institution Oversight Team**

9.1 There is hereby established a *Penal Institution* Oversight Team.

9.2 The *Oversight Team* shall be composed of three persons appointed by the Transitional Administrator.

9.3 The powers of the *Oversight Team* shall be to:

(a) visit and inspect at any time all or any parts of *Penal Institutions* to see the conditions of the institution and the conditions in which the *inmates* are kept for the purpose of ascertaining whether the provisions of this Regulation are complied with, in particular those relating to the treatment of *inmates*;

(b) receive in private or in public complaints by *inmates* and promptly investigate those complaints and as appropriate send a reply to the complainant on its findings and the actions it has taken;

(c) inquire into all alleged abuses against any *inmate* in a *Penal Institution* or in connection with it;

(d) make recommendations to the *Director* on any matter relating to the operation of any *Penal Institution*;

(e) Submit a written report to the *Cabinet Member for Justice* as soon as practicable after carrying out an inspection, visit or investigation and at such intervals as the *Cabinet Member for Justice* may determine.

(f) inquire into any matter referred to it by the *Cabinet Member for Justice* in connection with the *Penal Institution*;

(g) perform such other functions in relation to this Regulation as the *Cabinet Member for Justice* may determine; and

(h) submit an annual report to the *Cabinet Member for Justice* on the exercise of its functions.

9.4 No *inmate* shall be punished or have his or her rights or privileges abridged for having made a complaint to the *Oversight Team* or any other Authority established by law. The Manager shall inform the *inmates* of this right and ensure that the *inmates* are protected from retaliation.

9.5 The members of the *Oversight Team* shall hold office for a term of two years and may be removed for reasonable cause by the Transitional Administrator before the end of that period.

9.6 The *Oversight Team* shall visit every *Penal Institution* at least once every three months and shall make a complete inspection at least once a year.

9.7 The members of the *Oversight Team* shall discharge their responsibilities under this Regulation independently and impartially.

9.8 The *Oversight Team* shall exercise the powers granted to it under this Section in accordance with the Terms of Reference made by the *Cabinet Member for Justice* and approved by the Transitional Administrator.

9.9 The members of the *Oversight Team* shall be paid honoraria and such incidental allowances as are necessary for the effective discharge of their functions, to be determined by the Transitional Administrator.

9.10 The allocation of funds for the purposes of Subsection 9.9 shall be made in accordance with the procedure provided in UNTAET Regulation No. 2000/20.

9.11 The *Director* shall ensure that the *Oversight Team* is provided with all the facilities that are necessary for the effective discharge of its responsibilities.

9.12 Every official of a *Penal Institution* shall cooperate fully with and give full assistance to the *Oversight Team* whenever it visits the *Penal Institution*.

Section 10 **Official Visitors**

10.1 The Transitional Administrator, the *Cabinet Member for Justice*, all other members of the ETTA Cabinet, every Judge of the Courts and the holders of such other offices as the Transitional Administrator may designate by notice published in the *Gazette*, shall be Official Visitors to all *Penal Institutions*.

10.2 Every visitor to a *Penal Institution* under this Section, may at any time enter into and examine the conditions of any institution and the *inmates*, and may register any observations related to the conditions of the institution or abuses therein in a Visitors Book kept by the Manager. It shall be the duty of the Manager to draw the attention of the *Director* to any entries made in the book.

10.3 Every Prosecutor, Investigator, Legal Counsel, Judge or any authorized official of the Transitional Administration shall have the right to enter into any *Penal Institution* for the purposes of performing any function granted to him or her under this Regulation or any other law.

10.4 Every official of a *Penal Institution* shall cooperate fully with and give full assistance to any person visiting the *Penal Institution* in an official capacity pursuant to this Regulation.

PART III - ADMISSION AND TREATMENT OF INMATES

Section 11

Procedure for admitting inmates

11.1 No person shall be admitted into a *Penal Institution* without a valid committal warrant issued by a Judge.

11.2 Notwithstanding the provisions of Subsection 11.1,

(a) a child below the age of six months may be admitted with the mother who is lawfully taken into custody, and

(b) under special circumstances and where the Manager of the Institution deems it justifiable, a child between the ages of six months and two years may be admitted with the mother who is lawfully taken into custody.

