

FORMS OF CORRUPTION IN TIMOR-LESTE AND ITS COUNTERMEASURES

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Corruption is a pernicious phenomenon that subverts the fundamental values of life in society. Corruption undermines the foundations of the democratic rule of law, distorting the fair distribution of national wealth, fostering divisions and friction in society. In a word, corruption attacks justice and social harmony. Fundamental principles of the Constitution such as the universality of laws, equality and legality are emptied of content in favour of the particular interests of some unscrupulous people. As it is today a global phenomenon of increasingly difficult persecution and combat, it is imperative that the Timorese State adopt exceptional measures to ensure greater effectiveness in the fight against this crime.

The fight against passive corruption, therefore, must be assumed by everyone and provided with legal mechanisms that allow facing its hidden nature because, although it offends the foundations of the State, it ends up not having anyone, in particular, as a victim. The Timorese legal framework already has legal instruments to prevent and combat corruption and associated crimes, such as the Penal Code and the legal regime for preventing and combating money-laundering and the financing of terrorism. In the current context, it is important, in coherence with the existing legal framework, to establish new measures to prevent and fight corruption. Therefore, it was understood that this law should contain, as it does, provisions of a preventive and not just criminal nature. And, in this context, it was also considered convenient to have already provided here about the regime for the declaration of income, assets and interests.

Regarding criminal matters, it was decided to concentrate all corruption crimes in a single legal diploma, which resulted in the expurgation of those provided for in the Penal Code and their inclusion in this law, together with the new types that it enshrines.

Timor-Leste is one of the world's youngest and Asia's poorest countries, and the country is under development in various aspects of the country. The weakness of the regulatory and institutional framework in Timor-Leste is exposed to being targeted as a layering country in global money-laundering schemes, as well as losing public money through corruption, embezzlement and tax evasion and other crimes that are committed by public servants relating to the projects and public tenders. According to World Bank estimates, countries lose around 2 per cent of GDP annually due to corruption: in other words, approximately 60 million USD. The regulation and legal framework, especially penal code, entered into force in 2009, and that same the Anti-Corruption Commission (CAC) was established with the main task of the prevention of corruption.

Ten years later in year of 2020, the Timor-Leste National Parliament approved and the President of Republic promulgated a new law that defines the new measures to prevent and fight against corruption. The law was published and came into force in February 2021.

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The objective of the new law is the necessary mechanisms for an effective fight against corruption in order to meet the Constitution's fundamental principles, such as the universality of rights, equality and legality. The new law describes the general measures to prevent corruption and the income, assets and interests declaring regime. The corruption crimes, the applicable penalties and the special means of obtaining and retaining evidence are also defined. This law also changes other pieces of legislation related to preventing and combating corruption, namely the Penal Code, highlighting the creation of the new categories of illegal acts and the concentration of all corruption crimes in a single legal diploma.

With regard to the public sector, the Law 7/2020 provides guidelines that emphasize the need to observe appropriate procedures for the selection and training of people for public office, the turnover of these people in these positions and, finally, the need of implementing a regular training programme for them. The law also proposed a set of rules to be developed in guiding and regulating the conduct of public officials, in order to promote the personal behaviour standards of integrity, honesty, responsibility and impartiality. In order to facilitate the reporting of corrupt acts, it is foreseen that police and judicial authorities may accept anonymous complaints and protect the identity of whistle-blowers protection and protection against reprisals.

This law also emphasizes the promotion of publicity and transparency in procurement and public procurement procedures. It is also stressed the need for procurement procedures for goods and services acquisition to be carried out based on economic criteria and based on the principle of optimizing the cost and benefit relationship. Further, in addition to facilitating the public access to the competent authorities, it is expected that the administrative procedures may be simplified, thereby mitigating corruption opportunities.

Another innovation implemented through the law in question concerns the obligation for all individuals in public service and their household members to declare income, assets and interests, thus enabling the State to discover and prevent conflicts of interest and monitor more efficiently the wealth variations, in order to identify significant and unjustified increases in the declarant's wealth. These statements may be completed in an electronic form, to be prepared and provided by the relevant authorities.

