



NATIONAL PARLIAMENT

Draft Law no . 1 / V / 1

Statement of reasons

Corruption is a pernicious phenomenon that subverts the fundamental values of life in society. Corruption undermines the foundations of the Democratic Rule of Law by distorting the fair distribution of national wealth, fostering divisions and friction in society. In a word, corruption threatens justice and social harmony.

The fundamental principles of the Constitution as the universality of rights, equality and legality are emptied of content in favor of the interests of some unscrupulous people.

As it is now a global phenomenon which is ever more difficult persecution and combat, it is necessary for the Timorese State to adopt exceptional measures that ensure a greater effectiveness in the auction against this crime.

The fight against corruption must therefore be taken on and legal mechanisms must be put in place to confront its hidden nature because, although it offends the foundations of the State, it ends up not having anyone, in particular, as a victim.

The Timor-Leste legal framework already has legal instruments for preventing and combating corruption and associated crimes, such as the Penal Code and the legal regime for the prevention of money laundering and the financing of terrorism.

In the current context, it is important, in line with the existing legal framework, to establish new measures to prevent and combat corruption.

Thus, under the provisions of Articles 92, 95 and 97.1(a) of the Constitution of the Democratic Republic of Timor-Leste, the following undersigned Members present the following draft law.

Preamble

Corruption is a nefarious phenomenon that subverts the fundamental values of life in society and the democratic rule of law.

As a global phenomenon, it requires States to adopt domestic measures and close international cooperation.

The Timorese legal framework already has legal instruments for preventing and combating corruption and associated crimes, with the Criminal Code and the legal regime for the prevention of money laundering and the financing of terrorism.

In the current context, it is important, and consistent with the existing legal framework, to establish new measures to prevent and combat corruption.

Accordingly, the National Parliament decrees, in accordance with article 95.1 of the Constitution of the Republic, as a law:

TITLE
Anti-Corruption Law

CHAPTER I
Criminal provisions

Article 1.
Acts of corruption

For the purposes of this law, acts of corruption are those defined in articles 192, 274, 275, 281, 287, 288, 290, 292-299, 314, and 319 of the Penal code.

Article 2
Facts practiced outside the national territory

Whoever, outside Timor-Leste, commits, provides support, provides means, information or any form of facilitating the commission of corruption offenses shall be punished in accordance with the present law.

Article 3
Criminal liability of legal persons

1. Legal persons, even if irregularly constituted, and associations without legal personality are responsible for the crimes of corruption provided for in this law, when committed in their name and in the collective interest:
 - c) By its organs or representatives;
 - d) By a person under their authority, when the commission of the crime has become possible because of a willful violation of the duties of supervision or control which are incumbent on them.
2. The liability of the entities mentioned in the previous number does not exclude the individual responsibility of the respective agents.

Article 4
Penalties applicable to collective persons

1. 1. For the crimes referred to in this statute the persons mentioned in the previous article shall apply the following main penalties:
 - a) Fine;
 - b) Judicial dissolution
2. The penalty of a fine shall be fixed between a minimum of 50,000 and a maximum of 1,000,000 US dollars.

Article 5
Exemption and special attenuation of penalty

In cases where the agent is an relevant auxiliary in the collection of decisive evidence for the identification of others responsible for the practice of acts of corruption, as well as in the freezing and seizure of goods and products resulting from such acts, the penalty may be waived or especially attenuated.

Article 6
Illegal Enrichment

1. An official who, during the period of the exercise of public functions or during the five years following the end of his term of office, acquires an estate which is disproportionate to his income and which does not result from another legal means of acquisition, shall be liable to imprisonment up to five years.
2. For the purposes of the previous paragraph, the term "estate" means all assets in the country or abroad, including real estate, shares, stocks or shares in the capital of civil or commercial companies; of rights to ships, aircraft or motor vehicles, securities portfolios, term bank accounts, equivalent financial investments and credit rights.
3. For the purposes of paragraph 1, income shall be understood to mean all gross proceeds included in the declaration presented for the settlement of income tax of natural persons, or which, when dispensed, should be recorded.
4. It approves that the manifest disproportion between the estate of the defendant, his income or other means of lawful acquisition shall be decided by the Public Ministry.

Article 7
Construction fraud

1. The builder or seller of materials for the construction of infrastructures who commits a fraudulent act and diminishes in any way the quality of the work in a way that endangers the safety of persons and property is punished with effective imprisonment of 1 to 5 years.
2. The same penalty is applied to those who, being in charge of the supervision of the work or the delivery of the materials, intentionally, allow the fraudulent act.

Article 8
Obstruction of investigation

1. Whoever directly or indirectly obstructs or obstructs investigations, prosecution, hearing of suspects, defendants or witnesses in corruption cases shall be punished with imprisonment of 2 to 5 years.
2. The same penalty is applied to anyone who violates the duty to cooperate.

Article 9
Prescription

The criminal procedure for acts of corruption regulated in this decree-law applies for a term of 20 years, whatever the penalty applicable to the crime.

Article 10
Related searches

The present law is applicable to anyone who violates a legal norm expressly equated with corruption.

CHAPTER II
Procedural Penal provisions

Article 11
Urgent character of the process

Corruption processes are urgent and have priority over all other prosecutions whether or not they are arrested.

