

Overall Score:

58 - Very Weak

Legal Framework Score:

73 - Moderate

Actual Implementation Score:

45 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁸⁰Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

It is argued that there is no specific law focused on this matter; however, the constitution reserves that freedom in article 40. (Interview with an intellectual, Dr. Francisco Guterres, in his office; 2 August 2007 at 10.00 – 11.00 am)

A similar point was made by Dr. Christopher Samson, the director of an anti-corruption NGO in Dili. (Interview conducted on 10 July 2007, at his office in Comoro, 14.00 – 15.15 pm)

References:

Constitution of RDTL (Republika Demokratika Timor Leste)

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

An interview with Dr. Christopher made it clear that no law is in place; however, donors are not prohibited from giving support to their organizations.

(LABEH: Lalenok ba Ema hotu; in English: Mirror for the people)

References:

A specific law related to this is not in place; however, the RDTL constitution protected this freedom.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

References:

No such public disclosure requirement exists.

(Interview with Dr. Christopher, director of LABEH, at his office on 10 July 2007)

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

75

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

On the one hand, no formal steps were required, and no license was needed. People are free to organize themselves, almost without any restriction. However, some informal threats were made to STL and LABEH, in a series of cases, via phone, sms, e-mail, and face-to-face.

References:

Interview with Dr. Francisco Geterres, head of TIDS (Timor Institute Development Study), at his office on 2 August 2007
Interview with Dr. Christopher Samson, director of LABEH (an NGO working to advance good governance and specialize in the area of anti-corruption), at his office, 10 July 2007

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

References:

An interview with Dr. Amandio Benevides, deputy of the ombudsman office, at Dr. Benevides's office, on 17 July 2007

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

No CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues; however, threats have been made by government officials. According to LABEH, there were two different threats made towards LABEH through a daily newspaper in Dili (STL) by government officials.

References:

Interview with Dr. Christopher Samson, director of LABEH, at his office, on 10 July 2007

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

Interview with Dr. Christopher Samson, director of LABEH (an anti-corruption NGO), in his office, on 10 July 2007

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:

Interview with Dr. Christopher Samson, director of LABEH, in his office, 10 July 2007

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

Interview with Dr. Christopher Samson, director of LABEH, in his office, 10 July 2007

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

88

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

Constitution of RDTL, articles 40 and 52

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

References:

Constitution of RDTL, article 52

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

Constitution of RDTL, article 40

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

Constitution of RDTL, article 40

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

94

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

ET has just reached its 6th year of independence. So far, there have been no restrictions for print media or any other type of media. Some threats were made by the previous government, under the Fretilin regime; however, the media still has complete freedom of expression. New media organizations have come and gone, but no regulations were made to stop their activity. (An observation made by the researcher during his almost 8 years of working and leaving in ET)

References:

Constitution of RDTL, article 41

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

The constitution of RDTL supported the freedom of speech. So far, there have been no other laws in place to supplement nor restrict this license. A media law is under discussion. A draft was proposed; however, the response is not clear yet. ET, according to UNTAET regulation #1/2001, said that Indonesian law is accepted in the absence of other laws.

References:

The constitution of RDTL

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No law exists regarding this issue. The media has been established in accordance with peoples' wishes and their financial abilities.

References:

An interview with Dr. Francisco Guterres, head of TIDS and currently appointed as secretary of state for defense
The RDTL constitution

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no law that regulates this issue. Everything is still based on the Constitution. People can establish any media organization they want, or can afford to run.

References:

Interview with Dr. Francisco Geterres, head of TIDS, on 2 August 2007

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

100

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

Comments:

The government has not created any barriers against forming a broadcast entity. There are examples of radio community across the country. The radio community has now come up with regulations for its organizations. Some government laws were drafted, but they have not been passed yet.

References:

Interview with Dr. Francisco Guterres, head of TIDS, on 2 August 2007

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | **NO**

Comments:

The Constitution of RDTL supports the freedom of speech. So far, no other laws are in place to supplement nor restrict this license. A media law is under discussion. A draft proposed exists; however, the response is not clear yet. ET, according to UNTAET regulation #1/2001, said that Indonesian law is accepted in the absence of other laws.

References:

Constitution of RDTL

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

An interview with Dr. Francisco Guterres – head of TIDS and currently appointed as secretary of state for defense RDTL constitution

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No law regulates this issue. Everything is still based on the Constitution. There is still no regulation of licensing. People can establish any media organization they want or are financially able to run.

