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# CORRUPTION ASSESSMENT: TIMOR-LESTE

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# CORRUPTION ASSESSMENT: TIMOR-LESTE



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## ACRONYMS

ACC	Anti-Corruption Commission
AMP	Alliance for Parliamentary Majority
BPA	Banking and Payments Authority
CSC	Civil Service Commission
CSO	Civil society organization
DCHA	Department for Conflict and Humanitarian Affairs
FONGTIL	Forum Ong Timor-Leste
GoTL	Government of Timor-Leste
HATAC	High Administrative, Tax, and Audit Court
ICFJ	International Center for Journalists
INAP	National Institute of Public Administration
MCA	Millennium Challenge Account
MOF	Ministry of Finance
MSI	Management Systems International
NGO	Non-government organization
OIG	Office of the Inspector General
OPG	Office of the Prosecutor General
PG	Prosecutor General
RTK	Radio Timor Kmanek
RTL	Radio Timor-Leste
UHF	Ultra high frequency
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNCDF	United Nations Capacity Development Fund
UNDP	United Nations Development Programme
UNMISSET	United Nations Mission in Support of Timor-Leste
UNMIT	United Nations Integrated Mission in Timor-Leste
UNTAET	United Nations Transitional Authority in Timor-Leste
US	United States
USAID	United States Agency for International Development
USG	United States Government

## EXECUTIVE SUMMARY

Timor-Leste has, in recent years, taken promising steps to address corruption. In its favor, the country has developed a steady flow of anti-corruption legislation, a free media environment, and a strong opposition party. While this assessment highlights the gaps that remain, much has already been accomplished. The creation of a parliamentary sub-commission on corruption, adoption of a new criminal code that no longer includes libel, and creation of both a Civil Service Commission and an Anti-Corruption Commission with investigatory powers, can all be powerful tools to fight corruption, and are very positive indications about the strength of the government's commitment.

Much remains to be done, however, and gains to date may be lost if government commitment and attention begin to falter. Petty corruption in Timor-Leste is pervasive but not yet systemic. Allegations of high level corruption are common, though unsubstantiated. The issue is complicated by a small population, a small ruling elite, and the importance of Timorese family connections. While hard information about corruption is not available, public perceptions of corruption are widespread and growing. At the same time, the government must demonstrate a strong and continued commitment to addressing the issue. While anti-corruption legislation continues to be adopted, several major gaps remain. While in no way minimizing Timor-Leste's impressive progress since independence, this assessment focuses comments and recommendations on the substantial work that still needs to be done.

This report, conducted for the United States Agency for International Development (USAID), analyzes the status of corruption and anti-corruption programs in Timor-Leste, focusing on particular vulnerabilities to corruption abuses. It offers priority programming options for use by USAID, the Government, other donors, and nongovernmental organizations to consider in the coming years.

### Core issues

Core problems that influence corrupt behaviors were identified by the team. They include extremely low capacity across the board, weak oversight institutions, poor access to information, and a lack of understanding of basic anti-corruption concepts. While the government has continued to take action to address corruption, widespread public criticism of corruption and the likely scale of the problem, mean that the government must commit to a sustained, visible, and substantive anti-corruption effort. Similarly, the legal framework is not yet complete, and key institutions provided for in the 2002 Constitution – the Supreme Court and the external audit body – have still not been created. The newly created Anti-Corruption Commission faces an immediate obstacle in the selection of its first Commissioner, and some interlocutors questioned whether it will manage to get off the ground.

#### Low capacity

Timor-Leste has a widespread problem of low capacity. Low levels of literacy and numeracy mean that there are few appropriate candidates for positions at any level. While a larger socio-economic issue, this small pool of educated workers means that government staff are more likely to make mistakes, that civil society is less able to oversee government actions, that the media cannot adequately provide information to the public, and that the public is less able to receive, interpret, and weigh information it has access to.

#### Weak oversight

Timor-Leste has made some progress in establishing oversight bodies, but much remains to be done. Gaps in the legal framework should be addressed and nascent institutions need further support.

## Legal framework

Timor-Leste has adopted several key anti-corruption measures in recent years (e.g., a political party finance law, ratification of the UNCAC, creation of an anti-corruption commission), but several important gaps remain. These include:

- *Freedom of information* – the Constitution provides a right to information, but there is no implementing law.
- *Asset disclosure* – aside from a few very specific provisions, there is no general system for asset disclosure by high government officials.
- *Conflicts of interest* – there are no implemented rules governing conflicts of interest and few understand the concept. Similarly, there is no broad code of ethics applicable to civil servants.
- *Whistleblower protection* – there are no whistleblower protection rules.
- *Public participation* – there are no systematic provisions for public participation in government decision making.

## Key institutions

- **Anti-Corruption Commission** – a law creating a new Anti-Corruption Commission became effective in August 2009. The Commission is responsible for corruption prevention, education, and investigation, taking responsibility for some tasks previously assigned to the Provedor and the Inspector General. The Commissioner has not yet been appointed, and many feel that the selection will be extremely difficult, if not impossible, and may doom the Commission from the start. With the effective date of the law, other anti-corruption bodies have stopped taking new cases. As with its anti-corruption predecessors, the Commission will not have prosecutorial authority and will need to work closely with the Office of the Prosecutor General.
- **Civil Service Commission** – A newly established independent Civil Service Commission replaces the previous Public Service Directorate under the Ministry of State Administration. The new Commission will be relatively autonomous, and will have authority over public hiring, promotion, standards, and discipline.
- **External audit** – the Constitution provides for a supreme audit institution in the form of the High Administrative, Tax, and Audit Court. Seven years after the adoption of the Constitution, the Court has not been established, and there is no external audit function in Timor-Leste. There is some discussion of establishing a partial Court (the audit portion) within the next year. If accomplished, this would fill a serious gap in the country's anti-corruption framework.
- **Internal audit** – current internal audit authority is spread among a central Office of the Inspector General, an internal audit office in the Ministry of Finance, and Inspector General/internal audit bodies in line ministries. The various offices do not coordinate closely, and the redundancy does not make best use of limited audit resources.
- **Provedor** – the Provedor (Ombudsman), while previously responsible for a broad range of corruption activities, is now primarily focused on human rights. It is no longer taking new corruption cases, though the Anti-Corruption Commission is not yet established or able to take complaints.
- **Justice system** – Timor-Leste's justice system has extremely limited resources. There is as yet no Supreme Court. There are roughly a dozen judges countrywide, and as many prosecutors. Half of the approximately 80 lawyers work in legal aid organizations. While there are few complaints of corruption in the justice system (and disciplinary bodies for judges and prosecutors exist), progress of corruption cases *through* the justice system has been slow. Of

- **Parliament** – Parliament has yet to play a substantial oversight role. This is likely due at least in part to limited understanding of corruption and oversight concepts and limited capacity to draft and review legislation. However, there are some promising signs. The Parliament has created a special anti-corruption sub-commission, it has a very strong opposition party, and it has shown a strong interest in budget review. It remains to be seen whether this will eventually translate into meaningful oversight of government actions.
- **Media** – Timor-Leste’s media benefits from an almost complete lack of regulation and they have used this freedom to attack corruption with great zeal. Unfortunately, this enthusiasm is not matched by corresponding journalistic skill. Complicated by poor access to government information, reporting is generally anecdotal, presented weakly and poorly sourced. The resulting stew of unsubstantiated allegations (even when accurate) has begun to build government resistance, with the specter of government over-regulation now looming. In addition, media outlets, often founded by idealists rather than businessmen, lack plans for sustainability, and thus find it difficult to build long term skills and specialization.

### Poor access to information

A number of factors contribute to limited access to information in Timor-Leste. As noted, a primary structural factor is the lack of any regulation providing for access to government-held information. While the Constitution provides for a right to information, there is no legislation to implement this and thus no practical avenue for requesting information. Without such an avenue, requests to government are often ignored. Further complicating the matter, much government-held information is available only in Portuguese – a language few Timorese speak. Timor-Leste’s weak media do not aggressively pursue government-held information, and provide inadequate coverage and dissemination of information they do acquire. Finally, while corruption is perceived to be widespread, and the perception of corruption is growing, there is very little hard information or evidence about actual corruption experiences.

### Poor grasp of anti-corruption concepts

A crucial barrier to effective anti-corruption policy is the lack of understanding of central anti-corruption concepts by key actors. The team found poor grasp of such fundamental issues as access to information, straightforward tools such as asset disclosure, and more sophisticated concepts such as conflicts of interest. While some interlocutors welcomed or showed resistance to these ideas, a large majority simply did not understand them. This was particularly true in the case of conflicts of interest – even when framed in a specific example; many interlocutors did not appear to see the potential conflicts of interests related to hiring family members or having relatives bid on contracts. However, even some high-level figures did not grasp the concept of access to government information – a fundamental and widely used anti-corruption tool. This basic lack of understanding is a serious impediment not only to the implementation, but the design, of effective anti-corruption measures.

## Complicating factors

Complicating factors include language barriers and the broad use of international advisors. Use of Portuguese in place of Tetum prevents many Timorese from effectively overseeing or even participating in government. At the other end of the scale is the government’s heavy reliance on a very large number of international advisors. These ‘advisors’ are, in many cases, directly filling government roles, rather than providing only advice to local officials.

## Recommendations

The assessment team developed a range of recommendations balanced between prevention and enforcement, and dealing primarily with civil society, laws, media, and government oversight bodies.

While issues such as low literacy and numeracy require long term solutions, and some important recommendations face practical or political barriers, the team also looked for areas where rapid action could produce short term results.

High priority short term recommendations form part of a strategic plan to **provide reliable information to competent oversight actors**. These recommendations begin with development of a solid baseline of experiential data about corruption and development of a legal framework to make additional information available. Further elements include supporting government oversight bodies and anti-corruption planning capacity, and strengthening the ability of civil society to analyze and oversee government actions.

**Specific high priority recommendations include:**

Sector	Priority recommendations	Strategic problems addressed
Legislation	Freedom of information law	Poor access to information
	Asset disclosure regime	Poor access to information
	Conflict of interest rules	Poor grasp of AC concepts
Oversight	General support to the Anti-Corruption Commission	Weak oversight institutions
	Development of a comprehensive anti-corruption strategy	Poor grasp of AC concepts
	Link the Anti-Corruption Commission and the Prosecutor General	Weak oversight institutions
	Centralize internal audit mechanisms	Weak oversight institutions
Civil society	Conduct regular corruption experience surveys	Poor access to information
	Prepare regular service delivery report cards	Weak oversight institutions
Media	Strengthen media business planning	Weak oversight institutions
	Test access to information rules	Poor access to information
Government	Support expanded use of Tetum for government documents	Poor access to information

# I. INTRODUCTION

## Historical context

As one of the world's newest nations, Timor-Leste continues a long struggle, begun in the 1600s under the Portuguese, which carried on until the end of the Indonesian period in 1999. Newly independent Timor-Leste's fight is now to ensure that its young democracy can succeed. While there are bright spots, significant assistance from the international donor community has so far failed to get a handle on pressing social, political and economic problems. Not unexpectedly, for a nation that has seen foreign powers come and go, the Timorese are suspicious of outside assistance, but accept that it will be needed well into the future. Memories of the country's recent violent past are still fresh, and Timor-Leste's legal and administrative structures remain a work in progress.

During Portuguese times, investments in infrastructure, health and education were minimal. Relations were primarily extractive, starting with the export of sandalwood and later on with coffee. Portuguese rule was often brutal and exploitative, giving rise to the earliest forms of a resistance movement that would gain in numbers and force and carry on into modern times. After World War II and until the 1975 Indonesian invasion, a small number of mestizos and some from traditional ruling families were able to receive an education in the colony's few schools. These small, educated elite would later lead the resistance and become the country's leaders. Their influence is felt today in government and in the country's limited private economy.

In 1975, without Portuguese resistance, Indonesia invaded Timor-Leste, using the pretext of fighting communism for what would become a cruel and repressive occupation. The pervasive and systemic corruption found all over Indonesia would be incorporated into the administration of what was now Indonesia's 27th province. After the fall of Soeharto in 1998, and in the face of increasing violence from anti-independence activists and resistance forces in Timor-Leste, Indonesian President Habibie set the stage for a UN organized referendum in 1999. Seventy-eight percent of the Timorese electorate voted for independence. Shortly thereafter, violence erupted as pro-Indonesia militias launched a scorched earth campaign that left little of the country's already limited infrastructure in place and more than one hundred thousand dead.

In October 1999, the United Nations Transitional Authority in Timor-Leste (UNTAET) was established and the difficult process of nation-building was begun. Thousands of UN troops and advisers, along with a large number of international donors, flooded the capital of Dili and surrounding districts, bringing with them the promise of security and democratic governance. In 2002, a Constituent Assembly approved Timor-Leste's first constitution, which was followed by the election of former guerilla fighter and independence leader Xanana Gusmao as the country's president. In May 2002 Timor-Leste became a fully independent nation and the United Nations Mission in Support of Timor-Leste (UNMISET) was established as a successor to UNTAET, its mandate to provide assistance to core administrative structures critical to Timor-Leste's political stability.

Because the senior ranks of the bureaucracy in Indonesian times did not include Timorese officials and because public infrastructure was almost entirely destroyed, the United Nations had the daunting task of building the country's administration from the ground up, rather than working from an already existing base. A silver lining here may have been that the inefficiencies and corruption of Indonesian administration were not part of the mold from which the United Nations would work, although the legacy of corruption remains strong to this day.

An outbreak of violence in 2006, initially triggered by the dismissal of 594 soldiers but also fueled by weak and politicized governance, poverty and unemployment, prompted the UN to set up a new peacekeeping force known as the United Nations Integrated Mission in Timor-Leste (UNMIT) that remains in force today.

Parliamentary and presidential elections were held in 2007 and are notable because they represent the country's first successful transfer of power. The Chief of State is President Jose Ramos Horta and the head of government is Prime Minister Xanana Gusmao. An Alliance for Parliamentary Majority (AMP) rules over a fragile coalition that does not include Fretilin, the nation's largest political party, and the one most closely associated with the resistance movement. This makes the current political climate volatile and subject to the possibility of recurrent violence.

Adding to an already combustible mix is the frequent use of presidential pardons, which have been unpopular among the country's human rights community, civil society organizations, and the general population, who are increasingly troubled by what they see as impunity. Pardons have been provided for a number of prisoners who were former members of anti-independence groups and those blamed for directing the violence of 2006. The use of pardons threatens the credibility of the judiciary and other oversight institutions.

Although Timor-Leste suffers from high illiteracy, poor health, unemployment and insecurity, it has been able to establish a Petroleum Fund to ensure that revenues from its vast offshore oil and gas fields will be used into perpetuity for the benefit of the population. The Fund appears well managed and is a fine example of transparent and accountable governance in an environment where these qualities are often lacking.

## Structure of the report

The objectives of this assessment are twofold. First, this report provides a broad analysis of the state of corruption in Timor-Leste, taking into account the political-economic context, the current legal-institutional framework, stakeholders for and against reform, ongoing government and donor-sponsored anti-corruption programs, and entry points for appropriate anti-corruption initiatives. The assessment examines petty and grand corruption and key government functions where corruption can impair governance capacity and the achievement of development objectives. Second, the assessment reaches certain conclusions and provides particular guidance to the USAID mission in Timor-Leste concerning programmatic options it might consider to deal with corruption vulnerabilities.

This assessment was conducted using the new Corruption Assessment Handbook which was developed by Management Systems International for USAID/DCHA.<sup>1</sup> Initially, existing studies about governance in Timor-Leste were reviewed and based on these, the team assessed the country's political-economic dynamics in a preliminary fashion, drawing upon *corruption syndrome* concepts, producing a set of strategic propositions that address the underlying causes of and vulnerabilities to corruption in the country, not just the symptoms. During a three-week field visit, a wide range of stakeholders were interviewed and a set of key government functions were identified for in depth analysis where corruption vulnerability is strong, but opportunities to deal with the problem appear to be available. Ministry of Finance consultants updated an analysis of the adequacy of the legal-institutional framework to combat corruption. An integrated set of priority recommendations for programmatic action is presented at the end of the report.

The content and conclusions of this report do not necessarily reflect the policies or opinions of the United States Agency for International Development (USAID).

## 2. OVERVIEW OF CORRUPTION IN TIMOR-LESTE

Little hard information about corruption in Timor-Leste is available, although perception surveys suggest there is a gradual increase in corruption. While the country has put in place some important corruption safeguards, many institutions are very new, and much remains to be done. Petty corruption

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<sup>1</sup> Management Systems International (2009), *Corruption Assessment Handbook*. Washington, DC: MSI. Available with annexes at [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/technical\\_areas/anti-corruption\\_handbook/index.html](http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/anti-corruption_handbook/index.html)

is widespread, though perhaps not yet systemic. Allegations of grand corruption are frequent, but difficult to substantiate.

The country has in its favor a steady flow of recent anti-corruption legislation, a free media environment and a strong opposition party. A recent turnover of power following a hotly contested election indicates a commitment to the democratic process. While still strongly divided on key leadership issues, the government and opposition have shown a willingness to work together on anti-corruption efforts. A recent example of this collaboration is the establishment of an Anti-Corruption Commission with strong investigative powers.<sup>2</sup> The nearly unanimous vote to pass the Anti-Corruption Commission law suggests that parliamentarians understand the need to be seen as acting against corruption. If Parliament and Government can continue to move quickly and cohesively to adopt and implement anti-corruption tools, they can demonstrate to citizens and foreign investors alike that the country will not tolerate the growth of corruption, and that it has the courage and desire to prevent and punish corruption at every level.

