

# **DEMOCRATIC REPUBLIC OF TIMOR-LESTE**

## **ANTI-CORRUPTION LAW**

### **Translation of Portuguese version introduced into Parliament October 2010**

Corruption is a pernicious phenomenon that subverts fundamental values of life in society.

It undermines the foundations of the Democratic State based on the Rule of Law by falsifying the fair distribution of national wealth; promotes divisions and frictions in society. In one word, corruption is against justice and social harmony.

Fundamental constitutional principles such as universality of rights, and equality and legality are emptied of their contents in benefit of private interests of a few people devoid of scruples.

A global phenomenon increasingly difficult to track down and fight, corruption demands that our State adopt exceptional measures capable of ensuring increased effectiveness in the struggle against this type of crime.

The fight against corruption must therefore be taken on by everybody and must rely on legal mechanisms that enable to face its hidden nature for, although it attempts against the fundamental values of the State, it ends up not affecting any particular victim.

Having elapsed a year since the approval of the Criminal Code and the establishment of the Anti-Corruption Commission, the need arises to establish a specific juridical regime capable of responding to the particular needs of the fight against corruption.

Thus, pursuant to article 92, 95, and subparagraph a) of article 97.1 of the Constitution of the Democratic Republic of Timor-Leste, the undersigned Members of Parliament present the following draft law:

#### **TITLE**

#### **Anti-Corruption Law**

#### **CHAPTER I**

#### **Penal provisions**

#### **Article 1**

#### **Acts of corruption**

For the purposes of this statute, acts of corruption shall refer to those acts specified in articles 192, 274, 275, 281, 287, 288, 290, 292 to 299, 314 and 319 of the Penal Code.

#### **Article 2**

#### **Facts committed outside of the national territory**

Any person who, outside of Timor-Leste, provides support, means, information, or by any means whatsoever facilitates the commitment of crimes of corruption, shall be punished pursuant to this law.

**Article 3**  
**Corporate criminal responsibility**

1. Corporate bodies, even where irregularly established, as well as associations lacking juridical personality, shall be accountable for the crimes of corruption provided for in this law whenever such crimes are committed on their behalf and in the collective interest:

- a) by their organs or representatives;
- b) by a person under the authority of such organs or representatives, where the commitment of the crime has been possible by virtue of a wilful violation of the duties of incumbent upon them. made  
vigilance or control

2. The responsibility of the entities referred to in the preceding paragraph shall not exclude the individual responsibility of the respective perpetrators.

**Article 4**  
**Penalties applicable to corporate bodies**

1. The following principal penalties shall be imposed to the corporate bodies referred to in the preceding paragraph for committing the crimes contained in this law:

- a) Fine;
- b) Judicial dissolution;

2. The penalty of fine shall be set between a minimum of US\$50,000 and a maximum of US\$1,000,000.

**Article 5**  
**Exemption from penalty and special penalty mitigation**

Any perpetrator who assists in a relevant manner in the collection of decisive evidence for the identification and detention of other perpetrators responsible for committing acts of corruption as well as in the freezing and seizure of the goods and products originating from such acts may be exempted from the penalty or may have the penalty specially mitigated.

**Article 6**  
**Unjust enrichment**

1. Any functionary who, in the exercise of public functions, or during the five years subsequent to the cessation of such functions, acquires property that is manifestly disproportional to his or her income and that does not result from other lawful acquiring means, shall be punished with a penalty of imprisonment of up to five years.

2. For the purposes of the preceding paragraph, property shall mean any property asset existing in the country or abroad, including immovable property, quotas, shares or social shares of the capital of civil or commercial corporations, rights over banks, aircrafts or vehicles, portfolios, fixed deposit accounts, equivalent financial investments and credit rights.

3. For the purposes of paragraph 1 above, income shall mean any gross proceeds contained in statements presented for liquidation of income tax of individuals, or that should be contained in such statements where the person is exempted from liquidating income tax.

4. It shall be incumbent upon the Public Prosecution to provide evidence of manifest disproportion between the property of the defendant and his or her income or other lawful means of acquiring property.

**Article 7**  
**Fraud in the building process**

1. Any constructor or seller of materials intended for construction of infrastructure who commits a fraudulent act and thereby diminishes in any manner whatsoever the quality of the work in such a manner as to jeopardise the security of peoples and goods shall be punished with a penalty of imprisonment from 1 to 5 years.

2. The same penalty shall be imposed to a person who is in charge of supervising the works or delivering the materials and wilfully allows the fraud to take place.

**Article 8**  
**Obstruction to investigation**

1. Any person who, either directly or indirectly, prevents or obstructs any investigation, accusation, hearing of suspects, defendants or witnesses in the framework of corruption proceedings shall be sentenced to imprisonment from 2 to 5 years.

2. The same penalty shall be imposed to any person who violates the duty to collaborate.

**Article 9**  
**Lapse**

Criminal proceedings for acts of corruption regulated in this law shall lapse within 20 years, irrespective of the penalty applicable to the crime.

**Article 10**  
**Incrimination by special rule**

This law shall apply to any person who commits any act expressly equated with corruption.

**Chapter II**  
**Criminal procedure provisions**

**Article 11**  
**Urgent nature of the proceeding**

Corruption proceedings shall be urgent in nature and shall prevail over all other proceedings irrespective of whether or not there are defendants in custody.

