



## DEMOCRATIC REPUBLIC OF TIMOR-LESTE

### IV GOVERNMENT

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**BILL NO. /2008**

**OF**

### **ANTI-CORRUPTION COMMISSION**

Timor-Leste has the obligation to respect and comply with the traditional international law and with international high standards of good governance.

Therefore, Timor-Leste must understand that corruption harms the finance and economy of the State, inhibits national development and needs to be fought so that an equitable and prosperous society may be built, based on the principles enshrined in the Constitution;

For this purpose, the IV Constitutional Government adopted as one of its priorities the creation of an efficient, quick and effective Commission, able to fight corruption in all its forms, granting it powers and duties to investigate and expose corruption in a manner that is efficient, quick and effective, and which promotes a culture of State integrity, transparency and accountability;

Timor-Leste has been considering several options and models of anti-corruption commissions all over the world, in particular in Indonesia. The models of Singapore, Hong Kong, Macau, Malaysia and Australia have also been also considered.

Timor-Leste has been trying to adapt as much as possible the concepts and principles enshrined in the United Nations Convention Against Corruption, namely in what concerns the strengthening of capacity building and institutional development, in order to efficiently prevent and fight corruption. At the same time, the Government acknowledged the fundamental principles of due process.

The proposed law, which seeks to set up the Commission, has the advantage of creating an independent body dedicated exclusively to investigating and fighting corruption, enabling a higher degree of specialization and knowledge, and consequently greater credibility before the public and greater international acceptance;

The Government presents to the National Parliament, under section 97.1 (c) and section 115. 2 (a) of the Constitution of the Republic, with a request for priority and urgency, the following bill:

## CHAPTER I ESTABLISHMENT OF THE ANTI-CORRUPTION COMMISSION

### Section 1 Creation of the Commission

The present act creates the Anti-Corruption Commission, henceforth called Commission.

### Section 2 Definition

1. For the purposes of this Act, *corruption* means:
  - a) any conduct involving abuse of power or trust, or the violation of the duties of a public officer, enriching or benefiting himself or herself and / or other persons, or causing damages to a person;
  - b) any conduct by any person, regardless of being a public officer or not, harming the honest or impartial performance of public functions by a public officer;
  - c) any conduct by a public officer or a former public officer involving the undue use of information or materials he or she acquired during the performance of his or her official functions;
  - d) any conduct by a public officer that constitutes or involves the dishonest or biased performance of an official function he or she performs;
  - e) any conduct by any person, regardless of being a public officer or not, that harms or may harm the performance of official functions by any public officer, group or body of public officers, or any public agency or body:
2. *Public officer* includes individuals with public official functions or who act in a public official capacity, including namely the President of the Republic, the Prime Minister, Ministers, the Vice Prime Minister, Vice Ministers, Secretaries of State, Members of Parliament, the Prosecutor General, civil servants and other managers, staff and workers from State bodies and services, prosecutors and judges, as well as any person who performs a duty that normally is under the responsibility or competence of the government, as set in section 115 of the Constitution of Timor-Leste, national laws and international instruments, even if that function may be and is delegated or contracted out to a private body.
3. *Public agency or body* includes:
  - a) State departments and government institutions, including the legislative, administrative and judicial branches of the State, the national police of Timor-Leste (PNTL) and the Falintil – Defence Force of Timor-Leste (F-FDTL);
  - b) local administration;
  - c) government commissions and agencies;
  - d) State owned companies;
  - e) companies where the government holds over 50% of the capital; and
  - f) any other body indicated by law.
4. *Person* includes a natural or legal person (including banks and other financial institutions) and, in relation to a corporation, its managers and administrators.
5. *Facilities* include vehicles, sea vessels, aircraft, containers and external buildings.

### **Section 3 Nature**

1. The Commission is a public body with legal personality, technical independence and administrative and financial autonomy.
2. The Commission is independent from any body and is not subjected to any orders or instructions; it is merely required to comply with criteria of strict legality and objectivity, according to the penal procedure legislation.
3. In the performance of its duties, the Commission shall give maximum priority to the investigation of more serious or more complex cases of corruption.

