

EFFECTIVE MEASURES TO PREVENT AND COMBAT CORRUPTION AND TO ENCOURAGE COOPERATION BETWEEN THE PUBLIC AND PRIVATE SECTORS

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I. INTRODUCTION

Timor-Leste is a new country that restored its independence in 2002. Timor-Leste is a nation facing many problems to develop various aspects of life, particularly justice and the legal system. However, slowly but surely the nation has made some progress in the criminal justice system as a key element to support the development of a democratic state based on the rule of law including to generate clean a government devoid of nepotism, and collusion, and to establish the necessary framework for preventing and combating corruption in Timor-Leste.

Timor-Leste has taken significant steps against corruption issues since the restoration of the independence (2002). The first Constitutional Government established the Office of the Inspector General (OIG) under the Office of the Prime Minister with the tasks of inspection, auditing and investigation.¹

To generate clean government, in May 2004, Timor-Leste established the office of the *Provedor* for Human Rights and Justice (*Ombudsman*) which effectively functioned in 2005.² “The *Provedor* was responsible for promoting and monitoring good governance, human rights and justice, and combating corruption.”³

With the phenomenon of corruption that exists, on 2008 the National Parliament of the Democratic Republic of Timor-Leste ratified the United Nations Convention against Corruption (*UNCAC*). Timor-Leste ratified the *UNCAC* in 2008. As new country, with so many competing priorities, the ratification of *UNCAC* marked an important step in assuring good governance, and represented Timor-Leste’s serious efforts to prevent and combating corruption.

II. ANTI-CORRUPTION COMMISSION TIMOR-LESTE (ACC-TL)

Corruption is widely acknowledged as a complex and multi-dimensional phenomena with negative consequences that extend beyond the sphere of ethics and moral. Corruption has an impact on the social and economic life and threatens the basis of democratic states under the rule of law. In 2009, the National Parliament of Timor-Leste in accordance with Law No. 8/2009 established the Anti-Corruption Commission body with an expanded mandate on preventing and fighting corruption. Criminal Investigation of corruption cases is supervised by the Office of Prosecutor General.⁴ The nature of the Commission in according to article 3 is technically independent and administratively and financially autonomous. The Commission is given the status of specialized and Independent Criminal Police authority and its action is governed exclusively by statute and, in its capacity as criminal police authority, the Commission acts under the authorities of competent jurisdictions.

In its fight against corruption the commission embraces a three-pronged approach including as corruption prevention, and public education. The success in fight against corruption is dependent on

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¹Implementation Review Group, Third Session. *Executive Summary*, CAC/COSP/IP/2012/CRP.8, 1 (22 Jun. 2012).

²*Ibid.*

³*Ibid.*

⁴Decree-Law no. 8/2009, Establishment of Anti Corruption Commission (CAC).

16TH UNAFEI UNCAC TRAINING PROGRAMME
PARTICIPANTS' PAPERS

high ethical standards being maintained in all dealing and reporting of corruption cases to commission whenever it occur.

A. Investigation

The Commissions used two ways of starting an investigation such as through the dispatch of a Prosecutor, and it can start its own investigation, but needs to inform the Prosecutor in 72 hours in order to get a formal dispatch from Prosecutor. As a Special Criminal Police body, the Commission has the power to receive records of any cases of corruption reported by the public such as written or unwritten reports. Incoming information reports, either written or oral reports, are required to be recorded manually or electronically. All reports are categorized as corruption. In accordance with article 49 paragraph 3 of the Criminal Procedure Code, the investigator will notify the office of the Prosecutor General (OPG) as the penal prosecution.

The Commission not only receives reporting cases from the public, but accepts other cases recommended by other government agencies such as the Inspectorate General of the State and recommendation cases from Ombudsmen as well as cases reported by the Civil Service Commission Office.

All reported cases by the agencies will be analyzed by the Criminal Investigation Division. If the analysis discovers sufficient evidence of corruption, then the Anti-Corruption Commission immediately reports to the Prosecutor's Office which has the legal power to enforce the Corruption Act.

On the other hand, the Commission may also use its own initiative to proactively gather all the information from reliable sources that voluntarily want to cooperate with the CAC in fighting corruption in Timor-Leste. Starting from the year 2010 until 2012, the Criminal Investigation Division is to investigate corruption cases of both passive and active corruption, such as abuse of power, embezzlement, economic participation and business.