References:

Interview with Dr. Francisco Geterres, head of TIDS, on 2 August 2007

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | 50 | 25 | 0

Comments:

Most of these kinds of documents are available on the web. However, access is an issue due to the literacy rate, which is quite high (65%). Also, the cost for internet access is pretty expensive (\$5 per hour).

References:

Interview with Dr. Amanadio Benevides, deputy of the ombudsman office, on 17 July 2007

Interview with Joao Braz, deputy of procurement office, on 12 September 2007

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | 50 | 25 | 0

References:

An interview with Dr. Amandio Benevides, deputy of the ombudsman office, on 17 July 2007

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

75

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

No other law says the same thing, nor is there any law that prevents it. The defamation law, which has not passed through parliament, is meant to place some restrictions.

References:

Constitution of RDTL

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

The pressure that was applied on a local media group covering the Timor GAP is one example of this.

References:

An interview with Dr. Amandio Benevides, deputy of the ombudsman office, on 17 July 2007

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | **75** | 50 | 25 | 0

Comments:

There is no censorship; however, a threat was made to LABEH by a government official due to a report provided by LABEH to STL by the two ministers (i.e., Minister of Labor and Solidarity and Minister of Natural Resources). However, media access to very sensitive government information is often blocked.

References:

Interview with Dr. Christopher Samson, director of an ant-corruption NG,O in his office, on 10 July 2007

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

30

10a. In law, print media companies are required to disclose their ownership.

YES | **NO**

Comments:

There is no law for this.

References:

Interview with Dr. Christopher, director of LABEH, in his office, on 10 July 2007

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | **NO**

Comments:

There is no law for this.

References:

Interview with Dr. Christopher, director of LABEH, in his office, on 10 July 2007

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | **25** | 0

Comments:

There is no law for this.

No journalists were sold" favorable and unfavorable coverage, but no laws are in place to regulate the media according to international standards of journalism. Reports are biased in terms of no confirmation and no checks and balances. The international standards of journalism do not exist in Timor-Leste.

References:

Interview with Dr. Christopher, director of LABEH, in his office, on 10 July 2007

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

References:

Interview with Paula Rodrigues, Radio RTL reporter, in her office, on 5 July 2007

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

There is only one nationwide radio station and one national TV station, both owned by the government. During the last election, both outlets came under criticism due to their coverage, which critics alleged was in favor of one political party instead of being unbiased.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:

Interview with Dr. Christopher, director of LABEH, at his office, on 10 July 2007

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

References:

Interview with Dr. Christopher, director of LABEH, at his office, on 10 July 2007

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

Interview with Dr. Christopher, director of LABEH, at his office, on 10 July 2007

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

86

I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

References:

Constitution of RDTL, article 40

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

There is no organic law responding to this issue, though Indonesian law provides for this.

Except for the Constitution, ET has a number of limitations established by organic laws for specific issues. This is progressing at the parliamentary level as well as at the government level.

References:

Interview with Dr. Christopher, director of LABEH, at his office, on 10 July 2007

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

Normally, the laws that passed and some of the institutional regulations were published on the web site of the government, as well as in a bulletin specifically related to laws and decrees. This is called *Jurnal de Republika*. To request government information not otherwise published, a request needs to be cleared with the designated authority. Authorization from upper levels might be needed, depending on the sensitivity of the information requested.

References:

Interview with the deputy of procurement office, Joao Coimbra, at his office, on July 2007

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

45

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Some documents were certainly sensitive and remain inaccessible to the public. Some information related to corruption is on hold and cannot be request by a CSO or NGO.

References:

An interview with Dr. Francisco Guterres, head of TIDS, an intellectual currently appointed as the secretary of state for defense, at his office, on 2 July 2007

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

There are laws published under our mandate, and access is not for free. However, you can access and get some copies if this is needed for a clear reason. There is also a journal called "Jornal de Republica," which contains laws passed and which published and available at some cost.

Eventually, the internet will be another source, but it is hard for the public to access it due to literacy rates and cost. Requests for non-published government information require more time, and the government uses greater discretion and may delay or deny such requests.

References:

Interview with Joao Coimbra, deputy of the procurement office, in his office, on July 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

There were number of backlogs. Issues were handled based to importance and priority given by the agency. Some of cases related to corruption reports were set aside and dropped after they sparked political interest.

References:

An interview with Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

As mentioned before, appeals can be made only if there is a strong interest behind the request; politically sensitive requests face greater obstacles.