### **Section 4 Competences**

1. The Commission has the following competences:
  - a) Analyse indications or reports of facts justifying founded suspicions of corruption acts, transgressions against State patrimony, abusive exercise of public functions or acts detrimental to the public interest;
  - b) Carry out investigation and inquiry acts concerning corruption acts by the civil servants and all those who work for the Public Administration, or by private persons in their relationship with public agencies or services, under the terms of the penal procedure legislation and subject to the powers in this matter allocated by law to other bodies;
  - c) Carry out interrogations within the scope of investigation, as well as the further instruction acts necessary for the performing of its attributions;
  - d) Promote and request the holding of inquiries and investigation diligences in order to analyse administrative acts or procedures, within the scope of the relations between public bodies and private persons;
  - e) Provide evidence or any documents, information or things obtained during an investigation to the Public Prosecution;
  - f) Collect and analyse information concerning causes of corruption and ways to prevent it;
  - g) Carry out awareness raising actions seeking to curb the practise of corruption acts, motivating people to adopt precautions or reduce acts and situations facilitating the occurrence of criminal conducts;
  - h) Start the recovering of money and assets resulting from acts of corruption;
  - i) Guide, instruct and advise any public agency or body, or any other person, regarding ways to prevent and fight corruption conducts.
2. The Commission carries out its duties under the previous paragraph within the scope of the prevention and investigation of the crimes of traffic of influence, corruption in any of its forms, embezzlement, abuse of power and economic participation in businesses, as set in the penal legislation.

## **CHAPTER II STRUCTURE**

## **Section 5 Commission**

1. The Commission shall comprise the Commissioner, any Deputy Commissioners, and staff appointed to the Commission.
2. The Commissioner is the holder of all competences of the Commission; he or she may delegate them unto his or her deputies and retrieve these powers at any time.
3. Certain powers should not be delegated, which would include those involving reaching certain opinions or giving notices and directions where any action may interfere with a person's right to privacy or personal freedom.

## **Section 6 Commissioner**

1. The Commissioner is appointed by the President of the Republic through a proposal by three quarters of the Members of Parliament for a term of four years, renewable once.
2. The Commissioner has the following tasks:
  - a) Perform all competences of the Commission on its behalf;
  - b) Head the activity of the Commission;
  - c) Determine the start, continuation, cancelling or conclusion of any investigation;
  - d) Draft conclusions, form opinions and recommendations, and draft and provide reports related with any investigation; and
  - e) Perform all actions and practise all necessary acts for the said purposes.

## **Section 7 Eligibility**

1. A person seeking to apply to become Commissioner must be a Timorese citizen and meet all the following requirements:
  - a) possess experience and competence to perform the functions of Commissioner;
  - b) proven integrity;
  - c) be in full enjoyment of his or her capacities;
  - d) be recognised for his or her high level of independence and impartiality.
2. The Commissioner must complete their "Lists of Interests" as foreseen in sections 6 to 8 of Act no. 7/2007 of 25 July and complementary legislation.

**Section 8**  
**Incompatibilities and impediments**

1. The position of Commissioner is a full time one and is incompatible with:
  - a) performing any other public or private functions;
  - b) political activities;
  - c) receiving remuneration for any other activity or position;
2. The Commissioner must cease any of the above activities within fifteen days before taking up any functions.

**Section 9**  
**Civil and criminal liability**

1. The Commissioner has no civil or criminal liability for acts done or omitted, or any comments or opinions made in good faith in the exercise of his or her functions.
2. The Commissioner shall be accountable before the National Parliament for infractions made in the exercise of his or her functions and by clear and serious breaches of his or her obligations under the present Act.
3. The National Parliament shall decide on the lifting of the immunities of the Commissioner in case of an offence committed in the exercise of his or her functions.
4. The National Parliament shall remit to the Prosecutor-General any criminal offence committed by the Commissioner outside the exercise of his or her functions.

**Section 10**  
**Expiration of the appointment**

1. The Commissioner may be removed from office by the President of the Republic, by way of a proposal from three quarters of the current Members of Parliament, on the grounds of:
  - a) acceptance or performance by the Commissioner of an office, function or activity incompatible with his or her appointment;
  - b) permanent mental or physical incapacity preventing him or her from performing his or her functions, attested by a medical panel consisting of three doctors;
  - c) incompetence;
  - d) definite conviction for a criminal offence that carries a prison sentence;
  - e) acts or omissions in contradiction with the terms of his or her oath.
2. The appointment of the Commissioner expires automatically in the following cases:
  - a) end of the appointment;
  - b) death;
  - c) resignation.

**Section 11**  
**Motion for removal**

1. Any motion for the removal from office of the Commissioner must have the support of one fifth of the active Members of National Parliament.

2. The National Parliament shall set up an enquiry committee to review and investigate the matter that is the object of the motion for removal.
3. The findings of the enquiry committee shall be reported to the Commissioner, who has the right of appeal to the plenary.
4. Such appeal shall be dealt with in a plenary session specifically scheduled to take a vote on the removal.
5. The findings of the enquiry committee shall not be voted on until the appeal lodged has been reviewed and the Commissioner has been heard.

