

Distr.: Limited  
22 June 2012

Original: English

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**Implementation Review Group**

**Third session**

Vienna, 18-22 June 2012

Agenda item 2

**Executive summary**

**Note by the Secretariat**

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## II. Executive summary

### Timor-Leste

#### 1. LEGAL SYSTEM

The United Nations Convention against Corruption was signed by Timor-Leste on 10 December 2003 and ratified by Parliament on 10 December 2008. International treaties duly ratified and published in the Official Gazette prevail over national laws (art 9.2, Constitution of the Republic Democratic of Timor-Leste).

Timor-Leste is a democratic country with a multi-party system and semi-presidential system. There is a unicameral Parliament whose members are elected for five years.

Timor-Leste has adopted a civil law system in which the Constitution is the supreme law. In the interpretation of applicable legislation and to resolve conflicts of laws, the following hierarchy is applied: a) Statutes adopted by the Parliament, the Government or other institutions created after 19 May 2002; b) statutes developed by UNTAET (Transitional Administration by the United Nations); and c) Indonesian legislation in cases where there is a gap in the legal regime, so long as they are not inconsistent with the Constitution.

The institutions of the justice system were established in 2001, namely, the Court of Appeals in Dili and four district courts for the entire country. The Office of the Prosecutor General (OPG) represents the State's interest at court. The independence of the judiciary is guaranteed by the Constitution.

#### **Overview of the anti-corruption legal and institutional framework of 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. In 2004 the Parliament approved the establishment of the Office of the *Provedor* for Human Rights and Justice (Ombudsman) which effectively functioned in 2005. The *Provedor* was responsible for promoting and monitoring good governance, human rights and justice, and combating corruption. In 2009, Law No. 8/2009 created the Anti-Corruption Commission (CAC), and assigned CAC with an expanded mandate on preventing and fighting corruption. Criminal investigation of corruption cases is supervised by the OPG.

The anti-corruption legal framework is mainly established by the Penal Code, the Criminal Procedure Code and, recently, Law no. 17/2011 on Legal Regime Covering the Prevention of and Combat against Money Laundering and the Financing of Terrorism (anti-money laundering law). A draft anti-corruption law is currently being examined by Parliament.

## **2. IMPLEMENTATION OF CHAPTERS III AND IV**

### **2.1. Criminalisation and Law Enforcement (Chapter III)**

#### **2.1.1 Main findings and observations**

##### ***Bribery offences; trading in influence (articles 15, 16, 18, 21)***

Active bribery is criminalized by the Penal Code and is punishable with 3 to 10 years imprisonment. The Penal Code also criminalizes passive bribery based on the lawful or unlawful nature of the prohibited act: passive bribery for an unlawful decision is punishable with 3 to 15 years imprisonment, and passive bribery for a lawful decision, with up to 3 years imprisonment or a fine.

The Penal Code provides for a broad definition of ‘public official’, which covers civil servants, administrative officers, members of the armed and law enforcement forces, members of Parliament and the Government, and the judiciary. The definition is extended to foreign public officials and employees of a public international organization.

Trading in influence is criminalized by the Penal Code. If the act is committed in order to obtain an unlawful decision, it is punishable with 2 to 6 years imprisonment. If the act is committed in order to obtain a lawful decision, it is punishable with up to one year imprisonment or a fine.

Bribery in the private sector has not been criminalized. The reviewers acknowledged that the draft anti-corruption law is intended to address this matter.

##### ***Laundering of proceeds of crime; concealment (articles 23, 24)***

On 18 December 2011, the Parliament approved Law no. 17/2011 on anti-money laundering. This law foresees, inter alia, the establishment of an FIU within the Central Bank. Laundering of proceeds of crime is punishable with 4 to 12 years imprisonment. Attempt to launder money is punishable with a reduced penalty. The court may decide that proceeds of crime, capital and assets, any other property and intermingled property, and instruments of crime, be confiscated for the State. There is a wide range of predicate offences to money-laundering which cover, inter alia, corruption, fraud and extortion, terrorist financing, or any other crimes carrying a minimum sentence of 4 years.

Concealment is punishable with 2 to 8 years imprisonment.

The reviewers acknowledged that a draft decree-law on the FIU was under discussion in the Council of Ministers.

