

Overall Score:

58 - Very Weak

Legal Framework Score:

65 - Weak

Actual Implementation Score:

48 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ~~54~~ Anti-Corruption Non-Governmental Organizations

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

67

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

Comments:

According to Article 43 of the Constitution of Republic Democratic of Timor Leste (RDTL) on the Freedom of Association at section 1, "Everyone is guaranteed freedom of association provided that the association is not intended to promote violence and is in accordance with the law."

Also, according to government's decree law no. 5/2005 on Nonprofit Corporation that also known as the legal framework for foundation and association, "There is no denying the importance that have associations in the exercise of democracy and citizenship."

References:

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002. Article 43.

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

Decree Law Nu.5/2005, June 25, 2005 on Nonprofit Corporation.

Official: http://www.jornal.gov.tl/public/docs/2002_2005/decreto_lei_governo/5_2005.pdf. Unofficial: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2005-5.pdf>

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

According to government's decree law nu.5/2005 on Nonprofit Corporation that is the legal framework for foundations and associations, there is no ban on NGOs accepting funding from any foreign or domestic sources.

References:

Decree Law Nu.5/2005, June 25, 2005 on Nonprofit Corporation.

Official: http://www.jornal.gov.tl/public/docs/2002_2005/decreto_lei_governo/5_2005.pdf. Unofficial: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2005-5.pdf>

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

Comments:

According to government's decree law No.5/2005 on Nonprofit Corporation that is the legal framework for foundations and associations, there is no specific article requiring NGOs to disclose their sources of funding to the public or government.

References:

Decree Law No.5/2005, June 25, 2005 on Nonprofit Corporation.

Official: http://www.jornal.gov.tl/public/docs/2002_2005/decreto_lei_governo/5_2005.pdf; Unofficial: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2005-5.pdf>

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

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

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

75

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

Ivo Jorge Valente, Current Vice Minister of Justice for the 5th Constitutional Government of RDTL said that the government has never banned an NGO in any field, including anti-corruption. New NGOs are only required to register themselves to the Justice

Ministry to operate legally. Indeed, according to government decree law Nu 5/2005 every new NGO is asked to voluntarily register to the Department of Civil Registration at Ministry of Justice to be legally recognized by government.

Cornelio do Rosario, Membership Service Officer of NGO Forum says, NGO Forum itself also under the process of registration to become a national foundation for all NGO's. During his first two meetings with the Ministry of Justice, he was asked to show; a) organization bylaws; b) recent bank statement with the capital amount no less than USD50,000; c) declaration of founders of at least ten persons and; d) a map to office.

Domingos Rodrigues, Program Manager of Luta ba Futuro, a new anti corruption NGO that based in Same (Southern of Timor Leste) also said, their first two months involved registering the organization with the Ministry of Justice and the process ran smoothly, with no hard questions asked when they mentioned to the officials that the main objective of the organization was to fight corruption.

References:

Ivo Jorge Valente, Current Vice Minister of Justice for the 5th Constitutional Government of RDTL, February 24th, 2014, Dili, Timor Leste.

Cornelio do Rosario, Membership Service Officer of NGO Forum, March 5th, 2014, Dili.

Domingos Rodrigues, Program Manager of Luta ba Futuro, a new anti corruption NGO based in Same District (Southern of Timor Leste), April 8th, 2014, Dili, Timor Leste.

Decree Law Nu.5/2005, June 25, 2005 on Nonprofit Corporation. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2005-5.pdf>

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

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

Comments:

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption and Economic Justice NGO noted that civil society organizations are quite strong and active in influencing public opinion to pressure the government to change its policies on laws and annual state budgets, but have very little effect in actually changing government decisions. Fausta da Costa, Program Director of LABEH, also noted that in last two years, civil society groups have been urging Parliament to ratify the anti-corruption law, however they feel their statements have not been taken seriously by the government.

Jose Vieira, an academic, also said that civil society organizations in Timor Leste frequently try to influence public policies, but the issue is that CSOs have little access to decision makers.

References:

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption and Economic Justice NGO, April 10th, 2014, Dili, Timor Leste.

Fausta da Costa, Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption and Good Governance NGO, March 7th, 2014, Dili, Timor Leste.

Jose Vieira, an Academic from Universidade da Paz – UNPAZ (University of Peace), April 10th, 2014, Dili, Timor Leste.