## **Section 12 Deputy Commissioners**

1. The Commissioner may appoint up to three deputy Commissioners to assist him or her, from Timorese persons of acknowledged merit, probity and independence.
2. The features of sections 7, 8 and 9 of the present act apply to Deputy Commissioners.

## **Section 13 Appointment**

Each Deputy Commissioner shall be appointed for a term of four years, and is eligible for reappointment only once for an equal period of time to the original appointment.

## **Section 14 Removal**

Each Deputy Commissioner may be removed from the office by the Commissioner on the grounds listed in section 10.

## **Section 15 Support staff**

The Commissioner is supported by advisors, technical officers, investigators and further staff members required for the full exercise of his or her functions.

## **CHAPTER III SECRECY**

### **Section 16 Duty of secrecy**

Secrecy applies to investigations and inquiries made by the Commission, as set in the penal and penal procedure laws.

## **CHAPTER IV PROCEDURES**

**Section 17**  
**Procedure autonomy**

1. The Commission carried out its functions by its own initiative, concerning facts brought to its attention by any means.
2. All correspondence addressed or material and information furnished to, obtained or collected by the Commission shall be immune from any kind of censorship or other interference.
3. Archives, files, documents, communications, property, funds and assets of the Commission or in possession of the Commission, shall be inviolable and may only be accessed or made public in conformity with the applicable legislation.

**Section 18**  
**Penal procedure acts**

1. In relation to penal procedure acts within the scope of the Commission, the Commissioner and his or her deputies have the status of criminal police authority.
2. In relation to searches, raids and apprehensions, the Commission has the competences given by the penal procedure legislation to the Public Prosecution.
3. Searches, raids and apprehensions listed in the previous paragraph that, in duly justified exceptional circumstances of urgency, are done without the proper judicial authorization, must be validated through the Public Prosecution by the competent judicial body within the maximum time limit of 72 hours, after which they will be considered illegal.

**Section 19**  
**Investigation guarantees**

1. When in service, the Commissioner, his or her substitute and the investigation staff have the following prerogatives in relation to criminal police authorities, in conformity with the penal procedure law:
  - a) Right of access and free transit, in conformity with the law, for the duration and at the time required for the performing of their functions, to all services and facilities of the public and private bodies subjected to their attributions;
  - b) Request for examination, consultation and attachment to the records, any relevant books, documents, records, files and other documents possessed by bodies that are having their activities investigated;
  - c) Collect information on the activities under investigation, examine any indications of infractions and consider expert inspections, measurements and samplings for laboratory examinations;
  - d) Carry out investigations, so as to obtain evidence, at the places where activities under their scope of action take place, without the need for previous notifications;
  - e) Promote, in the applicable legal terms, the sealing of any facilities, as well as the seizing of documents and objects of proof in possession of bodies being investigated or their staff, if considered indispensable for the action; the relevant record must be drafted for this;
  - f) Request the collaboration of police authorities, in the cases of refusal of access or obstruction to the exercise of the action or investigation by the targets, in order to remove that obstruction and to ensure that investigations are carried out safely;

- g) Instruct any financial institution to freeze any bank account, whenever there are strong indications that it contains profits from corruption, regardless of the bank secrecy regime set by law;
  - h) Order that any person is prevented from moving or using any assets in his or her possession or custody, or being controlled by any other person;
  - i) Order that the suspect is prevented from leaving the country or his or her residence.
2. Whenever there are strong reasons for it, the Commissioner may, through written notification, under the terms of the penal procedure legislation:
    - a) Order any suspect to hand over his or her passport or travel documents immediately to the Commission;
    - b) Request the adoption of necessary and urgent temporary measures to ensure the means of proof, when needed, in conformity with the Penal Procedure Code;
    - c) At the places under investigation and provided by the bodies being investigated, use facilities with the necessary conditions of dignity and efficiency for working;
    - d) Exchange service correspondence with all public or private entities on matters under their competence;
    - e) In compliance with the legal formalities, issue the necessary summons for carrying out investigations, by himself or herself or through the police authority.
  3. Investigation acts listed in the previous paragraphs may, in duly justified exceptional circumstances of urgency, be done without a previous mandate from the competent judicial authority, but must be validated within 72 hours, after which they will be considered illegal.
  4. Where the law requires validation by a judge, it must be requested by the public prosecutor responsible for the case together with the Commission.