The business environment is widely considered non-competitive and a real private sector is mostly absent. Human resource constraints plague government operations and extend to the country's few businesses, civil society organizations and media, where the skills to investigate and analyze the complex problems of corruption and economic development remain deficient.

A key overarching weakness is the country's low capacity. This low capacity was a recurring theme throughout the assessment, and is reflected in this report. Although not an immediate corruption issue, it is an issue so pervasive as to merit special attention. Roughly half of the population is literate. Less is numerate. One example given to the team noted that the average staff of the Ministry of Finance (MoF) is educated to a third grade level, and that the Ministry recently conducted a training workshop on how to calculate simple percentages. A 2007 numeracy assessment of the Ministry found very high error rates and noted that "errors were made all day, everyday, by everybody."

This is not solely a problem at MOF. Every interlocutor, in every sector, noted a lack of local capacity. This lack of capacity is not localized to government institutions, but is nationwide. Organizations do not lack staff primarily because of low salaries, but because there are simply not enough qualified people available to hire.

This small pool of human capital has a limiting effect on virtually all anti-corruption actors. Because the problem is so widespread, it is not amenable to rapid change. Instead, the Government of Timor-Leste (GoTL) must invest heavily in basic education that can, with time, produce a much larger pool of citizens with basic literacy and numeracy skills. From an anti-corruption perspective, a literate and numerate civil service will be able to effectively carry out audit functions and use more sophisticated processes. Moreover, civil society and the media will be better able to oversee and challenge government actions.

With regard to gender, the team met almost exclusively (and not by design) with men -- in government, civil society, the media and business. While there are women in senior government positions, we recognize that significant gender biases exist throughout Timorese society. Because of the lack of hard information, we are unable to comment authoritatively on gender and corruption, noting only that all sectors appear dominated by the presence of men.

➤ **Recommendation 1: Invest in long-term basic education**

Anti-corruption planning should include a serious, long-term focus on basic education in order to greatly increase the pool of literate and numerate citizens who can both perform and oversee government activities.

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<sup>2</sup> Some argue that the original concept of the Anti-Corruption Commission did not survive the parliamentary process unscathed, but instead emerged much weaker than intended. However, the Commission does in fact have important powers and could play a strong role in anti-corruption efforts if it gains its feet quickly and is allowed to work unhindered.

## Political-economic dynamics

The corruption literature suggests that analyzing the political-economic dynamics in a country can point to potential vulnerabilities and risks for corrupt practices, as well as effective and targeted remedies that address corruption's underlying causes rather than just its symptoms.<sup>3</sup> In brief, the drivers of politics and economics in Timor-Leste are strongly characterized by powerful competing patronage networks countered by only very weak governance institutions and regulatory structures. The concentration of power in these networks revolves around their access to and distribution of state resources related largely to government jobs and public procurements. This occurs in an environment where unclear boundaries between an underdeveloped business sector and the ruling elite can lead to abuses. Moreover, patronage in filling government positions can lead to a highly politicized and captured bureaucracy. With weak loyalty to the state, but strong social bonds to rival patronage networks, political legitimacy and stability of government are precarious, especially given the continuing potential for violence as a means of problem resolution. Overall, the ruling elite can act with a sense of impunity given an environment of limited accountability.

According to Johnston's typology in the USAID Corruption Assessment Handbook, this description of political-economic dynamics places Timor-Leste somewhere between two corruption syndromes (Type 3 – "Oligarchs contend in a setting of pervasive insecurity," and Type 4 – "A dominant inner circle acts with impunity"). Characteristic of Type 3 countries is Timor-Leste's transitional politics and economy, very weak institutions, pervasive insecurity, and very strong political elites who appear able to interfere with legitimate political processes. Characteristic of Type 4 countries, there are few checks on political elite who make use of their positions to benefit themselves or their families and little accountability for their actions. Moreover, personally-controlled state power appears to intrude into the economy.

These dynamics suggest potential anti-corruption programming recommendations that are likely to address these particular underlying causes. These include weakening patronage networks by strengthening the effectiveness of government's delivery of public services; strengthening the institutional underpinnings for future anti-corruption programs (laws, agencies, procedures); and establishing stronger accountability mechanisms (both inside and outside government) to reduce impunity and make corruption a high risk activity.

## Factors that help control corruption

**Legislation.** While many gaps remain, as suggested in [Section 3](#) below, Timor-Leste has adopted a number of important anti-corruption laws in recent years, including creation of a Civil Service Commission, an Anti-Corruption Commission, a law on political party financing, and codes of ethics related to elections.

**Government turnover.** Without suggesting any judgment about the policies or politics of Timorese political parties, the simple fact that there was a turnover of power between political factions in 2007 is in itself a check on corruption, as it helps to prevent any one group or person from becoming politically entrenched. It also encourages review of current processes and past actions.

**Strong opposition party.** The existence of Fretilin as a large and strong opposition bloc helps to provide a significant check on executive power. While the legislative branch has thus far not exerted its oversight powers strongly, it is possible that Parliament may eventually grow into this role.

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<sup>3</sup> Blunt, Peter (2009) "The Political Economy of Accountability in Timor-Leste: Implications for Public Policy," *Public Administration and Development* 29: 89-100; Johnston, Michael (2005) *Syndromes of Corruption*. New York: Cambridge University Press; Management Systems International (2009) *Corruption Assessment Handbook*. Washington, DC: MSI; Warrener, Debbie (2004) "The Drivers of Change Approach," London: Overseas Development Institute (November)

**Free media.** Timorese media,<sup>4</sup> while extremely weak, do enjoy substantial freedom to report what they wish to. While the quality of reporting has been low, media have used their freedom to comment extensively on alleged corruption in government.

**Strong NGOs.** As noted in [Section 4](#) below, Timor-Leste has a few strong NGOs that perform excellent oversight work.

**Petroleum Fund.** As noted in Section 3, the Timor-Leste Petroleum Fund, conceivably a serious corruption target, is in fact well structured and defended from corruption.

## Factors that contribute to corruption

As noted in greater detail in [Section 5](#), our analysis uncovered several weaknesses that contribute to corruption vulnerability in Timor-Leste. These include:

**Lack of a sustained high-level anti-corruption effort.** A broad public perception of widespread corruption, sinking indicator scores, and high profile corruption allegations, means that the government must commit to a visible and sustained anti-corruption effort. The government must not only acknowledge that corruption exists and should be fought, but must commit to immediate action to prevent corruption from becoming systemic. This will require serious commitment to broad reforms. Creation of the new Anti-Corruption Commission is a positive step, but must not be the endpoint of anti-corruption activity. Corruption in Timor-Leste is ill-defined, but has the potential to grow substantially. Immediate action and long-term planning could provide the opportunity to stem further corruption growth before it becomes endemic, and to take advantage of a public and civil society that are still energetic and optimistic. As noted about the Vice Prime Minister tasked with anti-corruption efforts, “the majority of measures he has undertaken to date have met with silence, disinterest and passivity. Most of the sixty-seven memos written to Ministries and Secretaries of State have received no response. One of the greatest challenges he has encountered has been the tendency to seek protection from the hierarchy to protect personal interests.”<sup>5</sup> This passivity must be replaced with aggressive action if corruption is to be stemmed.

**Family linkages in a small society.** Timor-Leste is a small country and the educated ruling elite are an even smaller group. Timorese culture places high value on family connections - even those that are quite distant. This results both in complications (in a small society, conflicts of interest are more likely) and in opportunities for corruption (a tendency to first consider who can help to get a favor done). These inevitable close connections suggest an urgent need for definition and regulation of transactions involving family.

**Oversight institutions are weak.** Essential accountability institutions in government do exist, but they suffer from low capacity, overlapping roles, and the absence of an established track record of prosecutions.

**Citizens do not have access to reliable information.** Official language constraints, the absence of laws ensuring citizens’ access to information, and poor journalistic standards have created an information void that contributes to a culture of suspicion.

**Public officials and citizens have a poor grasp of fundamental anti-corruption concepts.** Because the basics are not understood, anti-corruption laws and their enforcement are often lacking.

## Corruption trends

There is little hard evidence of the extent or nature of corruption in Timor-Leste. What information exists is generally in the form of legal-institutional analysis or aggregated perception surveys.

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<sup>4</sup> Note that in this document, media is referred to separately from civil society for ease of reference.

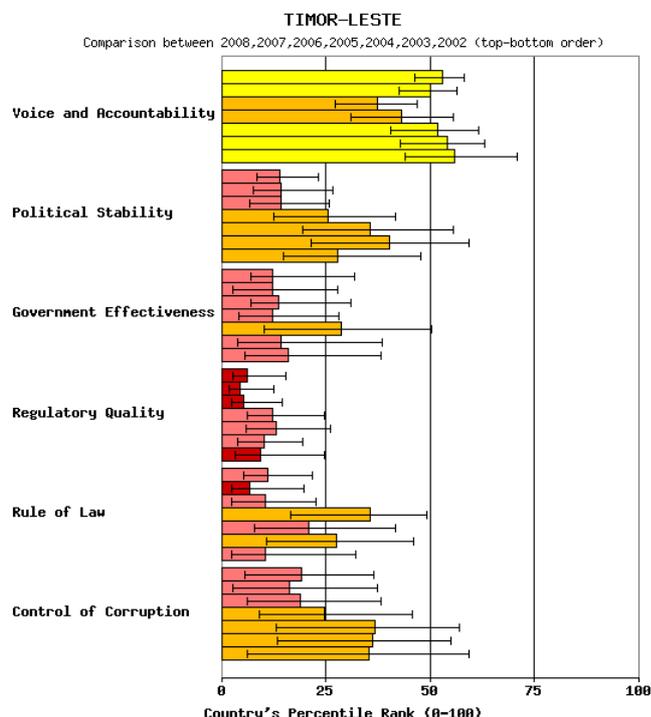
<sup>5</sup> GoTL (2009), VPM 5-Month summary report.

An example of the former is the Global Integrity Index, which assesses the existence, effectiveness, and citizen access to key anti-corruption mechanisms at the national level in a country. Based on expert assessments, the Index measures the anti-corruption and good governance safeguards or prerequisites in place in a country that should ideally prevent, deter, or punish corruption. The Index also assesses whether the laws are being effectively implemented.

Global Integrity Report	2007 rating
Overall score	Very weak
Civil society, public information, and media	Strong
Elections	Weak
Government accountability	Very weak
Administration and civil service	Very weak
Oversight and regulation	Very weak
Anti-corruption and rule of law	Moderate

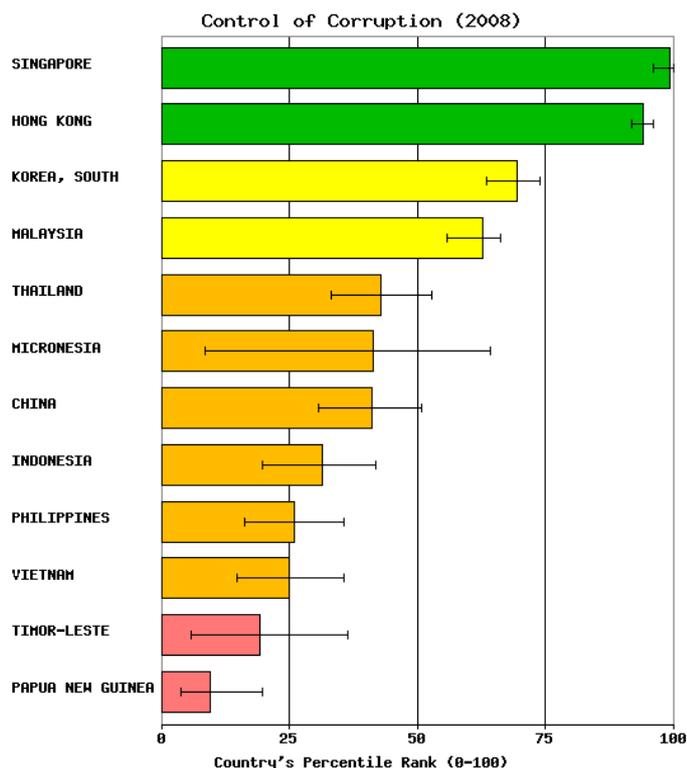
Timor-Leste’s overall rating in the Global Integrity Index of 2007 is “very weak,” with significant vulnerabilities in all branches of government, though with some bright spots in civil society and the legal framework.

In terms of public perception, the World Bank’s [governance indicators](#) for 2008 show (at right) striking weaknesses in five of the six categories represented: control of corruption, rule of law, regulatory quality, government effectiveness, political stability, and voice and accountability, with voice and accountability being the only category in which Timor-Leste ranks above the fiftieth percentile. These indicators are all based on aggregating public opinion surveys and most of them have declined over time.



Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2009: Governance Matters VIII: Governance Indicators for 1996-2008  
 Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

Timor-Leste performs substantially worse than many other countries in the region on the World Bank's corruption indicator, and worse than other countries in the same income range. The TI Corruption Perception Index, based on an aggregation of public opinion surveys, has also fallen from 2.6 in 2006 and 2007 to 2.2 in 2008.



Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2009: Governance Matters VIII: Governance Indicators for 1996-2008  
 Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

### 3. POLICY AND LEGAL-INSTITUTIONAL FRAMEWORK TO FIGHT CORRUPTION

This section discusses key elements of the legal and policy framework for anti-corruption in Timor-Leste. Note that most specific institutions are covered in more detail in [Section 6](#), and recommendations are presented in that section. Recommendations relating to gaps or omissions, on the other hand, are presented here. Annex 2 presents a snapshot of the current state of the legal-institutional framework as it relates to the corruption problem.

#### Constitution

The Constitution of the new Democratic Republic of Timor-Leste (Timor-Leste) was adopted by a Constituent Assembly on 22 March 2002. The Constitution provides for a “democratic state ... based on rule of law” and separation of powers. It includes a number of important protections relating to anti-corruption, including freedom of speech and information, freedom of the press and mass media, freedom to assemble and demonstrate, freedom of association, a right to political participation, habeas corpus, access to courts, and universal suffrage. The Constitution explicitly provides for a legislative supervisory power. The Constitution also provides for a number of key oversight bodies, including an Ombudsman (Provedor), a Supreme Audit Institution (High Administrative, Tax, and Audit Court), and disciplinary bodies for judges and prosecutors (Superior Councils).

#### Ombudsman (Provedor)

The Ombudsman is defined by the Constitution as “an independent organ in charge of examining and seeking to settle citizens’ complaints against public bodies, certifying the conformity of the acts with

the law, preventing and initiating the whole process to remedy injustice.” The Ombudsman is also given the power to challenge the constitutionality of laws. This was expanded by an implementing law that created the office of the Provedor for Human Rights and Justice. The law established the Provedor as an independent body charged “to combat corruption and influence peddling, prevent maladministration and protect and promote human rights and fundamental freedoms of natural and legal persons throughout the national territory.”<sup>6</sup> The law set out the following definitions:<sup>7</sup>

“*Corruption*” refers to the act of offering, giving, receiving, or soliciting anything of value with the aim of deviating the legal procedures of a public service meanwhile influencing the action of a public official for satisfaction of one’s private interests, including those of friends and family members; corruption presents itself in different forms such as bribery, conspiracy, nepotism, extortion, embezzlement, fraud and favouritism;

“*Maladministration*” means acts and omissions outside the powers conferred, made on the basis of irrelevant considerations, mistake of facts and law or lack of due process, and which disrupt or undermine the effective and proper functioning of the Public Administration;

“*Influence Peddling*” refers to the practice of soliciting, demanding, charging or accepting, for one’s benefit or that of a third person, by oneself or through an intermediary, and with one’s consent or endorsement, an advantage or promise of advantage, in the form of property or otherwise, to abuse one’s influence, real or presumed, with the aim of illegally obtaining from any public entity a order, competitive bid award, contract, job, allowance, subsidy, benefit or any other favourable decision.<sup>8</sup>

The law tasked the Provedor with anti-corruption education, prevention, and investigation. The Provedor was permitted to investigate cases and forward them to the Prosecutor General, but not to prosecute cases directly.

## Anti-Corruption Commission

In 2009, Parliament adopted a law “Creating the Anti-Corruption Commission” that repealed key portions of the law on the Provedor and transferred competence for corruption issues to a newly created Commission. A principal (if unconvincing) argument for establishing the new body was that because the Provedor was charged with both human rights protection and investigation of corruption, he could face a conflict in a case where investigators violated a suspect’s human rights.<sup>9</sup>

The new Anti-Corruption Commission (ACC) is intended “to provide the State with a specialized and independent criminal police body, the authority of which is guided only by legality and objectivity criteria, in articulation with the competent authorities, as is indispensable for its credibility while [providing a] mechanism for fighting corruption.”

The ACC has powers similar to those of the Provedor, but with expanded police authority, including (with appropriate judicial approval) arrest, search, seizure of assets, surveillance, and wiretapping. As with the Provedor, the ACC can forward cases to the Prosecutor General, but cannot directly prosecute a case.

The law provides additional definitions relevant to corruption, including:

*Passive corruption for illicit act* means, under article 292 of the Penal Code, an officer who, by himself or through a third party, with his consent or ratification, requests or accepts, for himself or for a third party, an undue patrimonial or non-patrimonial advantage, or the

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<sup>6</sup> Act no. 7/2004 of 26 May, Approving the Statute for the Provedor for Human Rights and Justice, Article 5.3.

<sup>7</sup> While the Provedor is no longer tasked with corruption issues, the above definitions remain in the law, and should provide guidance to the new Anti-Corruption Commission.