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

According to Arsenio Pereira da Silva, Executive Director of NGO Forum, none of their members have been shut down by government since the country declared its independence. Tito de Jesus Filipe, President of Timor Lorosa'e Journalists Association (TLJA) also noted that there has been no media report on the shutting down of any Anti Corruption NGO's in Timor Leste during the study period.

Ivo Jorge Valente, Vice Minister of Justice for the 5th constitutional government, noted that the government will never have any intention to shut down NGOs involved in controlling and eradicating corruption, on the contrary, the government has encouraged the NGOs to be more active in order to help state institutions such as anti-corruption commission, ombudsman and prosecutor general in presenting any corruption case to in court.

According to the latest assessment by the NGO Forum, there are 323 national and 57 international NGOs actively operating, and none have been shut down by government (Cornelio do Rosario). However, there are a number of NGOs registered with the Forum that no longer carry out their activities, but this is because of internal problems rather than being shut down by the government.

References:

Tito de Jesus Filipe, President of Timor Lorosa'e Journalists Association (TLJA), February 21st, 2014, Dili.

Ivo Jorge Valente, Vice Minister of Justice for the 5th constitutional government, February 24th, 2014, Dili, Timor Leste.

Arsenio Pereira da Silva, Executive Director of NGO Forum Timor Leste, February 24th, 2014, Dili.

Cornelio do Rosario, Membership Service Officer of NGO Forum Timor Leste, March 7th, 2014, Dili.

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

No: A NO score is earned if any NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

100

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

Comments:

Arsenio Pereira da Silva, Executive Director of the NGO Forum confirmed no anti-corruption activists were tried in court and/or jailed during this period of study. This was also reaffirmed by Ivo Jorge Valente, Vice Minister of Justice for the 5th constitutional government.

Francisco da Silva, Director of Timor Leste Media Development Center (TLMDC) which is actively involved in various trainings on good governance and investigative journalist noted that freedom of expression and association is deeply rooted in the principles of human rights in Timor Leste. For example, there are several prominent anti-corruption NGOs in the country, including LABEH, Luta Hamutuk and La'o Hamutuk. None of their members have been prosecuted or imprisoned during the period of study.

References:

Arsenio Pereira da Silva, Executive Director, NGO Forum Timor Leste, February 24th, 2014, Dili.

Ivo Jorge Valente, Vice Minister of Justice for the 5th constitutional government, February 24th, 2014, Dili, Timor Leste.

Francisco da Silva, Director of Timor Leste Media Development Center – TLMDC, February 24th, 2014, Dili, Timor Leste.

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

Comments:

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, and Fausta da Costa, Program Director of LABEH, both confirmed that during this research period (February 2013 – February 2014) there were no cases of anti-corruption activists being attacked or physically harmed by anyone. Jose Vieira, an academic noted that there have been dark threats through text messages and phone calls but without any real attack against anti-corruption activists.

References:

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption and Economic Justice NGO, April 10th, 2014, Dili, Timor Leste.

Fausta da Costa, Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption and Good Governance NGO, April 10th, 2014, Dili, Timor Leste.

Jose Vieira, an Academic from Universidade da Paz – UNPAZ (University of Peace), April 10th, 2014, Dili, Timor Leste.

Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

Comments:

There have been no murders or attempted murders of anti-corruption activists in Timor Leste.

Arsenio Pereira da Silva, Executive Director of the NGO Forum noted that none of their anti-corruption NGO members were attacked or killed for their work. Francisco da Silva, Director of Timor Leste Media Development Center confirmed no media knowledge of any murders or attempts as such murders.

Fausta da Costa, Program Director of LABEH, noted that their monitoring officer did get anonymous threats through short message services (SMS). However, there was no action and he believes there is no real threat of violence of killings. LABEH is a national NGO which has been engaged in anti-corruption and good governance for over 10 years.

References:

Arsenio Pereira da Silva, Executive Director, NGO Forum Timor Leste, February 24th, 2014, Dili.

Francisco da Silva, Director of Timor Leste Media Development Center-TLMDC, February 24th, 2014, Dili.

Fausta da Costa, Program Director of LABEH – Lalenok Ba Ema Hotu (Anti Corruption NGO), March 7th, 2014, Dili.

Yes: A YES score is earned if there were no documented cases of NGO 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?

75

04a. In law, citizens have a right to organize into trade unions.