It is also defined that public institutions disclose their activity, operation and decision-making processes to the public, through regular publication of activity reports and their broad dissemination through electronic media.

This law also recognizes the existence of more appropriate mechanisms to control corruption, such as the accountability of legal persons. Thus, commercial companies that engage in illegal practices such as bribery, influence peddling or other practices that result in the removal of competitors in procurement procedures or money-laundering, for example, will be held criminally liable.

This law also forbids public officials, for a two-year period after the end of his term, from engaging in any activity in the private sector, whenever the service to be rendered or the employment is directly related with the roles performed by him or under his supervision when he was in office holding a public position.

Law 7/2020 defines corruption crimes as those committed while exercising public roles, passive corruption of public official for an illegal act, passive corruption of a public official for

a legal act, active corruption of a public official, embezzlement, embezzlement of public property, violation of the participation right and equal candidacy in procurement, sale or concession tenders, abuse of power, profiting from economic interest in business and conflict of interest. Whoever is convicted of a crime enshrined in this Law, punishable by imprisonment for more than 5 years, is prohibited from taking or being in public offices for a period of 5 to 10 years.

Through the enactment and entry into force of this important law, Timor-Leste marked a fundamental stage of the national cause to fight against corruption. However, the determining factor of this effort goes beyond the enactment, which will be the institutional and social preparations to rigorously implement the law, always maintaining the momentum and the political will to fulfil the purposes of this law.

Responding to the new law, the Anti-Corruption Commission (CAC) of Timor-Leste, assisted by UNODC has developed manuals on asset declaration and investigations for the Commission, and the manuals are used in the context of operationalizing the new Anti-Corruption Law (2020), which introduces new criminalization of corruption elements. The law also mandates the CAC to administer the new system for the declaration of income, assets and interests, with a view to preventing conflicts of interest and facilitating the detection of sudden, unjustified changes in wealth.

As part of the manual on asset declarations, assisted by the UNODC, the CAC has prepared a declaration form that is currently under review and being considered for approval by Timor-Leste's Supreme Court of Justice. The manual includes technical instructions on the form's effective use, in order to support verification, collation and analysis efforts within the country's legal framework. Another key element of the manual is a compendium detailing practical ways to respond to borderline cases, such as wealth in crypto currencies, how to consider former spouses and requirements for re-elected Members of Parliament.

Meanwhile, the manual on investigations looks comprehensively at all stages of preliminary and formal anti-corruption investigations, within the legal context of Timor-Leste. Sections include the legal authority of the Commission, whistle-blowing, responding to complaints, financial and digital investigations, managing information, interviewing witnesses, developing cases and asset recovery.

Multiple studies in different countries and sectors have shown the value of whistle-blowing to detect fraud, corruption and other misconduct and its importance is often rated equally high as internal audits or due diligence checks. At the same time, challenges in reporting are very high and acts of corruption remain largely under-reported, both by direct witnesses and by whistle-blowers who come across alleged wrong doing in the workplace. Studies show that potential whistle-blowers do not believe in appropriate follow-up to their report; they are afraid of retaliation ranging from negative consequences for their career to physical threats; they are afraid of civil or criminal liability; and they would not know where to receive advice.

Timor-Leste currently has no whistle-blowers' protection legal framework. A witness protection law was enacted in 2009, but the operating procedures and institutional arrangements to operationalize the law are still missing. The event resulted in a series of recommendations on how to develop these arrangements; Timorese authorities requested follow-up support from the UNODC to establish the needed systems at the national level.

Approved on 29 June 2009 by the National Parliament, the law that creates the Anti-Corruption Commission aims to give the competence to the independent State specialized criminal police that in its action will be based only on the criteria of legality and objectivity in articulation with the competent authorities, as it is important for its credibility as a mechanism to combat corruption.

Corruption is a phenomenon with negative consequences for society and the economy that affects the principle of democracy and the rule of law and, given that fact, the IV Constitutional Government wrote and proposed to the National Parliament a legal framework for the CAC. This is a clear example of ethics, responsibility and transparency in governance according to the principles set out in the Constitution and reflecting the spirit of the United Nations Convention against Corruption.