<sup>8</sup> Act no. 7/2004 of 26 May, Approving the Statute for the Provedor for Human Rights and Justice, Article 1.

<sup>9</sup> It is not clear why it is so widely assumed that a legal investigation would necessarily violate human rights.

promise thereof, against any act or omission contrary to the duties of their position, even if prior to that request or acceptance;

*Passive corruption for licit act* means, under article 293 of the Penal Code, an officer who, by himself or through a third party, with his consent or ratification, requests or accepts, for himself or for a third party, an undue patrimonial or non-patrimonial advantage, or the promise thereof, against any act or omission that is not contrary to the duties of his position, even if prior to that request or acceptance; and an officer who, by himself or through a third party, with his consent or ratification, requests or accepts, for himself or for a third party, an undue patrimonial or non-patrimonial advantage from a person that has had, has or will have any claim depending from the exercise of his public functions;

*Active corruption* means, under article 294 of the Penal Code, a person who, by himself or through a third party, with his consent or ratification, gives or promises to give an officer or a third party with the officer's knowledge, an undue patrimonial or non-patrimonial advantage with the purpose indicated in article 292 or article 293 of the Penal Code;

*Embezzlement* means, under article 295 of the Penal Code, an officer who unduly seizes for himself or for a third party money or a movable asset, whether public or private, that is in his possession or available to him by way of his functions;

*Illegitimate use* means, under article 296 of the Penal Code, an officer who uses or allows another person to use, for purposes other than those for which they are meant, vehicles or other movable assets of significant value that are delivered to him, in his possession or accessible to him by way of his functions, in order to obtain an illegitimate benefit for himself or for a third person, or to cause damage to someone;

*Abuse of power* means, under article 297 of the Penal Code, an officer who abuses powers or breaches duties inherent to his functions, in order to obtain an illegitimate benefit for himself or for a third person, or to cause damage to someone;<sup>10</sup>

The Commissioner of the ACC is to be appointed by Parliament on proposal by the Government, and he or she then appoints three Deputy Commissioners. The criteria for selection of the Commissioner are relatively strict, and include experience as a judge, prosecutor, lawyer, police officer or investigator. It is widely expected that choice of the Commissioner will be extremely difficult. In the interim between publication of the ACC law and establishment of the Commission, there will be a gap in anti-corruption authority – now filled temporarily by the Office of the Prosecutor General

The ACC is expected to develop a comprehensive anti-corruption strategy.<sup>11</sup> While drafts of such a strategy currently exist, they are at a very early stage and need substantial expansion to be of use.

## Other oversight bodies

### Parliament

As noted, the Constitution endows Parliament with a legislative supervisory power, though there are indications that this is not well understood by MPs. Parliament holds legislative hearings and Government actors do appear, but there does not appear to be a regular “Question time” or interpellation process.

### Supreme Court

The Constitution provides for a Supreme Court, which also fills the role of the Supreme Audit Institution until the High Administrative Tax and Audit Court (HATAC) has been created. Like the HATAC, the Supreme Court has not yet been established and its role is filled by the Court of Appeals.

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<sup>10</sup> Law Creating the Anti-Corruption Commission, Article 2.

<sup>11</sup> This is also a priority of the Vice Prime Minister charged with anti-corruption work.

## High Administrative, Tax, and Audit Court (HATAC)

The Constitution provides for a Supreme Audit Institution in the form of a special court that is part of the regular court system. This court has not yet been established.

## Office of the Inspector General (OIG)

A decree law<sup>12</sup> of 2009 confirms the Office of the Inspector General (first established in 2000 under UNTAET) as an internal audit body reporting to the Prime Minister. It does not currently have authority over internal audit bodies created within line ministries, but such a role is under consideration.

## Civil Service Commission (CSC)

A 2009 law<sup>13</sup> transformed the Directorate for Public Service (under the Ministry for State Administration) into a more autonomous Civil Service Commission.<sup>14</sup> The Commission is “responsible for ensuring a politically neutral, impartial, merit based Public Sector, holding a high standard of professionalism with the purpose of providing quality services to the State and to the people of Timor-Leste.” The CSC has administrative, financial and technical autonomy under the oversight of the Prime Minister.<sup>15</sup> Limited civil service training is available through the National Institute of Public Administration (INAP), though this appears to be a very weak body. Because of a prior limit on the size of the civil service, the government is still heavily reliant on national consultants – hired outside the civil service system -- and often highly paid.

## Other institutions or functions

### United Nations Convention Against Corruption (UNCAC)

Timor-Leste signed the UNCAC in 2003, but did not ratify the convention until early 2009.<sup>16</sup>

### Penal Code

The new Penal Code adopted in 2009 no longer includes defamation as a criminal offense, with the exception of “insult ... on grounds of religious belief or function.”<sup>17</sup>

#### The Petroleum Fund

In 2005, Timor-Leste established a Petroleum Fund to safeguard the nation’s considerable wealth derived from this non-renewable resource in the Timor Sea. All revenues from petroleum development, including royalties and taxes, are deposited directly into the Petroleum Fund account. The Ministry of Finance is responsible for deciding on the Fund’s overall risk strategy and the Banking and Payments Authority (BPA) serves as the operational manager.

A conservative investment strategy – primarily low-risk securities in the United States, Australian bonds, Japanese bonds and Eurobonds -- has so far ensured that the Fund has not suffered substantially from the global economic downturn. With major assistance from Norway, systems and controls have been put in place.

There is an emphasis on transparency and accountability throughout the Fund, which is often referred to as Norway Plus. To date, the operation of Timor-Leste’s Petroleum Fund serves as a fine example of how an impoverished nation’s finite resources can be managed to high standards of accountability.

<sup>12</sup> Laws in Timor-Leste are of three major types: Laws (statutes) adopted by Parliament, Decree laws adopted by the Council of Ministers, and Decrees adopted by individual Ministers. Decree laws are adopted under Constitutional Section 115.3, which gives the Government the power to regulate its own activities. However, they are used with sufficient frequency as to cause concern, since they often cover important topics, but do not allow for a parliamentary legislative review.

<sup>13</sup> Law on Creation of the Civil Service Commission.

<sup>14</sup> In some cases referred to as the Public Service Commission.

<sup>15</sup> Somewhat worryingly, the English translation of the law describes the CSC as being “under the tutelage and oversight of the Prime Minister,” though it is not clear what “tutelage” is intended to convey.

<sup>16</sup> Dates according to UNODC record (<http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>). UNODC is the ‘custodian’ of UNCAC.

<sup>17</sup> Penal Code, Article 223.

## Political Party Finance

A law on political party financing was adopted in 2008 and appears to be respected. The law requires annual reporting of party assets to the National Electoral Commission, with sanctions for non-submission. All parties appear to have submitted fairly timely information in the first round of reporting.

## Municipalities

Timorese government is currently highly centralized, with virtually all authority at the national level. There are currently plans to gradually decentralize to a system of municipalities (replacing the current districts) that would have a mix of devolved and delegated powers, starting with those ministries that are most deconcentrated.

Decentralization always offers more avenues for corruption, though also the possibility of greater involvement by citizens. While the team supports decentralization, it has serious concerns about the current capacity of Timor-Leste to responsibly staff new local governments. While it appears that the decision to decentralize has already been made, the process envisioned is unclear and the team was unable to devise meaningful recommendations. USAID should follow this process carefully and consider supporting anti-corruption measures (especially, local oversight and participation) as the options become more clear.

## Omissions

The Timor-Leste legal framework does not include several important anti-corruption elements. These include:

- *Freedom of information* – While the Constitution provides for freedom of information, there is no implementing law. This key omission means that there is no practical provision for public access to government-held information.
- *Asset disclosure* – While a few laws provide for disclosure of assets by key officials (e.g., the Provedor and ACC laws), there is no overall system for asset disclosure by high government officials. What few disclosures there have been (some required by law, some voluntary by Ministers in the AMP government) are not updated regularly and are not available to the public for review.
- *Conflicts of interests* – There are effectively no regulations on conflicts of interests.<sup>18</sup> This may in large part be because the concept is not well understood. Even individuals with authority over recruitment or procurement often did not appear concerned that desire to help family members might lead to a different outcome than a strictly merit-based approach, and that the latter was to be preferred.
- *Code of ethics* – There is effectively no code of ethics for civil servants.<sup>19</sup> There has been some discussion of an “Ethics Information Program” of training,<sup>20</sup> but it is not clear what standards the training would be based on.
- *Whistleblower protection* – The Provedor and ACC must protect the confidentiality of complainants and witnesses up to the time of indictment, and the Provedor may accept

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<sup>18</sup> There are conflict of interest provisions in Article 10 of Law 8/2004 on the Civil Service. However, they do not appear to be implemented, and there was little awareness of their effect.

<sup>19</sup> There are several codes of ethics related to elections, but none of general applicability. There are broad provisions in the Law on the Civil Service.

<sup>20</sup> Draft 28 April 2009 meeting minutes of the NP6 working group on national priorities.

anonymous complaints. The ACC may request police protection for witnesses and witness protection law exists.<sup>21</sup> There appears to be no other provision for whistleblower protection.

- *Public participation* – There is no systematic provision for public participation in government decision making, though Parliament does hold public hearings and invite witnesses. The Government has made public consultation a priority, though there have as yet been few visible attempts at implementation.

There is currently no regulation of the press of any sort, though several somewhat restrictive draft laws are being considered.

## Recommendations for the legal framework

### ➤ Recommendation 2. Ensure local ownership of legislative drafting

USAID and all donors should ensure that legislative drafting support is focused on educating counterparts about available models and providing technical expertise, but that counterparts should own the process and should be the key decision makers in choosing between alternatives.

Many of the recommendations that follow relate to development of new laws or rules. While it is always important for aid in legislative drafting to be managed responsibly, this is particularly true for Timor-Leste. Because of low technical capacity and weak understanding by local counterparts, international advisors and donors have frequently been the drivers of past drafting efforts – to the extent that counterparts, relying heavily on their advisors, have adopted rules that they do not fully understand. While donor-driven drafting often results in faster action and a better law, it is equally often a law that the beneficiary country does not own or fully comprehend. Such a law, however well written, is not likely to be respected, implemented, or amended. At times, as well, the law is not well suited to the local context, and the ‘cut and paste’ transplantation of foreign laws to Timor-Leste was a frequent complaint during the assessment. A far better long term solution, though slower and more cumbersome in the short term, is for international actors to actually *advise* counterparts, rather than drive the process.

### ➤ Recommendation 3. Develop a freedom of information law

Help the GoTL to review different models for freedom of information laws and develop an appropriate local law to implement the Constitutional requirement of free access to information.<sup>22</sup> While many models exist, the following key elements are often overlooked by new governments:

- All government-held information should be publicly available except certain categories (usually national security, personal information, etc).
- Requestors should not need to provide any reason for wanting information.
- Denials should be explained with reference to a valid statutory exception. Requestors must be able to appeal denials to a court.

### ➤ Recommendation 4. Develop an asset disclosure regime

Help the GoTL develop an asset disclosure regime for senior officials.<sup>23</sup> Such a regime should include:

- Regular (probably yearly) written disclosure of assets for all senior government officials. This should apply to at least: the President, the Prime Minister, Ministers, Secretaries of

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<sup>21</sup> ACC law, Article 22, and Law on Protection of Witnesses 2-2009

<sup>22</sup> This is an UNCAC requirement.

<sup>23</sup> This is an UNCAC requirement.

State, Members of Parliament, senior judges, the Prosecutor General, and leaders of autonomous or semi-autonomous bodies such as the ACC, Provedor, OIG, and BPA.

- Disclosures should be publicly available – ideally published on the internet. As Timor-Leste’s capacity develops, it will likely wish to widen the net of senior officials and develop a subsidiary process of non-public asset disclosure for mid-level officials.

➤ **Recommendation 5. Develop conflict of interest rules and codes of ethics**

Support education for key officials on the concept of conflicts of interest and help the GoTL develop appropriate local rules. Because of the small and highly interconnected population, local standards may differ from those in larger countries, but it is essential that there *be* published standards. Once rules are developed, support the GoTL in implementing the standards directly through codes of ethics, and in educating civil servants in their application.

➤ **Recommendation 6. Develop a whistleblower protection law**

Help the GoTL to analyze whistleblower protection needs in Timor-Leste and develop an appropriate legislative response that takes into account limited resources and the small size of the country.

➤ **Recommendation 7. Develop public participation mechanisms**

Help the GoTL develop formal avenues and requirements for public participation in government decision making. This may include general or model rules for public notice and comment periods, public hearings (especially given Timor-Leste’s low literacy), advertisement, and dissemination/availability of information in a comprehensible format (in terms of language and level of sophistication). Note that many developing countries erroneously focus on public *information* in lieu of the more cumbersome (but more rewarding) public *participation* or consultation. Public participation has the benefit that the public feels a greater sense of understanding, ownership, and acceptance of government actions, thus reducing suspicion and cynicism.

## 4. ANTI-CORRUPTION STAKEHOLDERS IN TIMOR-LESTE

The purpose of a stakeholder analysis is to identify and analyze important groups that have either demonstrated a commitment to reform or who oppose reform. Because major stakeholder groups can demonstrate internal conflicts and because there are different levels of support, we have identified each group in terms of its degree of opposition, conditional support or core support for anti-corruption reforms. We have looked for anti-corruption champions, groups that can be nurtured, those ready to advocate for reform, those already advocating for reform, and those with vested interests in maintaining currently corrupt systems. Finally, we have ranked each major group in terms of its political will and capacity to fight corruption.

### Media

While print and broadcast media in Timor-Leste are for the most part free to report on corruption, their capacity is minimal. Because of low literacy levels, many people rely on radio or on state-controlled television for news. The decriminalization of defamation removes a disincentive for journalists to report on corruption. Threats from government to news outlets for reporting on corruption appear minimal, and there are no recent, confirmed cases of journalists having been harmed. The Timor-Leste press reports frequently on alleged corruption at the highest levels. Yet most of this reporting is not backed up with solid investigation and often amounts to nothing more than rumor. The risk here is that government may in the future decide to tighten its grip over the media in an attempt to rein in spurious and unprofessional reporting.

The media in Timor-Leste can be a strong advocate for anti-corruption reform, but deficient reporting skills are a severe impediment to that goal. Taken as a whole, Timorese media is a group that could be nurtured over the short- to medium-term. The media demonstrates a high level of political will to battle corruption but with little capacity to do so.

## Civil society organizations

Timorese civil society is broad and diverse, especially for a country of this size. There are at least (and perhaps *only*) three NGOs either devoted to or partially devoted to anti-corruption issues, and for the most part their work is of high quality. They are La'o Hamutuk, LABEH and Luta Hamutuk.<sup>24</sup> Investigations are conducted, reports are written, and information is disseminated to policy makers and others with an interest in their work. These NGOs are often able to provide the substance and credibility that is mostly lacking among the community of journalists. Forum Ong Timor-Leste, or FONGTIL, is an umbrella NGO group with strong links to government. There is a ten member FONGTIL working group on transparency and accountability, but indications are that the group is not very active.

In an environment in which access to government information is limited, the NGO community can play an important role in disseminating information. Taken as a whole, the NGO community will almost always exhibit anti-government biases, which can only be balanced if the government steps up its commitment to providing the public with adequate access to information. NGOs with some focus on anti-corruption exhibit fairly high levels of political will and capacity to fight corruption. Unfortunately, while the three NGOs named above are quite strong, it is possible that there are no (or few) others of similar caliber. These three NGOs may be seen as the nucleus for a strong civil society, but it is essential that other strong NGOs (in any field) develop if civil society is to become a truly significant force in Timor-Leste.

## Private sector

In terms of anti-corruption tendencies, the Timorese business community is often in conflict with itself. Power is vested in a few controlling families with links to government; other business owners are mostly small and willing to pay bribes for contracts. Members of the local business community complain about corruption but are willing to engage in corrupt practices to ensure their own success. While business associations do exist, they appear weak and unstructured. Given the role of prominent families and pressing needs among small businesses to compete, it is unrealistic to expect Timor-Leste's small and insular business community to become a vocal advocate for reform in the near term. However, a few stronger associations could be nurtured over the medium- to long-term, and these could become effective voices for creating a better overall environment for business and for efforts that would stem corrupt practices. At the present time, the Timorese business community ranks low in terms of political will and capacity to battle corruption. Certain controlling families engaged in business are a likely opposition group to reform efforts.

## Oversight institutions

This section includes a brief analysis of the Provedor, the Office of the Prosecutor General, the Office of the Inspector General, the Anti-Corruption Commission, the Civil Service Commission, the Ministry of Finance, and the judiciary. Because the functions of these institutions often overlap, inefficiencies exist. As is true for the bureaucracy in general, the oversight institutions suffer from severe human resource constraints. Although it has an oversight function, we have chosen to analyze the National Parliament separately.

The Office of the Provedor until recently had responsibility for investigating corruption cases in addition to its roles to investigate human rights abuses and maladministration. Because the Anti-

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<sup>24</sup> While the team's search for plausible anti-corruption champions produced little result, these three NGOs were the most frequently mentioned candidates.

Corruption Commission will take over most of the Provedor's anti-corruption role, its significance as an oversight institution will be greatly reduced once the ACC begins to function.

The Office of the Prosecutor General (OPG) is widely considered to be a major bottleneck in the pursuit of state corruptors; it has a severe case backlog. Because the OPG has not prosecuted any high level corruption cases, it is often viewed with suspicion and as a source of frustration among other oversight institutions, the media and civil society. The OPG rates low in terms of capacity and moderate in terms of political will.