Yes

No

Comments:

According to Constitution of The Republic Democratic of Timor Leste (RDTL) Article 52.1. states that, "Every worker has the right to form or join trade unions and professional associations in defense of his or her rights and interests."

Also, According to Parliament Resolution No. 8/2009 on Ratifies of Membership, The Convention No. 98 International Labor Organization, on the application of the principles right to organize and collective bargaining, article 3. states that, "Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined in the preceding Articles."

And Also, The Labour Code of the Democratic Republic of Timor-Leste, No.4.2012, article 78 says, "All workers and employers, without any discrimination and without any need for prior authorization, shall be free to establish, and to become members of, organizations the objective of which is to promote and defend their rights and interests."

References:

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002. Article 52 on Trade union freedom.

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

Parliament Resolution Nu. 8/2009, March 9th, 2009, on Ratifies of Membership, The convention No. 98 International Labor Organization. Official: http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no11.pdf. Unofficial: <http://www.jornal.gov.tl/?mod=artigo&id=1072> palavras=lei%20sindicato

The Labour Code of the Democratic Republic of Timor-Leste, No. 4/2012, December 20, 2011.

Official: http://www.jornal.gov.tl/public/docs/2012/serie_1/serie1_no7.pdf. Unofficial: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law%204-2012%20Labour%20Code.pdf>

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.

04b. In practice, citizens are able to organize into trade unions.

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

Comments:

Jose da Conceicao da Costa, Secretary General of the East Timor Trade Union Confederation (KSTL) noted that in the past, workers have been laid off from work simply because they are member to KSTL and involved in demonstration of workers' rights. According to him, this sort of unfair treatment against local workers by the employers continued throughout the period of this study.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, also said that disputes between employers and employees are often resolved with termination of contract without clear justification by the company.

Overall, there is a very low rate of unionization in Timor-Leste with high levels of informal economic activity (Freedom House). According to a 2013 report by the US Department of State, in Timor-Leste workers are not organized to a high degree, and have little experience negotiating or promoting worker rights, and thus are often not involved in policy debates and negotiations.

References:

Jose da Conceicao da Costa, Secretary General of the East Timor Trade Union Confederation (KSTL), March 31st, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 31th, 2014, Dili, Timor Leste.

Jose Vieira, academic from Universidade da Paz (UNPAZ), March 31th, 2014, Dili, Timor Leste.

Freedom House, Freedom of the World Report 2013: Timor-Leste. <http://www.freedomhouse.org/report/freedom-world/2013/east-timor-0#.U3UG-a1dXq8>

US Department of State Human Rights Report 2013: Timor-Leste. <http://www.state.gov/j/drl/rls/hrrpt/2013/eap/220237.htm>

100: Trade unions are common and are an important part of 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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

Comments:

According to Constitution of The Republic Democratic of Timor Leste, article 41.1, "Freedom of the press and other mass media is guaranteed."

"Freedom of the press shall comprise, namely, the freedom of speech and creativity for journalists, the access to information sources, editorial freedom, protection of independence and professional confidentiality, and the right to create newspapers, publications and other means of broadcasting." Article 41.2.

References:

Constitution of The Republic Democratic of Timor Leste (RDTL) March 20, 2002. Article 41.

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

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.

05b. In law, freedom of speech is guaranteed.

Yes | No

Comments:

According to Constitution of The Republic Democratic of Timor Leste, article 40.1, "Every person has the right to freedom of speech and the right to inform and be informed impartially."

"The exercise of freedom of speech and information shall not be limited by any sort of censorship." Article 40.2.

References:

Constitution of The Republic Democratic of Timor Leste (RDTL) March 20, 2002. Article 40 on Freedom of Speech and

Information. Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

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?

50

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Cancio Ximenes, Director of Weekly Newspaper Mata Dalan noted that it took one and half month for him to get his newspaper registered. During the registration process, he was asked to show organization bylaws, recent bank statement with the capital amount no less than USD50.000, and declaration of founders of at least ten persons. This provision applies to all groups who want to set up a newspaper or magazine. Though the number of print media outlets has increased, it has only slowly, with only one weekly being launched last year. The USD50.000 requirement is a significant barrier to overcome. However, the other elements of the licensing process are not particularly burdensome.

Ivo Jorge Valente, Current Vice Minister of Justice for the 5th Constitutional Government said that new print media entities are required by law (Decree Law No 5/2005) to register their institution with the Justice Ministry to get the identification number as a legal media entity.

