

COMBATING CORRUPTION THROUGH EFFECTIVE CRIMINAL JUSTICE PRACTICES, INTERNATIONAL COOPERATION AND ENGAGEMENT OF CIVIL SOCIETY IN TIMOR-LESTE

*Henrique Lopes Soares**

I. INTRODUCTION

Corruption is known as a disease that undermines all aspects of human life (socioeconomic) and destroys the development process of the state (law and democracy). And also corruption has become a global problem, because it happens in all countries in the world. So combating and fighting corruption is the responsibility of all people, not only a group or an institution.

Based on the fight against corruption, through this paper, I will share how to combat and prevent corruption in Timor-Leste (TL), with the topic “*Combating Corruption through Effective Criminal Justice Practices, International Cooperation and Engagement of Civil Society In the Context of Timor-Leste*”.

I will divide the paper into four parts: *First*, the National Strategy of combating corruption. *Second*, Anti-Corruption Commission (ACC) Responsibilities. *Third*, how Timor-Leste takes part in cooperating internationally to combating corruption, and *Fourth*, prevention methodology to engage the public to prevent corruption in Timor-Leste. And last, I will share some challenges that the ACC faced, by sharing the challenges we experienced with the aim of getting feedback from other participants’ experiences in dealing with combating corruption in their countries.

A. The National Strategy of Anti-Corruption

Since Timor-Leste’s independence in 2002, there has been increasing apprehension about corruption. The public has been very critical about this perceived rise in corruption. There are several main institutions that share the mandate of combating corruption. These can be divided into two categories, namely, independent state bodies and executive bodies. Prior to the ACC’s establishment, several institutions, such as the Inspector General (OIG), were tasked with inspecting, auditing and investigation of disciplinary and administrative matters (established by UNTAET in 2002). In May 2004, based on the National Constitution article 27, the Government-established Office of Provedor for Human Rights and Justice/PDHJ (Ombudsman) was mandated with good governance, human rights and anti-corruption.

In 2008 the National Parliament of the Democratic Republic of Timor-Leste ratified the United Nations Convention against Corruption (UNCAC). In 2009, Law No. 8/2009 created the Anti-Corruption Commission (ACC) and assigned it an expanded mandate on preventing and fighting corruption. When the ACC was established, the responsibilities and functions of PDHJ regarding anti-corruption were transferred to the ACC. And the ACC has been officially handling its work since the National Parliament elected the first Commissioner in 22 February 2010. In 2011 Law no 17/2011 created the Financial Information Unit under the Central Bank, which has some role in preventing corruption, especially in relation to the issue of money laundering. And in July 2011 the National Parliament established an Audit Court; it is an important institution with an auditing function to oversee state expenses in particular. And in 2014 by the Decree Law no. 15/2014, the ministry of Justice created the Scientific Police of Criminal Investigation (PSIC), to prevent and combat organized crime, money laundering and drugs.

B. Establishment of the Anti-Corruption Commission of Timor-Leste

According to the law that established the ACC, law no. 8/2009, the Commission is given the status of an independent, specialized criminal police body with technical independence and administrative and financial autonomy. Based to article 4 law no. 8/2009, the mission of the ACC is to undertake preventive action and

* Prevention Specialist, Anti-Corruption Commission, Timor-Leste.

criminal investigation action against corruption in any of its forms, such as embezzlement, abuse of power, trading of influence and financial participation in public affairs, as defined by penal legislation. In article 5 the ACC has the power of criminal prevention and investigation. *In terms of criminal prevention, the Commission has the power to:* a) Gather and analyse information on the causes and the prevention of corruption. b). Undertake awareness, limited, and motivating public to prevent corruption. c) Advise any institution or public authority on the way to prevent and fight against corruption.

In terms of criminal investigation, the commission has the power to exercise the duties assigned under the terms of the law to the criminal police bodies, notably, a). to conduct the inquiry or practice acts of inquiry delegated to it by the Public Prosecutor's Office, b). to gather news of crime, c). to discover those agents responsible for practicing criminal acts, d). to proceed to the identification and detention of people, e). to make the necessary notification by itself or by resorting to another police authority, f). to conduct interrogations within the scope of the investigation and other investigative measures necessary for the performance of their duties, g). to conduct searches and body searches, to seize objects and documents, h). to stand on watch, i). to intercept and record conversations or telephone calls, with a court order, j). to examine books, documents, records, archives and other pertinent elements in the possession of the entities which are under investigation, as well other pending offences, k). to draw up expert reports, take measurements and gather samples for laboratory exams and to seal off premises.

In terms of criminal investigation, the Commission may also suggest to the public prosecutors that precautionary measures be adopted under the terms of the applicable penal procedural legislation, notably: that an order be made to freeze bank accounts when there are strong indications that they contain funds resulting from crimes as set out in article 4, and that an order be made that any assets in the possession, custody or control of a person are not to be used. Acts carried out by the Commission without a court order from the competent judicial authorities, under the terms set out in the law, shall be validated by the competent judicial authority within a maximum time limit of 72 hours, under penalty of it being rendered null and void and the validation shall be requested with urgency by the Public Prosecutor's Office.

The regime of protection of investigation secrecy set out in criminal procedural law shall govern the investigation and inquiries under the responsibility of the Commission (article 14), the documents, information and evidence gathered by the Commission shall be confidential until the trial in accordance with the regime of secrecy established by law.