##### ***Embezzlement; abuse of functions; illicit enrichment (articles 17, 19, 20, 22)***

Misappropriation or embezzlement of private or public property by a public official is punishable with 3 to 10 years imprisonment. In addition, if an official uses or allows another to use an official vehicle or other public moveable asset of significant value for purposes other than those intended, this behaviour is punishable with up to 2 years imprisonment.

Embezzlement of property in the private sector is also criminalized.

Regarding abuse of functions, the Penal Code prohibits abuse of power or violation of duties, directly or indirectly, with the intent to obtain any unlawful benefit or to cause loss to another. Such behaviour is punishable with 1 to 4 years imprisonment.

With regard to illicit enrichment, debates in Parliament were held to assess the feasibility to implement the optional article 20 of the Convention, while respecting the Constitution. The discussion is still on-going. The reviewers were satisfied that Timor-Leste is considering the matter.

***Obstruction of justice (article 25)***

The Penal Code prohibits acts or attempts, by means of a gift or promise of material or other gain, to induce false testimony, false expert opinion, interpretation or translation. Such behaviour is punishable with up to 4 years imprisonment or a fine. In addition, the use of threats or violence to prevent a judge or public prosecutor from freely performing his or her duties constitutes a crime punishable with 1 to 4 years imprisonment. If such behaviour is committed by taking advantage of holding a political, public, military or law enforcement office, the applicable penalty is 2 to 8 years imprisonment.

***Liability of legal persons (article 26)***

The Penal Code provides for corporate responsibility whenever provided in specific legislation, even in the cases that the head of a corporate entity, including by mere de facto association, can be held responsible for committing offences. The reviewers acknowledged that the draft anti-corruption law is intended to further address this matter.

***Participation and attempt (article 27)***

Any individual who participates, as an accomplice, author or instigator, in the commission of an offence, shall be held responsible as a perpetrator of the crime. Attempt is punishable only in connection with crimes committed intentionally and punishable with a maximum penalty of more than 3 years, as well as in cases expressly determined by law. Preparatory acts are not punishable but are considered as aggravating circumstances.

***Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)***

When the President or the members of the Government is charged with a criminal offence punishable with more than 2 years imprisonment, he or she shall be suspended from office so that the proceedings can be pursued. If the offence is punishable with less than 2 years imprisonment, the suspension from office is determined by a vote of the Parliament. Regarding public servants, Law no. 8/2004 foresees appropriate measures, including disciplinary measures, suspension from office, transfer of service, or forced retirement. The Public Service Commission, established in 2009, is in charge of enforcing the respect of the code of ethics of civil servants.

The Criminal Procedure Code provides for the possibility of granting bail to a defendant. Early release or parole can be granted by the court where the imposed

prison sentence exceeds six months, and once one half of the sentence has been served.

The reviewers were satisfied that the Penal Code contains several provisions that allows suspension or imprisonment with monitoring by reintegration services, substitution of community service for imprisonment, and probation. With regard to article 37 of the Convention, under the Penal Code, “an official who, having been lawfully requested by competent authorities to provide due cooperation to enforce justice or provide any other public service, refuses to do so or fails to do so without justification, is punishable with up to 3 years imprisonment or a fine”. An accused person who provided substantial cooperation with law enforcement authorities in the investigation or prosecution of an offence can have his or her penalty reduced, but he or she cannot enjoy immunity from prosecution.

Timor-Leste has not yet entered into agreements or arrangements provided by article 30.5 of the Convention.

Chapter IV of the Anti-Corruption Commission Law provides for cooperation between CAC and other public authorities, individual and legal persons.

***Protection of witnesses and reporting persons (articles 32, 33)***

In 2009, the Witness Protection Law was approved, but up to now it has not been implemented due to lack of resources. Protection is extended to the witness’ family members. However, it remains unclear whether protection is extended to whistle-blowers and experts who give testimony. The reviewers acknowledged that witnesses and “persons involved in the investigation conducted by CAC” may require protection.

***Freezing, seizing and confiscation; bank secrecy (articles 31, 40)***

The Penal Code and the Criminal Procedure Code set up rules and principles that allows for confiscation of objects that were used or destined to be used in the commission of a crime, as well as converted and intermingled property. The draft anti-corruption law, with specific provisions on freezing and confiscation of proceeds, property, equipment or other instrumentalities of crime, is intended to be more precise and in line with the Convention. The reviewers acknowledged that the anti-money laundering law was recently adopted, and that there have been no cases investigated or prosecuted.

