

INTERNATIONAL COOPERATION FOR COMBATING CORRUPTION IN TIMOR-LESTE: CHALLENGES AND COLLECTIVE ACTION

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I. INTRODUCTION

Along with much of the world, Timor-Leste is developing very rapidly due to information and technological advances, modern forms of transportation and economic growth, which greatly encourages the development of new forms of transnational crimes like corruption. Consequently, corruption has become a serious problem (*crime extraordináriu*)¹ for the people of Timor-Leste because it has penetrated all lines of people's lives in a structural and systematic way, thus creating a negative stigma against Timor-Leste in the international community.

The problem of corruption is no longer a national problem but has become a transnational phenomenon (crime across borders).² And so, bilateral and international cooperation is essential in preventing and eradicating criminal acts of corruption through investigation and prosecution in criminal justice trials, including the confiscation and return of assets.

In recent years, corruptors have increasingly dared to commit criminal acts in their home country, and they have evaded justice by fleeing to other countries and concealing the assets they have taken in the country where they are hiding. The perpetrators of the crime then use the territorial jurisdiction of another country as a place of refuge and a safe haven from prosecution.

A. Corruptors Avoid Prosecution

Each country has a positive law to maintain security, order and peace for every citizen or person within its territory. However, violations of the legal system are subject to sanctions as an effort to monopolize and bind so that the law can still be enforced, but not every corruptor will be willing to take responsibility for his actions. They will try to avoid prosecution and threats of punishment. They will use all means at their disposal (*modus operandi*), both legal and illegal. These criminals evade justice by escaping into the territory of another country or to the country of origin. Corruptors who fled with the intention of avoiding prosecution in their original country involve the interests of both countries.

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¹ Paulo Anuno's thesis entitled: "*Tinjauan Hukum Ekstradisi Terhadap Pelaku Kejahatan Korupsi Yang Melarikan diri Ke Luar Negeri*" or in English "A Review of the Extradition Law against Corruption Perpetrators Who Fled Abroad" (free translation), p. 1, 2019.

² Ibid.

B. Cases

Several cases involving several perpetrators of criminal acts of corruption were carried out in Timor-Leste, among others, in 2012 a former adviser to the Ministry of Finance, the defendant Bobby Boye,³ a citizen of Nigeria and the United States, fled Timor-Leste to the United States. The suspect (Mr. P), an Indonesian citizen, fled to Indonesia. The Dili District Court sentenced a Portuguese couple to 8 years' imprisonment, but both fled to Australia and are now located in Portugal.⁴ And they were absolved by Timor-Leste's Court of Appeal.⁵ One case is about a former Finance Minister⁶ who left Timor-Leste for Portugal. Also, Mr. L was involved in money-laundering and left Timor-Leste for Australia and Indonesia. Also, Mr. M, suspected in a case of financial fraud, has been located in Singapore and Australia. The three defendants mentioned in these cases hold dual citizenship. Hereinafter, the difficulties of bringing them back to Timor-Leste for investigation, prosecution or trial will be discussed.

II. INTERNATIONAL RELATIONS⁷

As has been stated in the introduction and examples of concrete cases, difficulty investigating corruption cases and repatriating the suspects and their illicit profits from other countries has allowed the perpetrators to evade justice. To overcome these difficulties, international cooperation is urgently needed. Therefore, Timor-Leste ratified the United Nations Convention against Corruption in 2009, emphasizing all aspects of anti-corruption efforts (prevention, investigation, prosecution of offenders, seizure and

³ In late 2009, Bobby Boye, as an oil tax law expert, was hired to assist Timor-Leste for three years advising to the Timor-Leste Ministry of Finance. On June 19, 2014, the Federal Bureau of Investigation (FBI) found that he had defrauded Timor-Leste of more than US\$3.5 million between June 2012 and December 2012. The money was transferred to the New York Opus & Best Services LLC Current Account. He was detained in the District of Bergen County, New Jersey, USA. On October 15, 2015, the Federal Court through Judge Freda Wolfson sentenced Boye to 6 years in prison and returned \$3.51 billion to Timor-Leste. Source <https://www.laohamutuk.org/econ/corruption/Boye/14BoyeCase.htm> . Accessed 12 November 2021.

⁴ They arrived in Portugal in 2017. <https://www.easttimorlawandjusticebulletin.com/2017/11/portuguese-convicts-who-fled-timor.html>. <https://www.jn.pt/mundo/absolvido-casal-portugues-antes-condenado-por-peculato-em-timor-13234352.html>. Accessed 12 November 2021.