## **Section 20**

### **Other measures**

The interception and recording of conversations or **electronic** communications, as well as the detaining of persons, may only be ordered jointly by the Public Prosecution and the Commission, by way of judicial decision under the penal procedure legislation.

## **Section 21**

### **Compulsory private examinations**

1. The Commission may conduct a compulsory examination.
2. A compulsory examination is to be conducted by the Commissioner or by a Deputy Commissioner, as determined by the Commissioner.
3. A person required to attend a compulsory examination is entitled to be informed, before the compulsory examination, of the nature of the allegation or complaint being investigated.
4. A compulsory examination is not public, however an attorney is allowed to be present. A person being examined must be informed of this in a formal and timely manner.



## **Section 22 Summons**

1. The Commissioner may summon a person to appear before the Commission at a compulsory examination or public inquiry at a time and place named in the summons, in order to make statements or present documents or evidence, if there are any.
2. A witness who has been summoned to attend before the Commission shall appear and present himself or herself according to the summons.
3. A person who, after having been duly summoned, without justification, does not attend or respond to the questions, is punishable according to the penal legislation.

## **Section 23 Use to be made of depositions, documents and other evidence**

1. Depositions, documents or other evidence produced by a witness at a compulsory examination or public inquiry before the Commission may be admissible as evidence against any person in any proceeding.
2. The Commissioner or his or her substitute may request the person being investigated or inquired to present documents or other things with interest for the investigation.

## **Section 24 Protection of witnesses and persons assisting Commission**

According to the applicable legislation, the Commissioner may request police protection for witnesses and other persons assisting the Commission, when there are strong suspicions that their security and physical integrity is jeopardized.

## **Section 25 Cases where there is no punishment**

1. No punishment may be warranted for those who, previously and duly authorized by a justified dispatch from the Commissioner, accept in person or through a third party an illicit request made by a staff member or another person, if that is adequate to prove the commitment of any of the crimes under the present act.
2. The acceptance of benefits may also be authorized, if that is adequate to prove the commitment of any of the crimes listed in section 2.1 (a) of the present act.

## **Section 26 Conclusion of the procedure**

1. The Commissioner reports to the competent bodies, namely the Public Prosecution, when there are relevant facts for the penal action.
2. Should the investigation end without relevant justifications for a penal action, the final report of the Commission may contain recommendations towards the improvement of the adequacy of the activities by the bodies being investigation, the legislation applicable to them and the purposes they seek to achieve.

**CHAPTER V  
DUTY OF CONFIDENTIALITY**

**Section 27  
Confidentiality**

Subject to section 24, documents, information and things collected by the Commission shall be confidential throughout the investigation and shall be kept confidential after the completion of the investigation where the Commissioner considers the protection of privacy is necessary.

**CHAPTER VII  
COOPERATION AMONG BODIES**

**Section 28  
General duty of cooperation**

1. State direct, indirect and autonomous administration services that are the object of investigation are bound to the duties of information and cooperation.
2. All natural and legal persons, subject to their respective and legitimate rights and interests, have the duty to collaborate with the Commission.
3. Subject to the priority to be given to judicial cases where respondents or defendants are deprived from their freedom, all public agencies, and in particular those with competences in the criminal area, shall give the maximum priority to the prevention, investigation and trial of corruption cases.

**Section 29  
Special duties of cooperation**

1. The Commission is entitled to receive cooperation from public bodies and may request them to carry out any necessary investigations, inquiries, examinations, syndications, expert inspections or diligences.
2. Public bodies must provide information to the Commission and supply any documents and further elements they may have, as well as respond to the requests made by the Commission, which may set a time limit for the compliance.
3. The Commission, the criminal police bodies and the Public Prosecution have a special duty to cooperate and coordinate their respective activity, according to the penal procedure legislation.

**Section 30  
Collaboration between the services**

The Commission may enter into arrangements, including memorandums of understanding, with any other national or foreign institutions, regarding:

- a) the cooperative performance of the respective functions;
- b) the joint use of facilities and staff; and
- c) the exchange of information.

### **Section 31**

#### **Referral of matters to other bodies**

1. Subject to the general duty of confidentiality contained in the Act, the Commission may, before, during or after investigating a matter, refer any matter for investigation or other action to the Prosecutor-General or other integrity institution considered by the Commissioner to be appropriate in the circumstances.
2. The Commissioner may request a body to provide information and reports concerning matters related with the respective activity.