References:

An interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | **50** | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁶³Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Constitution of RDTL, articles 46 and 65

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

Constitution of RDTL, article 65

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

75

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

References:

Article 5 of National Parliament law
Article 5 of presidential election law
International Certification Mission Report on Election

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

References:

Article 5 of National Parliament law
Article 5 of presidential election law
International Certification Mission Report on Election

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

ET has just faced its second election, both parliamentary and presidential. In 2002, Parliament was elected before the president, but in 2007, it was the other way around.

References:

Interview with Dr. Christopher Samson, director of LABEH (an anti-corruption NGO), at his office, on 10 July 2007

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

80

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

Constitution of RDTL, article 65

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

References:

Constitution of RDTL, article 46

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence,

terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Poverty and illiteracy impact this, but otherwise citizens are relatively free to run for political office in practice.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | **50** | 25 | 0

Comments:

There are more opportunities to see the opposition's role clearly, compared with the previous government, when Fretilin ran. Open discussion is allowed and consensus is reached quite often in parliamentary debates

References:

Interview with Dr. Christopher Samson, director of LABEH (an NGO on anti-corruption), at his office, on 10 July 2007

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

CNE is one of the tools to assure that elections respect the law, are non-partisan and neutral, are transparent, and are accurate.

References:

CNE

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

65

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

References:

CNE law article 8

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

CNE web: www.cne.tl

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

References:

CNE web: www.cne.tl

Law on CNE article 9

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | **50** | 25 | 0

Comments:

Reports were available; however, they were available after a delay and public access was difficult, especially with those in rural areas, given their literacy level and the limited infrastructure.

References:

www.cne.tl

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Election report at www.cne.tl

International Certification Mission Report

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

79

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

References:

www.cne.tl

UN certification mission report

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost^o voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

Constitution of RDTL, article 65 (5 & 6)

Law # 5/2006, on 28 December 2006

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The electoral appeals mechanism takes complaints from both candidates and voters, but does not necessarily act on complaints promptly. The appeals mechanism was abused at times by ruling parties' supporters, who ran the entity dealing with complaints, and who often sought to delay the announcement of electoral results.

References:

Interview with Dr. Christopher Samson, director of LABEH, in his office, on 10 July 2007
See also UN Certification Team reports on the most recent election

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | **50** | 25 | 0

Comments:

The police and military were heavily involved in election rallies and were affiliated with parties and/or politicians. Last year's crisis in Timor-Leste was evidence of this.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

References:
Law # 5 / 2006

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

The observers were given priority to access polling sites, counting stations, and voters themselves; however, discrimination against political agents happened all over the place.

References:

Interview with Dr. Christopher Samson, director of LABEH, at his office, on 10 July 2007
Election Report of UN Certification mission

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

There are regulations governing political parties broadly, but no specific laws or regulations governing private financial contributions to parties.

References:

Political party laws

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

References:

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

References:

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

References:

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

References:

Political Party Law, 2004 Section 26

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | **NO**

References:

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

Comments:

The Audit Court is a provision of the RDTL Constitution; however, it has not been implemented yet. No such court has been established yet.

References:

Constitution of RDTL, article 129

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

4

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | **0**

Comments:

It is not clear; there is no law.

References:

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

While there are theoretical limits in law, in practice they are routinely ignored and not enforced whatsoever.

References:

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are

meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

No such system is operating in the country.

References:

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

Comments:

CNE is doing this type of auditing; however, this is only related to election activities in which political parties are supported by the government or international funds (e.g., UNDP).

References:

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

25

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

CNE is doing this type of auditing; however, this is only related to election activities in which political parties are supported by the government or international funds (e.g., UNDP).

References:

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

CNE is doing this type of auditing; however, this is only related to election activities in which political parties are supported by the government or international funds (e.g., UNDP).

References:

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

CNE is doing this type of auditing; however, this is only related to election activities in which political parties are supported by the government or international funds (e.g., UNDP).

A few political parties have previously published financial information, but these have been the exception, not the rule.

References:

Interview with Dr. Francisco Guterres, at his office, on 2 August 2007 (Dr. Francisco used to be head of an NGO doing research on economic development in ET; he is currently appointed as secretary of state of defense)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-1. Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

Yes; however, the implemented institutions are weak. Bureaucracy is one of the impediment from making this happen. If any government official is sued, parliament must take away immunity beforehand. Administration protocols would also take time and coordination.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

56

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

There is no substantial justification made on a regular basis. There is no censorship whatsoever. Exposure is limited, and journalists rarely ask critical questions.

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

It would be the supreme court. However, there is no such institution in place.