⁵ Mr. T and his wife Mrs. Fong were sentenced in 2017 for embezzlement. Also, read source: <https://www.macaubusiness.com/east-timor-court-of-appeal-acquits-portuguese-couple-previously-convicted-of-embezzlement/>. Accessed 12 November 2021.

⁶ She was condemned by Dili District Court for 7 years in prison. She appealed to the Court of Appeal and case is ongoing investigation handled by the Timor-Leste Court of Appeal. <https://www.independente.tl/en/national/pires-fights-against-unfair-seven-year-jail-sentence-for-corruption>. <https://visiteasttimor.com/news/court-appeal-nullifies-sentence-to-former-timorese-ministers-but-did-not-close-case/>. Accessed 12 November 2021.

⁷ As stated in the constitution of the Democratic Republic of Timor-Leste (RDTL), Article 8, number 1. On matters of international relations, the Democratic Republic of East Timor shall govern itself by the principles of national independence, the right of the People to self-determination and independence, the permanent sovereignty of the peoples over their wealth and natural resources, the protection of human rights, the mutual respect for sovereignty, territorial integrity and equality among States and the non-interference in domestic affairs of other States. 2. The Democratic Republic of East Timor shall establish relations of friendship and cooperation in all other peoples, aiming at the peaceful settlement of conflicts, the general, simultaneous and controlled disarmament, the establishment of a system of collective security and establishment of a new international economic order capable of ensuring peace and justice in the relations among peoples. 3. The Democratic Republic of East Timor shall maintain privileged ties with the countries whose official language is Portuguese. 4. The Democratic Republic of East Timor shall maintain special ties of friendship and cooperation with its neighbouring countries and the countries of the region.

return of misappropriated assets).⁸ Ratification indicates that Timor-Leste has the power to mark various breakthroughs that require specific forms of international cooperation, such as mutual legal assistance in the collection and transfer of evidence, extradition, and tracing and freezing of criminal proceeds.

A. Extradition

According to article 35 of the Constitution of Timor-Leste, extradition must comply with special rules, such as having to go through a judicial decision, ensuring there is no political motive, and there is no death penalty. From the perspective of international law, article 35 of the Constitution is very suitable and appropriate according to the international rules as stated in article 44 of the United Nations Convention Against Corruption⁹ and article 45 about the transfer of sentenced persons. Correspondingly, a legal source is used as normative material, namely the Timor-Leste National Parliament Act, number 15/2011, about International Criminal Judicial Cooperation or “*Cooperação Judiciária Internacional Penal, (CJIP)*”.¹⁰ It is very beneficial for Timor-Leste to be part of the Portuguese-Speaking Countries (CPLP) which represents several continents of Africa, Europe, America and Asia. Timor-Leste is also trying to become a member of ASEAN because it is very profitable regionally, geopolitically and economically.

B. Mutual Legal Assistance

Article 46 of the United Nations Convention Against Corruption (UNCAC) states that States parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention. In Timor-Leste, the Anti-Corruption Commission has limited authority to handle corruption cases,¹¹ and the public prosecutors are vested with the power to institute criminal proceedings¹²; nevertheless, the Commission must still have a voice to contribute to the government, national parliament and public prosecutors at the national level as well as at international seminars and meetings.

Timor-Leste has extradition treaties with member states of the Community of Portuguese Speaking Countries, but Timor-Leste has not adopted any domestic law with regard to bilateral extradition agreements and mutual legal assistance.

III. COLLECTIVE ACTION TO COMBAT CORRUPTION

A. International Agencies

The Anti-Corruption Commission does not have full power over extradition and mutual legal assistance, but so far it has established good and continuous cooperation. As an

⁸ Legislative guide for the implementation of the United Nations Convention against Corruption, number 7, p. 2-3.

⁹ Because extradition is subject to the domestic law of both the requesting State Party and the requested State Party, State Parties should seek to create and conclude bilateral and multilateral agreements.

¹⁰ The law number 15/2011, approved on 16 August 2011, by former National Parliament, Fernando La Sama de Araújo and on 18 October 2011, enacted by former President of the Republic, José Ramos-Horta. The law has 160 articles, title I on general provisions, title II on extradition, title III on transmission of criminal procedures, title IV on enforcement of criminal sentences, title V on surveillance of condemned persons or conditionally release, title VII on final disposal.

¹¹ Article 5, Powers of the Commission, Law n0. 8/2009, Law on the Anti-Corruption Commission. In terms of criminal prevention and criminal investigation.