(c) in making a decision under this Section, the Manager shall take into consideration what is in the best interest of the child.

(d) Whenever a child is admitted into a *Penal Institution* with the mother, the Manager of the *Penal Institution* shall ensure that the basic needs of the child are adequately provided for.

11.3 The Manager of every *Penal Institution* shall upon admission of an *inmate* or immediately thereafter:

(a) ensure that the following information is recorded in a bound register or an electronic data processor:

(i) information concerning the identity of the *inmate*;

(ii) the reasons for his or her commitment and the authority thereof; and

(ii) the day and hour of his or her admission;

(b) provide the *inmate* with written information in a language he or she understands concerning the treatment of *inmates* of his or her category, all the rights and the privileges of the *inmate* and the disciplinary requirements and if the *inmate* is illiterate, the information shall be conveyed to him or her orally;

(c) with the consent of the *inmate*, notify members of his or her family or designated friend that the *inmate* is admitted into the institution and the date thereof, provided that a *detainee awaiting trial* shall be allowed to inform immediately his or her family or friend by himself or herself and shall be provided with the facilities to do so;

(d) make an initial assessment of the *inmate* for the purpose of determining his or her classification in accordance with the procedures established pursuant to Section 5.2 (i); and

(e) produce the *inmate* before a medical practitioner for physical and mental state examination.

11.4 Where it appears to the Manager of the *Penal Institution* that the *inmate* is sick or suffering from physical injury or mental disorder the Manager shall ensure that the *inmate* is examined by a medical practitioner, before he or she is admitted into the institution.

11.5 Before an *inmate* is admitted into a *Penal Institution*, the Manager shall inquire from the *inmate* about his or her medical history and whether he or she has any medical condition that must be brought to the attention of the Manager.

Section 12 **Fingerprints and Measurements**

12.1 The Manager of every *Penal Institution* shall cause the fingerprints and body measurements of every *inmate* to be taken; and if necessary, reasonable force may be used by any Prison officer of the institution to compel the *inmate* to comply.

12.2 When a *detainee awaiting trial* is acquitted or the case is dismissed before or during trial due to insufficient evidence, all records of fingerprints and measurements taken during his or her detention in respect of the charge of that offence shall be destroyed forthwith.

12.3 The Manager of every *Penal Institution* shall send periodic returns to the Investigating Judge indicating the records of the *detainees awaiting trial* that have been destroyed in pursuance of this Section.

12.4 The Manager of a *Penal Institution* shall ensure that information relating to the *inmates* are kept confidential.

12.5 A person shall not divulge information relating to an *inmate* which has been obtained in the course of the administration or enforcement of this Regulation, except:

(a) as authorized by this Regulation or any other law;

(b) as reasonably required in connection with the administration or enforcement of this Regulation;

(c) for the purposes of legal proceedings arising out of the administration or enforcement of this Regulation or an order of a court;

- (d) to a government agency for the purpose of the proper performance of its functions; or
- (e) with the consent of the *inmate* to whom the information relates.

Section 13 **Legal Custody**

13.1 The Manager of every *Penal Institution* shall have legal custody of every person lawfully detained in the Institution.

13.2 Legal custody of an *inmate* under Subsection 13.1 shall commence as soon as the *inmate* is received within the *Penal Institution* or into custody or by a Prison officer of the *Penal Institution* and shall continue while the *inmate* is confined in the *Penal Institution* or is for any reason outside in custody or under the control or supervision of any Prison Officer or other person pursuant to this Regulation.

13.3 Where any *inmate* is for any reason outside the institution in the custody or under control or supervision of any other person pursuant to this Regulation, that person shall have the powers and obligations of a Prison Officer in dealing with the *inmate*.

13.4 When due to the illness or incapacity of the Prison Officer or person having the custody or control or supervision of any *inmate* outside the *Penal Institution*, or for any other reason, that custody or control or supervision ceases, the *inmate* shall return to the *Penal Institution* forthwith. If the *inmate* fails to return, he or she shall be deemed to have escaped from lawful custody and be unlawfully at large, and shall be liable accordingly.