The Office of the Inspector General (OIG) has very limited capacity to carry out financial inspections and audits of other government bodies. Its leadership, however, appears committed to reform. The OIG ranks low in terms of capacity and moderate in terms of political will to fight corruption.

The Anti-Corruption Commission (ACC) is favored by the coalition government and may have a promising future, although it is still too early to know for sure. Much will depend upon the selection of a highly qualified Commissioner and the ACC's ability to work with the Office of the Prosecutor General.

The new Civil Service Commission (CSC) holds promise in terms of its ability to bring order to recruitment, promotion and appointment processes. These are traditionally areas in which conflicts of interest and susceptibility to other corrupt practices are noted as having been high. It is still too early to determine the level of political will the CSC will bring to the drive against corruption. As with other oversight bodies, we assume capacity will remain low for the foreseeable future.

The Ministry of Finance has limited resources to carry out its audit function or to provide comprehensive review and control of state budgets. Its political will to provide oversight appears moderate.

The Timor-Leste judiciary remains mostly untested in terms of its anti-corruption mandate. In non-corruption cases, there have been complaints about the quality of decisions rendered. There have been no allegations of corruption within the judiciary itself and, while inexperienced, its judges may prove to be effective in the fight against corruption. We consider the judiciary moderately capable of fighting corruption.

## **Parliament**

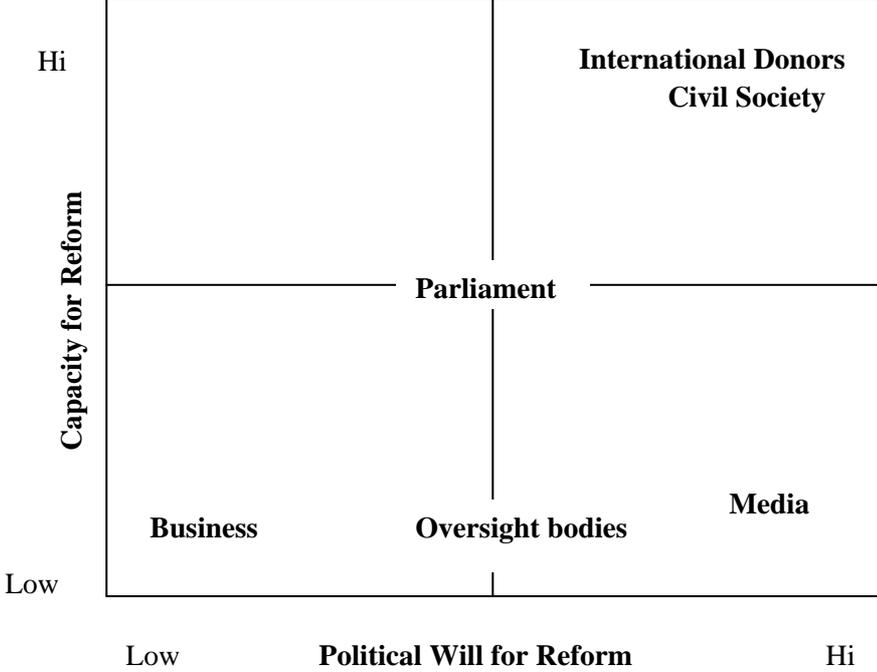
Parliament is a potential player in the movement to combat corruption in Timor-Leste, but has shown relatively little interest to date. Many of its MPs come from the resistance and have taken up the anti-corruption mantle as an extension of previous activities to ensure the strength and independence of their country. Fretilin functions as a strong opposition, and it is often behind corruption allegations directed at the government. The AMP coalition government has adopted a tough stance against corruption as well. The activity of Committee C, with a sub-committee devoted to the corruption issue, is a promising development, as is Parliament's recent decision to ratify UNCAC. In spite of these positives, it remains to be seen how Parliament will function if faced with a high level corruption case. Some members are from powerful families with ties to business and important parts of government. Furthermore, members have limited capacity to do research and to draft anti-corruption legislation. Overall, we believe Parliament exhibits moderate capacity and political will to fight corruption.

## **International donors**

The donor community plays a vital role in monitoring and providing support for anti-corruption initiatives in civil society, the media and government. AusAID, UNDP, USAID and the World Bank appear to be the major international players in the anti-corruption arena. Without their support, Timorese efforts to combat corruption would be greatly diminished. Ironically, some of these same players have been singled out for failure to effectively monitor how funds have been spent, thus contributing to the corruption perception problem. The United Nations was often cited for lacking strong internal controls over the way its own contracts were awarded, although we are not able to

verify these claims. Overall, the donor community rates high in political will and capacity to deal with corruption issues. Finally, as noted elsewhere, there appears to be little coordinated oversight of the many donor-funded international advisors, who, because of their great influence, also present a corruption risk.

**Table 2: Stakeholder mapping for political will and capacity for anti-corruption reform**



## 5. INITIAL STRATEGIC FRAMEWORK FOR TIMOR-LESTE

Based on analysis of the preceding data and trends, our initial strategic framework identified several core problems that underlie the corruption environment in Timor-Leste and proposed related strategic goals for anti-corruption programs. Working hypotheses about the underlying causes of corruption and what can be done to reduce the problem are also derived.

As noted in Section 2, while the lack of hard information made it difficult to categorize Timor-Leste in a particular corruption syndrome, the country appeared closest to Type 4 (a dominant inner circle acting with impunity), with elements of Type 3 (oligarchs contending in a setting of pervasive insecurity).

Four fundamental issues appear to be at the root cause of corruption problems in Timor-Leste today.

**Oversight institutions are weak.** Essential accountability institutions in government do exist, but they suffer from low capacity, overlapping roles, and the absence of an established track record of prosecutions.

**Citizens do not have access to reliable information.** Official language constraints, the absence of laws ensuring citizens’ access to information, and poor journalistic standards have created an information void that contributes to a culture of suspicion.

**Human resources are limited.** Low capacity in government means that essential anti-corruption functions are not effectively carried out.

**Public officials and citizens have a poor grasp of fundamental anti-corruption concepts.** Because the basics are not understood, anti-corruption laws and their enforcement are often lacking.

**Table 3: Initial strategic framework**

Core Problem	Strategic Goals	Hypotheses
Oversight institutions are weak. (based on syndromes analysis)	<ul style="list-style-type: none"> <li>• Enhance investigative capacity.</li> <li>• Clarify roles and responsibilities of oversight institutions.</li> <li>• Protect oversight institutions from political interference.</li> </ul>	<ul style="list-style-type: none"> <li>• Strong oversight institutions are essential to detecting and preventing corruption.</li> <li>• Political influence, poor capacity, overlapping roles and a lack of clearly defined procedures undermine the effectiveness of oversight institutions.</li> <li>• Better oversight contributes to citizens' confidence in government.</li> </ul>
Citizens do not have access to reliable information.	<ul style="list-style-type: none"> <li>• Create laws and procedures that give citizens access to government information.</li> <li>• Bolster a responsible media through strong journalistic standards and sustainable business practices.</li> </ul>	<ul style="list-style-type: none"> <li>• To provide an essential check on corrupt practices, government agencies must be clearly mandated to provide citizens with access to information.</li> <li>• Government information is of little use unless it is widely disseminated in a language citizens can understand.</li> <li>• Laws and procedures for requesting government information are mostly absent, contributing to suspicion and creating undue hardships for those with an interest in knowing.</li> <li>• Responsible media provide the knowledge necessary to enable citizens to hold public and private institutions to account.</li> </ul>
Human resources are limited.	<ul style="list-style-type: none"> <li>• Well trained official staff for anti-corruption/audit bodies.</li> <li>• Roles and authorities for anti-corruption bodies are clearly defined.</li> <li>• Trained manpower and limiting political influence enables the prosecution of anti-corruption cases.</li> </ul>	<ul style="list-style-type: none"> <li>• The absence of trained manpower makes it difficult to carry out essential anti-corruption/audit functions.</li> <li>• Because anti-corruption/audit responsibilities are divided among multiple agencies and coordination is weak, an already constrained human resource environment is made worse.</li> <li>• As a result of limited human resources or political influence, cases may not be professionally investigated and prosecutions have mostly not occurred.</li> </ul>
Public officials and citizens have a poor grasp of fundamental anti-corruption concepts. (based on syndrome analysis)	<ul style="list-style-type: none"> <li>• Fundamental anti-corruption concepts are widely understood.</li> <li>• Laws sufficiently address basic anti-corruption concepts.</li> <li>• The private sector understands and adheres to the "rules of the game." Laws, institutions and procedures are established to provide effective underpinning for anti-corruption programs.</li> </ul>	<ul style="list-style-type: none"> <li>• Unless basic anti-corruption concepts are understood, citizens will not hold government accountable and enforcement will be poor.</li> <li>• Corruption can flourish when laws do not sufficiently address fundamental anti-corruption concepts such as conflict of interest and asset disclosure.</li> <li>• The private sector will not grow unless rules are understood and the playing field is level.</li> </ul>

## 6. CORRUPTION VULNERABILITIES

Somewhat surprisingly, no one sector emerged as a primary focus of corruption. Anecdotal evidence of widespread petty corruption is strong and there are frequent allegations of high level corruption, but hard evidence is lacking. Corruption in public works and customs<sup>25</sup> received significant mention, as did the government procurement process as a whole, but generally it appeared that corruption is reasonably uniform across government functions and sectors. This lack of good information is reflected in a recommendation to conduct regular experiential surveys. Because no one sector emerged for special attention, the team decided not to incorporate specific anti-corruption recommendations for sectors in the Mission's portfolio, but does note that many of the recommendations provided in this report have broad applicability to health and economic growth programs. In addition, the Mission can consider specific sector activities that focus on anticorruption themes, such as public expenditure tracking in health and procurement monitoring related to public works.

A practical result is that we focused on the most evident structural weakness – lack of oversight. The team met with key stakeholders, including government, media, civil society, the private sector, and the donor community. The analysis below is structured according to organizational rather than thematic sectors. Note that recommendations are offered in each section, but are summarized and prioritized in [Section 7](#).

### 6.1 Government oversight bodies

While there has been steady and recent progress towards improved government oversight within and among branches, significant gaps remain. Many of these were noted in earlier discussions of the legal framework, but are presented here along with specific recommendations for action.

There are a number of bodies that are important to anti-corruption efforts, but for which few entry points exist. This may be because of a change in status (Provedor) or because of existing international support (Civil Service Commission). These cases will be mentioned, but will not form the basis of specific recommendations. They may, of course, be worthy of consideration for programs not related to corruption.

#### Provedor

Because most anti-corruption responsibilities have been transferred from the Provedor to the ACC, the team does not recommend specific anti-corruption support to the Provedor. Existing support may continue to be important on issues of human rights and justice. We note in passing that the office of the Provedor appears to be well respected, and that the public feels comfortable in passing complaints to the Provedor with the expectation that action will be taken.

#### Civil Service Commission

The Civil Service Commission, while newly established, builds on a relatively strong predecessor body. The CSC could logically play a role in issues including conflicts of interests, codes of ethics, civil service training, and asset disclosure. However, the plethora of international advisors already present at the CSC limits the entry points for additional support. The weakness of the civil service training institute (INAP) limits the opportunity for extensive civil service training.

#### ➤ Recommendation 8: Donor coordination and strategy for Civil Service Commission

The team recommends that USAID meet with CSC donors to coordinate strategy. If appropriate, USAID should consider providing support for development of conflict of interest standards and training. If this niche is already filled, USAID should coordinate with relevant donors to ensure that standards are appropriate and appropriately developed. Background

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<sup>25</sup> Note the recent establishment of an Inter-Ministerial Committee on Infrastructure charged with monitoring infrastructure procurement actions.

support could include analytical information on international models and their application in Timor-Leste.

### **Anti-Corruption Commission (ACC)**

The ACC is, like the CSC, a brand new body. The ACC, however, does not transform an existing body, but creates a new organization that takes on some of the functions of the Provedor. The ACC is designed to be the central anti-corruption actor in the government and there appears to be no territoriality within the Provedor, OIG, or CSC that would impede this goal.

As previously noted, the ACC will face some challenges. The choice of a Commissioner will be extremely difficult, both in terms of meeting the criteria in the law and in terms of politics. Fretilin is an opposition party and appears willing to use its ability to prevent a quorum to influence the selection process.<sup>26</sup> The Government must nominate a Commissioner within 60 days of publication of the ACC law for Parliamentary selection. The Commission begins operation within 90 days of publication.<sup>27</sup> While some interlocutors suggest that a choice might be made during August 2009, it is more likely that the process could be deadlocked for months to come.

### ***Major corruption vulnerabilities***

Selection of the Commissioner allows room for political manipulation. If this is thought to occur, confidence in the ACC will drop. The current Provedor, appointed under a Fretilin government, has already been accused by the AMP government of political bias. The same could occur for the Anti-Corruption Commissioner (and for the new Provedor, due to be appointed soon). However, Fretilin's parliamentary strength, and the legal requirement for a large quorum, makes it likely not only that any Commissioner will not have strong political loyalties, but that he/she will not be immediately suspect.

There appear to be few eligible candidates for the office of Commissioner. Queries by the team about corruption champions elicited very few specific names. Tension between the AMP government and the Fretilin opposition might lead to a weak or ineffectual candidate being appointed, hamstringing the ACC before it can even start operations. Many interlocutors were extremely skeptical that the ACC will ever get underway at all.

It is a very real possibility that there will be, at the least, a very long delay in selection of the Commissioner, and that until his/her appointment, the ACC will not function. Some existing bodies have already ceased taking new corruption cases, while the ACC is not yet in place. While the law appears to envision this transfer of authority only when the new Commission is active,<sup>28</sup> the practical result may be a significant gap in anti-corruption authority and investigations.

Finally, the ACC will face the same bottleneck in prosecution that the Provedor experienced. No matter how well the Commission functions, it must rely on the Prosecutor General to move corruption cases forward.<sup>29</sup> Several solutions for this have been proposed, including long-term secondment of prosecutors to the ACC and establishment of a special corruption unit within the PG. Secondment would offer greater control of the prosecution process by the ACC, but result in complicated loyalties for prosecutors working with the ACC but expecting careers in the Office of the Prosecutor General. The Prosecutor General does not appear to support this option. A special prosecution unit would avoid

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<sup>26</sup> Article 7 of the ACC law requires that three quarters of the total working members of Parliament be present.

<sup>27</sup> Articles 34 and 36 of the ACC law.

<sup>28</sup> Article 32 of the ACC law suggests that current bodies will turn over cases and authority only once the new Commission is active. Interlocutors, however, interpreted the law to mean that they can continue current investigations but not open new cases.

<sup>29</sup> Note that this is generally, but not universally, true of most Anti-Corruption Commissions in the region, the clear exception being Indonesia, where the Corruption Eradication Commission has broad powers of both investigation and prosecution, and a Special Corruption Court has been established to try cases expediently and without the judicial biases found in the regular Indonesian court system. The Philippines Ombudsman Office also has investigative and prosecutorial powers.

this issue, but would limit ACC influence on prosecutions. The Prosecutor General has indicated that formation of a special prosecution unit for economic crimes (including corruption and money laundering) is already underway.

### *Practical recommendations*

While the selection of an ACC Commissioner is an important question mark, the ACC is clearly the central government's anti-corruption body for the future. In addition, few donors have shown a strong interest in the body, with AusAID and USAID the lead candidates for support. In all the recommendations below, USAID should coordinate closely with AusAID, first in defining an assistance strategy and then in providing support.

#### ➤ **Recommendation 9: Support the nascent Anti-Corruption Commission**

The ACC will be a completely new body and will be in need of considerable support. Needs will likely include materials (office space, furniture, equipment), but more importantly development of appropriate office procedures. USAID should offer medium term capacity building support to the office in the form of materials and one or more advisors (keeping in mind the need for mentoring, rather than direct action).<sup>30</sup>

#### ➤ **Recommendation 10: Develop a comprehensive anti-corruption strategy**

One of the ACC's tasks will be to develop a comprehensive anti-corruption strategy. USAID should help the ACC to work with a broad range of stakeholders to develop a realistic but wide-reaching strategy, consistent with UNCAC, to address corruption in Timor-Leste in the long term. Such a strategy should include completion of the legal framework, appropriate media regulation, administrative procedures, strong oversight bodies, and long-term capacity building.

#### ➤ **Recommendation 11: Support an ACC-Prosecution link**

The ACC will need to work closely with prosecutors, whether seconded or working for the Prosecutor General. Both options offer benefits, but creation of a special PG prosecution unit may be simpler, keep reporting and loyalties more clear, and make it easier to establish accountability if prosecution of corruption cases continues to lag. Because OPG is already forming a special economic crimes unit, USAID should focus support on that option.

#### ➤ **Recommendation 12: Support corruption reporting mechanisms**

Work with the ACC to develop and widely publicize simple, reliable, and confidential reporting mechanisms that the public can use to report acts or suspicions of corruption.

#### ➤ **Recommendation 13: Support external review of the ACC**

It is often noted that one reason for the success and credibility of the Hong Kong ICAC is that its work is reviewed by no less than four independent committees and a complaints committee. While this multiple oversight is too much to expect from Timor-Leste's limited resources, it is important that the ACC be welcoming of external oversight – by both government (especially parliament) and civil society. USAID should work with the ACC to design avenues for such oversight.

#### ➤ **Recommendation 14: Join regional anti-corruption bodies**

Timor-Leste does not appear to be part of the ADB-OECD Anti-Corruption Initiative (ACI). This network joins about 27 countries in the Asia-Pacific region for peer review and cooperation. Its recently adopted action plan includes:

- developing effective and transparent systems of public service;

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<sup>30</sup> AusAID is the only other donor that has indicated a serious interest in working with the ACC and appears eager to coordinate its anti-corruption activities with USAID.