References:

Constitution of RDTL, article 126/169

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

In fact, there is no supreme court in place. The court of appeals has performed this function at times, but often only under political pressure.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to relay upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | **50** | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

0

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | **NO**

Comments:

Immunity must be lifted by parliament before prosecution can happen.

References:

Constitution of RDTL, article 27

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | **NO**

Comments:

However, the ombudsman office is mandated by law to only identify and recommend; any further step is difficult because immunity has to be removed from the officials before any action can be taken.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

0

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | **NO**

Comments:

No law is in place.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | **NO**

Comments:

A law regarding the function of public servants has not been passed yet.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | **NO**

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | **NO**

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007
Constitution of RDTL, article 129.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There is no such law in place. Often officials have two to ten jobs within the private sector while simultaneously serving in government.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

0

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

Comments:

No asset disclosure is in place.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

No asset disclosure is in place.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No asset disclosure is in place.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Many critics and observers point to the government's habit of using state assets to facilitate the ruling party's activities, their campaigns, and the habit of distributing money right before elections. Government vehicles have also been used to carry out political campaigns.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007
UN Certification Mission Report

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

29. Can members of the legislature be held accountable for their actions?

92

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

The Constitution provides for a supreme court, which in theory could review legislative actions, but the court does not yet exist. In the meantime, other courts, including the court of appeals, have performed this function.

References:

Constitution of RDTL, article 126/129

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007 Constitution RDTL, articles 150 & 152

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

In law, immunity exists only for statements made in Parliament. In practice, however, those protections have been extended to criminal charges unrelated to Parliamentary service, where immunity has not been lifted where it likely should have been.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

0

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | **NO**

Comments:

No such law is in place. In fact, the office of ombudsman is the only one that is implementing this system in the country; no one else is doing it.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

This happened when members of previous parliaments and government officials were taking commissions from business people. There is a hidden policy of forcing investors to share with local people whether they would be capable of delivering services or not. It was known that every investors in ET must work in partner with the locals.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

0

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

Comments:

There is no law to force that to happen. There also is no political will behind it.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

50

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The bureaucracy suffers from unprofessional civil servants who are responding to requests. For those who have no power and no relatives in a position to access records, request for such information likely will be denied.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The bureaucracy suffers from unprofessional civil servants who are responding to requests. For those who have no power and no relatives in a position to access records, request for such information likely will be denied.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

35
III-3. Judicial Accountability

33. Are judges appointed fairly?

92

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

There are criteria for selection, too. Someone has to be in training for two years and pass an exam before getting appointed.

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as the secretary of defense

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as the secretary of defense

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

National judges must complete a two-year course and be approved for appointment. After the course, their appointments are approved by (1) the president, (2) the national parliament, (3) the government, and 4) the head of the court of appeals.

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as the secretary of defense
Constitution of RDTL, article 128

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

79

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as the secretary of defense

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as the secretary of defense

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

Yes, the Constitution establishes the Konsellu Superior Majistratura Judisial, which is the Superior Council for Justice.

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as the secretary of defense

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

The Constitutional provisions establish that the council codify, for example, independence.

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as the secretary of defense
Constitution of RDTL, articles 119, 120, & 121

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Investigations into judicial misconduct suffer from the broader problems of politicization. For example, the ombudsman office can initiate an investigation concerning corruption in the judiciary, but the result of the investigation needs to be approved by the prime minister, and only the prime minister can order further legal and formal investigations. In addition, a government official cannot be prosecuted until the National Parliament removes the immunity attached to him or her as an official person.

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as the secretary of defense

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

Investigations into judicial misconduct suffer from the broader problems of politicization. For example, the ombudsman office can initiate an investigation concerning corruption in the judiciary, but the result of the investigation needs to be approved by the prime minister, and only the prime minister can order further legal and formal investigations. In addition, a government official cannot be prosecuted until the National Parliament removes the immunity attached to him or her as an official person.

This burden has limited the effectiveness of the judicial oversight mechanism. The case of Major Alfredo is an example of the lack of power on the part of the judiciary.

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as the secretary of defense

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

0

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | **NO**

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | **NO**

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | **NO**

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

No such law is available.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No such law is available.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

83

37a. In law, the legislature can amend the budget.

YES | NO

Comments:

Parliament can monitor and amend the budget within a 6-month period.

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as secretary of defense, at his office, on 2 August 2007

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as secretary of defense, at his office, on 2 August 2007

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as secretary of defense, at his office, on 2 August 2007

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

67

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as secretary of defense, at his office, on 2 August 2007

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | **50** | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as secretary of defense, at his office, on 2 August 2007

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | **50** | 25 | 0

Comments:

The costs associated with internet access are very high for the average citizen. Illiteracy also plays a role.