Section 14 **Separation of Inmates**

14.1 The Manager of every *Penal Institution* shall ensure that *inmates* of the following categories are separated:

- (a) male from female *inmates*, who shall be confined in separate areas;
- (b) *prisoners* from *detainees awaiting trial*;
- (c) *juveniles* from adults, unless where it is not in the best interest of the *juvenile* to do so;
- (d) such classes of *inmates* as the *Director* may specify from any other classes specified by him or her.

14.2 The Manager of every *Penal Institution* shall, as far as practicable, ensure that the special needs of the following categories of *inmates* are provided for bearing in mind what is best for each *inmate*:

- (a) *juveniles*;

- (b) women, in particular pregnant or nursing mothers; and
- (c) mentally impaired *inmates*.

14.3 The Manager of every *Penal Institution* shall ensure that the rights and privileges of suspects under detention are safeguarded.

Section 15 **Inmate Welfare**

15.1 The Manager of every *Penal Institution* shall ensure that the *inmates* are kept in fair, safe, secure and humane conditions.

15.2 Every *inmate* in every *Penal Institution* under this Regulation shall have the following rights:

- (a) a bed and clean bedding;
- (b) access to washing facilities so that every *inmate* may have a bath or shower as necessary for hygiene;
- (c) clean drinking water shall be available whenever the *inmate* needs it and sufficient quantities of wholesome food;
- (d) natural or artificial light;
- (e) access to sanitary facilities and products;
- (f) facilities for shaving;
- (g) clean and acceptable clothing;
- (h) a minimum of two hours of outdoor physical exercise in fresh air and sunlight every day;
- (i) access to private visitors;
- (j) access to legal counsel and to communicate with him or her freely, without censorship and in confidence;
- (k) access to medical care and treatment;
- (l) receive and send correspondence; and
- (m) access to the members of the *Oversight Team*.

15.3 Subject to Subsection 15.4, the rights provided in Subsection 15.2 may be limited if there is an emergency in the *Penal Institution*, if the security of the institution is threatened or if the health or safety of any person is threatened or for any other reason provided by law.

15.4 No *inmate* shall be denied any one or more of the rights under this Section, if the denial of that right would be injurious to the health of the *inmate* or demeaning to his or her dignity.

15.5 No *inmate* shall be denied a right granted under this Section as punishment for a disciplinary offence.

15.6 The Manager of every *Penal Institution* shall, as far as practicable, ensure that adequate and appropriate provision is made for the various religious and spiritual needs of the *inmates*.

Section 16 **Prison Work**

16.1 A *prisoner* shall be required to perform such work as the Manager may direct.

16.2 A *detainee awaiting trial* shall not be required to perform any work, but may at his or her own request, and subject to the directions of the Manager, perform such work as the Manager may arrange.

16.3 The Manager shall, in directing or arranging for any particular work to be performed by an *inmate*, have regard to the age and the physical and mental health of the *inmate*, and any skills or work experience of the *inmate*.

Section 17 **Complaints**

17.1 Without prejudice to any other right, every *inmate* may at any time make a complaint or request to the Manager or any authorized person. If the complaint is against the Manager, it shall be made to the *Director*.

17.2 The person receiving the complaint or request shall afford the *inmate* every opportunity necessary to fully state his or her complaint or request without any censorship as to substance.

17.3 Unless the complaint or request is evidently frivolous or groundless, it shall be dealt with and replied to without undue delay.

17.4 A complaint that alleges an abuse against an *inmate* or a violation of his or her rights shall, as soon as practicable, be submitted to the *Oversight Team* for investigation.

17.5 Whenever a complaint of abuse is made against a Prison Officer, the Manager or as appropriate, the Director shall ensure that the officer is removed from any position which will bring him or her into contact with the *inmate* pending the outcome of the investigation.