References:

Cancio Ximenes, Director of Weekly Newspaper "Mata Dalan", February 21th, 2014, Dili, Timor Leste.

Ivo Jorge Valente, Current Vice Minister of Justice for the 5th Constitutional Government, February 21st, 2014, Dili, Timor Leste.

Tito de Jesus, Filipe, President of Timor Lorosa'e Journalists Association (TLJA), February 21th, 2014, Dili.

Decree Law Nu.5/2005, June 25, 2005 on Nonprofit Corporation. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2005-5.pdf>

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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | **No**

Comments:

All print media are required to be registered as Foundations under Law Nu.5/2005. There is no legally defined appeals mechanism for print media entities if a license is denied or revoked by the National Director of Registries and Notarial Services at the Ministry of Justice.

References:

Decree Law Nu.5/2005, June 25, 2005 on Nonprofit Corporation.

Official: http://www.jornal.gov.tl/public/docs/2002_2005/decreto_lei_governo/5_2005.pdf. Unofficial: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2005-5.pdf>

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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

Comments:

Cancio Ximenes, Director of weekly newspaper Mata Dalan who just registered his newspaper with the ministry of justice said, it took one and a half months (45 days) for him to complete the registration process. Mata Dalan was officially registered on September 23rd, 2013 and was the only paper that founded and registered in 2013.

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Association says that licenses for print media are required by law before a newspaper starts printing. While the registration process for newspapers and magazines is usually relatively quick, if the requirements are not complete, it could potentially take up to three or four months. Mouzinho Lopes, Director of Daily Independente also said, he registered his newspaper with the government three years ago, and it was took nearly three months to complete all requirements.

The National Directorate of Registries and Notaries of Ministry of Justice, who certifies the registration process under Government Decree Law No. 5/2005 must complete the process within 90 days.

References:

Cancio Ximenes, Director of weekly newspaper "Mata Dalan", March 3rd, 2014, Dili, Timor Leste.

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Association, April 11th, 2014, Dili, Timor Leste.

Mouzinho Lopes, Director of Daily INDEPENDENTE, April 11th, 2014, Dili, Timor Leste.

Decree Law Nu.5/2005, June 25, 2005 on Nonprofit Corporation. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2005-5.pdf>

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

Comments:

The registration fee paid for media foundation is US\$70, but prior to registering the organization is required to show a recent bank statement with a minimum balance of US\$50.000. According to Alexandre Assis, there was one weekly named "Teki Tabloid" which last year did not manage to register because it did not have a sufficient balance in the bank.

Cancio Ximenes, Director of weekly newspaper Mata Dalan, who recently registered, notes that he paid US\$70 for the registration fee, and was able to register, having completed all the necessary requirements.

References:

Cancio Ximenes, Director of weekly newspaper "Mata Dalan", March 3rd, 2014, Dili, Timor Leste.

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Association, April 11th, 2014, Dili, Timor Leste.

Mouzinho Lopes, Director of Daily Independente, April 11th, 2014, Dili, Timor Leste.

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?

94

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Luis Evaristo Soares, Director of Center of Community Radio, said that in relation to the absence of broadcasting law, frequency for his radio was very easy to obtain from the government. While the registration is free, the licensing involves steps that can take a couple of weeks.

Prizado Ximenes, President of Timor Leste Community Radio Association, also said that, there are 16 community radio stations currently operating throughout the country and all have had radio frequencies easily and fairly assigned. Domingos Bian who manages a catholic radio said, they obtained two frequencies from government (FM and AM) and both were obtained easily from the government.

Silvina Tavares, who managed an anti corruption radio in Dili (FM 91,2 Mhz) also said that it is quite easy to form either Radio or TV outlets. When registering, the Communications Regulatory Authority at the Ministry of Transportation and Telecommunications efficiently provided the frequency and the license for her radio station.

References:

Luis Evaristo Soares, Director of Center of Community Radio, March 17, 2014, Dili, Timor Leste.

Prizado Ximenes, President of Timor Leste Community Radio Association, March 17, 2014, Dili, Timor Leste.

Domingos Bian, Director of Radio Timor Kmanek, March 17, 2014, Dili, Timor Leste

Silvina Tavares, Director of Radio LABEH (Anti Corruption Radio FM91,2Mhz), May 9, 2014, Dili, Timor Leste.

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.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

"Any regulatory measures adopted by the Authority may be challenged before the competent courts." Article 29.1.