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as secretary of defense, at his office, on 2 August 2007

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

0

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | **NO**

Comments:

There should be an audit court.

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as secretary of defense, at his office, on 2 August 2007

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

0

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | **0**

Comments:

There should be an audit court.

The finance department is used to compile the expenditure tracks of the ministries.

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as secretary of defense, at his office, on 2 August 2007

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

There should be an audit court.

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as secretary of defense, at his office, on 2 August 2007

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There should be an audit court. No committee has been established.

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as secretary of defense, at his office, on 2 August 2007

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

There should be an audit court.

References:

Interview with Dr. Francisco Guterres, head of TIDS and currently appointed as secretary of defense, at his office, on 2 August 2007

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

IV-1. ⁴⁶Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Bylaws for civil servants, law no. 8/2004, dated 16 June 2004, article 6

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

Bylaws for civil servants, law no. 8/2004, dated 16 June 2004, article 11

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | NO

References:

Bylaws for civil servants, law no. 8/2004, dated 16 June 2004, articles 97 & 101

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

No article in the their bylaws
law no. 8/2004, dated 16 June 2004

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

31

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Virtually every civil servant is affiliated with one political party or another.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | **25** | 0

Comments:

Most civil servants are appointed according to political affiliation. Some positions have been filled through advertisement and interview processes; however, family relationships very often affect decisions. Protests against such practices helped contribute to the popular discontentment that fed into last year's political crisis.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

Most civil servants are appointed according to political affiliation. Some positions have been filled through advertisement and interview processes; however, family relationships very often affect decisions. Protests against such practices helped contribute to the popular discontentment that fed into last year's political crisis.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

No evidence was seen by the public. It is also not mentioned in the bylaw. Article 64 is not clear about this. No specification is pointed out.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

Publication is specified and is based on government officials' assessment of whether a position is open for application. Many cases prove that ads were made for formality only. The person for the post had been identified within the institution, or was related by family related, for example.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

The newspapers STL – Voice of Timor Leste, TP – Timor Post, and Diario and TVTL and RTL (government-owned TV and radio stations) publish such information, at least partially.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

The inspector general and/or the ombudsman office can call for an investigation, but authorization by the prime minister is needed before proceeding legally.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | **0**

Comments:

No article talks about this issue.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

46

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

Bylaw of civil servants, law no. 8/2004, 16 June 2004, article 103

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Law no.8/2004, 16 June 2004, article 64

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | **0**

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

0

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

Comments:

There is no asset disclose in this country.

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | **0**

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

References:

Interview with Dr. Francisco Guterres, who used to be head of TIDS and currently is appointed as secretary of defense, at his office, on 2 August 2007

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, who used to be head of TIDS and currently is appointed as secretary of defense, at his office, on 2 August 2007

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

There is no law in place to provide for this type of protection.

References:

Interview with Dr. Francisco Guterres, who used to be head of TIDS and currently is appointed as secretary of defense, at his office, on 2 August 2007

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, who used to be head of TIDS and currently is appointed as secretary of defense, at his office, on 2 August 2007

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

The inspector general as well as office of proveador serve this function. However, these two are limited in their role. The inspector can initiate an investigation, but the decision remains with the prime minister. The proveador also can investigate and call an irregularity, but its evidence cannot be used to further prosecute the case at court. The Ministry of State and Administration has to redo it to be considered as evidence before a court of law and justice.

References:

Interview with Dr. Francisco Guterres, who used to be head of TIDS and currently is appointed as secretary of defense, at his office, on 2 August 2007

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

88

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with both Dr. Amandio Benevides, deputy of the ombudsman office

Dr. Francisco Guterres, who used to be head of TIDS and currently is appointed as secretary of defense, at his office, on 2 August 2007

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Although there are hurdles with regard to coming to a decision about whether to proceed with a case, the ombudsman (proveador) often does take action.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

63
IV-3. Procurement

48. Is the public procurement process effective?

80

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

Law No. 8/2004, article 10

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

Law on Procurement Nos. 10, 11, and 12

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | **50** | 25 | 0

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | NO

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

Laws Nos. 10, 11, and 12

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

Laws Nos. 10, 11, and 12

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

Laws Nos. 10, 11, and 12

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

Laws Nos. 10, 11, and 12

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

Punishment is limited to a certain period, depending on how much of an offense was committed.

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

Laws Nos. 10, 11, and 12

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | **50** | 25 | 0

Comments:

The implementation is based on the investigation report, and this investigation remains subject to the political will, as well as the will of other ministry departments.