Section 18
Offences against discipline

18.1 Any person who:

- (a) disobeys any lawful order of any Prison Officer;
- (b) is willfully careless or negligent at work;
- (c) acts in an abusive or indecent manner, whether by language or conduct;
- (d) maliciously threatens another person;
- (e) without authority, communicates with any person, not being an *inmate* or *Prison Officer* or any other person lawfully admitted in the *Penal Institution*;
- (f) without permission, leaves his or her cell, place of work or appointed place;
- (g) traffics in unauthorized articles or substances;
- (h) engages in gambling; or
- (i) in relation to medical tests conducted interferes with, adulterates or substitutes a test or sample;

commits a minor offence against discipline and is liable to be punished in accordance with the provisions of Section 23.1 of this Regulation.

18.2 Any person who:

- (a) willfully disfigures, damages or destroys any part of the *Penal Institution*, or any property that is not his or her own;
- (b) assaults any other person, including another *inmate*;
- (c) escapes from the lawful detention of the *Penal Institution*;
- (d) have in his or her possession an article or substance not issued or authorized by an officer, prescribed by a medical officer, medical practitioner or dentist, or permitted under the Regulation;
- (e) take or use alcohol, a drug of addiction or drug of dependence or an unauthorized substance or article that has not been lawfully issued to the prisoner or take or use alcohol or a drug of addiction or drug of dependence lawfully issued in a manner that was not prescribed or authorized;
- (f) is in possession of a weapon;
- (g) appropriates property of any other person;

- (h) mutinies or incites *inmates* to mutiny;
- (i) commit an act or omission that is contrary to the good order, management or security of the prison or the security of the *inmates*;

commits a serious offence against discipline and is liable to be punished in accordance with the provisions of Section 23.2 of this Regulation.

18.3 Any *inmate* who attempts to commit an offence against discipline or who incites, aids, procures or counsels the commission of an offence described in Subsections 18.1 and 18.2, shall be liable to be dealt with and punished in the same manner as if he or she had committed that offence.

Section 19 **Disciplinary Powers of a Manager**

The Manager of every *Penal Institution* shall have the power to hear any complaint relating to any offence against discipline under Section 18 of the present Regulation.

Section 20 **Power to Examine Witnesses**

Every Manager of a *Penal Institution* may, on hearing a complaint pursuant to Section 19, examine any person concerning the alleged offence on oath or otherwise.

Section 21 **Charge of Disciplinary Offence**

A charge of a disciplinary offence alleged to have been committed by an *inmate* under Section 18, may be made by any Prison Officer and shall be brought forthwith to the attention of the Manager of the institution who shall hear the charge or as appropriate refer it to the Prosecutor.

Section 22 **Procedure for Disciplinary Hearings**

22.1 An *inmate* charged with an offence against discipline shall be given a written notice of the charge setting out the alleged offence, the date of the offence, the facts on which the allegation is based and identifying the provision of the Regulation that is alleged to have been breached.

22.2 A hearing and an examination mentioned in Sections 19 and 20 respectively, shall be in the presence of the *inmate* charged with the offence, who shall be entitled to be heard and to call or put questions to any witnesses and to make submissions.

22.3 The Manager shall not find the *inmate* charged with offence guilty, unless satisfied based on the evidence presented at the hearing, that the *inmate* committed the disciplinary offence in question.

22.4 An *inmate* charged with an offence against discipline shall be provided with all reasonable means to prepare his or her defence, including translation or interpretation services, as may be required.

Section 23 **Punishments**

23.1 An *inmate* who is found guilty of a disciplinary offence under Section 18.1 shall be liable to one or more of the following punishments:

- (a) a warning or reprimand;
- (b) a loss of privileges; or
- (c) performance of extra duties.

23.2 An *inmate* who is found guilty of a disciplinary offence under Section 18.2 shall be liable to one or more of the following punishments:

- (a) a warning or reprimand;
- (b) a loss of privileges;
- (c) performance of extra duties;
- (d) confinement in the *inmates* sleeping quarters for a maximum of seven days;
- (e) restitution; or
- (f) confiscation of property associated with the offence and disposal of that property as the Manager thinks appropriate;

provided that a *juvenile* shall not be subjected to punishment under paragraphs (e) and (f) without prior approval of the *Director*.