"No provision in the present Decree-Law shall affect the right of service providers to, at any time, apply to a competent court for judicial review." Article 29.2.

References:

Decree Law No. 15/2012 on The Regulation Of The Telecommunications Sector, article 29.1. Judicial review. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/index-e.htm>

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.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Luis Evaristo Soares, Director of Center of Community Radio, said it takes one month for him to get the radio frequency from the Communications Regulatory Authority at the Ministry of Transportation and Telecommunication. Prezado Ximenes and Domingos Bian who respectively run a private radio in the capital, also said that they were able to obtain the radio frequency within two months. The process and timeline are the same for TV.

References:

Luis Evaristo Soares, Director of Center of Community Radio, March 17, 2014, Dili, Timor Leste.

Prezado Ximenes, President of Timor Leste Community Radio Association, March 17, 2014, Dili, Timor Leste.

Domingos Bian, Director of Radio Timor Kmanek, March 17, 2014, Dili, Timor Leste

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Both Luis Evaristo Soares and Prezado Ximenes have registered their radio stations with the Communications Regulatory Authority at the Ministry of Transportation and Telecommunication at no cost or free. This no cost licensing is the same for both radio and TV.

References:

Luis Evaristo Soares, Director of Center of Community Radio, March 17, 2014, Dili, Timor Leste.

Prezado Ximenes, President of Timor Leste Community Radio Association, March 17, 2014, Dili, Timor Leste.

Domingos Bian, Director of Radio Timor Kmanek, March 17, 2014, Dili, Timor Leste

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

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

There has been no attempt by the government to block or censor the online publication. Both online newspapers and bloggers are free to publish anything. While the Parliament has talked about the possibility of the creation of an online law in conjunction with the media law, no changes have come to pass (Alexandre Assis and Filomeno de Brito Carvalho).

According to Freedom House's 2013 report, though internet access is highly limited in Timor-Leste, "the government does not censor websites or restrict users' access to diverse content."

References:

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Association, April 11th, 2014, Dili, Timor Leste.

Filomeno de Brito Carvalho, Director of Centru Jornalista Investigativu Timor Leste – CJITL, a leading online newspaper in Timor Leste, April 11th, 2014.

Freedom House ,Annual Report on the Freedom of the Press 2013. <http://www.freedomhouse.org/report/freedom-press/2013/east-timor#.UxZR1fSwLA>

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.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

Filomeno de Brito Carvalho, Director of Centru Jornalista Investigativu Timor Leste – CJITL says; until now there has been no attempt by the government to remove online information or disable servers due to their political content. Both online newspapers and bloggers are always free to publish anything even there are Timorese porn sites and blogs, created by unknown bloggers which have not been removed by the government.

According to Freedom House, "Internet access was limited to just 0.91 percent of the population in 2012 due to poverty and inadequate infrastructure. Nonetheless, the government does not censor websites or restrict users' access to diverse content."

References:

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Association, April 11th, 2014, Dili, Timor Leste.

Filomeno de Brito Carvalho, Director of Centru Jornalista Investigativu Timor Leste – CJITL, a leading online newspaper in Timor Leste, April 11th, 2014.

Freedom House, Annual Report on the Freedom of the Press 2013. <http://www.freedomhouse.org/report/freedom-press/2013/east-timor#UxZR1fSwLA1>

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?

50

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

Comments:

Timor Leste does not yet have a media law but an article at the criminal code governed this issue.

"Any person who, by any means, even if lawful, becomes privy to facts regarding the private or sexual life of another person and, without consent of the latter, publicly circulates the same without just cause, is punishable with up to 1 year imprisonment or a fine." Article 183. Public disclosure of private information.

References:

Penal Code of the Republic Democratic of Timor Leste, Decree Law No. 19/2009, Article 285, March 30th, 2009. http://www.wipo.int/wipolex/en/text.jsp?file_id=243617

Francisco Agustinho Pinto, Lawyer and Media Specialist, Phone Interview on May 9, 2014.

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:
At times, state media outlets don't report on corruption or on corruption reports due to political considerations. For example, Radio Television East Timor receives invitations from NGOs who want to publish advocacy work on corruptions, but officials at the station refused to allow reporters to cover the press conference.

Other reporters can at times face various forms of pressure when pursuing a politically powerful subject as well. For instance, Armando Alves, an online journalist from Center for Investigative of Timor Leste noted that last month in Atauro island, he and a number of journalists from the print and electronic media were confronted by a number of people suspected of being messengers from sub-district administrator. At the time, he and his friends on their way to confirm a case of corruption allegation that involved the head of the sub-district.

