

THE IMPORTANCE OF ASSET DECLARATION FOR THE LAW ENFORCEMENT OFFICER IN TIMOR-LESTE

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I. INTRODUCTION

As we know that in the life of the nation and State, there is no single institution that is free from potential risks of corruption. Currently, corruption has undermined all aspects of life of every individual and institution, including law enforcement institutions and their officers. As the Transparency International 2019 Global Corruption Barometer – Africa survey showed, 47 per cent of Africans believe that most or all police are corrupt, with 28 per cent also saying they had paid a bribe to a police officer in the previous year; the police also earned the highest bribery rates in Latin America and the Caribbean and the Middle East and North Africa, where 24 and 22 per cent, respectively, said they had paid a bribe to a law enforcement officer in the past year.¹ Police corruption broadly refers to “acts of misconduct by police officers aimed at obtaining financial benefits or other personal gains in exchange for selectively enforcing or manipulating rules, as well as the conduct of investigations and arrests” (Chêne 2010).

The impact of law enforcement corruption on the public interest is devastating, because it denies people accessibility to legal protection, and corruption can protect other criminal activity such as drug dealing, human trafficking, prostitution, illegal gambling and illegal logging, which consequently diminish public faith and confidence in the law enforcement authorities, themselves. This is because the public relies on the law enforcement officers to uphold the law, protect the community and assist it in times of need. In Timor-Leste, corruption was widespread among government officials. Transparency International ranked Timor-Leste at 93 out of 180 countries on its Corruption Perceptions Index in 2019, and the Government of Timor-Leste is continuing to take steps to combat corruption. There were accusations of police, including border police and immigration officials, involvement in corruption—most commonly bribery and abuse of power. Allegations of nepotism in government hiring were common. The customs service was under scrutiny for alleged corruption related to incoming goods.² The Anti-Corruption Commission in its 2019 annual report reported that, in 2019, there were four corruption cases that occurred in two law enforcement authorities, where two cases involved members of the Timor-Leste National Police (PNTL) and two other cases occurred in the customs service.³ As a law enforcement officer, they should keep away from corrupt behaviour because when officers act illegally, they dishonour both themselves and the law and the entire justice system that they represent.

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¹ Transparency International 2019 Global Corruption Barometer Survey, retrieved from <<https://www.transparency.org/en/blog/fix-the-police>>.

² Retrieved from <<https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/timor-leste/>>.

³ Comissão Anti-Corrupção, Relatório Anual CAC 2019, Dili, 2019, p. 25.

In order to effectively fight corruption crime within the law enforcement authorities, there must be a serious effort to identify the root of the corruption itself. Thus, urgent and concrete action with a progressive approach needs to be introduced by the State.

Law No. 8/2009 (15 July) on the establishment of the Anti-Corruption Commission (CAC) does not provide any direct or concrete preventive measures to be in place for the prevention of corruption in Timor-Leste. Although criminal offences against corruption are contained in the Penal Code, the purpose of which is to deter public officials from engaging in corrupt acts, no system for effective corruption prevention efforts has been designed yet. Whereas in article 4 of law number 8/2009 it states that, “The mission of the Commission is to undertake the preventive action and criminal investigation action against corruption in any of its forms”. However, the preventive actions that were taken so far by the CAC are still very general in nature, such as directing an anti-corruption campaign to the public, public awareness raising, and inspection and monitoring of the implementation of government projects.

There are several causes for the occurrence of corruption within the law enforcement authorities, one of which is the absence of a transparency and accountability mechanism for the public officials regarding their income, assets and interests during their tenure. Without asset declaration procedures, it is difficult to exert control over state losses, which can accumulate through corruption involving public officials. In Timor-Leste, corruption prevention efforts are generally only internal, namely from and by the superiors of an institution, so this is considered less effective and efficient because there is still room for manipulation and collaboration between corrupt officials and their superiors.

Corruption, which is known as a multidimensional crime, should not only be dealt with by prosecution but also through preventive mechanisms, one of which is through asset declaration, monitoring and control of the assets of public officials. Asset declaration will limit the ability of public officials to accept illegal assets, accept bribes and practice extortion and corruption. According to the World Bank, asset declaration is regarded as “a powerful tool to prevent corruption, detect illicit enrichment and conflicts of interests”⁴ and subsequently to identify ill-gotten gains among public officials. Around the world there are “more than 150 countries have introduced asset disclosure requirements for their public officials.”⁵

In this paper, I will discuss the mechanisms for preventing criminal acts of corruption through the asset declaration regime in Timor-Leste, which will increase the transparency and integrity of public officials to the public, especially law enforcement officers. This is expected to be an external monitoring mechanism for all forms of conflict of interest, lifestyles and assets of every public official who carries out public duties for the welfare of the whole Timorese society.