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

Laws Nos. 10, 11, and 12

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

83

49a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

There is the Jornal Republika, as well as published versions of related laws.

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

Laws Nos. 10, 11, and 12

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It also will depend on priorities and on the reasons given to obtain such information.

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

These were well advertised in two big local newspapers in the capital of Timor Leste.

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

References:

Interview with Joao Coimbra, deputy of procurement office, at his office, on July 2007

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

50. Is the privatization process effective?

0

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

There is currently only a draft law on privatization.

References:

Interview with Dr. Manuel Tilman, former member of a parliamentary commission that deals with economy and development issues; he is currently re-elected to this parliament and sat on Commission 9, which dealt with issues related to corruption and good governance

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | **NO**

Comments:

There is currently only a draft law on privatization.

References:

Interview with Dr. Manuel Tilman, former member of a parliamentary commission that deals with economy and development issues; he is currently re-elected to this parliament and sat on Commission 9, which dealt with issues related to corruption and good governance

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | **0**

Comments:

There is currently only a draft law on privatization.

References:

Interview with Dr. Manuel Tilman, former member of a parliamentary commission that deals with economy and development issues; he is currently re-elected to this parliament and sat on Commission 9, which dealt with issues related to corruption and good governance

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

0

51a. In law, citizens can access privatization regulations.

YES | **NO**

Comments:

There is only a draft law on privatization at this point in time.

References:

Interview with Dr. Manuel Tilman, former member of a parliamentary commission that deals with economy and development issues; he is currently re-elected to this parliament and sat on Commission 9, which dealt with issues related to corruption and good governance

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | **0**

Comments:

There is only a draft law on privatization, and privatization has not yet occurred in East Timor as of the present time.

References:

Interview with Dr. Manuel Tilman, former member of a parliamentary commission that deals with economy and development issues; he is currently re-elected to this parliament and sat on Commission 9, which dealt with issues related to corruption and good governance

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | **NO**

References:

Interview with Dr. Manuel Tilman, former member of a parliamentary commission that deals with economy and development issues; he is currently re-elected to this parliament and sat on Commission 9, which dealt with issues related to corruption and good governance

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Interview with Dr. Manuel Tilman, former member of a parliamentary commission that deals with economy and development issues; he is currently re-elected to this parliament and sat on Commission 9, which dealt with issues related to corruption and good governance

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Manuel Tilman, former member of a parliamentary commission that deals with economy and development issues; he is currently re-elected to this parliament and sat on Commission 9, which dealt with issues related to corruption and good governance

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

50
V-1. National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

There is an ombudsman office, with a good governance and anti-corruption section.

References:

Constitution of RDTL, article 27

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

73

53a. In law, the ombudsman is protected from political interference.

YES | NO

References:

Constitution of RDTL, article 27

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The law that regulates this office is very weak. It has no power to send its investigation to the courts. It can only investigate and report, and the decisions about whether to take cases forward remain with the prime minister and the Ministry of Public Administration. The National Parliament must also lift immunity if the cases involve a public official, which creates an additional barrier linked to political considerations.

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman has been suffering from a shortage of funding in recent times.

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

There are reports on cases, miss-administration, and abuses of power, as well as related work of the office.

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Despite the somewhat significant hurdles facing the ombudsman—that is, having to rely on political actors (i.e., the prime minister and parliament) to move cases forward—the ombudsman is indeed aggressive in initiating cases.

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

There have been cases of abuse committed by government officials for which the ombudsman has called for a response. However, it has limited powers to enforce and cannot proceed without parliament lifting immunity on government officials. In the vast majority of cases the ombudsman has been ignored by the government.

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

Interview with Sebastiao Diaz Ximenes (ombudsman office) at his office, 22 January 2008.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

100

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

There are reports published on various issues related to corruption.

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No fee is paid to access this information.

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

0

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | **NO**

Comments:

No such institution is established as of yet.

References:

It's mentioned in Constitutional article 124

Freedom House's Countries at the Crossroads, 2006"

— <http://www.freedomhouse.org/modules/publications/ccr/modPrintVersion.cfm?edition=7&ccrpage=31&ccrcountry=113>

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

13

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

If/when the audit court is set up, it will be guaranteed political independence.

References:

Constitution of RDTL, article 124(1)

Freedom House's Countries at the Crossroads, 2006"

— <http://www.freedomhouse.org/modules/publications/ccr/modPrintVersion.cfm?edition=7&ccrpage=31&ccrcountry=113>

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | **0**

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

0

57a. In law, citizens can access reports of the audit agency.