- strengthening anti-bribery actions and promoting integrity in business operations; and
- supporting active public involvement.

The ACI is among the most active regional corruption networks, and would be well worth GoTL consideration. Study tours could be organized or special experts could be brought to Timor-Leste from Singapore and Hong Kong where effective anti-corruption commissions exist.

Note that ASEAN also has a plan of action that emphasizes attention on corruption, and Asia-Pacific Economic Cooperation (APEC) has an expert group on corruption. The Pacific Plan also has a focus on anti-corruption agencies and auditors general. Timor-Leste may not have the resources to join all these bodies, but they could be useful assets as the country develops its plans. Regional cooperation on anti-corruption is a priority of the Vice Prime Minister tasked with anti-corruption work.

### **External audit – High Administrative, Tax, and Audit Court**

There is at present *no* domestic external audit of government finances.<sup>31</sup> This is a major gap in the legal framework and a serious corruption vulnerability. While the HATAC is established by the Constitution as a Supreme Audit Institution,<sup>32</sup> there appears to have been no progress in actually establishing the body. There is some suggestion that a forthcoming law might (with planned Portuguese assistance) establish a partial HATAC focusing on audit, and this would be an important first step. However, there appears to be no urgency to act, and no indication that action would come during the next several months. Such prolonged inaction (since the adoption of the Constitution in 2002) begins to suggest a lack of political will to address the issue. While it is true that human resources are limited, creation of a functioning HATAC should be given a high priority. An independent, external audit facility is crucial to building the government's credibility.

### *Practical recommendations*

#### **➤ Recommendation 15: Support establishment of the HATAC**

Use diplomatic efforts to encourage the establishment of the HATAC. USAID should work with Portuguese assistance to offer technical support in designing the institution and drafting the law.

### **Internal Audit – Office of the Inspector General**

At present, internal audit responsibilities are spread among OIG, MoF, and line ministries, with little coordination between actors, and no consistency in the structures or approach. While in a larger country this might be acceptable, Timor-Leste does not have the human resources to successfully staff so many disparate bodies.

### *Major corruption vulnerabilities*

The lack of coordination in internal audit means that limited resources are used ineffectively, audits may be inconsistent (and of varying availability), and that oversight of the audit bodies is limited. The OIG is already established, has the largest staff, and offers the greatest independence from line ministries. It now has authority to forward cases directly to the Prosecutor General, rather than awaiting Prime Ministerial approval. In addition, the OIG recently lost its only external advisor.

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<sup>31</sup> Discounting international firms hired for specific purposes – at present, Deloitte, which appears to have won *all* the 2009 government audit contracts.

<sup>32</sup> In itself an unusual choice.

## *Practical recommendations*

### ➤ **Recommendation 16: Support centralization of internal audit under OIG**

Encourage centralization of internal audit responsibilities under OIG. Specific line ministry IGs would be solely responsible to OIG. This centralized approach would increase independence of auditors, increase consistency, and simplify public access to audit results. USAID should offer technical assistance to OIG in the form of one or more long-term mentors – conceivably one to advise OIG on appropriate structure and procedures, and one to provide on-the-job training for OIG staff.

## **6.2 Parliament**

Parliamentary elections in 2007 led to a handover of power from the Fretilin party to a coalition of smaller parties (the AMP). A dispute between the two was resolved only when the President asked the AMP to form the Government. Fretilin therefore has not only a very strong opposition position in Parliament, but a (waning) feeling of grievance that they were not selected.<sup>33</sup>

The current coalition government and the Fretilin opposition have highlighted corruption issues but have not made any formal parliamentary inquiries on the subject. Committee C on Economy, Finance, and Anti-Corruption has established a sub-committee to deal specifically with corruption. However, overall understanding of essential anti-corruption concepts appears lacking among many parliamentarians. Without such an understanding, the Parliament cannot be effective in establishing anti-corruption measures. It remains to be seen whether Parliament has the will or the capacity to provide oversight on anti-corruption matters.

In recent years the quality of parliamentary debate, particularly on budget matters, appears to have improved, which may be partially a function of access to budget information and analysis. The Parliamentary Research Center provides some policy analysis and attempts to respond to requests from legislators, while the UNDP is providing international advisory support.

The President of the National Parliament heads an administrative structure that consists of a powerful Council of Ministers and the Office of the Secretary General, which is undergoing reorganization but will continue to emphasize administration, plenary support, and research and information technology. Providing support to 65 Members of Parliament, the Secretariat currently employs 66 civil servants. As a result of recent recruitments, that number is expected to increase to 121 by 2010.

### **Major corruption vulnerabilities**

No Member of Parliament has been prosecuted for corruption, although allegations of corrupt behavior surface from time to time in the press and elsewhere. MPs are protected from arrest relating to official duties, but the protection is felt to carry beyond official duties in practice. The insular nature of Timorese society and ties to powerful interests in government and the economy create a corruption vulnerability among MPs that is made more pronounced because laws do not provide for mandatory asset disclosure or clearly define conflicts of interest.

### **Opportunities and obstacles for anti-corruption programs**

The Committee C sub-committee on corruption provides a good entry point for anti-corruption programming, although we have not been convinced that sufficient will exists within Parliament as a whole to actively pursue a full anti-corruption agenda.

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<sup>33</sup> Fretilin generally refers to the current administration as the “de facto” Government.

## Practical recommendations

### ➤ Recommendation 17: Train MPs on corruption concepts

Parliament already receives assistance from a number of UNDP advisors. However, a 2008 UNDP evaluation<sup>34</sup> suggests that anti-corruption training could be an area better served by another donor, thus providing a window for possible USAID support. MPs, staff and especially members of Committee C would benefit from training programs and activities specifically devoted to anti-corruption. Modules could be developed and trainings delivered that are specific to the circumstances of Timor-Leste and that provide detailed information on essential concepts such as conflict of interest, asset disclosure, contracts and bids, access to state information and investigative procedures. Note that this same material could be provided to INAP as the basis of a civil service course. In addition, MPs could learn from participation in the Global Organization of Parliamentarians Against Corruption (GOPAC) activities, including the Southeast Asia chapter of GOPAC (SEAPAC).

## 6.3 Justice sector

Timor-Leste's judiciary is strikingly small, consisting of a Court of Appeals, four District Courts, and about a dozen judges, most with little experience. There are a similar number of prosecutors, about half of whom are in Dili. There are roughly 80 lawyers, of whom half work in donor-supported legal aid programs. Case backlogs are estimated at 5,000 or more. Contract enforcement is problematic. At the same time, virtually all interlocutors agreed that there was little evidence of corruption in the justice system, though there are some claims of political influence. Disciplinary systems (Superior Councils) are very new, but appear to be functioning.

OPG noted that most corruption cases referred for prosecution are low level and that witnesses are reluctant to testify. Corruption cases are the second-rank prosecution priority, following cases in which a person has been detained.<sup>35</sup> However, many interlocutors noted that corruption cases referred to the Office of the Prosecutor General have made little progress, with only one minor conviction to date.

### Major corruption vulnerabilities

While the absence of a Supreme Court is a serious concern that puts the judicial branch at an important disadvantage relative to other branches of government, it is not an issue that appears amenable to technical assistance. The standard explanation is that current judges do not meet the qualifications for appointment to those courts.<sup>36</sup> It is surprising that Constitutional transitional provisions did not take this issue into account, but Timorese interlocutors do not see any flexibility in the law nor do they see it as an issue of particular concern. USAID may wish to consider diplomatic encouragement to create a Supreme Court. Given the drastic lack of qualified judges, it may be that there are insufficient personnel to staff both a Supreme Court and an appellate court. In this case, the current Appeals Court could simply be reorganized as the Supreme Court. This may seem to create substantial work for minimal gain, but there is an important perceptual difference between the two courts. The Supreme Court is, of course, the top organ of the judicial branch; the Appeals Court, however competent, is not. The Courts at present, therefore, are likely not perceived as the equal of other branches, since they only have, as it were, a *pro-tem* leader.

The resolution of this issue will be determined by the amount of flexibility that Timor-Leste can find within its Constitutional provisions. The present very narrow reading makes it impossible to create a Supreme Court until judges have sufficient experience to meet the criteria. An equally credible reading, however, would allow current judges to be appointed to the Supreme Court.

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<sup>34</sup> 2008 Mid-Term Evaluation of the UNDP Timor-Leste Parliamentary Project.

<sup>35</sup> A third rank is cases relating to police or armed services personnel.

<sup>36</sup> Though it appears that most also do not meet the requirements for the Court of Appeals.

The backlog of cases in courts and OPG is substantial. The Prosecutor General does not see it as problematic and believes that the current number of prosecutors is adequate to both reduce the backlog and resolve new cases.<sup>37</sup>

As noted, there is currently a gap in anti-corruption authority, with the Provedor and other bodies not taking new cases, but the ACC not yet online. Only now, with the ACC law already published, does the GoTL appear to be taking any steps to develop a response. In the interim, the Office of the Prosecutor General will receive new corruption cases. The Prosecutor General suggests that public awareness campaigns be conducted that suggest that corruption cases be reported directly to the police and prosecutors. Such campaigns seem more likely to cause confusion than encourage reporting, since it would likely soon be followed by a public awareness campaign for the ACC.

➤ **Recommendation 18: Offer support to OPG**

While the Prosecutor General appeared comfortable with the number of prosecutors and the level of outside assistance available, it is clear that the OPG is a bottleneck for corruption prosecutions. USAID should continue existing support to OPG, but offer additional support in building a capable economic crimes unit that could focus on corruption and money laundering cases, in close conjunction with the ACC.

➤ **Recommendation 19: Encourage GoTL to address the ‘gap’ in anti-corruption authority**

While most interlocutors acknowledged the gap in anti-corruption authority between publication of the ACC law and the actual creation of the Commission, few seem to view it as a serious issue. Given the likely difficulty in appointment of an Anti-Corruption Commissioner, USAID should encourage the GoTL to view the problem with greater urgency and to develop a plan to address it.

## 6.4 Civil society

For a country of Timor-Leste’s small size, civil society is remarkably broad and deep. FONGTIL has registered more than 500 local NGOs and 100 international NGOs that are engaged in advocacy, capacity building, the provision of essential services and information dissemination. Civil society organizations appear to operate in nearly every developmental sector, with LABEH, La’o Hamutuk, and Luta Hamutuk comprising the principal actors in anti-corruption activities.

As noted in the [Section 4](#), the few active civil society organizations in Timor-Leste demonstrate a high degree of political will to fight corruption and appear to have the capacity to do so. Because Timorese civil society is bolstered by a resistance mentality and is firmly rooted in the country’s independence movement, it commands respect in government circles and among the population.

### Major corruption vulnerabilities

The assessment team notes one major corruption vulnerability that is particular to Timorese civil society. This relates to the large amounts of donor funding directed to civil society groups and the pressures that are often present to spend money quickly in an environment where absorptive capacity is very low. This is a problem for two reasons.

First, systems of financial control in local NGOs are often weak, providing opportunities for corruption for individuals in the organization and at an institutional level. The team heard of several cases of individual and institution level corruption within the NGO community. Although it was not

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<sup>37</sup> Note that this assessment does not recommend anti-corruption support to the courts. While the courts are clearly a key element of the anti-corruption framework, few corruption cases presently reach them, and the team chose to focus support on the preceding steps of investigation and prosecution. It is likely that in 3-5 years time, anti-corruption efforts should also include support to the courts.

possible for us to verify how widespread these practices are, it seems likely that they are extensive, given the amounts of money available, weak controls, and pressures to spend.

The next problem relates to perceptions that NGOs hold of the donor community. When the amounts of money budgeted for NGO programs exceed what is truly needed, NGO leaders are the first to notice. This has led to a widely held perception that international donors are an easy target.

### Opportunities and obstacles for anti-corruption programs

The assessment team is not aware of any civil society groups that have been blacklisted by the current or previous governments nor are we aware of any serious threats posed to NGO leaders. Ministries often do not comply with requests for information from NGOs and some of our interviewees have characterized this as a form of passive resistance, although it may often be the result of disorganization and poor record-keeping.

A decree law on Associations and Foundations in Timor-Leste<sup>38</sup> is under discussion. Article 11 of the draft legislation provides for significant state oversight, which could present problems in the future for civil society groups that monitor the government. Article 11 reads as follows:

Associations and foundations administering funds allocated by the State, benefiting from any form of assistance from the State or receiving funds from development partners for the purpose of implementing any activities included in the National Development Plan, are subject to direct oversight by the Ministry of Planning and Finance.

The meaning of “direct oversight” is not clearly defined and is subject to broad interpretation.

### Practical recommendations

Civil society in Timor-Leste demonstrates the will and the capacity to fight corruption, and some of its leaders are considered champions of reform. Because this will and capacity are mostly absent within the government, we believe that civil society should be a major entry point for anti-corruption programming, with the intention of creating reform momentum among the public and inside the government. Creating this momentum will require solid information on the nature and extent of the corruption problem, monitoring government performance, and advocacy campaigns that are fact-based, well targeted and sustained.

#### ➤ Recommendation 20: Conduct corruption experience surveys

Diagnostic corruption surveys, pioneered by the World Bank Institute<sup>39</sup> and now used in various forms by other international organizations, can provide detailed, experiential information on the nature and extent of corruption, primarily at the administrative level. Such surveys should be conducted on a continuing basis (annually) to monitor corruption trends and assess whether various initiatives are having their intended effects. (Higher level corruption that is specific to certain individuals and families with political connections is mostly the domain of investigations conducted by law enforcement, the media and civil society.)

Survey design is normally a multi-stakeholder process, guided by an anti-corruption expert and others with deep knowledge of the local environment. Questions can focus on actual corruption experiences of respondents, as well as on their attitudes and perceptions. Groups normally targeted by these surveys are individuals, households, government officials, and businesses. The actual surveys can be conducted by a local firm in partnership with an appropriate civil society organization. After a thorough analysis of the data collected, the results of the survey can be made widely available.

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<sup>38</sup> Law 5/2005.

<sup>39</sup> [www.worldbank.org/wbi/governance](http://www.worldbank.org/wbi/governance)

Effectively conducted and used, the survey unbundles corruption (administrative, state capture, bidding, theft of public resources, purchase of licenses); identifies weak and strong institutions; examines processes, sectors and functions in depth; assesses the costs of corruption to different stakeholders; and identifies concrete and measurable ways to reduce those costs through targeted reforms. Given the absence of hard information on corruption in Timor-Leste, we believe that a survey like this could be extremely beneficial in pinpointing important sources of corruption and in providing donors and the GoTL with an effective starting point for anti-corruption programming.

#### ➤ **Recommendation 21: Develop service delivery report cards**

Public service delivery report cards were first developed in Bangalore, India in 1993 and have been applied by civil society groups in many other countries. Just as the private sector uses customer satisfaction information to adjust business practices based on demand, report cards enable citizens and policy makers to register their opinions on the quality, efficiency, effectiveness and cost of services delivered by government authorities.

The report card is a sample survey of service users that provides a rating of public agencies to determine satisfaction with different dimensions of their services. Information gleaned from the surveys can be used to quantify the extent of corruption and its overall costs to the consumer. Once complete, the survey information can be placed in a report card format that rates various agencies in terms of customer satisfaction, with an important determinant of overall satisfaction being the levels of corruption experienced at different divisions within a given agency. Civil society groups often collect and analyze report card data.

Report cards are an effective way of highlighting where petty corruption occurs and how much it costs. Civil society and government may use these report cards and periodic follow-up surveys to determine how well a public service provider is doing, what types of interventions are called for, and whether improvements have been made over time. The end result is that citizens are given a means for challenging their government to become more efficient and government is provided with a tool that should enable it to perform at increasingly high levels over time.

Overall, use of report cards should affect the strengthening of quality service delivery, which, in turn, should have an impact on reducing the influence of patronage networks. If government responds positively to the recommendations in report cards, businesses and citizens should begin to get better services without having to resort to loyalty networks or corrupt means.

#### ➤ **Recommendation 22: Support Public Expenditure Tracking Surveys**

Public expenditure tracking surveys (PETS)<sup>40</sup> have been used with success in many parts of the world. The idea is to track whether budget funds allocated are actually used for their intended purpose, by following the money trail from the budget itself to the government agency where the funds were expended. Surveys of this kind, often carried out by NGOs, can help communities to determine whether they are getting the full value of support anticipated or why they are not. Because USAID may wish to concentrate on services within a particular sector that it already supports and on a sector where services are especially deconcentrated, health and education appear to be attractive candidates.

#### ➤ **Recommendation 23: Support anti-corruption advocacy campaigns**

Well run advocacy campaigns provide an opportunity for civil society to mobilize the public against corruption. These campaigns can inform citizens about the corruption problem at different levels and solicit ideas for doing something about it. Advocacy campaigns provide an effective means for disseminating the types of detailed information about local corruption

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<sup>40</sup><http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/EXTPUBLICFINANCE/0,,contentMDK:20235447~pagePK:148956~piPK:216618~theSitePK:1339564,00.html>

gathered from surveys, the media, and other sources. The campaign can also highlight best practices to fight corruption gleaned from other parts of the world.