⁴ <<https://www.worldbank.org/en/news/opinion/2016/09/26/asset-declarations-a-threat-to-privacy-or-a-powerful-anti-corruption-tool>>.

⁵ Ibid.

II. THE RATIONALE OF ASSET DECLARATION

The declaration of assets by public officials can be a powerful mechanism for both the prevention and investigation of public-sector corruption. Based on the experience of several countries that have implemented this mechanism, they are able to control corruption that occurs in the public sector. Thus, this mechanism is recommended to be implemented in countries with very high levels of corruption. This mechanism was first started in United States and was initiated by President Truman in 1951 amidst rampant corruption in the public sector. It was then followed by several countries in Western Europe in the 1980s, and it was put into practice by all European members in 2000 (OECD 2011, pp. 22-23).

The principles behind this mechanism are transparency, accountability and integrity. As the bedrock of clean and corruption-free government, these principles are recognized as the important elements in regulating the relationship between the State and its people. By relying on these principles, an atmosphere of mutual trust can be created so that, in carrying out its duties, the public does not suspect that public officials are engaged in corrupt practices. Article 8, Chapter II of the UNCAC provides that in order to fight corruption, each State Party shall promote, *inter alia*, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system. More particularly, the Convention encourages each State Party:

. . . where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, *inter alia*, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.⁶

Furthermore, in article 52(5) it is stated that:

Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.⁷

III. THE ASSET DECLARATION REGIME IN TIMOR-LESTE

In Timor-Leste for years, there have been calls for transparency and asset declaration of elected and public officials, as these will improve the confidence of the people and foreign investors in the government's integrity and good governance. Therefore, through its National Parliament, Timor-Leste enacted Law No. 7/2020 (26 August) on Prevention Measures and Combating of Corruption, which established a regime of asset declaration for public officials.

⁶ Article 8. Codes of Conduct for Public Officials, Section 5, Chapter II, UNCAC.

⁷ Ibid.

The asset declaration regime in Timor-Leste is a mechanism that can be said to be a modern and progressive approach towards fighting against corruption because it includes and adopts all universal principles and good practices which have been applied in various countries. As applied in many countries, an effective and legally binding asset declaration mechanism must have such fundamental elements as described as follows.

A. Legal Basis

The legal basis for asset declaration in Timor-Leste is divided into two categories, namely international conventions and national laws.

1. International Conventions

For the Timor-Leste context, the main source of law which forms the basis for the creation of the asset declaration regime is the United Nations Convention against Corruption (UNCAC) which is stipulated in article 8 (5) and article 52 (5). Timor-Leste fully ratified UNCAC in 2008 through Parliamentary resolution number 25/2008. Pursuant to article 9 (2) of the Timor-Leste Constitution, which states that: “The norms contained in international conventions, treaties and agreements are in force in the domestic legal order upon approval of ratification or adherence by the respective competent bodies and after being published in the official gazette.” Therefore, with the resolution of the National Parliament, UNCAC has become legally binding on Timor-Leste and will be implemented gradually by the competent state institutions.

2. National Laws

The national laws which serve as the basis of asset declaration are, *first*, Law No. 5/2009 concerning the civil service statute as stipulated in article 10 (4) about conflicts of interest, where it is clearly stated that,

... in case of suspicion of corruption, fraud, embezzlement or, in general, diversion of assets or public money, the public official, within the scope of the competent process, is obliged to provide access to his assets before the administrative and judicial authorities, acting in accordance with the law and in accordance with the powers of inspection and supervision.

Second, chapter II of Law No. 7/2020 (26 August) on Prevention Measures and Combating of Corruption establishes the asset declaration regime for public officials. According to article 27 of this law, the ultimate goal of the asset declaration regime is to, one, detect and prevent conflicts of interest; and two, monitor the fluctuation of wealth to detect significant and unjustified increases of the assets of people subject to declaration. In addition to the two goals above, it also tacitly aims to prevent other related crimes such as tax evasion and money laundering.

B. The Content of Declarations

Good asset declaration regimes spell out clearly and specifically the income, assets, interests, obligations and expenditures that should be declared by public officials. According to article 34 (2) of Law No. 7/2020, the declaration must be detailed and cover all types of income; movable and immovable assets; precious objects with a value above US\$1,500; all types of investments; commercial company ownership; current account balances and deposits, as well as other financial products; securities including stocks and other financial instruments; debts and other financial obligations; gifts including travel and other leisure or entertainment activities over US\$250; foreign travel and other luxury

expenses above US\$2,500; participation in executive management bodies, administrative councils, supervisory or consultation bodies or any collegial body of a commercial company; and participation in private organizations, including political parties, political associations, associations and other non-profit organizations.