***Statute of limitations; criminal record (articles 29, 41)***

There are four levels of statute of limitations regulated by the Penal Code: 20 years for crimes punishable with more than 12 years imprisonment, 15 years for crimes punishable with 7 to 12 years imprisonment, 8 years for crimes punishable with 3 to 7 years imprisonment, and 4 years for all other cases. The statute of limitations can be suspended; however, suspension shall not exceed one half of the limitation provided for.

Currently, there is no database for registration of criminal records, but Timor-Leste intends to create one database soon. Technical assistance, including training and equipment, would be helpful in this area.

***Jurisdiction (article 42)***

Timor-Leste applies the territoriality principle to determine its jurisdiction. Regardless of the nationality of the alleged perpetrator, Timorese criminal law is applicable to crimes committed aboard vessels and aircraft with Timorese registration or under Timorese flag. Jurisdiction is extended to particular crimes committed outside the national territory, such as money-laundering and terrorist financing offences.

Law no. 15/2011 provided that nationals cannot be extradited, but Timor-Leste will prosecute its nationals instead. The reviewers were satisfied that the “*aut dedere aut judicare*” principle is implemented.

***Consequences of acts of corruption; compensation of damage (articles 34, 35)***

Decree-law no. 12/2005 about Administrative Offences under Legal Regime of Public Procurement and Legal Regime of Public Contracts allows for a range of measures to be taken against a tenderer because of his or her ‘offensive conduct’.

With regard to article 35 of the Convention, the reviewers noted that the legal framework has been put in place to allow victims to initiate legal proceedings against those responsible for the damage to obtain compensation.

***Specialised authorities and inter-agency coordination (articles 36, 38, 39)***

The Office of the Provedor was created in 2005 to protect and promote human rights, good governance and combat corruption. The Provedor, by his reports on corruption complaints, had successfully recommended the OPG to investigate and prosecute corruption allegations against high-ranking officials. In 2009, the anti-corruption mandate of the Office was transferred to CAC by Law no. 8/2009, which foresaw the creation of this institution to ‘undertake preventive actions and criminal investigation actions against corruption in any of its forms’. The reviewers were impressed by Timor-Leste’s efforts to fight corruption, and invited Timor-Leste to continue in this direction.

The reviewers were satisfied with the close cooperation among law enforcement authorities, namely, the Provedoria, CAC, OPG, and the Police. An FIU is yet to be established based on Law no. 16/2011.

**2.1.2. Successes and good practices**

Overall, the reviewers were impressed with successes that Timor-Leste has reached in a short period and in difficult conditions, and identified the following good practices:

- The strong political will of Timor-Leste to combat corruption which is demonstrated in particular by mandating initially the Provedor and then by creating the CAC,
- High-ranking officials have undergone investigations and trials,
- The involvement of civil society at large in monitoring and promoting good governance,

- Immunity from prosecution enjoyed by members of the Government and of Parliament has been lifted by the Parliament in several occasions,
- Innovative approach of CAC to train students to identify corrupt practices that led to investigation on allegations of misappropriation of public property by a Head of Department and other civil servants,
- The drafting and adoption, in a short period, of the Criminal Procedure Code, the Penal Code, the Witness Protection Law, the Anti-Corruption Commission Law, the Public Service Law, the International Judicial Cooperation in Criminal Matters Law, and the Anti-Money Laundering Law,
- Under Law no. 8/2004, the obligation by civil servants to declare the professional status of spouses and the prohibition to have spouses and first degree descendants under direct supervision in any given service. Nevertheless this law is not applicable to members of the Government, judges, prosecutors, and public defenders and lawyers, who are under specific regimes,
- The organization of awareness-raising activities on anti-corruption in schools,
- The current development of Timor-Leste Transparency Portal managed by the Ministry of Finance and accessible by the public, in order to monitor and centralize expenditures and revenues of all public institutions, aid management, and e-procurement.