The most effective anti-corruption advocacy campaigns are multidimensional, making use of whatever means are most appropriate for a given country. These can include radio, television, and newspaper public service announcements; talk shows and debates; posters and signs highlighting various aspects of the corruption problem; and concentrated use of the Internet. Our assessment for Timor-Leste is that radio followed by television and newspapers are the most appropriate media for an advocacy campaign. Given the overall security environment in Dili and district centers, public rallies are not advised. Internet penetration remains too low to be part of an effective advocacy strategy, except to the extent that it facilitates the sharing of information among campaign organizers.

Another part of corruption awareness building can be the posting in government offices of simple notice boards showing the official fees charged for basic procedures. While these will certainly not eliminate corruption, they can discourage particularly brazen unofficial requests.

## 6.5 The media

The broad contours of the media in Timor-Leste remain much the same as in 2006 when USAID conducted its last assessment of the sector. The number of daily and weekly papers continues to fluctuate (there are currently five dailies and two weeklies). Papers are often created under idealistic leadership and then cease operations in the absence of sufficient capital or ad revenue. There are nineteen commercial and community radio stations, including RTK, which is run by the Catholic Church. RTL is the state-owned television station. Suara Timor-Leste is currently experimenting with a private TV station in Dili. Because it is only able to broadcast with a limited UHF signal, few people are aware of the station's existence.

The Timorese media report frequently on high level government corruption cases, but the low quality of this reporting renders most of it of little value and, in some cases, may actually be detrimental to anti-corruption efforts.<sup>41</sup> When reporters cannot be trusted to present factual information or check their sources, corruption claims will eventually be dismissed by the public, even in those instances where real corruption may exist. As things stand now, suboptimal reporting on corruption has added to a culture of suspicion in which the public assumes – without a nuanced appreciation of the phenomenon – that corruption is the norm rather than the exception and that government at all levels is simply bad. This type of cynicism can, over time, undermine the democratic process.

### Major corruption vulnerabilities

The assessment team is not aware of any cases in which reporters or editors have engaged in any form of “envelope journalism,” a practice that is common in Indonesia and elsewhere in Southeast Asia whereby journalists or editors are paid to place or write stories that are favorable to the paying party. Journalists may be swayed by the opinions of powerful figures, but that is not corruption. Nor is it corruption that some media outlets and two of the country's four printing presses are tied to figures in government. These things are of course troubling, but they are not corruption. The absence of envelope journalism in Timor-Leste is a bright spot for the profession and it should be guarded through continuous monitoring and self-regulation.

### Opportunities and obstacles for anti-corruption programs

Five draft media laws have been prepared, with UNDP assistance, for consideration by the Timor-Leste government. Article 19, an international freedom of information advocacy group, along with

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<sup>41</sup> Also of note is the poor quality of Tetum to English translation. In one instance the assessment team found reference in a corruption article to the Ministry of Public Works, while the Tetum version of the paper referred to the Office of the Prosecutor General in the same place

members of the Timorese community of journalists and civil society, have conducted a thorough analysis of these laws and draws the following conclusions:

“The draft laws are unnecessarily complex and, taken together, they are potentially confusing and contradictory. This should be avoided in any legal system, but it is of particular concern in Timor-Leste, a small country with few legal resources. It would be better if the media laws were simplified and integrated into one law, and there should be a separate law for freedom of information. There are many problems with each of the draft laws, but the main dangers to journalists are in the draft law establishing a **Media Council**, and in the draft **Journalists Statute**. Adoption of these laws would seriously damage the ability of Timor-Leste’s citizens to obtain information of public interest.”<sup>42</sup>

The result of the Article 19 analysis and civil society advocacy against the draft laws appears to be a decision among policy makers to reconsider major portions of the drafts.

The current government has for the most part allowed the Timorese press to report without any significant restrictions. However, in the face of so much poor reporting on corruption, it is possible the government could begin rolling back media freedoms. The Timorese press would be well-advised to begin a regime of self-regulation, sustainable business practices and training for journalists to upgrade reporting skills. Some of this work is already underway with support from USAID and other donors, and a working group of several journalists’ associations appears to be working toward this end. Given vulnerabilities within the Timorese press, these efforts should be redoubled and infused with a greater sense of urgency.

### Practical recommendations

#### ➤ **Recommendation 24: Encourage sustainable business practices for media outlets**

Learning and applying sustainable business practices will be central to ensuring the future of the media in Timor-Leste. Papers and radio stations that rely on idealism and community support alone will often fail. The market for dailies and weeklies in Timor-Leste is probably not large enough to sustain more than a couple of publications. But those that succeed will be able to provide better pay and support for their reporters, thus upgrading the quality of news that is available.

Short-term courses on sustainable business practices for the media could be offered through an existing Timorese institution or a contractor. These courses would likely be small – given the size of the community – and well targeted to those with serious interests in creating viable media businesses. Coursework would ideally be complemented by one-on-one mentoring, in which a seasoned international media operator (possibly someone already in retirement) would provide daily assistance to aspiring media businesses.

#### ➤ **Recommendation 25: Provide formal journalism training**

Continued emphasis on the journalism program at the National University of Timor-Leste is recommended. This is a new program, receiving support through the International Center for Journalists (ICFJ), which merits future attention in terms of curriculum development and mentoring of the most promising students.

#### ➤ **Recommendation 26: Create a reporting awards program**

Through one of the existing associations of journalists or a prominent civil society organization, an awards program for excellence in journalism could be established. Using a panel of respected judges, annual awards could be provided for the best examples of investigative journalism and financial journalism, along with other areas like sports and political cartoons that help in sustaining a vibrant press.

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<sup>42</sup> From Article 19 short summary of TL Media Laws.

➤ **Recommendation 27: Test access to government information**

In tandem with other efforts to expand access to information, reporters could be challenged through the various journalists' associations to "test" repositories of public documents and to report back on how easy or difficult it was for them to obtain what they were looking for. This could be a valuable exercise to highlight in the press and as a means to encourage the government to increase access to records and reinforce more systematic record-keeping. Once a freedom of information law is in place, this strategy could be augmented by lawsuits to enforce the law, though this may stretch legal resources more than is wise in early years.

➤ **Recommendation 28: Support a strong, self-regulating Press Council**

Journalists associations in Timor-Leste are weak, unstructured and divided among rivaling interests in the community. Efforts should be made to create one strong, broadly representative press council. A respected and authoritative press council can provide self-regulation and the moral force that is needed to develop a more responsible press. An independent press council is always a better alternative than government regulation, which can represent a slippery slope toward censorship.

➤ **Recommendation 29: Support investigative journalism training**

Good investigative journalism requires learning and practice with research and interview techniques, evidence-based data analysis, and clear writing. The investigative journalist must know how to make balanced political judgments, possess basic skills in economics, and be numerate. There is no way around the fact that Timor-Leste's journalists will need training if they are to fulfill their essential role of providing the public with the information it needs to understand and participate fully in the affairs of the nation. While some investigative journalism training has been provided in recent years with the support of AusAID and USAID, continued training is still needed.

Training should be provided to reporters, editors and publishers who are working for publications and media outlets that appear ready to make themselves into viable, long-term business enterprises. Courses can be designed specifically for the Timorese context and build on what the World Bank, USAID and others have offered in other developing country contexts. On-the-job training and mentoring can be provided along with a flexible schedule of coursework to accommodate the on-call demands of a normal journalist. Training could include information on the structure and function of the justice system and anti-corruption bodies so that journalists better understand the legal framework.

## 6.6 Private sector

The economy of Timor-Leste is dominated by government activity, and the public sector accounts for approximately half of all employment outside of agriculture. Agriculture accounts for about 85% of private employment and small-scale trading provides most of the balance. The United Nations and a large donor community provide a major source of demand for goods and services within the country's very small private sector. The eventual withdrawal of UNMIT personnel from Timor-Leste will be a blow to the local economy. Corruption allegations are widespread in the media and among business operators, although hard information on petty and grand corruption is entirely lacking. No large scale corruption cases have been prosecuted.

### Major corruption vulnerabilities

An important corruption vulnerability facing the private sector in Timor-Leste is a failure to either understand or abide by basic anti-corruption principles. This failure extends to government, which is the major source of contracts for the private sector. As discussed elsewhere in this report, conflict of interest legislation in Timor-Leste is incomplete and insufficiently understood. A stronger private sector, characterized by active business and trade associations, would be an advocate for this type of legislation. At a minimum, effective regulation would embody standards and procedures designed to

safeguard the integrity of the private sector, including codes of conduct and clear guidelines for contracting with the state. As a signatory to UNCAC, Timor-Leste has access to numerous resources and toolkits that can assist it in defining the boundaries between the private and public sectors. To date, however, it appears little effort has been expended in this area.

Because diagnostic surveys covering the business environment in Timor-Leste have not been conducted, the assessment team relied on business owners for anecdotal information about corruption. We were told that private sector activity is constrained by widespread petty corruption at almost all levels. Extralegal payments for services are found in Customs, business registration, utility hookups, land-titling and government procurement. Government infrastructure projects provide a major opportunity for corruption because of the procurement-intensive nature of the construction industry. Other types of government procurement also appear hobbled by corrupt practices, including everything from bid-rigging to speed payments for invoice processing. High level government corruption allegations over contracting are widespread, although investigations that would provide factual evidence of actual corruption have not been conducted, making it impossible to prove the veracity of claims made in the press and elsewhere.

While large scale procurement is centralized to a body within the Ministry of Finance, procurements with a value less than \$250,000 are conducted by line ministries. Not only is \$250,000 a very large amount for a country of this size, it appears that these smaller procurements are not closely regulated. The Ministry of Finance does not provide or approve model rules for ministry procurement and it appears that each ministry is able to establish whatever procurement rules it sees fit.

### **Opportunities and obstacles for anti-corruption programs**

Timor-Leste's small business community is mostly reliant on the government for contracts. While business owners complain about paying bribes, it appears that most of them do so as a necessary means to ensure their survival. Because the business community remains unorganized at this time (associations are not well structured and membership fluctuates), it does not appear to be a viable entry point for anti-corruption programming. The Vice Prime Minister dealing with anti-corruption has supported a proposed Inter-Ministerial Commission on Investment and Development, to be converted to an investment agency by 2011.

### **Practical recommendations**

While not a discrete anti-corruption programming recommendation, the assessment team believes it will be important for USAID and other donors to continue their efforts to expand the country's private sector. As a component of other programming to encourage economic growth, the donor community should continue its efforts to strengthen business associations. A component of this type of association strengthening should be educating the private sector on conflicts of interest, the need for transparency in business practices and introducing means for reducing administrative barriers to entry. Furthermore, the diagnostic surveys, service delivery report cards and advocacy measures mentioned in this report's section on civil society will be of use to a better organized business community as well.

#### **➤ Recommendation 30: Regulate small scale ministry procurement**

Assist the MOF in establishing model procurement rules for line ministries, and a system by which ministries may vary from the model, but must have variances approved by MOF.

## **6.7 Issues of special note**

### **Advisors**

It would be impossible to have more than a few substantive meetings with the GoTL without being struck by the sheer number of international advisors present in government offices. In virtually every case where the team met with a senior government figure, an international advisor joined the meeting. Clearly this is occasioned by continuing lack of capacity and shallow human resource pool available in

the country. However, the team grew increasingly concerned by the number of international advisors, their roles, and their interaction with their counterparts.

Most advisors appear to in fact be carrying out functional roles rather than mentoring Timorese officials. At the same time, their interaction with their nominal counterparts or supervisors was troubling, with some interlocutors complaining about advisors who want “to be the boss” rather than simply providing advice. International advisors are selected in different ways depending on the sponsoring donor and are not under any one oversight mechanism.

➤ **Recommendation 31: Define the role of and oversight process for advisors**

The problem of low GoTL capacity will continue for years to come. The government will continue to need advisors, and perhaps in some cases, international *staff*. The team therefore provides the following brief recommendations to all donors and the GoTL:

- Focus on advice and capacity building except when staff functions are absolutely necessary.
- Develop an overall oversight mechanism for advisors. This should include consistent standards for terms of reference, evaluation, and impact assessment.

## Language

Timor-Leste’s Constitution provides that Tetum and Portuguese are the country’s official languages, with Indonesian and English as civil service working languages. A large proportion of the population speaks Tetum, a similar number speak Indonesian, a small percentage speak English, and less than 5% speak Portuguese.<sup>43</sup> Perhaps 10% of MPs speak Portuguese. Virtually all laws are written, adopted, and published only in Portuguese. A UN effort provides unofficial translation into English and Tetum.

A population that cannot read the laws cannot follow them, much less oversee their implementation. While this problem has been repeatedly raised over recent years, there has been no evident change in policy. The team strongly recommends the expanded use of Tetum in addition to Portuguese, in order to ensure that Timor-Leste’s population has a true opportunity to fully participate in and oversee government action.

➤ **Recommendation 32: Support expanded use of Tetum for all official documents**

The team makes the following suggestion to the GoTL and all donors:

- Require (and for donors, support) publication of all official documents in both Portuguese and Tetum.

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<sup>43</sup> Blunt, Peter; *Political Economy of Accountability in Timor-Leste*, Public Admin. Dev. 29, 89–100 (2009).

## 6.8 Summary of recommendations

The following table summarizes all of the recommendations in the document, rates the likelihood of short term success, and suggests the potential level of impact of each. The recommendations in shaded rows are those suggested as *high priorities* for short term action. These are repeated in [Section 7](#) as part of the recommended USAID strategy.

**Table 3: Recommendations**

#	Sector	Anti-corruption program option	Major counterparts	Potential obstacles	Potential impact	Short-term success	Impact timing	Strategic problem
1	Education	Long-term basic education	Ministry of Education	Cost, long time frame	High	Unlikely	Long	Low capacity
2	Laws	Local ownership of legislative drafting	Donors, Gov, Parliament	Slower drafting, donor resistance	Medium	Neutral	Long	Low capacity
3	Laws	Freedom of information	Gov, Parliament	Government resistance	High	Likely	Mid	Poor access to information
4	Laws	Asset disclosure	Gov, Parliament	Government resistance	High	Likely	Short	Poor access to information
5	Laws	Conflict of interest rules	Gov, Parliament	Lack of understanding	High	Neutral	Mid	Poor grasp of AC concepts
6	Laws	Whistleblower protection	Gov, Parliament	Complexity	High	Unlikely	Long	Weak oversight institutions
7	Laws	Public participation	Gov, Parliament	Complexity, cost, delay	High	Unlikely	Long	Weak oversight institutions
8	Oversight	Civil Service Commission Support	CSC	Donor density	Medium	Unlikely	Mid	Weak oversight institutions
9	ACC	Support Anti-Corruption Commission	ACC	ACC leadership	Medium	Neutral	Short	Weak oversight institutions
10	ACC	Comprehensive anti-corruption strategy	ACC	Lack of understanding	High	Likely	Mid	Poor grasp of AC concepts
11	ACC	ACC-Prosecution link	ACC, Prosecutor General	Prosecutor resistance	High	Neutral	Mid	Weak oversight institutions

#	Sector	Anti-corruption program option	Major counterparts	Potential obstacles	Potential impact	Short-term success	Impact timing	Strategic problem
12	ACC	ACC reporting mechanisms	ACC		Low	Unlikely	Mid	Weak oversight institutions
13	ACC	External review of ACC	ACC, Civil society	ACC resistance, low CSO capacity	Medium	Unlikely	Long	Weak oversight institutions
14	ACC	Regional anti-corruption bodies	ACC	Cost, resources	Medium	Likely	Mid	Weak oversight institutions
15	Oversight	External audit - HATAC	Government, Appeals Court	Broad resistance	High	Unlikely	Long	Weak oversight institutions
16	Oversight	Centralize internal audit	OIG, MOF, line ministries		Medium	Likely	Short	Weak oversight institutions
17	Parliament	Parliamentary anti-corruption sub-committee	Parliament		Medium	Likely	Short	Poor grasp of AC concepts
18	Justice sector	Support Office of the Prosecutor General	OPG		Medium	Likely	Mid	Weak oversight institutions
19	Oversight	Address 'gap' in anti-corruption authority	ACC, Provedor, OPG, Gov	Lack of sense of urgency in government	High	Neutral	Short	Weak oversight institutions
20	Civil society	Corruption experience surveys	Civil society	Cost	High	Likely	Short	Poor access to information
21	Civil society	Service delivery report cards	Civil society, local and national government		High	Likely	Mid	Weak oversight institutions
22	Civil society	Public expenditure tracking surveys	Civil society, Ministry of Health or Education		High	Likely	Medium	Weak oversight institutions
23	Civil society	Anti-corruption advocacy	Civil society		Medium	Likely	Mid	Weak oversight institutions

#	Sector	Anti-corruption program option	Major counterparts	Potential obstacles	Potential impact	Short-term success	Impact timing	Strategic problem
24	Media	Business plans	Media		Medium	Likely	Mid	Weak oversight institutions
25	Media	Formal journalism training	Media, universities		Medium	Unlikely	Long	Weak oversight institutions
26	Media	Journalism awards	Media		Medium	Likely	Mid	Weak oversight institutions
27	Media	Test access to information	Media, lawyers	Lack of lawyers	High	Likely	Mid	Poor access to information
28	Media	Strong self-regulating Press Council	Media, Government	Government plans to regulate	High	Neutral	Mid	Weak oversight institutions
29	Media	Investigative journalism training	Media		High	Likely	Mid	Poor access to information
30	Executive	Develop model procurement rules	Ministry of Finance	Line ministry resistance	High	Likely	Mid	Weak oversight institutions
31	General	Define the role of and oversight process for advisors	Donors, Government	Donor resistance, lack of local capacity	Medium	Unlikely	Long	Low capacity
32	General	Support expanded use of Tetum for government documents	Government	Government resistance, cost, need to develop Tetum	High	Unlikely	Mid	Poor access to information

## 7. STRATEGIC PLAN AND PRIORITY RECOMMENDATIONS FOR ANTI-CORRUPTION PROGRAMMING

The earlier sections of this report offered a number of recommendations for practical USAID action. The team believes that all of these are important, but the recommendations do vary in terms of their level of impact, short term feasibility, and when the impact will be felt. In Table 4, the team has assembled the recommendations that it feels are the highest priority for short term action. These recommendations focus on two of the strategic problems addressed in the report: poor access to information and weak oversight institutions. The overall goal is to **provide reliable information to competent oversight actors**.