B. Public Education

In order to prevent corruption, the Commission uses public education and campaigns to share information and knowledge as well as provided education to the public about the impact of corruption itself through training programmes or workshops to the youth, community leaders, private sector and academics from primary school up to university, and delivers messages to the public through print media, electronic television, radio, etc. The activities are carried out at the national level and the districts levels. Also the commission provides education in order to monitor use or movement in order to save government facilities.

C. Prevention of Corruption

The Prevention of Corruption Division plays an important role to collect and analyse all the information related to the prevention of criminal acts of corruption which advises all government authorities in order to find the solution about corruption in the public sector, especially the use of state finances.

In the prevention of corruption, the Commission gets closer to the public sector in the fight against corruption, by making formal contacts and holding intensive meetings with government officials through seminars or workshops in order to distance themselves from the practice of corruption. Essentially the purpose of the meeting and the workshop is how each individual is a public servant, starting from the top leadership to subordinates and to know how to control both procedures relating to tendering or bidding any project — whether it is done by the private sector of national and international companies.

In addition to workshops, the Prevention of Corruption Division also approaches the authorities and carries out monitoring and inspection of projects at the district level. The Prevention of Corruption Division also conducts unannounced inspections of the implementation of projects in the field in order to see the implementation of these projects physically and assures that the quality of materials used on the project is in line with what has been planned.

Besides providing training to government officials, the Commission is also working with the

electoral commission (CNE) and held a workshop to all parties participating in the elections that will follow the election in order to produce the transparency and creating a condition of a democracy and to avoid corruption in the election, based on the article 11 law no. 6/2008 the legal regime of financial of the political parties.

The public and private sectors are important to the programmes of the Commission; therefore, in addition to cooperating with government authorities and society in general, the prevention division approach is to collect and analyze information related to corruption prevention measures in order to ensure effectiveness in the public sector, particularly the implementation of the State budget.

III. INTERNATIONAL COOPERATION⁵

The International Cooperation framework is established by the Constitution and the recent 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.

A. Extradition; Transfer of Sentenced Persons; Transfer of Criminal Proceedings (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. Preliminary discussions have been started with several neighbouring countries. It appears that, 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.

B. Mutual Legal Assistance (Article 46)

Timor-Leste has not concluded bilateral agreements on mutual legal assistance. Law 15/2011 allows Timor-Leste to 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 documents, and communication of information about the law or the laws of the foreign Timor, as well as the communication of information relating to judicial records of the suspect, accused or convicted. Mutual assistance can be made through the Department of Justice and the Office of General Prosecutor appropriate existing international agreements.

C. Law Enforcement Cooperation; Joint Investigations; Special Investigative Techniques (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 includes 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, CAC, and the future Financial Intelligence Unit (FIU) if allowed by a court decision. Such measures include wiretapping, interception of telecommunications, undercover operations, and controlled deliveries. Taking into account the legal and institutional context, the reviewers were confident that law enforcement cooperation would be significantly enhanced in the coming years.

D. Challenges

The Anti-Corruption Commission has been facing several challenges in the performance of its functions during the past three years because the Government and National Parliament are not serious about approving the Anti-Corruption legislation draft that has been sent to the National Parliament several years ago. Timor-Leste has a Witness Protection law to protect the witnesses; however, in reality, the law has still not been implemented yet. It is important that all public officials declare their income and assets (asset declaration) and to establish a registry system accessible by the public. Furthermore, according to research and evaluation by the Anti-Corruption Commission, 45 percent of society still lacks sufficient knowledge to form an understanding about corruption matters; however,

⁵ See Executive Summary, *supra*, at n. 2.

16TH UNAFEI UNCAC TRAINING PROGRAMME
PARTICIPANTS' PAPERS

the public's expectation to punish the corrupt actors is high.

E. The Way Forward

Cooperation and coordination among the Anti-Corruption Commission and other state institutions are improving, and also the Commission has a very good relationship with the Public Prosecutor's Office, the General Inspectorate of the State, the National Police, and the Ombudsman's Office. The Commission has explored cooperation with civil society so as to grow a culture of anti-corruption at the grassroots level. In addition, the Commission is strengthening its institutional capacity and legal framework (i.e., capacity building for investigators). Finally, the Commission is always looking for opportunities to engage in international cooperation.

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