YES | **NO**

Comments:

The audit court is not yet established.

References:

No sources given.

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The audit court is not yet established.

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The audit court is not yet established.

References:

Interview with Dr. Amandion Benevides, deputy of the ombudsman office, at his office, on 17 July 2007

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

4
V-3. Taxes and Customs

58. In law, is there a national tax collection agency?

100

58. In law, is there a national tax collection agency?

YES | NO

References:

Tax office, including customs under the minister of planning and finance

Interview with Dr. Manuel Tilman, current parliament member, Commission 9 on anti-corruption and good governance

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

75

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Manuel Tilman, current parliament member, Commission 9 on anti-corruption and good governance

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Manuel Tilman, current parliament member, Commission 9 on anti-corruption and good governance

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

50

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

There is no real monitoring of the tax service.

References:

Interview with Dr. Manuel Tilman, current parliament member, Commission 9 on anti-corruption and good governance

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

References:

Department of Immigration, including custom tax

Interview with Dr. Manuel Tilman, current parliament member, Commission 9 on anti-corruption and good governance

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

75

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Manuel Tilman, current parliament member, Commission 9 on anti-corruption and good governance

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Manuel Tilman, current parliament member, Commission 9 on anti-corruption and good governance

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

If one does not pay a commission fee or facilitation fee," one is likely to have problems with importing goods.

References:

Interview with Dr. Manuel Tilman, current parliament member, Commission 9 on anti-corruption and good governance

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

0

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | **NO**

Comments:

If/when the audit court is created (as called for under the Constitution), it would have jurisdiction over state-owned enterprises.

There are three main state-owned companies: Timor Telco, Water, and Power. There is no formal oversight mechanisms in place as of yet.

References:

Interview with Dr. Francisco Guterres, head of TIDS and now appointed as secretary of state for defense

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

Comments:

If/when the audit court comes into existence, it would be guaranteed political independence.

References:

Interview with Dr. Francisco Guterres, head of TIDS and now appointed as secretary of state for defense

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Constitution is clear about a supreme audit, but it has not been established yet.

References:

Interview with Dr. Francisco Guterres, head of TIDS and now appointed as secretary of state for defense

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Constitution is clear about a supreme audit, but it has not been established yet.

References:

Interview with Dr. Francisco Guterres, head of TIDS and now appointed as secretary of state for defense

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Constitution is clear about a supreme audit, but it has not been established yet.

References:

Interview with Dr. Francisco Guterres, head of TIDS and now appointed as secretary of state for defense

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Constitution is clear about a supreme audit, but it has not been established yet.

References:

Interview with Dr. Francisco Guterres, head of TIDS and now appointed as secretary of state for defense

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

10

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

There is no legal guarantee of citizen access to such records.

References:

Interview with Dr. Francisco Guterres, head of TIDS and now appointed as secretary of state for defense

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS and now appointed as secretary of state for defense

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Some auditing of the three main state-owned enterprises has been carried out, mainly at the request of international donors. But the results are not easily accessible.

References:

Interview with Dr. Francisco Guterres, head of TIDS and now appointed as secretary of state for defense

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no practical access to such records.

References:

Interview with Dr. Francisco Guterres, head of TIDS and now appointed as secretary of state for defense

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no practical access to such records.

References:

Interview with Dr. Francisco Guterres, head of TIDS and now appointed as secretary of state for defense

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

10
V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

63

67a. In law, anyone may apply for a business license.

YES | NO

References:

Interview with Dr. Manuel Tilman, at his office, in August 2007

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

Complaints must be addressed through the formal legal complaints procedures; namely, by filing a court complaint with supporting documents and via a complaint to the ombudsman's office.

References:

Interview with Dr. Manuel Tilman, at his office, in August 2007

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Dr. Manuel Tilman, member of Parliament who is heading Commission 9, which deals with anti-corruption and good governance; he was head of the Commission of Economy and Development with the previous Parliament

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Dr. Manuel Tilman, member of Parliament who is heading Commission 9, which deals with anti-corruption and good governance; he was head of the Commission of Economy and Development with the previous Parliament

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

Dr. Manuel Tilman, member of Parliament who is heading Commission 9, which deals with anti-corruption and good governance; he was head of the Commission of Economy and Development with the previous Parliament

Business Regulations and Requirements for Business Registration

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

Dr. Manuel Tilman, member of Parliament who is heading Commission 9, which deals with anti-corruption and good governance; he was head of the Commission of Economy and Development with the previous Parliament