Article 12
Duty of collaboration

1. All public authorities shall cooperate promptly and expeditiously in investigating crimes of corruption.
2. The internal control organs of the Public Administration have a special duty to collaborate with the criminal investigation, namely, to make its specialists available for the performance of expert duties.

Article 13
Special investigation teams

The Prosecutor-General may determine the establishment of an investigation team and coordinate it, if it decides it is necessary, when a given corruption process is particularly complex.

Article 14
Representation of the legal person in the process

1. In the event that the crime of corruption is committed by a legal person it is represented by its directors or officers.
2. In the event that an indictment is filed against the legal person, notification and summons to the court are sent to the residence of the administrators or directors or to their professional domicile.

Article 15
Anonymous report

1. The news of the crime of corruption can be made by anonymous report, in addition to other forms of news of the crime provided for in the Criminal Code.
2. Corruption proceedings may also be initiated through the reporting of suspicious transactions by the competent financial authority, in particular the Financial Intelligence Unit.
3. The conduct of a person who has reported to the competent authorities, in good faith and with reasonable cause, any facts related to the offenses of corruption, shall be lawful.

Article 16
Searches and reviews

1. Searches and reviews in corruption cases are validly authorized by an order of the Public Prosecutor's Office, without prejudice to the provisions of art. 56 of the Code of Criminal Procedure.
2. The provisions of the previous number do not apply to searches in homes.

Article 17
Seizures

The seizure of objects related to the crime of corruption or that may serve as a means of proof may be authorized by order of the Public Prosecution Service, without the need for any further validation.

Article 18
Special access to communications

Investigators shall be authorized to open, examine letters and parcels distributed by postal services or other means suspected of connection with the investigation.

Article 19
Freezing and confiscation of property suspected of illicit origin

1. Real or movable property, rights, securities, values, amounts and any other objects deposited in banks or other credit institutions belonging to or in the possession of the accused are subject to the precautionary measure of seizure, without prejudice to the provisions of the Penal Code regarding loss of property and instrumentalities of crime.
2. Seizure of immovable or movable property, rights, securities, values, amounts and any other objects deposited in banks or other credit institutions on behalf of third parties shall take place when there are reasonable grounds to believe that they are the proceeds of crime.

Article 20
Bank secrecy

1. Banking and financial institutions may not refuse to comply with a written request for information or for the presentation of documents made by the judicial authorities regarding goods, deposits or securities of any client.
2. The institutions referred to in the previous number are obliged to comply with the request within a maximum period of 3 working days from receipt.

Article 21
Defense of rights of third parties in good faith

1. A third party who invokes ownership of things, rights or values which have been seized may request the delivery of the same as long as he makes the claim and proof of ownership.
2. The application is assessed by attachment, notifying the Public Prosecutor's Office to file an opposition within twenty days.
3. The decision is delivered by the judge as soon as the necessary steps have been taken, unless the matter proves to be complex or liable to cause disruption to the normal course of the proceedings, in which case the Judge will refer to normal civil means.

Article 22
Witness protection

The special witness protection regime provided for by law is applicable to corruption cases.

Article 23

Detention outside of *flagrante delicto*

1. The Public Prosecutor's Office may order the arrest outside of *flagrante delicto* in cases of corruption in which pre-trial detention is admissible.
2. The detainee must be submitted to the first judicial interrogation within a maximum period of 72 hours.

Article 24

Action for damages

1. In case the investigators judge that the evidence is insufficient with respect to one or more elements of the crimes of corruption, but it is evident that there has been damage to the State, they will give to the Public Ministry the process to propose action of compensation against the person in charge.
2. The acquittal in the processes of corruption does not harm the civil action for the damages.

Article 25

Death of the accused and civil action

1. In the event of the death of the accused during the investigation, if the damage suffered by the State is evident, the Public Prosecution Service must proceed with the competent civil action against the inheritance or the heirs.
2. In the event of the death of the accused during the trial stage, if it is clear that the State has suffered damages, the Judge shall send the results to the Public Prosecutor's Office to try the competent civil action against the inheritance or other heirs.

CHAPTER III

Public Participation

Article 26

Community involvement

1. The public should participate and support in the prevention and eradication of corruption.
2. Everyone shall have the right to seek, obtain and provide competent authorities with information concerning acts of corruption.

Article 27

Praise

The State indicates its public recognition to those who contribute to the prevention and eradication corruption through the award of praise, medals or other forms of recognition under specific regulation to be approved by the Government.

CHAPTER VI

Final Provisions

Article 28

Regulation



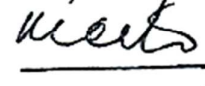


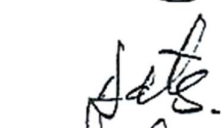


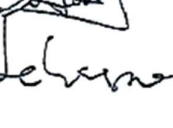
The norms and procedures necessary for the implementation of public participation in the prevention and eradication of corruption are subject to Government regulation.

Article 29
Entry into force

This law shall enter into force on the day immediately following its publication in the *Jornal da República*.

National Parliament, 6 July 2018

The Deputies:

1. Joaquim de Santa 
2. Francisco Herculano Branco 
3. Aniceto Guterres 
4. Adriano do Nascimento 
5. Antuário Branco. 
6. David Macedo S. Lino 
7. Maria Angelica Rangel da Cruz 
8. Filipe Soares 
9. Lidia M. S. Martins 
10. Nelica Soares Meneses 