Without prejudice to the overall rule of confidentiality established by law, the Commission may, before, during or after the investigation of a matter, transmit any matter for investigation or other action to the Attorney General or other legally competent authority; also the Commissioner may request information and reports from any authority, *vis-à-vis* matters concerning the corresponding activity.

Any investigation conducted by the ACC must first obtain permission from the Public Prosecutor's Office, because the prosecutor has the power under article 132, paragraph 1 Constitutional law Timor-Leste, and regulated in article 48 of Decree Law no.13/2005 particular criminal procedural law of Timor-Leste, which explains that the prosecutor is the holder of a criminal case, and here, the prosecutor must cooperate with the court to discover the truth and should be based on the law and the objective in any action by any process.

C. International Cooperation

To combat and prevent corruption, Timor-Leste has ratified and become a state party to UNCAC in 2008. Based on the International Cooperation framework is established by the Constitution and the Law no. 15/2011 on International Judicial Cooperation in Criminal Matters. The Penal Code and the Criminal Procedure Code also contain provisions applicable to international cooperation.

Extradition (articles 44, 45, 47): Timor-Leste is a party to the extradition convention among the Portuguese Speaking Countries. Timor-Leste has not concluded any bilateral extradition agreements. According to the Constitution and Law No. 15/2011, the convention could be used as the legal basis for extradition by Timor-Leste on the condition of reciprocity.

Mutual legal assistance (article 46): Timor-Leste has not concluded a bilateral agreement on mutual legal assistance. Under Law no. 15/2011, Timor-Leste may give and ask for assistance, including search for and

seizure of objects or property, persons in transit, warrant service and to interview the suspect, the accused person, witness or expert, the procurement of evidence, notice of the action and service of document, and communication of information about the law or the laws the foreign Timor, as well as the communication of information relating to judicial record of the suspect, accused or convicted.

Law enforcement cooperation (based on articles 48, 49 50): The police have cooperated with other police forces of the region, either directly or through the Interpol network, both spontaneously and upon request, only regarding organized crime matters. Cooperation included the establishment of joint investigation teams and transmission of information which may be useful for foreign police forces. Special investigative techniques may be used by the police, ACC and the future Financial Intelligence Unit (FIU) if allowed by a court decision.

In terms of capacity-building in the area of prevention and investigation of corruption, the ACC also has made MOUs with other countries and international agencies, such as: KPK Indonesia, CPIB Singapore, ICAC Hong Kong, MACC Malaysia, ILEA Thailand, UNDP, UNOCD, GIZ, JICA, COICA etc.

D. Engagement and Public Awareness

In this part, as an officer of prevention in the ACC, I will share about how the ACC takes action to engage and raise public awareness to prevent corruption. Based on the ACC's Organization Chart, there are three Units under the Directorate of Public Awareness and Prevention. The Units are the Studies and Risk Assessment Unit, the Inspection and Monitoring Units, and the Promotion of Values and Integrity Unit. Based on the decree law no. 23/2015 about the ACC Organic Structure, the Units have the responsibilities such as: a). Identify and classify the factors that favour of corruption in the public administration and private sector, b). Carry out awareness-raising actions aimed at prevention of corruption and related crimes, c). Adoption and dissemination of good transparency and visibility in administrative and financial decentralization, as well as in public procedures, with special supply of goods or public rights, in the purchase and sale of subsidies and other financial support, d). Production of thematic programmes and campaigns in collaboration with the media in dissemination of the fight against corruption, e). To develop within the scope of the attribution of the ACC measures to prevent corruption and related crimes in the public and private sectors.

Based on the responsibilities mentioned above, there are some best practices of prevention that were implemented since the ACC was established.

1. Supervise the private sector using the state budget to implement development projects. There is always work to see the implementation of the construction process. Provide input to the private sector about how to do a good construction process and to prevent corruption during implementation of the construction process.
2. Inspection and monitoring of public property, public projects run by the private sector / companies. The aim is to protect public property and avoid fraud in construction.
3. Raising public awareness through socializing the anti-corruption value to: public servants, community leaders, political parties, veterans, youth, women, students (primary school-university).
4. Join with the State Secretary of Communication to share the ACC programme and anti-corruption values to the public through Radio and TV.
5. Join with the NGO (CEPAD) to enhance the capacity of the media to share information about preventing corruption to the public about corruption cases.
6. Monitoring political parties in election campaigns to prevent money politics and misuse of public property.
7. Studies and risk evaluation about the lack of laws and make recommendations to the competent organ to change laws that allow or give opportunity to corruption.
8. Survey public subsidies offered by the government to measure the advantages to groups or society.

II. THE CHALLENGES THAT THE ACC FACED

1. The ACC has no anti-corruption and asset recovery law;
2. Lack of human resources, especially existence of IT experts in the Commission to do searches regarding criminal activity (Including Corruption); this is to trace the communication that had been done between criminals through email, and to check equipment whenever conducting an investigation;
3. The lack of specialized resources to detect fraud in procurement and construction;
4. The ACC also has limitations such as: budget for operations (observation, surveillance) and limited operations equipment (for example, wiretapping).

III. CONCLUSION

The people of Timor-Leste perceive there to be a high occurrence of corruption in their country. This perception has given rise to some common expression associated with growing allegations of corruption. All these expressions reflect a subtle consciousness of corruption shared by all sides, namely by potential contractors, the general public and public officers. Therefore, to combat corruption effectively in Timor-Leste, we need to strengthen law enforcement and all institutions that have the responsibility against corruption, to cooperate with other countries and effective engagement of public awareness in fighting and preventing corruption.

References

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