Section 24 **Right of Appeal**

24.1 Any *inmate* who is found guilty of a disciplinary offence under this Regulation and is dissatisfied with the finding or punishment may as soon as practicable lodge an appeal with the Manager against the finding or the punishment.

24.2 The Manager of a *Penal Institution* shall ensure that an *inmate* who has indicated a desire to appeal against a finding or punishment is given appropriate assistance to make the appeal.

24.3 The punishment imposed against the *inmate* shall be stayed until the appeal is disposed of.

24.4 For the purposes of hearing appeals under this Section, each District Court for each district in which a *Penal Institution* has been established shall designate two Judges to attend the Institution no less than once every two weeks to hear and determine appeals by *inmates*.

24.5 A Judge designated by a District Court pursuant to Subsection 24.4 shall serve for a period no longer than two years after which he or she shall be replaced by another judge to be designated by the Court.

24.6 A Judge hearing an appeal under this Section may confirm or overturn the finding and as appropriate quash, or confirm the punishment imposed by the Manager or substitute it with an appropriate punishment.

Section 25 **Referral to Prosecutor**

At any time during a hearing under Section 19, the Manager is of the opinion that, in the circumstances, the *inmate* has committed an offence under any law other than this Regulation, he or she shall decline to proceed with the hearing and cause the matter to be referred to the relevant Public Prosecutor.

Section 26 **Record of Punishment**

26.1 Upon imposing a punishment for an offence against discipline, the Manager shall enter, in the Punishment Book, a statement of the nature of the offence, the date of the offence, the name of the offender and the punishment imposed and shall sign and date the entry.

26.2 The Manager of the *Penal Institution* shall send forthwith to the *Director* particulars of every entry made in the Punishment Book.

26.3 The entries in the Punishment Book shall be subject to the rules of confidentiality provided in Sections 12.4 and 12.5.

Section 27 **Restraint**

27.1 Without prejudice to any power otherwise conferred, a Manager of a *Penal Institution* may authorize and direct the restraint of an *inmate* where, in the opinion of the Manager, the restraint is necessary:

(a) to prevent the *inmate* from injuring himself or herself or any other person and thereafter seek medical advice;

(b) to prevent the escape of the *inmate* during his or her movement to and from the *Penal Institution*.

27.2 If restraint is used in relation to an *inmate* for a continuing period of more than 4 hours, the use and circumstances shall be reported forthwith to the *Director* and the matter submitted for review by a medical practitioner.

27.3 Restraint under this Section shall only be used under the circumstances described in Subsection 27.1 and for no longer period than is necessary to achieve the purposes prescribed in this Section and shall not be used as punishment.

Section 28 **Use of Force on Serious Breach of Security**

28.1 Where the *Director* is of the opinion that a serious breach of the order or security of any *Penal Institution* under this Regulation has occurred or is imminent and no other reasonable means of control are available, the *Director* may order the use of such force against any *inmate* as necessary and proportional to the need, to restore order and security in the institution. Lethal force shall only be used as a last resort.

28.2 Before force is used under this Section, steps shall be taken, where it is practicable under the circumstances so to do, to issue the orders necessary to restore or ensure order and security within the institution and to give warning of the consequences of failure to comply with those orders.

Section 28A **Measures for the Protection of Inmates**

28A.1 A Manager of a *Penal Institution* may authorize the use of separate confinement in an adequately illuminated and ventilated cell in order to protect an individual from harming himself or herself or other prisoners.

28A.2 The use of separate confinement for protection shall be used strictly for the period in which the inmate is a risk to himself or herself or to other inmates and shall not exceed in any case seven days.

28A.3 Any inmate subjected to separate confinement shall be entitled to be regularly examined by a medical practitioner who may make a recommendation on medical grounds requiring the Manager to remove the inmate from such confinement.

Section 29 **Removal and Transfer of Inmates**

29.1 Subject to the provisions of any other law, any *inmate* may be transferred, on the direction of the *Director* from the *Penal Institution* in which he or she is lawfully detained to

another, provided that the transfer is in the best interest of the *inmate* or for the order and security of the institution or in the best interest of the other *inmates*.