Business Regulations and Requirements for Business Registration

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

Dr. Manuel Tilman, member of Parliament who is heading Commission 9, which deals with anti-corruption and good governance; he was head of the Commission of Economy and Development with the previous Parliament

Business Regulations and Requirements for Business Registration

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Dr. Manuel Tilman, member of Parliament who is heading Commission 9, which deals with anti-corruption and good governance; he was head of the Commission of Economy and Development with the previous Parliament

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Dr. Manuel Tilman, member of Parliament who is heading Commission 9, which deals with anti-corruption and good governance; he was head of the Commission of Economy and Development with the previous Parliament

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

References:

Dr. Manuel Tilman, member of Parliament who is heading Commission 9, which deals with anti-corruption and good governance; he was head of the Commission of Economy and Development with the previous Parliament

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

70. Is there legislation criminalizing corruption?

100

70a. In law, attempted corruption is illegal.

YES | NO

Comments:

There is confusion about whether ET is applying Indonesian law, or Timorese or UN and/or Portuguese law. Our access to applicable laws is limited in this country. Every group applies its own law, and people were the victims of these ambiguities.

References:

KUHP (Indonesian law), according to law decree # 1/2000

Indonesian exists in practice until Timor has its own law and as long as it is not against human rights and international conventions. If this applies, then it is under law article 415 & 418 as well as 31/99.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Law No. 31/99

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Law No. 31/99

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | NO

References:

Law No. 31/99

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

References:

Law No. 31/99

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Law No. 31/99

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES | NO

References:

Law No. 31/99

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Law No. 31/99

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

Ombudsman office for anti-corruption as well as human right and justice

Constitution of RDTL, article 27

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

64

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

References:

Ombudsman office for anti-corruption as well as human right and justice
Constitution of RDTL, article 27

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | **50** | 25 | 0

References:

Interview with Dr. Francisco Guterres, head of TIDS, at his office, on 2 August 2007

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

Interview with interim OIG officer Francisco Carvalho 23 January 2008 at his office

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | **50** | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | **25** | 0

Comments:

The major hurdles in this area relate to the fact that the prime minister must approve further actions to advance a case to prosecution/formal legal action. In addition, the National Parliament must lift immunity if the case involves a public official.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | **75** | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

50

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

71
VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

67

74a. In law, there is a general right of appeal.

YES | NO

References:

Constitution of RDTL, article 28

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

A number of cases were pending from 2000 up until now, given their sensitivity, as well as political interference by the ruling party.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

75

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

50

76. In practice, are judicial decisions enforced by the state?

100 | 75 | **50** | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

94

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Constitution of RDTL, article 119

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

Judges are assigned cases by their superiors; in Dili, this would be the head of the Dili District Court.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

Constitution of RDTL, article 128 (1)

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

57

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

The sense of Suco-ism is somewhat strong here and affects decisions.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides – Deputy of Ombudsman office at his office on 17 July 2007.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

Comments:

There is what we call a public defender” who does this function.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

While the qualifications of public defenders may be adequate, their numbers are not.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

This is a law that is still being worked on and that faces criticism by CSO. A number of legal aid organizations would resist the law if it applies. This issue is also linked to political interference due to educational background. Many who have an Indonesian education cannot come to an agreement with those who have a Portuguese education. Most leaders had a Portuguese background and want to dismiss those educated under the Indonesian regime by saying they were not well trained and lack knowledge.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The police often rely on donor support, and suffer from resource constraints. Their cars are very limited and other equipment is lacking.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | **25** | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

75

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

The ombudsman's office would be the primary mechanism through which citizens could complain about police actions.

References:

Law of ombudsman

Constitution of RDTL, article 27

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

Both the ombudsman's office and the inspector general's office are tasked to investigate such allegations. However, neither can independently advance legal action without the approval of the government. Evidence gathered during such investigations cannot necessarily be used as evidence for legal action. The two bodies can only document and recommend; the minister of administration of state has to then re-investigate the case before initiating a formal court case, and the political will of the ministry of state can be questioned when politically connected individuals are involved.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | **50** | 25 | 0

Comments:

The ombudsman is quite aggressive in initiating investigations, although the dependence of this office on the prime minister and Parliament to advance investigations undermines its ultimate efficacy.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

Police officers are not granted immunity under the law.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | **50** | 25 | 0

Comments:

The ombudsman office indicates that political will remains the major challenge in this area. They have identified a number of irregularities, but no one has been willing to listen to their report, not even Parliament.

References:

Interview with Dr. Amandio Benevides, deputy of the ombudsman office, in his office, on 17 July 2007

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.