### Providing better access to information

Access to information is crucial to effective external oversight of government actions. Two of the laws recommended below are intended to provide access to information that can be used by civil society and the media to oversee government action. Additionally, the team recommends generating new information (through surveys and report cards) that can be used to measure the effectiveness of anti-corruption actions. Access to information can only be effective, of course, if the information is in a language that is widely understood, and the team recommends helping the government to provide documents in Tetum as a matter of course.

### Strengthening oversight institutions

Other recommendations are more directly targeted at building the strength of existing or nascent oversight institutions. While the future of the Anti-Corruption Commission is still very much in question, the team believes that, *if* an effective leader is selected, the Commission can play an important role in anti-corruption efforts and deserves support. The Office of the Inspector General faces fewer uncertainties and is capable of being a very effective internal oversight mechanism. Similarly, the team recommends support to the media in the expectation that fewer, but stronger media outlets will emerge and play a strong and responsible role in oversight.

### Longer term strategy

**Omitted** in the list below are many other recommendations that the team felt were crucial in addressing key strategic problems, but that faced significant obstacles or required long-term attention. These include the central question of capacity development in Timor-Leste as a whole, the creation of a Supreme Court and a Supreme Audit Institution, mechanisms for public participation, the abilities of parliament, and the role of international advisors. While not amenable to short term intervention, the team recommends that USAID keep these issues in mind or include them in long-term planning.

**Table 4: Priority recommendations**

Sector	Priority recommendations	Strategic problems addressed
Legislation	<a href="#">Freedom of information law</a>	Poor access to information
	<a href="#">Asset disclosure regime</a>	Poor access to information
	<a href="#">Conflict of interest rules</a>	Poor grasp of AC concepts
Oversight	<a href="#">General support to the Anti-corruption Commission</a>	Weak oversight institutions
	<a href="#">Development of a comprehensive anti-corruption strategy</a>	Poor grasp of AC concepts
	<a href="#">Link the Anti-corruption Commission and the Prosecutor General</a>	Weak oversight institutions
	<a href="#">Centralize internal audit mechanisms</a>	Weak oversight institutions
Civil society	<a href="#">Conduct regular corruption experience surveys</a>	Poor access to information
	<a href="#">Prepare regular service delivery report cards</a>	Weak oversight institutions

Media	Strengthen media business planning	Weak oversight institutions
	Test access to information rules	Poor access to information
Government	Support expanded use of Tetum for government documents	Poor access to information

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## ANNEXES:

### Annex I. List of interviewees

Sector	Name	Title	Organization
Civil society	Gusmao, Fernando Dias	President	National Development Party
	Amaral, Jose	Team Leader – Advocacy	FONGTIL
	Granadeiro, Dinorah Suzette Ximenes	Executive Director	FONGTIL
	Sloman, Annie	External networking	FONGTIL
	da Costa, Roberto	Director, Research Unit	JSMP
	dos Santos, Casimiro	Deputy Director	JSMP
	Sampaio, Jose de Oliveira	Director	JSMP
	Alvares, Almeiro	Editor	KLAAK
	Pinto, Rui	Senior Editor	KLAAK
	Scheiner, Charles	Researcher	La'o Hamutuk
	Seac, Virato da Costa	Researcher – Petroleum, Economy, and Government	La'o Hamutuk
	Samson, Christopher Henry	Executive Director	LABEH
	Miranda, Nelson Suxas	Program Manager, Budget Transparency	Luta Hamutuk
	Viana, Joaozito	General Manager / Council Member	Luta Hamutuk / Parliamentary Consultative Council
	Soares, Salvador J. Ximenes	Chairman and CEO	Suara Timor Lorasae
	Belo, Jose	Editor	Tempo Semanal
	MacKinnon, Scott	Trainer/Advisor	Tempo Semanal
	Donor community	Everett, Silas	Representative
Clark, Darian		First Secretary, Development Cooperation	AusAID
Vitor, Antonio		Program Officer (Justice, Anti-corruption)	AusAID
Dooradi, Dicky		Chief of Party	DI
Rangel, Ivo		National Coordinator	DI
Rice, Charles S.		Country Director	ICFJ
Suni, Francis		Coordinator of Special Projects	ICFJ
Wyrod, Christopher		Resident Country Director	IRI
Francisco, Brian		Chief of Party	MSD
Kuehn, Susanne		International Technical Specialist (CTA)	UNCDF/Local Governance Support Programme
Holford, Bryan		Chief Technical Advisor	UNDP/Civil Service Reform Project
Caldeira, Miguel		Project Manager	UNDP/Media Development Project
Cave, Shane		Governance Advisor – Transparency, Accountability, Anti-Corruption	UNMIT
Soares Matias		Research and Monitoring Officer	UNMIT
Wyart, Virginie		Governance Advisor	UNMIT/Democratic Governance Support Unit
Executive branch	da Soza, Gaston	Chief, Economic Statistics	BPA
	de Vasconcelos, Abroao	Managing Director	BPA

Sector	Name	Title	Organization
	Pereira, Liborio	Director General	Civil Service Commission Secretariat
	Neves, Belarmino	Director	INAP
	Ximenez, Julianos	Auditor	MOF/Audit
	Pires, Emilia	Minister	MOF
	Costra, Agostino	Director of Budget	MOF/Budget
	Martin, Pfeiro	Chief of Department, Budget Control	MOF/Budget
	Afonso, Benjamim Sanches	Research Assistant	MOF/MCA
	Piedade, Felix	Research Officer	MOF/MCA
	Saldanha, Joao M.	Senior Advisor for Policy Analysis and Research / Point of Contact – MCA	MOF/MCA
	Ovesen, Vidar	Fiscal Policy and Petroleum Fund Adviser	MOF/Petroleum Fund
	Monteiro, Manuel	National Director of Procurement	MOF/Procurement
	Ribeiro, Rosa	Advisor – procurement	MOF/procurement
	Rodrigues, Ulderico	Director, Revenue	MOF/Revenue and Customs
	Greenwood, Terry	Taxation Compliance Adviser	MOF/Revenue and Customs
	O'Connor, Tony	Advisor on Customs	MOF/Revenue and Customs
	Brites, Sara Lobo	Director of Treasury	MOF/Treasury
	de Carvalho, Jose Alexandre	Chief - FMIS Department	MOF/Treasury
	Mathur, Subodh Kumar	Advisor on Assets and Financial Management I. Systems	MOF/Treasury
	Monteiro, Domingos	Public Sector Reform Advisor	Office of the Prime Minister
	Brito, Vicente Fernandes	Deputy Prosecutor General	Office of the Prosecutor General
	Figuereido, Arlindo	Inspector Prosecutor	Office of the Prosecutor General
	Pessoa, Anna	Prosecutor General	Office of the Prosecutor General
	Carrascalao, Mario	Vice Prime Minister (II)	Office of the Vice Prime Minister
	da Costa, Cipriano Januario Goncalves	Advisor for Infrastructure	Office of the Vice Prime Minister
	Pires, Milena	Senior Advisor	Office of the Vice Prime Minister
	Sequeira, Jose Carlos	Advisor for Rural Development	Office of the Vice Prime Minister
	de Carvalho, Francisco	National Director	OIG
	Raustein, Odd	Project Coordinator and Advisor	Secretary of State for Natural Resources
Parliament	Moniz, Gertrudis	Vice-President of PD Bench	Democratic Party
	Amaral, Joao Rui	Secretary General	Parliament
	Pereira, Cipriana da Costa	MP	Parliament / Committee C / Subcommittee on Corruption / FRETILIN
	Benedit, Antero	Parliament nominee / Council member	Parliamentary Consultative Council
	Vasconselhos, Franisco	Religions representative / Council member	Protestants / Parliamentary Consultative Council
	Benevides, Amandio	Deputy Provedor	Provedor
	Lima, Oscar	Shareholder/Council member	Timor Telecom/Parliamentary Consultative Council

Sector	Name	Title	Organization
	Gaffud, Fe	Senior Budget Expert/Trainer	UNDP/Parliament Project
Private sector	Castro, Rui	Vice President	Business Forum
	Gusmao, Jose	Businessman	Business Forum
	Angelica, Maria	Member	Businesswomen's Association
	Goncales, Kathleen	President	Businesswomen's Association
	Soares, Eduardo	Creative Director	INSIGHT
US government	Chaka, Malik	Director, Threshold Programs	MCC
	Kelly, Thomas	Director, Economic Policy	MCC
	Rose, Sarah E.	Development Policy Officer	MCC
	Cloutier, Peter	General Development Officer	USAID/Timor-Leste
	da C.G. Guterres, Ana Lourenco	Project Management Specialist	USAID/Timor-Leste
	Derby, Eileen	Democracy and Governance Team Leader	USAID/Timor-Leste
	Klemm, Hans	Ambassador	US Embassy/Timor-Leste

## Annex II. Legal-Institutional Analysis

Corruption is facilitated or inhibited by the legal and regulatory framework, how it is put into practice, and how it is enforced or monitored through governmental institutions. This table is provided to assist analysis of these factors. It is meant to provide a general orientation and identification of the main strengths and weaknesses of the anti-corruption regime in the country. The items in the checklist are typically considered to be the main components of a comprehensive anti-corruption regime.

	What Are the Formal Provisions?	How Are They Implemented in Practice?	Major Weaknesses/Comments
<b>I. NATIONAL ANTI-CORRUPTION STRATEGIES/PLANS</b>			
<b>I.1 Anti-corruption Strategy and Plans:</b>			
Is there a formal national anti-corruption strategy/program? (UNCAC Article 5)	2008 was the “Year of Administration”. The bare outline of an anti-corruption strategy has been drafted.	Several laws (Anti-Corruption Commission, Civil Service Commission) were developed in 2008, and the UNCAC was ratified.	There is as yet no comprehensive anti-corruption plan for the country.
Are there governmental institutions mandated to enforce/implement this strategy/program? What are their legal authorities? (UNCAC Article 6)	<p>The Anti Corruption Commission (ACC) is tasked with prevention, education, and investigation. According to Law no. 23/2009, its legal authorities include:</p> <ul style="list-style-type: none"> <li>a) Identifying and detaining people</li> <li>b) Carrying out searches and inspections;</li> <li>c) Seizing objects and documents;</li> <li>d) Carrying out surveillances;</li> <li>e) Intercepting and recording telephone conversations, with a judicial warrant; ...</li> </ul>	The commission has not being established, however it is expected that it will have a mission to prevent and investigate corruption in any form.	All but one MP voted to adopt the ACC law.
<b>2. ANTI-CORRUPTION ENFORCEMENT LAWS AND INSTITUTIONS</b>			

	What Are the Formal Provisions?	How Are They Implemented in Practice?	Major Weaknesses/Comments
<p><b>2.1 Explicit Anti-corruption Laws:</b></p> <p>Is there legislation explicitly prohibiting or criminalizing corruption or corrupt behaviors (bribery, embezzlement, trading in influence, abuse of functions, illicit enrichment, bribery and embezzlement in the private sector, laundering of proceeds of crime, concealment, obstruction of justice, etc. per Articles 15-31 of the UNCAC)?</p>	<p>Timor-Leste Penal Code no. 19/2009 defines several specific corruption offenses, echoed in the Law for the establishment of Anti-Corruption Commission no. 23/2009</p>	<p>Prior to the approval of the penal code, Timor-Leste used Indonesia's Law on corruption.</p> <p>The Law has been approved but the commission has not yet been established.</p>	
<p>Are there governmental institutions mandated to enforce/implement this anti-corruption legislation? What are their legal authorities? (UNCAC Article 36-39, 58)</p>	<p>The ACC is primarily tasked with investigation. The Prosecutor General's Office (PGO) has the legal authorities to investigate and prosecute.</p>	<p>The PGO has so far prosecuted few cases. Several are now in court, and there has been one conviction. Several dozen cases are pending.</p>	<p>The ACC does not yet exist, but the Office of the Inspector General (OIG) and the Provedor are no longer taking new corruption cases.</p>
<p><b>2.2 Corruption Investigations (UNCAC Chapter III):</b></p> <p>Is there legislation regulating investigation of corruption cases?</p>	<p>Timor-Leste Penal Code no. 19/2009 and the law establishing the ACC.</p>	<p>Prior to the approval of the penal code, Timor-Leste used Indonesia's Law on corruption</p>	<p>The ACC law gives the ACC authority to investigate cases, including substantial police powers.</p>

	What Are the Formal Provisions?	How Are They Implemented in Practice?	Major Weaknesses/Comments
What institutions are responsible for investigation of corruption cases? What are their legal authorities?	Prosecutor General Office has legal authority to investigate corruption cases.	<p>The Provedor's office (PDHJ) was previously in charge of examining and seeking to settle citizens' complaints including those for corruption cases (according to Constitution RDTL, Article 27)</p> <p>In addition, since 2000, Office of the Inspector General (OIG) has also conducted investigations of corruption cases.</p> <p>All investigation results from both PDHJ and OIG are submitted to the Prosecutor General's Office.</p> <p>As of the effective date of the ACC law, the OIG and Provedor are not investigating new cases.</p>	<p>Investigation result from PDHJ and OIG are not considered by Prosecutor General Office (PGO). PGO is required to reinvestigate cases it receives. This has caused a delay in prosecutions.</p> <p>There is now a gap in investigation until the ACC is established.</p>
<p><b>2.3 Corruption Prosecution in Courts:</b></p> <p>Is there legislation regulating prosecution of corrupt offenses?</p>	Timor-Leste Penal Code no. 19/2009	Several dozen corruption cases are pending with the Prosecutor General.	There has been only one (minor) corruption conviction. The Prosecutor General says that cases forwarded for prosecution are poorly investigated.
What institutions are responsible for prosecute corruption cases? What are their legal authorities?	Prosecutor General office (PGO) has legal authority to submit corruption cases to the court.		Most domestic authorities believe that the Constitution restricts prosecution powers to the PGO.

	<b>What Are the Formal Provisions?</b>	<b>How Are They Implemented in Practice?</b>	<b>Major Weaknesses/Comments</b>
<p><b>2.4 Money Laundering</b> (UNCAC Articles 14, 52, 58):</p> <p>Is there legislation prohibiting laundering the proceeds of corrupt activities? (Money laundering is the action with property of any form which is either wholly or in part the proceeds of a crime that will disguise the fact that that property is the proceeds of a crime or obscure the beneficial ownership of said property)</p>	<p>Timor-Leste still uses the Indonesian Law on Money Laundering no. 31/1999. A new draft Law is awaiting discussion and approval in the Council of Ministers.</p>	<p>No implementation to date.</p>	<p>The law is felt by some to be urgent. At present, most money laundering is thought to occur outside the country.</p>
<p>Are there governmental institutions mandated to enforce/implement this legislation?</p>	<p>No</p>		
<p><b>2.5 Asset Recovery</b> (UNCAC Article 8):</p> <p>Is there legislation regulating recovery of assets from corruption cases (confiscation, forfeiture, return, international cooperation, etc.)?</p>	<p>No law in place. Timor-Leste still uses the Indonesian Law on Money Laundering no. 31/1999</p>	<p>Has never happened in practice since few corruption cases have been prosecuted.</p>	
<p>Are there governmental institutions mandated to enforce/implement this legislation?</p>	<p>No.</p>		
<p><b>2.6 Witness protection</b> (UNCAC Article 32):</p> <p>Is there is legislation that protects witnesses in corruption cases?</p>	<p>There is a Witness Protection Law</p>	<p>Some witnesses are unwilling to provide information, particularly on corruption.</p>	<p>There is low public awareness of the law.</p> <p>As a result, many cases lack enough evidence. In addition, there are few regulations that will penalize people if they do not cooperate with the justice sector.</p>
<p>Are there governmental institutions mandated to enforce/implement this legislation?</p>	<p>National Police, Prosecutor General, courts.</p>		

	What Are the Formal Provisions?	How Are They Implemented in Practice?	Major Weaknesses/Comments
<b>3. CORRUPTION PREVENTION LAWS AND INSTITUTIONS (UNCAC, Chapter II)</b>			
<b>3.1 EXECUTIVE BRANCH</b>			
<p><b>3.1.1 Asset Disclosure</b> (UNCAC Article 8):</p> <p>Are there laws or regulations that require disclosure of assets for senior elected officials or political candidates and their families?</p>	No general law in place. Specific laws require submission by the Provedor and the Anti-Corruption Commissioner.	The ACC Commissioner has not been appointed. In 2007, Ministers of the IV <sup>th</sup> Constitutional Government declared their assets to the Court of Appeal.	Public can not review asset declarations – the voluntary Ministerial declarations are said to be available at the Court, but are not in practice. No law requiring asset disclosure for most senior officials
Are there governmental institutions mandated to enforce/implement/monitor such laws/ regulations?	No.		
<p><b>3.1.2 Abuse of Discretion</b> (UNCAC Article 19):</p> <p>Are there laws or regulations that place limits on the discretion of senior government managers in making decisions about the use of government funds?</p>	There are few, if any, restrictions on conflict of interests. Law 8/2004 provides some general restrictions..		Some government official use government funds and assets for personal use, including for political party activities.
Are there governmental institutions mandated to enforce/monitor such laws/regulations?	No.		
<p><b>3.1.3 Gifts/Favors/Abuse of Influence</b> (UNCAC Articles 7, 8,12,15-22):</p> <p>Are there laws or regulations that place limits on accepting gifts, favors or services, that control or limit how senior government managers use their influence, or that regulate conflicts of interest for executive branch managers?</p>	Procurement Law.	There are few, if any, restrictions on conflict of interests.	Often officials own a private company while serving in government.
Are there governmental institutions mandated to enforce/implement/monitor such laws/regulations?			
<b>3.2 LEGISLATIVE BRANCH</b>			
<p><b>3.2.1 Asset Disclosure</b> (UNCAC Article 8):</p> <p>Are there laws or regulations that require disclosure of assets for legislators or legislative candidates, and their families?</p>	No law in place	Nothing in practice	
Are there governmental institutions mandated to enforce/implement/monitor such laws/regulations?			