29.2 Any *inmate* may be removed from the institution and taken to another place for judicial purposes.

29.3 No *inmate* may be removed from a *Penal Institution* pursuant to Subsection 29.2 unless there is a duly signed order of a Registrar of a Court, a Judge or an Investigator or Prosecutor directing the Manager of the *Penal Institution* to produce the *inmate* at the named place for judicial purposes.

29.4 Where it appears that an *inmate* requires medical, surgical or dental treatment or on the advice of a medical practitioner, the *inmate* may be removed by or under the direction of the Manager of the institution to a hospital or other suitable place for the purpose of examination or treatment.

29.5 Whenever an *inmate* is transferred from one *Penal Institution* to another, the Manager shall, with the consent of the *inmate* and as soon as practicable, inform the family of the *inmate* or his or her designated friend and record the matter in a bound Transfer Register or an electronic data processor.

29.6 In any case where an *inmate* is removed out of the *Penal Institution* for any of the purposes under this Section, the *inmate* shall be deemed to continue to be under the legal custody of the Manager while he or she is absent from the institution and the reasons for the removal, the authority and purpose thereof and as appropriate, the duration of the removal shall be recorded in a register kept for that purpose;

29.7 Whenever an *inmate* is taken out of a *Penal Institution*, he or she shall as far as practicable be shielded from public view and be protected from any insult or disrespect.

Section 30 **Power of Medical Examination and Treatment**

Whenever an *inmate* refuses to undergo:

- (a) medical examination upon or during admission to a *Penal Institution*;
- (b) medical examination required by the Manager of the *Penal Institution*; or
- (c) medical treatment or examination and the medical practitioner attending to the medical needs of the *Penal Institution*, is of the opinion that the life or health of the *inmate* or any other person is likely to be endangered by that refusal;

the medical practitioner or Manager may use or direct the use of such force as is necessary to subject the *inmate* to such treatment or examination.

Section 31 **Arrest of Inmate Unlawfully at Large**

Any Police Officer or any Prison Officer may arrest without a warrant any *inmate* who is unlawfully at large, and may take him or her to any place where he or she may be lawfully detained.

Section 32
Compensation for Property Damaged by Escapers

32.1 Any *inmate* who, in the process of escaping or attempting to escape from a *Penal Institution* or custody causes any damage or loss to any real or personal property shall be liable to fully compensate the owner of the property of such loss or damage.

32.2 A claim for compensation under this Section may be filed by the affected party with the Court of competent jurisdiction and shall be the subject of separate proceedings.

Section 33
Discharge of Inmates

33.1 The Manager of a *Penal Institution* shall be responsible for the due discharge of any *inmate*, immediately on becoming due for release.

33.2 All *inmates*, prior to discharge, shall be examined by a medical practitioner, and no *inmate* shall be discharged while labouring under any acute or dangerous illness unless under his or her own request and in any case such *inmates* shall not be held in the prison for longer than two weeks beyond the expiry of the sentence.

33.3 At the time of discharge, the Manager of the *Penal Institution* shall ensure that the *inmate* is given all his or her belongings that were taken from the *inmate* at the time of admission or any other time, including all income that may be due to the *inmate* arising from earnings from a work in prison programme that may be established.

PART IV - MISCELLANEOUS

Section 34
General Offences

34.1 Any person who conveys, brings or in any manner introduces or causes to be introduced any article into the *Penal Institution* or attempts to convey, bring or in any manner introduce any article into the institution:

(a) with deliberate intent to breach the order, security or good administration of the *Penal Institution*; or

(b) where the article is of the kind likely to jeopardize the order, security or good administration of the *Penal Institution*,

commits an offence and shall be liable to be punished in accordance with Section 35 of the present Regulation.

34.2 Any person who without permission of the Manager or *Director*, conveys, brings or in any manner takes, removes or causes to be taken or removed out of a *Penal Institution*, any article that he or she did not have in his or her possession when he or she was admitted into the *Penal Institution*, commits an offence and shall be liable to be punished in accordance with Section 35 of the present Regulation.