The CAC reports to the Parliament but is otherwise fully independent. It has the power to begin and conduct criminal investigations related to corruption cases, according to the criminal code. Besides that, it also has the role of education and public awareness, by identifying and promoting the measures that prevent corruption.

Corruption cases are also connected with transnational organized crime, which is characterized by having high profits and involving more than one person and one country as its main scope, violates human rights, causes damage and undermines the socio-economic development of countries. The advent of communication technologies, the interconnection of the world economy and the greater circulation of people, goods and services, created favourable conditions for organized crime to globalize its activities, becoming a stateless organization, which stopped being contained within the limits of physical borders of a country, having similar characteristics in the different countries, and that makes the use of the most modern technology one of the mechanisms of its global strategy.

Faced with a criminal phenomenon with similar characteristics, responses focused only on the internal mechanisms of each country will be doomed to failure. Therefore, the response to transnational organized crime will have to be coordinated, and by international legislative systems in which the main focus should be on cooperation between the different organs of the different States, with responsibility for the prevention and repression of crime. Therefore, it is necessary to strengthen the rule of law and the institutions responsible for the investigation, prosecution and adjudication of transnational organized crime at the level of each affected State and, at the same time, to strengthen the State's mechanisms for international legal and judicial cooperation. In this context, States are faced with the challenge of ratifying and adopting their domestic legal systems, the most important international conventions whose main purpose is to combat organized crime, and which encourage cooperation and mutual international legal assistance.

The Timor-Leste Parliament also adopted the United Nations Convention against Transnational Organized Crime (Palermo, 2000) and the United Nations Convention against Corruption (Mérida, 2003). The adoption of these conventions that encourage international legal and judicial cooperation mean that Timor-Leste is able to ensure not only due legal processes, but above all that the borders of countries do not impede the fight against crime. These conventions ensure that criminals who commit cross-border crime can be pursued, tried and held criminally responsible.

By generating transnational organized crime with high profits, its fight also will only be effective insofar as the assets and advantages generated by it are effectively reverted to the State, through mechanisms of widespread loss, of assets and advantages of the crime that once reverted in favour of the States should preferably be used to strengthen the rule of law and the institutions of the States responsible for fighting crime.

Aware of the damage that transnational organized crime is capable of causing and, convinced that acting in isolation, it will not be possible to effectively fight these criminal phenomena, Timor-Leste not only ratified the most important United Nations Conventions mentioned above, but also approved specific legislation on the preventing and fighting money-laundering and terrorist financing, which establishes special measures to collect evidence, breach of confidentiality and loss of assets in favour of the State not only in relation to money-laundering and terrorist financing, but also to a wide range of serious crimes. Timor-Leste also approved specific legislation that regulates international legal and judicial cooperation in criminal matters, to favour and encourage cooperation and mutual assistance.

International, bilateral and multilateral conventions, ratified by Timor-Leste, under the terms of domestic law, are the main sources of international judicial cooperation and prevail over the legislation, with the exception of the Constitution of the Republic. In addition to the Conventions, agreements and treaties, there are two other main sources that regulate international judicial cooperation: the Constitution of the Republic and Law No. 15/2011, of 26 October.

Due to lack of understanding about the laws and regulations regarding the public administration service, many public servants and high-level government officials are involved in maladministration and corruption. The impact is that public projects lack sufficient quality, so the public prosecutors have to investigate many cases such as embezzlement, tax fraud, falsification of public documents, harmful administration, economic participation in business and many more.

Internally, the Public Prosecution of Timor-Leste can utilize a new law that entered into force on 17 August 2022 that regulates the Central Office for Combating Corruption and Organized Crime, which was already established in 2015. During this year from January to July, the Central Office for Combating Corruption and Organized Crime was handling investigations of about 48 cases and most cases about embezzlement, tax fraud, falsification of public document, harmful administration, economic participation in business, abuse of power and others.

These were the ideas and information that I would like to share with the distinguished colleagues in this forum and my sincere thanks to the UNAFEI for inviting me to this conference.