C. Covered Officials

In practice, the coverage of public officials who must report their assets is applied differently from country to country. Some require declarations from all civil servants; some only require declarations from civil servants in certain positions; some only require declarations from elected officials. This depends on the level of responsibility in dealing with the powers and functions of a public official and the potential corruption risks involved.

According to article 29, a wide group of public officials is covered. This includes all heads and members of the four branches of the state sovereign bodies such as the President of the Republic; Members of Parliament; members of the Government; members of the judiciary magistrate and all of their high-ranking officials. The obligation to declare assets also includes heads of management and leadership positions in local and national public administration as well as armed and police officers, elective bodies of local government, holders of management positions and leadership of public companies, officials and officers of the customs, taxation, state asset management, state inspection and audit service, ambassadors, consuls and holders of direction and leadership positions in Timor-Leste's embassies in foreign countries and also members of the criminal investigation police and migration services.

Apart from the people mentioned above, other people who also have to declare their assets are their family members. Family members of the declarant covered by this law are the spouse or person with whom he/she lives in marital union, minor or economically dependent children, and other economically dependent persons.

D. Period of Declaration

As a mechanism to monitor changes in assets, the period of the submission of the declaration must be tightly regulated. According to article 32 of the Law No. 7/2020, the period of declaration is defined in four categories, such as the initial declaration done within 30 days after taking office, the annual declaration due by 31 January of the following year, the final declaration up to 30 days after termination of office and the post-exercise declaration annually during the three years following the termination of the term of office. However, the declaration can be presented at any time, at the initiative of the declarant, whenever there is a substantial change in the declarant's assets and interests. For lower level declarants, instead of the annual declaration, they are required to submit a declaration every three years as referred to in article 29, lines u), v), w), x), y), z), and aa).

E. Verification

A good asset declaration regime should have a mechanism for verification. A thorough and careful verification process will have the power to test and explore the truth, accuracy, authenticity, clarity and validity of the documents, source and existence of a declaration against the standard and specifications that are required by law. There are two types of verification: formal verification as stipulated in article 41, and risk-based audits as mentioned in article 44 with the aim to determine whether there have been significant and unjustified increases in the assets of the declarant or members of the declarant's family, as well as the existence of conflicts of interest. These two verification procedures are

mandatory and applied to all declarations undertaken by oversight bodies every two years as set forth in article 43.

For the purpose of verification, the oversight bodies may request additional information, data and explanation from the declarant and the declarant's family members and government institutions that have the authority over asset registration and other private natural or juridical institutions with whom the declarant or member of the declarant's family has carried out transactions or who is in possession of information on a transaction subject to the declaration as clearly stipulated in article 46. The additional information will be used as a comparison to the information and documents submitted by the declarant and the declarant's family members in the declaration form.

F. Oversight Bodies

According to article 28, there are two oversight bodies to oversee the receiving and verification of asset declarations, namely the CAC and the Supreme Court of Justice, whereas the Supreme Court of Justice will receive and verify the declarations that are coming from the President of the Republic, the Members of the National Parliament and members of the Government Cabinet including public officials of the CAC. The declarations of all other public officials will be receive and verified by the CAC. In this asset declaration process, these two oversight bodies also have the authority to impose fines on declarants and their family members who do not comply with the rules and regulations as regarded in the asset declaration regime.

G. Cooperation

Cooperation is one of the fundamental factors for the success of an asset declaration system. Due to limitations in the availability and accessibility of information, each oversight body must have a wide range of networks of cooperation either with individual people or institutions in order to be able to access accurate and credible information about the subject and object of the declaration and to facilitate the verification process to detect ill-gotten assets and the application of sanctions.

Pursuant to articles 46 (2) and (3), cooperation of the oversight bodies with other institutions is necessary with regard to the following institutions: civil registration office, land, sea and aero transportation registration office, commercial entity registration office, non-governmental registration office, land and property registration office, tax administration office, banks and other financial institutions, casinos and the Financial Intelligence Unit.

The oversight bodies may also obtain information abroad through access to free databases or through cooperation with foreign authorities. As stated in article 46 (4) and (5), the oversight bodies may resort to international cooperation in order to obtain information from banks, legal persons and foreign governments if the declared assets are outside of the country.