### **2.1.3. Challenges and recommendations**

As the anti-corruption legal framework has been set up only recently, the main challenge that Timor-Leste faces is to enforce the laws in an effective and coherent manner, and to make public servants, practitioners and citizens understand the laws. In addition, institutions established in this ten-year-old Nation have encountered the lack of specialised staffing, financial resources and technical equipment. Other specific challenges identified are in enforcing integrity and security of all CAC's staff, particularly of investigators, as well as integrity of other law enforcement agencies; enforcing parliamentarians' role through anticorruption legislation and supervisory power, and lack of specialized resources to detect fraud in procurement and constructions. The following steps could further strengthen existing anti-corruption measures:

- Noting that the investigators of CAC must seek approval of the OPG in order to start investigations, while acknowledging a close cooperation between CAC and the OPG, the reviewers invited Timor-Leste to look into the matter to explore ways that would allow for more expeditious investigations,
- Consider including in the draft anti-corruption law provisions to address gaps or enhance the effectiveness of the current laws of the following matters: protection of whistle-blowers and experts, bank secrecy, liability of legal persons, freezing, seizure and confiscation of proceeds of crime,
- Consider establishing a transparent and effective asset declaration system for high-ranking officials and parliamentarians, and civil servants,
- Speed up the development and adoption of a Code of Ethics for Members of Parliament, and develop regulations or guidelines on reception of "gifts" by civil servants, parliamentarians, and high ranking officials,

- Organise continuous specialised training sessions for practitioners, and include, in the curriculum of the Legal Training Centre, the Police Academy, Institute of National Defence, and the National Institute for Public Administration, specialised modules on corruption offences and financial investigations and create a pool of trained investigation specialists on financial auditing,
- Expedite the establishment of the FIU, and the functioning of the Supreme Court and the Court of Accounts, with appropriate budget, staffing and technical resources,
- Consider reducing the threshold of predicate offences to money-laundering crimes by making them punishable with a minimum of one year imprisonment,
- Provide for the suspension of statute of limitations in the cases where an alleged perpetrator evaded the administration of justice.

## **2.2. International cooperation (Chapter IV)**

### **2.2.1 Main findings and observations**

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.

#### ***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 Community. To-date, 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 condition of reciprocity. An alternative view from the national justice sector considers that for efficiency and specificity bilateral/multilateral agreements will still be required. The reviewers invited Timor-Leste to take a decision on this matter as soon as possible and notify the Secretary-General of the United Nations.

Prior to Law no. 15/2011, international cooperation requests were channelled by the Ministry of Foreign Affairs. Law no. 15/2011 now provides that the central authority is the OPG. All incoming and outgoing requests must be forwarded to the Ministry of Justice with a view to deciding on their admissibility. Any decision that declares a request inadmissible shall be motivated and may not be appealed against.

Extradition procedure consists of an administrative stage and a judicial stage. Once the request is considered admissible, the Supreme Court of Justice, whose functions are currently being taken care of by the Court of Appeal, will make a legal assessment of the forms and substance of the reproached facts to decide whether extradition shall be granted or not. Appeal before the full bench of the Supreme Court is possible according to the Criminal Procedure Code.



Provisional arrest may be granted, if requested, on serious grounds, including the risk of evasion of the person sought.

Dual criminality is a pre-requisite for extradition. Extraditable offences are those punishable with minimum one year imprisonment. If extradition is sought for the purpose of executing a prison sentence, it may be granted only if the duration of the sentence that remains to be served is not less than 6 months.

When a request includes several separate offences, of which some are not extraditable, extradition may be possible for all.

Nationals who are on Timorese territory at the time of the request cannot be extradited but Timor-Leste will prosecute them.

Requests shall be refused if the sentence entails death penalty, life imprisonment, or a sentence 'resulting in any irreversible injury of the person's integrity'. In addition, if extradition is sought for the commission of an offence that is subject to criminal proceedings in Timor-Leste, or that may be subject of criminal proceedings for which Timor-Leste has jurisdiction, the request shall be refused.

The reviewers were satisfied that Law no. 15/2011 contains provisions that are in line with article 44, paragraph 15 of the Convention, regarding human rights concerns.

Extradition sought against a national for purposes of enforcing a sentence pronounced against him shall be refused. In this circumstance, Timor-Leste can enforce the foreign sentence on the condition that the sentence be confirmed by the courts.

The reviewers were satisfied that simplified extradition procedure is regulated.

Reportedly no extradition request has been received or sent out since the entry into force of Law no. 15/2011.

Requests can be transmitted by adequate telematic means, including telefax, subject to an agreement between the requesting and the request state. Urgent requests may be transmitted by post, electronic means, telegraph or by any other means allowing for a written record.

With regard to article 45, Timor-Leste is party to the Convention on the Transfer of Sentenced Persons among the Portuguese Speaking Countries Community. Timor-Leste has not had any cases under this framework.

Transfer of criminal proceedings is regulated by Law no. 15/2011.