Joaozito Viana, Deputy Director of Luta Hamutuk, noted that threats from government to news outlets for reporting on corruption are minimal.

References:
Armando Alves, an online journalist from Center for Investigative of Timor Leste, April 11th, 2014, Dili, Timor Leste.
Raimundos Oki, journalist from Daily Timor Post, April 11th, 2014, Dili, Timor Leste.
A source from state radio who requested anonymity, April 11th, 2014, Dili, Timor Leste.
Joaozito Viana, Deputy Director Luta Hamutuk Institute, Anti Corruption NGO, March 17, 2014, Dili, Timor Leste.

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:
Jose Ximenes, Director of Timor Post, noted that the Timor Post has never been directly censored by the government. For example, last year, the Timor Post reported on corruption allegation against former Justice Minister Lucia Lobato (who is now sentenced to five years in prison) and experienced no government attempts at censoring what they published.

Luis Evaristo Soares, Director of Center for Radio Communities, also confirmed that there is no direct censorship effort made to his radio even though the government funds his station every year.

Luta Hamutuk's monitoring shows, media reports frequently on alleged corruption at the highest levels, and there is no government prevention of publication.

References:

Jose Ximenes, Director of Daily Newspaper, Timor Post, March 17th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 17th, 2014, Dili, Timor Leste.

Luis Evaristo Soares, Director of Center for Radio Communities, government funded radio. March 17th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director Luta Hamutuk Institute, Anti Corruption NGO, March 17, 2014, Dili, Timor Leste.

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 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?

45

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

Yes | **No**

Comments:

According to Decree Law No.5/2005 on Non-Profit Corporate Bodies, any non-profit private media (print or electronic) who register with the Ministry of Justice should submit a founder declaration letter, with at least 10 members. This is then made public knowledge.

However, this requirement is only upon initial registration, and there is no requirement to refile regularly, either annually during relicensing or during a change in ownership.

References:

Decree Law No 5/2005 on Non-Profit Corporate Bodies, July 25th, 2005, Article 3 on acquiring personality. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2005-5.pdf>

Decree Law No. 14/2003 on Public Companies, September 24th, 2003, Article 5 on Mandatory information in the articles of incorporation. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/index-e.htm>

Yes: A YES score is earned if print media companies are required by law to publicly 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 publicly disclosed.

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

Yes | **No**

Comments:

According to Decree Law No.5/2005 on Non-Profit Corporate Bodies, any non-profit private media (print or electronic) who register with the Ministry of Justice should submit a founder declaration letter, with at least 10 members. This is then made public knowledge.

However, this requirement is only upon initial registration, and there is no requirement to refile regularly, either annually during relicensing or during a change in ownership.

References:

Decree Law No 5/2005 on Non-Profit Corporate Bodies, July 25th, 2005, Article 3 on acquiring personality. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2005-5.pdf>

Decree Law No. 14/2003 on Public Companies, September 24th, 2003, Article 3 on Mandatory information in the articles of incorporation. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/index-e.htm>

Yes: A YES score is earned if broadcast media companies are required by law to publicly 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 publicly disclosed.

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

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

Comments:

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Association (TLJA), noted that TLJA has received several reports of journalists who take bribes from local businessmen to influence their coverage. The code of ethics for Timorese journalists promulgated on October 27, 2013, article 10 clearly states, "A journalist is forbidden to receive bribes." There are many reports of bribe-taking among journalists, who accept bribes rather than uncover and report on corruption, according to Cancio Ximenes, Director of Mata Dalan.

According to Joaozito Viana, an anti corruption activist from Luta Hamutuk Institute, when compared to the state media such as Radio Television Timor Leste (RTTL), editors and journalists from private media do more closely adhere to the code of conduct, while RTTL coverage more often violates the code of conduct's first article on the right of society to obtain correct information, as some important events sometimes do not get coverage from RTTL.

References:

Joaozito Viana, Deputy Director Luta Hamutuk Institute, Anti Corruption NGO, March 17, 2014, Dili, Timor Leste.

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Association (TLJA), April 11th, 2014, Dili, Timor Leste.

Cancio Ximenes, Director of Weekly Newspaper "Mata Dalan", March 17, 2014, Dili, Timor Leste.