H. Accessibility

One of the mechanisms to ensure effectiveness in controlling assets and conflicts of interest of public officials is by involving the public through disclosing asset declaration data to the public. Experience shows that most successful investigations are triggered by complaints of citizens, NGOs and journalists with knowledge about the true situation of an

unfaithful public official. Therefore, asset declarations should be publicly available online.⁸ Contrary to the principle of transparency, the asset declaration regime in Timor-Leste does not permit public access to data and information on the content of the asset declaration itself. Article 56 of Law No. 7/2020 criminalizes the negligent or intentional disclosure of information contained in a declaration. Officials from oversight authorities who are convicted of such conduct may be sentenced to imprisonment between 2 to 5 years or a fine.

I. Sanctions

In order to be able to demonstrate the effectiveness, strength and binding power of an asset declaration regime, it must have an element of sanctions. The asset declaration regime in Timor-Leste follows a two-pronged system of sanctions, namely administrative sanctions and criminal sanctions. Administrative sanctions in the form of fines are imposed for several violations such as late declaration of assets (article 48), failure to declare assets after notification (article 49), incomplete declaration (article 51), omission of information (article 52), and the declaration of false information (article 53). Criminal sanctions can be imposed for several acts of violation such as a refusal to declare by a family member (article 50), incomplete declaration (article 51 (2)), the declaration of false information (article 53 (2)), obstruction of verification (article 54) and breach of obligation by an agent of the oversight body (article 55).

J. Reporting

Although there is a question in terms of transparency, reports on the asset declaration regime in Timor-Leste are open to the public. As stipulated in article 28 (3), the oversight body is required to produce a biennial statistical report containing the number of people required to declare, the number of people who did not submit the declaration within the deadline, the number of people who were sanctioned administratively, disciplinarily or criminally by indicating the violations and sanctions applied as well as the number of people whose verification of the declaration led to the adoption of measures to prevent or resolve a conflict of interest. This report can be accessed by the public as required by article 9 (1) of the law. Regarding public complaints on the illegal gain or any other violation of a public official, the law precisely follows the norms contained in article 13 (2) of UNCAC. Thus, Article 109 (1) of Law No. 7/2020 expressly permits anonymous complaints.

IV. CONCLUSION

Public sector corruption that involves law enforcement officers has become a reality in many countries, including Timor-Leste. There are various factors behind it, both from the individual and from the legal environment, that limit the ability of the State to control the corrupt behaviour of that individual. This must be addressed immediately. As law enforcement officers are the guardians, protectors and enforcers of the law, they should be clean and free from all forms of corruption. If law enforcement officers are infected with the corruption virus, it will facilitate the occurrence of other serious crimes because they are the gatekeepers who take action against any perpetrator of crime that occurs in society.

One of the mechanisms that is believed to have the power to prevent corruption in the public sector is the enactment of an asset declaration regime for public officials, including

⁸ Transparency International Principles on Asset Declaration.

law enforcement officials, because the asset declaration regime is regarded as an effective and efficient mechanism to prevent corruption, conflicts of interest, illicit enrichment and ensuring public accountability, transparency and increasing institutional integrity.

Thus, Timor-Leste has learned from and reflected on the good experiences of countries which were successful in combating corruption in the public sector through the establishment of an asset declaration regime. Accordingly, Timor-Leste enacted its own asset declaration regime for public officials, which is regarded as a modern and progressive approach in the fight against corruption.

As a standard that has been adopted by various countries, the asset declaration regime in Timor-Leste also adheres to fundamental principles such as, *first*, establishment of the regime based on a sound legal basis and for the purpose of detecting both illicit enrichment and conflicts of interest; *second*, the content of the declaration must cover all essential information regarding a public official's income, assets, interests and expenditures; *third*, the asset declaration should cover all public officials at risk for corruption including their family members; *fourth*, the period of declaration should cover the time that the official first assumes public office and during and after the term of office; *fifth*, the declaration submitted should be verified rigorously and audited; *sixth*, the oversight body should be equipped with sufficient human and financial resources to verify and audit the declarations; *seventh*, the oversight body should cooperate with other State and private institutions for obtaining comparative information; *eighth*, the declarations must be accessible to the public; *ninth*, there must be administrative and criminal sanctions against misreporting of assets, including declarations that are incomplete, inaccurate, intentionally erroneous, or that omit or conceal any substantial amount of wealth; and, *tenth*, the oversight body must produce regular reports containing, *inter alia*, case statistics and an analysis of trends.

With the enactment of this asset declaration regime, it is hoped that it will be able to effectively prevent and eradicate corruption in the public sector, especially within the law enforcement apparatus in Timor-Leste.