#### ***Mutual legal assistance (article 46)***

Timor-Leste is a party to the Convention on Mutual Legal Assistance in Criminal Matters among the Portuguese Speaking Countries Community.

Timor-Leste has not yet concluded bilateral agreements on mutual legal assistance.

Law no. 15/2011 allows Timor-Leste to grant and request assistance, including for searches and seizure of objects or property, the transit of persons, the service of writs to and hearing of suspects, accused persons, witnesses or experts, the procuring of evidence, the notification of deeds and the service of documents, and the communication of information on Timorese law or the law of a foreign State, as

well as the communication of information relating to the judicial record of suspect, accused or sentenced persons. These wide measures of assistance were positively noted.

Suspect or accused persons, witnesses or experts can be summoned to appear for the purposes of foreign criminal proceedings if Timor-Leste received the request 50 days at least before the date at which the person should appear. The concerned person shall be informed of his or her right not to appear.

The central authority is the OPG. Both outgoing and incoming requests shall be transmitted to the Ministry of Justice for the admissibility check. The OPG will either execute or transmit the request to the appropriate authority for execution.

Upon authorization of the Minister of Justice, or in conformity with any international treaty that Timor-Leste is a party to, direct communication may be established with foreign authorities.

Requests on an urgent matter could be transmitted through Interpol channels, if the requesting state sees fit. Otherwise, urgent requests could take the form of letters rogatory to be transmitted directly between competent judicial authorities.

Requests for cooperation shall include, inter alia, the purpose of and the reasons for the request, the identification of the suspect, the accused or the sentenced persons, or of the witness or expert whose evidence is sought, a description of the facts, the text of the legal provisions applicable, and any other relevant document. The competent authority may require the requesting state to modify or complete an irregular or incomplete request.

Requests for assistance, its purpose, measures subsequently taken, and other relevant documents shall be kept confidential. If the assistance cannot be carried out without unveiling such information, Timor-Leste shall consult with the foreign counterpart on whether to continue executing the request.

Information obtained in order to be used within the criminal proceedings mentioned in the request shall not be otherwise used. Exceptionally, the Minister of Justice, when consulted, may, after having sought the opinion of the Prosecutor General, authorise that information could be used in the framework of other criminal proceedings.

Safe conduct is regulated in accordance with article 46, para. 27 of the Convention.

The execution of a request for international cooperation shall be free of charge, but the requesting State shall bear the costs deemed “to be of relevance on account of the human or technological means used”, and other substantial and significant costs that the execution of the request entails.

***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 Interpol network, both spontaneously and upon request, only regarding organised 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 FIU if allowed by a court decision. Such measures include phone tapping, 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.

### **2.2.2 Successes and good practices**

Overall, the reviewers appreciated that a new legal framework has been established to enhance international cooperation activities. In particular, the reviewers noted that Law no. 15/2011 allows for foreign judgment regarding “the confiscation of proceeds, objects or instrumentalities of the offence” to be enforced.

While acknowledging Timor-Leste’s efforts in adopting Laws no. 15/2011 and 17/2011, the reviewers were confident that their implementation would be ensured immediately, and that consideration for entering into bilateral and multilateral agreements and arrangements would be duly taken.

### **2.2.3 Challenges and recommendations**

Challenges encountered by Timor-Leste have been identified in making operational international cooperation in terms of information exchange, transfer of criminal proceedings and sentenced persons, joint investigations and special investigation techniques for corruption crime.

Given that Law no. 15/2011 has been adopted only recently, it might be useful to include in the curriculum of the Legal Training Centre specialised modules on international cooperation.

Regarding reporting obligations, the reviewers invited Timor-Leste to notify, in the shortest time, the Secretary-General of the United Nations Organization of its central authority for mutual legal assistance matters, the languages acceptable for incoming requests, and whether the Convention could be used as the legal basis for extradition.

## **3. TECHNICAL ASSISTANCE NEEDS**

Technical assistance could help Timor-Leste further strengthen institutional and legal framework in the following areas:

- Special investigation techniques in financial investigation fraud in construction and procurement, cybercrime, and interviewing techniques,
- Witnesses, whistle-blowers, experts and victims protection,
- Computer accounting and laboratory forensics,
- Information technology,
- FIU and Anti-Corruption Commission cooperation,
- Criminal information analysis and criminal records
- Anti-corruption legislative advice,

- Integrity in public and private sectors,
  - Mutual legal assistance,
  - Public Expenditure Track System,
  - On-site senior adviser.
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