**Article 12**  
**Duty to collaborate**

1. Every public authority shall collaborate readily and timely in any investigation into corruption crimes.

2. Public Administration's internal control organs shall have the special duty to collaborate with criminal investigation by particularly making their specialists available for performing expert functions.

**Article 13**  
**Special investigation teams**

Where a given corruption proceeding is particularly complex and where deemed necessary, the Prosecutor-General of the Republic may determine the establishment of an investigation team and take on the respective coordination.

**Article 14**  
**Representation of a corporate body in the proceeding**

1. Where the corruption case is committed by a corporate body, the latter shall be represented by its administrators or directors.
2. Where the accusation is made against a corporate body, the summon to appear in court shall be addressed to the residence of the administrators or directors or to their professional domicile.

**Article 15**  
**Anonymous denunciation**

1. Notice on corruption cases may occur by anonymous denunciation in addition to other forms of crime notice provided for in the Criminal Procedure Code.
2. Corruption proceedings may also be initiated through the communication of suspect operations by the relevant financial authority, notably the Financial Information Unit.
3. The conduct of any person who, in good faith and based on reasonable grounds, denounces any facts related to crimes of corruption, shall be considered to be lawful.

**Article 16**  
**Searches**

1. Searches in the framework of corruption proceedings shall be validly authorised by order of the Public Prosecution, without prejudice to the contents of article 56 of the Criminal Procedure Code.
2. The contents of the preceding paragraph shall not apply to home searches.

**Article 17**  
**Seizures**

Seizure of items related to corruption crimes or that may serve as means of evidence may be authorised by order of the Public Prosecution without the need for any subsequent validation.

**Article 18**  
**Special access to communications**

Investigators shall be authorised to open and examine letters and parcels distributed by the postal services or other means suspected of being linked to any proceeding under investigation.

**Article 19**  
**Freezing and confiscation of items suspected to be of unlawful origin**

1. Immovable or movable property, rights, titles, valuables, financial amounts as well as any other items deposited in banks or other credit institutions pertaining to, or in the possession of, the defendant shall be subject to precautionary measures of seizure, without prejudice to the provisions of the Criminal Code insofar as forfeiture of crime goods and instruments is concerned.

2. There shall be seizure of immovable or movable property, rights, titles, valuables, financial amounts as well as of any other items deposited in banks or other credit institutions on behalf of third parties whenever there are grounds to believe that such property constitute proceeds of the crime.

**Article 20**  
**Bank secrecy**

1. Banking and financial institutions may not refuse to comply with any request for information or presentation of documents made by the judicial authorities regarding property, deposit of valuables of any client.

2. It shall be mandatory for the institutions referred to in the preceding paragraph to satisfy any such requests within a maximum period of 3 working days from the date of receiving the request that must be done in writing.

**Article 21**  
**Defence of bona fide third parties rights**

1. Any third party invoking ownership of items, rights or valuables seized may request the restitution of the same items as long as he or she so alleges and produces evidence of such ownership.

2. The petition shall be recorded in attachment to the main proceeding and the Public Prosecution shall be notified so that it may contest it within a period of twenty days.

3. The decision shall be issued by the judge as soon as the necessary measures have taken place, except where the issue reveals to be complex or susceptible of disturbing the regular development of the proceeding, in which case the judge shall forward it to the normal civil forum.

**Article 22**  
**Witness protection**

The special regime for protection of witnesses provided for in the law shall apply to the corruption proceedings.

**Article 23**  
**Detention outside of *flagrante delicto***

1. The Public Prosecution may order the detention outside of *flagrante delicto* in corruption cases in which preventive detention is admissible.

2. The detainee shall be submitted to the first judicial interrogation within a maximum period of 72 hours.

**Article 24**  
**Compensation suit**

1. Where the investigators conclude that the evidence is insufficient as regards one or more elements of the corruption crime, but it is evident that there was harm for the State, they shall hand over the proceeding to the Public Prosecution so that a compensation suit is filed against the person responsible.

2. Acquittal in corruption proceedings shall not prejudice any the civil suit for the damages caused.

**Article 25**  
**Death of the defendant and civil suit**

1. In case of death of the defendant, should the damages suffered by the State be evident, the Public Prosecution shall move forward with the competent civil suit against the heritage or the heirs.
2. In case of death of the defendant during trial, should the damages suffered by the State be manifest, the judge shall forward the records to the Prosecutor so that the competent civil suit against the inheritance or the heirs can be initiated.

**Chapter III**  
**Public participation**

**Article 26**  
**Participation of the community**

1. The public shall participate in, and provide support to, corruption prevention and eradication.
2. Everybody has the right to search for, obtain and provide the relevant authorities with information relating to acts of corruption.
3. The rules and procedures necessary to implementing the participation of the public in preventing and eradicating corruption shall be the object of regulation by the Government.

**Article 27**  
**Praise**

The State shall mark its public recognition to those who contribute for corruption prevention and eradication through the award of praise, medal or other form of recognition in accordance with a specific regulation to be approved by the Government.

**Chapter IV**  
**Final provisions**

**Article 28**  
**Entry into force**

This law shall enter into force on the day immediately after its publication in the Official Gazette.

Approved on....

The Speaker of the National Parliament

*Fernando La Sama de Araújo.*