## **CHAPTER IX**

### **ACCOUNTABILITY BEFORE THE NATIONAL PARLIAMENT**

#### **Section 32**

##### **Reports**

1. Subject to the secrecy of judicial cases, the Commission may at any time prepare a report on any matter that has been the subject of an investigation or other action in respect of corrupt conduct and may include in a report statements as to any of the Commission's findings, opinions and recommendations.
2. Before reporting on any matters involving individual rights, the Commission must give the person or body an opportunity to make representations to the Commission concerning those matters.
3. The Commission may, at any time, prepare a special report on any administrative or general policy matter relating to the functions of the Commission.
4. The Commission shall present to the National Parliament, by 31 March of each year, an overall report as to the Commission's activities during the previous year.
5. The report mentioned in Section 32.4 is to include:
  - a) a description of the allegations received by the Commission;
  - b) a description of the types of investigations carried out by the Commission;
  - c) an evaluation of the response of appropriate authorities to recommendations made by the Commission;
  - d) the general nature and extent of any information communicated between the Commission and other authorities;
  - e) the extent to which investigations carried out by the Commission have resulted in prosecutions or disciplinary actions;
  - f) a description of the Commission's activities during that year in relation to its prevention and education function; and
  - g) any recommendations for changes in the laws of the State that the Commission considers should be made as a result of the performance of its functions.
6. The National Parliament or any commission from the National Parliament may from time to time require the Commission to report on its general activities, while safeguarding at all times the duty of confidentiality and secrecy in investigations.

## **CHAPTER IV BUDGET**

### **Section 33 Budget**

1. The expenses of the Commission shall be met through a grant separated from the Budget, which shall include the estimate revenue from other sources.
2. The budget for the Commission shall be prepared, approved and managed in accordance with law.
3. The Commission shall not receive funds from a source that could compromise its independence and integrity.
4. The Commission shall keep proper books of account and other records in relation to its functions or activities.
5. The reports are presented to the National Parliament and be audited by the High Administrative, Tax and Audit Court, or subjected to independent external audits.

## **CHAPTER X FINAL AND TRANSITORY FEATURES**

### **Section 34 Act 7/2004**

1. Sections 5, 13, 23, 24, 25 and 47 of Act no. 7/2004, of 26 May, will now read the following:

#### **"Section 5 Nature**

1. [...]
2. [...]
3. The Office of the Provedor of Human Rights and Justice, henceforth called "Office of the Provedor", is responsible for preventing mismanagement and protecting and promoting human rights and the fundamental freedoms of natural or legal persons throughout the entire national territory.
4. [...]
5. [...]

#### **Section 13 Eligibility requirements**

1. [...]
  - a) Sufficient experience and skills to investigate and draft reports on violations of human rights and mismanagement;
  - b) [...]
  - c) [...]
2. [...]

## **Section 23 Investigation**

The Provedor of Human Rights and Justice is responsible for investigating violations of human rights and fundamental freedoms and guarantees, as well as situations of mismanagement, clear illegality and absence of a fair and equitable process.

## **Section 24 Verification and recommendation**

[...]

- a) Supervise the functioning of public powers, namely the Government and its bodies and private entities carrying out public tasks and services, with the possibility of starting inquiries on systematic and generalized violations of human rights or cases of mismanagement;
- b) [...]
- c) [...]
- d) [...]
- e) [...]

## **Section 25 Promotion of human rights and good governance**

1. [...]

- a) Promote a culture of respect for human rights and good governance, namely through public statements, information campaigns and any other adequate means for informing the general public and Public Administration, as well as mainstream information on human rights and good governance.
- b) [...]

2. [...]

- a) [...]
- b) [...]
- c) [...]

3. [...]

## **Section 47 Recommendations**

1. The Provedor of human Rights and Justice shall identify the causes of human right violations, abuse and mismanagement in a public body, and draft recommendations for their correction, prevention or elimination, as well as for the observance of the highest standards in what regards human rights, legality, ethics and efficiency.

2. [...]

3. [...]

4. [...]"

2. Sections 26 and 27 of Act No. 7/2004 of 26 May 2004 are hereby revoked, as well as any legislation that conflicts with the present Act.

**Section 35**  
**Transitory regime**

1. The Commission shall only investigate new cases remitted to it, with all others remaining under the scope of the Public Prosecution and the other criminal investigation bodies.
2. All matters concerning corruption received by any State body, namely the Office of the *Provedor* of Human Rights and Justice and the Office of the Inspector General, after the entry into force of the present Act, shall be remitted to the Commission.

**Section 36**  
**Entry into force**

The present Act enters into force on 1 January 2009.

Approved by the Council of Ministers on 6 October 2008.

The Prime Minister,

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Kay Rala Xanana Gusmão