	What Are the Formal Provisions?	How Are They Implemented in Practice?	Major Weaknesses/Comments
<b>3.2.2 Gifts/Favors/Abuse of Influence/Conflicts of Interest</b> (UNCAC Articles 7, 8, 12, 15-22):  Are there laws or regulations that place limits on accepting gifts, favors or services, that control or limit the use of influence, or that regulate conflicts of interest for legislators?	No law in place	There are few, if any, restrictions on conflict of interests.	In some cases, some Members approve laws that are related to their business or party.
Are there governmental institutions mandated to enforce/implement/monitor such laws/regulations?	No.		
<b>3.2.3 Oversight Responsibility:</b>  Is there legislation that provides clear monitoring and oversight responsibility to the legislature to ensure executive and budgetary accountability?	The Constitution clearly states a legislative oversight role.	MPs appear to believe that they cannot exercise investigative oversight without adoption of a specific law. Parliament does appear to exert some oversight of budget execution.	
Are there governmental institutions mandated to enforce or implement such laws?	No		
<b>3.3. JUDICIAL BRANCH</b>			
<b>3.3.1 Asset Disclosure</b> (UNCAC Article 8):  Are there laws or regulations that require disclosure of assets for judges and senior court officials, and their families?	No law in place	Nothing in practice	
Are there governmental institutions mandated to enforce/implement/monitor such laws/regulations?	No.		
<b>3.3.2 Gifts/Favors/Abuse of Influence/Conflicts of Interest</b> (UNCAC Articles 15-22):  Are there laws or regulations that place limits on accepting gifts, favors or services, that control or limit the use of influence, or that regulate conflicts of interest for judges and senior court officials?	Organic Law for Prosecutor and Court.  Also the Constitution RDTL, Article 122: Judges in office may not perform any other function, whether in public or private ...	Judicial actors should not be involved with political parties.	
Are there governmental institutions mandated to enforce/implement/monitor such laws/regulations?	The Superior Council for the Judiciary.	Little capacity.	

	What Are the Formal Provisions?	How Are They Implemented in Practice?	Major Weaknesses/Comments
<b>3.3.3 Judicial Independence</b> (UNCAC Article 8):  Are there laws or regulations that ensure judicial independence from the executive (related to judicial selection, dismissal, and budget issues)?	Constitution RDTL, Article 119: Courts are independent and subject only to the Constitution and the Law		Some claim that political interference in the judiciary is strong. This has limited the effectiveness of judicial oversight mechanisms.
Are there governmental institutions mandated to enforce or implement such laws?			
<b>3.3.4 Accountability Mechanisms:</b>  Are there laws or regulations that ensure judicial accountability (including transparency of judicial records, process and decisions)?	Constitution RDTL, Article 128: The Superior Council for the Judiciary is the organ of management and discipline of judges of the court.....		
Are there governmental institutions mandated to enforce/implement/monitor such laws or regulations?	Superior Council for Judiciary	The Superior Council regularly monitors the work of the Judicial branch.	
<b>3.4. CIVIL SERVICE</b>			
<b>3.4.1 Conflicts of Interest</b> (UNCAC Articles 7, 12):  Are there laws or regulations that define conflicts of interest for public officials?	Civil Service Law No. 8/2004, Article 10 and Procurement Decree Law.  Also Code of Ethic for Civil Servants section 14: disclose to public administration any direct or indirect benefit may derive from any profitable activity	In practice, some public officials' family members to second degree have commercial interests with bidders. Also some civil servants have commercial interests with bidders.	
Are there governmental institutions mandated to enforce/implement conflict of interest legislation?	Civil Service Commission	The commission is now being established.	
<b>3.4.2 Asset Disclosure</b> (UNCAC Article 8):  Is there legislation that requires civil servants to disclose their assets? (include whether disclosures are made public)	No law in place	Nothing in practice	
Are there governmental institutions mandated to enforce/implement asset disclosure legislation?			

	What Are the Formal Provisions?	How Are They Implemented in Practice?	Major Weaknesses/Comments
<p><b>3.4.3 Codes of Conduct</b> (UNCAC Article 8):</p> <p>Are there laws or regulations that establish ethics standards for public officials and civil servants?</p>	Civil Service Law no. 8/2004	At present time, each Ministry is responsible for their staff code of conduct. However, since the establishment of the Civil Service Commission, all matters related to staff discipline will be centralized in the Commission	
Are there governmental institutions mandated to enforce/implement code of conduct legislation?	Civil Service Commission	The commission is now being established and does not have a track record.	Lack of human resources
<p><b>3.4.4 Whistleblower Protection</b> (UNCAC Articles 8, 33):</p> <p>Is there legislation that provides protection for people who report cases of corruption?</p>	Not in the Civil Service Law. However, there is a Witness Protection Law.	People are hesitant to testify or report cases of corruption.	People are not aware of the law.
Are there governmental institutions mandated to enforce/implement whistleblower protection legislation?	No.		
<p><b>3.4.5 Lobbying:</b></p> <p>Are there laws and regulations that regulate lobbying of public officials?</p>	No law in place		
Are there governmental institutions mandated to enforce/implement lobbying legislation?			
<p><b>3.4.6 Public Hiring and Appointments</b> (UNCAC Article 7):</p> <p>Is there legislation that requires public hiring to be based on merit rather than patronage, nepotism, favoritism, personal connections, and bribery?</p>	Decree Law No. 34/2008: about Recruitment: must be impartial and independent.	In the past, some civil servants have been appointed according to political affiliation while other positions have been filled based on family connections. However, after the establishment of the Civil Service Commission, all hiring and appointments will be centralized in the Commission.	
Are there governmental institutions mandated to enforce/implement public hiring and selection legislation?	Civil Service Commission	Now being established.	

	What Are the Formal Provisions?	How Are They Implemented in Practice?	Major Weaknesses/Comments
<b>3.4.7 Immunity:</b>			
Is there legislation that regulates removing immunity from elected representatives or senior public officials so that investigations can be conducted into suspected corrupt offenses that they have committed?	The Constitution provides for immunity for official actions for the President, MPs, and senior members of Government.	Immunity only applies to politically appointed government officials, who are not members of the civil service.	While immunity is in theory only available for official acts, it is felt in practice to extend more broadly to any act by a covered official.
Are there governmental institutions mandated to enforce/implement such immunity-removal legislation?			
<b>3.5. TRANSPARENCY AND ACCOUNTABILITY</b>			
<b>3.5.1 Complaint mechanism (UNCAC Article 13):</b>			
Is there legislation that establishes and regulates an Ombudsman office or other mechanism for reporting acts of corruption?	Ombudsman office is regulated according to RDTL Constitution Article 27.	In the past, the Ombudsman has received corruption complaints. The VPM II also provides a mechanism for the public to provide their complaints through a complaints box.	
Is an Ombudsman office established or are there other governmental institutions mandated to take reports about corruption and act on them?	The Anti Corruption Commission	OIG and the Provedor used to cover part of this. With the effectiveness of the ACC, the older bodies are no longer taking new cases.	There is a serious gap between the effectiveness of the ACC law and the establishment of the Commission. In theory, persons could bring corruption complaints to the police or the Prosecutor General.
<b>3.5.2 Freedom of Information (UNCAC Articles 10, 13):</b>			
Is there legislation that provides citizens with rights to access public documents related to government resources and decision making?	No legislation in place		Most laws, and many government documents, are available only in Portuguese – an official language, but which few people speak.
Are there governmental institutions mandated to enforce/implement freedom of information legislation? (when evaluating the formal provisions and actual performance, consider whether any information is provided proactively or only upon request)	No	The government provides some information proactively. Other requested information is often not provided, or is available only through connections.	

	What Are the Formal Provisions?	How Are They Implemented in Practice?	Major Weaknesses/Comments
<b>3.5.3 Public participation</b> (UNCAC Article 13):  Are there laws or regulations that require that executive, legislative and regulatory meetings, including commissions, be open to the public?	No.	No.	
Are there governmental institutions mandated to enforce/implement legislation/regulations on public hearings?	No	Each Ministry or state institution will sometimes conduct public hearings, but these are not required.	No response to public comment is required.
<b>3.6. POLITICAL PARTIES AND ELECTIONS</b>			
<b>3.6.1 Political Party Financing</b> (UNCAC Article 7):  Is there legislation that requires transparency in political party funding and expenditures?	Political Party Law	Prior to Legislative election in 2007, all political parties received funding from the government.  The new law defines funding criteria	Some political parties have not submitted their expenditure reports to the Commission.
Are there governmental institutions mandated to enforce/implement political party financing legislation?	National Commission for Elections	The commission responsible for maintaining and controlling Political Party funding and expenditure	
<b>3.6.2 Elections</b> (UNCAC Article 7):  Is there legislation that regulates the conduct and financing of elections? (independence of election commissions, elections budgets free from political pressure, ethical standards, provisions for whistleblowing, etc.)	Election Law	Elections generally have been conducted in a peaceful and democratic way.	
Are there governmental institutions mandated to enforce/implement legislation related to elections and their financing?	National Commission for Elections	STAE, as the government technical secretariat for administering elections, also supports the preparation and implementation of elections.	

	What Are the Formal Provisions?	How Are They Implemented in Practice?	Major Weaknesses/Comments
<b>3.7. PUBLIC FINANCE</b>			
<b>3.7.1 Financial Management Systems</b> (UNCAC Article 14):			
Are there laws or regulations that establish and regulate an integrated financial management system?			
Are there governmental institutions mandated to enforce/implement this legislation/regulation?			
<b>3.7.2 Audits of Public Expenditures</b> (UNCAC Article 14):			
Is there legislation that requires periodic auditing of public accounts, public budgets and public expenditures?	RDTL Constitution Section 129:3 High Administrative, Tax and Audit Court (HATAC) is to monitor the lawfulness of public expenditures and to audit state accounts.	Since HATAC has not being established, some government ministries have established their own internal audit. The executive branch has hired international audit firms on occasion.	The failure to create the HATAC 7 years after adoption of the Constitution, is a serious concern. The structure for internal audits is inefficient.
Are there governmental institutions mandated to enforce/implement public audit legislation? (consider both the institutions mandated to carry out audits and the institutions mandated to review and follow up on audit findings)	No		
<b>3.7.3 Public Procurement</b> (UNCAC Article 9):			
Is there legislation that regulates and promotes transparency in public procurements?	Government Decree Law No. 24/2008	Government has decentralized procurement to line ministries for amounts less than \$250,000.	There are no fixed rules for line ministry procurement.
Are there governmental institutions mandated to enforce/implement public procurement legislation?	Procurement Department in the Ministry of Finance.		
<b>3.7.4 Budgeting Process</b> (UNCAC Article 9):			
Are there laws or regulations that require transparency in budget planning?	RDTL Constitution, section 145:2 The Budget law shall be based on efficiency and effectiveness ... as well as preclude the existence of secret appropriations of funds.	The budgets proposed by each Ministry are reviewed by the Budget Review Committee prior to submission to the Parliament. The government must present and be accountable for questions from members of parliament.	In practice, the Parliament has low but growing capacity to review proposed budgets. It has made some substantive changes to budgets. Government representatives do appear and answer questions.
Are there governmental institutions mandated to enforce/implement this legislation/regulation?	National Parliament and, when established, the Supreme Court.	The Supreme Court has not being established. Parliament plays an important role in questioning government budget planning.	

	What Are the Formal Provisions?	How Are They Implemented in Practice?	Major Weaknesses/Comments
<b>3.7.5 Taxation</b> (UNCAC Article 12):  Is there legislation that disallows the deductibility of expenses that constitute bribes, for tax purposes? (Article 12, paragraph 4)	The Taxation Law is No. 8/2008. It is not clear whether this allows deduction of bribes.		
Are there governmental institutions mandated to enforce/implement this provision in the law?	Taxation Department in the Ministry of Finance		
<b>3.7.6. Banking System</b> (UNCAC Articles 14,15, 40):  Are there laws or regulations that require transparency and accountability in the banking system?	UNTAET Regulation No.8/2000: Bank Licensing and Supervision		
Are there governmental institutions mandated to enforce/implement this legislation/regulation?	Banking and Payment Authority.		
<b>3.8. PRIVATE SECTOR REGULATION AND PRIVATIZATION</b>			
<b>3.8.1 Business regulations</b> (UNCAC Article 12):  Are there laws or regulations that establish rules for regulating business operations (including but not limited to accessibility of information on business requirements and fee structures, administrative remedies to challenge decisions and fees, etc.)?		Business licensing is with the Ministry of Justice, while business registration is with the Ministry of Tourism, Commerce and Industry. Construction licenses come from the Ministry of Infrastructure.	The plan for a one stop shop (one roof service) has not been implemented.
Are there governmental institutions mandated to enforce/implement such business-related legislation or regulation?			
<b>3.8.2 Privatization:</b>  Is there legislation that regulates how the privatization of state enterprises should be conducted?	No law in place	Nothing in practice	There is a plan for EDTL (Electricity) to be privatized. However, it is not clear when/if this will happen.
Are there governmental institutions mandated to enforce/implement privatization legislation?	No		

	What Are the Formal Provisions?	How Are They Implemented in Practice?	Major Weaknesses/Comments
<p><b>3.8.3. Business Sector Anti-corruption Actions</b> (UNCAC Article 12):</p> <p>Are there anti-corruption actions taken by the private sector (ethics codes, anti-corruption advocacy activities, etc.)?</p>	No		
<b>3.9. NON-GOVERNMENTAL ORGANIZATIONS AND THE MEDIA</b>			
<p><b>3.9.1 Civil Society Organizations</b> (UNCAC Article 13):</p> <p>Are there laws or regulations that limit the ability of nongovernmental organizations to organize or advocate for reform or monitor government performance?</p>	No law in place	<p>NGOs are free to monitor government performance.</p> <p>The government provides some funding for NGO programs.</p>	Receipt of government funds might have an impact on NGO independence.
<p>Are there governmental institutions mandated to enforce/implement this legislation?</p>	No		FONGTIL, while a non-government umbrella organization, appears to play a significant role in de facto civil society regulation.
<p>Are there CSOs that advocate for anti-corruption reforms and/or implement anti-corruption activities? (Note: For column one, provide a general sense of the number of organizations or size of the NGO sector, as well as prominent organizations working on anti-corruption. For column two, please indicate the overall strengths and weaknesses of organizations and/or the NGO sector.)</p>	There are three local NGOs that advocate for anti-corruption reforms.	LABEH has presented a number of corruption cases to the Ombudsman. Recently, they conducted a national campaign for combating corruption.	Luta Hamutuk, Lao Hamutuk, and LABEH are strong organizations
<p><b>3.9.2 Media:</b></p> <p>Are there laws that limit the media's rights to investigate corruption cases (censorship, gag or libel laws)?</p>	No law in place. The new Penal Code decriminalized defamation.	Media are free to report on corruption cases involving government officials.	The media frequently report on corruption cases. Libel was recently decriminalized, but previous criminal libel cases against reporters remain in limbo.

	What Are the Formal Provisions?	How Are They Implemented in Practice?	Major Weaknesses/Comments
Are there governmental institutions mandated to enforce/implement this legislation?	No		Draft media laws provide for a government-influenced Press Council that would have substantial authority to license and sanction journalists.
Are investigations on corruption published in the media?	Reports are published, but often consist of allegations rather than investigation.	The quality of reporting is extremely weak.	
<b>4. CULTURAL DIMENSIONS</b>			
Are there any particular features of tradition or culture (practices, institutions) that support/prevent anti-corruption efforts?	Family connections in Timor-Leste are very strong.	People often approach family members in influential positions for faster or better service, often in conjunction with a “gift”.	
<b>5. INTERNATIONAL COOPERATION</b>			
Are there laws that require international cooperation in investigations of and proceedings in civil and administrative matters relating to corruption? (UNCAC Chapter IV; Articles 54-59)	No law in place	Not in practice	
Are there governmental institutions mandated to enforce/implement this legislation?	No		
<b>6. COMPLIANCE WITH INTERNATIONAL LEGAL INSTRUMENTS</b>			
(for each relevant international instrument below, please provide information in column 2 on the official level of compliance (signed, ratified in full, ratified in part, etc.); in column 3 provide your expert opinion on the effectiveness of compliance in practice. A list of many relevant international legal instruments can be found in Figure 3 and the Appendix of the Handbook)			
1. UN Convention against Corruption	National Parliament has ratified the Convention		
2. CoE Civil Law Convention on Corruption (if applicable)	Penal Code Decree Law No. 19/2009		
3. CoE Criminal Law Convention on Corruption (if applicable)			