34.3 Any person who, for the purposes of obtaining permission to convey, bring or remove any article out of a *Penal Institution*, knowingly makes a false statement or representation or knowingly gives information that is false in a material particular commits an offence and shall be liable to be punished in accordance with Section 35 of the present Regulation.

34.4 Any person who, without permission of the Manager, enters into a *Penal Institution*, or photographs the *inmate*, or attempts to enter the institution, or to photograph him or her commits an offence and shall be liable to be punished in accordance with Section 35 of the present Regulation.

34.5 Any person who loiters about or near a *Penal Institution* or in or near some other place where for the time being there are *inmates* or conceals or leaves an article at any place with the intent that the article be found or received by an *inmate* commits an offence and shall be liable to be punished in accordance with Section 35 of the present Regulation.

34.6 This Section shall not apply to *inmates*.

Section 35 **Punishment for General Offences**

Any person found guilty of an offence under Section 34 of this Regulation shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding \$1000.00 or to both such imprisonment and fine. These penalties shall be applied in accordance with laws applicable in East Timor.

Section 36 **Power to Propose Rules**

36.1 The *Cabinet Member for Justice* may through the Cabinet propose to the Transitional Administrator rules to be adopted by a Directive prescribing all matters that are required or permitted under this Regulation or are necessary or convenient to be prescribed, for giving effect to the purposes of this Regulation.

36.2 Without limiting the generality of the provisions of Subsection 36.1, the *Cabinet Member for Justice* may propose the following rules:

- (a) making provision for order, security, and good administration of *Penal Institutions*;
- (b) making provision for the safe, secure, humane containment of *inmates* of *Penal Institutions*;
- (c) prescribing the prerequisites to engagement and conditions of engagement of Prison officers under Section 7 of this Regulation and establishing ranks of Prison officers and providing for their promotion;
- (d) prescribing the powers, and duties of Prison Officers;
- (e) prescribing the classification, separation, segregation, diet, instruction, treatment, employment, discipline, medical and other treatment of *inmates*;
- (f) regulating the taking of measurements, fingerprints, or other identification processes and the recording of such and any other particulars of *inmates*;
- (g) providing for the sale or disposal of uncollected, abandoned or unclaimed property left at a *Penal Institution* and the disposal of the proceeds of sale;
- (h) regulating the property that may be kept at a *Penal Institution* on behalf of an *inmate*;
- (i) providing for further powers and duties of any person appointed by the Transitional Administrator under this Regulation to inquire into and report upon any matter, incident or occurrence concerning any *Penal Institution*;
- (j) regulating the association of male and female *inmates*, *juvenile* and adult *inmates* and convicted and untried *inmates*;
- (k) regulating the treatment of unconvicted *inmates*;
- (l) regulating the provision of notices to *inmates* charged with offences against discipline;
- (m) regulating the admission, removal under custody or release of *inmates*;
- (n) regulating admission of visitors to the *Penal Institution*, searching procedures, and meeting arrangements;
- (o) regulating the sending and receiving of correspondence by *inmates*;
- (p) regulating the programmes of reform, rehabilitation and parole that may be established; and
- (q) any other matter relating to the proper management of the *Penal Institutions* under this Regulation.

36.3 In proposing rules under this Section, due regard shall be given to the provisions of Section 2 of this Regulation.

36.4 Any rules made under this Section may apply to all *Penal Institutions* or to a particular class of institutions or generally to all *inmates* or to any specified class or classes of *inmates*.

Section 37
Funding and Technical Support

The ETTA shall provide funding for the operations of all *Penal Institutions* under this Regulation and technical support to the Prison Service.

Section 38
Repeal

Act No. 12/1995 of the Republic of Indonesia on Corrections and any other applicable laws of the Republic of Indonesia on Corrections are hereby repealed.

Section 39
Entry into force

The present Regulation shall enter into force on 28 August 2001, provided, however, that the second sentence of Section 2.2 (g) shall enter into force on 28 February 2002.

Sergio Vieira de Mello
Transitional Administrator