¹² Article 48 number 1, Criminal Procedure Code of Timor-Leste, 2009.

example: in terms of capacity-building in the area of prevention and investigation, Timor-Leste has entered into Memorandums of Understanding (MoU) with other countries and provided international assistance, such as to: the European Commission, UNDP, PALOP-TL, Camões I.P, UNODC, UNAFEI, JICA, USAID, ILEA Bangkok, The Independent Commission Against Corruption (ICAC) Hong Kong, Corrupt Practices Investigation Bureau (CPIB) Singapore, *Komisi Pemberantasan Korupsi* (KPK) Indonesia, Malaysian Anti-Corruption Commission (MACC) Malaysia, GIZ, COICA, etc. Also, Timor-Leste has been a member of INTERPOL since October 2002 following the independence and restoration of the Democratic Republic of Timor-Leste (RDTL) and has engaged in cooperation with INTERPOL represented by the Prosecutor General's Office and the Timor-Leste National Police (PNTL). In 2015, the government established the *Policia Cientifica de Investigação Criminal* (PCIC), which is also the focal point for INTERPOL, and the Anti-Corruption Commission (CAC) is also a member of it.

B. National Teamwork

The most important and urgently needed form of cooperation is that among government institutions, intellectuals, civil society and the community – all of which have an important role in preventing and combating corruption. Such cooperation must be carried out both informally and formally and on an ongoing basis. Examples of agencies with which cooperation is carried out by the Anti-Corruption Commission include the Financial Information Unit (FIU)¹³ (in this case special cooperation in the field of exchanging information, although there are problems in uncovering Politically Exposed Persons (PEP)),¹⁴ the State Inspector General (IGE), the Public Function Commission (CFP), the Human Rights and Justice Ombudsman (PDHJ), institutes and universities, *Policia Cientifica de Investigação Criminal* (PCIC), Timor-Leste National Police (PNTL), the National Directorate of State Heritage (DNPE), and the Immigration Police, as well as with Civil Society (NGOs and Churches) and Local Authorities (Village Chiefs).

IV. CHALLENGES

A significant challenge to international cooperation is the right of every citizen to receive protection. Under international law, a country has personal jurisdiction based on active citizenship (nationality) over its citizens who are outside its territory. This relationship is manifested in the rights, power and authority of the State (jurisdiction) to enforce its national law against its citizens who commit crimes within the country or outside its territory. The State has the legal grounds, the jurisdiction and the obligation to bring their citizens accused of criminal acts to justice based on the principles of territoriality, nationality and universality.

As a result of the complexity of dealing with different legal systems, bureaucratic procedures, different languages and so on, obtaining justice has been a slow process. Consequently, the people's sense of justice is unfulfilled and various forms and types of

¹³ The Financial Information Unit, is an administrative entity created within the Central Bank of Timor-Leste under Law no. 17/2011 of 28 December, amended by Law no. 05/2013/III of 14 August, on the Legal Regime for Prevention and Combating Money Laundering and Financing of Terrorism. The nature, organization and function are regulated under the Decree Law no.16/2014 of 18 June.

¹⁴ The Deputy Commissioner of Investigation, Mr. Castro, revealed that Timor-Leste has had problem becoming a member of the EGMONT GROUP, which has made it difficult to obtain accurate information about public officials who have transferred or maintain wealth overseas.

corruption crimes have developed and become increasingly sophisticated, even harming State finances. Slow responses from legal institutions, such as the police and prosecutors from cooperating countries in relation to mutual legal assistance in corruption cases, only make the problem worse.

V. CONCLUSION

International cooperation needs to become faster in punishing the perpetrators for their crimes in order to restore a sense of justice for the community. The violator must be held accountable by the court for his or her actions for the crimes that have been committed, and if proven guilty, the punishment imposed must be commensurate with his or her guilt.

To carry out investigations, prosecution and adjudication to bring home the perpetrators of corruption crimes, there must be special treaties regarding extradition for the formal process whereby a State requests the enforced return of a person accused of a crime to stand trial in the requesting State. And mutual legal assistance is a process by which the State seeks and provides assistance in gathering evidence in criminal cases. The treaties can be done bilaterally and multilaterally.

The Anti-Corruption Commission has made several breakthroughs in making recommendations to the government and the National Parliament to encourage Timor-Leste to adopt an extradition law. While waiting for the law, the Anti-Corruption Commission already has Measures to Prevent and Combat Corruption, or *Medidas de Prevenção e Combate a Corrupção (MPCC)*.¹⁵

¹⁵ Law no. 7/2020 of August 26th Prevention and Combat Measures Corruption. This law has 117 articles, and has the competence to criminalize corruption crimes committed in the exercise of public functions (articles 79 to 87) and corruption crimes committed in the exercise of private functions (articles 88 to 91).