Journalists Code of Ethics. October 27, 2013. Accessed on April 18, 2014. <http://arktlenglish.files.wordpress.com/2013/12/kode-etik-final.pdf>

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

Comments:

European Union election observation mission, in its final report on the most recent 2012 elections states, “All 21 parties and party coalitions received access to the state-owned Radio and Television of Timor-Leste (RTTL) in accordance with the regulations. They also had access to the privately-owned television channel and newspapers and to non-state radio stations. Debates on state-owned RTTL TV and on privately-owned STL TV granted candidates additional free exposure....The volume of coverage of the campaign was much smaller in the private and non-state electronic media. On the privately-owned STL TV there was a less diverse range of coverage but balanced access was given to most of the political parties and coalitions. Non-state radio stations devoted minimal attention to the campaign, giving access to a limited number of parties and candidates, although their treatment was relatively balanced.”

Francisco Agustinho Pinto, Lawyer and Media Specialist, said that based on the last election in 2012, both mass and electronic media have given the same portion of air time for all political parties and presidential candidates, especially during the campaign period.

As an example of balance on the radio, during the 2012 election period, CJITL collaborated with all the community radio stations across the country in establishing a radio talk show called “A question of balance”. The show provided an intensive and balanced forum for all political parties that competed in the parliamentary elections.

References:

European Union election observation mission Timor Leste Parliamentary Election 2012 Final Report.http://www.eueom.eu/files/pressreleases/english/east-timor-2012-final-report_en.pdf

Filomeno Brito de Carvalho, Director of CJITL – Center for Investigative Journalist of Timor Leste, March 17th, 2014, Dili, Timor Leste.

Francisco Agustinho Pinto, Lawyer and Media Specialist, Currently working as Legal Advisor for Anti Corruption Commission, April 11th, 2014, Dili, Timor Leste.

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:

European Union election observation mission Timor Leste Parliamentary Election 2012, stated, “RTTL (state channel) aired on its radio and television channels a daily programme inserted into its prime time news bulletins covering the campaign activities of the different political parties. RTTL also provided ten minutes of free airtime daily to each party and party coalition, during which a pre-recorded presentation of their electoral programme was shown. All registered parties and party coalitions used the free airtime to which they were entitled with the exception of UNDERTIM. The government increased RTTL’s budget by US\$500,000

to allow it to cover the elections. RTTL used these funds to assign 21 teams of journalists to follow the campaigns of all the parties and coalitions running in the election.”

According to Faustino Cardoso, Former President of National Election Commission, as published by daily online diakkalae.com, State Radio and Television (RTTL) signed an agreement with National Election Commission to facilitate live debates for both parliamentary and presidential election campaign.

References:

European Union election observation mission, Final Report on the 2012 Parliamentary election. http://www.eueom.eu/files/pressreleases/english/east-timor-2012-final-report_en.pdf

Faustino Cardoso, Former President of National Election Commission, with the State Radio an Television Board Director, Expedito Dias Ximenes and the political representatives, of April 12, 2012. <http://www.youtube.com/watch?v=k39I-a50IGI>

April 13, 2012 debate between two presidential candidates on state radio and television. Accessed on website: Di'ak Ka Lae? Timor-Leste Reconsidered on April 18, 2014. <http://www.diakkalae.com/2012/04/lu-olo-v-tmrs-televised-debate-part-1.html>

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

Comments:

Tito de Jesus Filipe, President of Timor Lorosa'e Journalists Association (TLJA), said that during the period of study there were no journalists jailed for reporting on corruption. Cancio Ximenes, who run a weekly anti corruption newspaper in the country noted that his paper has been operating for a year in the field of anti corruption and his journalists have yet to have any cases raised against them.

Francisco da Silva, Director of Timor Leste Media Development Center (TLMDC), also asserted that freedom of the press in Timor Leste fairly deeply rooted across the country, as no local journalists have journalist been imprisoned for reporting on corruption and crimes.

References:

Tito de Jesus Filipe, President of Timor Lorosa'e Journalists Association (TLJA), February 14th, 2014, Dili.

Cancio Ximenes, Director of weekly newspaper "Mata Dalan", February 21st, 2014, Dili.

Francisco da Silva, Director of Timor Leste Media Development Center (TLMDC), February 21st, 2014, Dili.

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

Comments:

Tito de Jesus Filipe, President of Timor Lorosa'e Journalists Association (TLJA), noted that during the year of 2013, there were no incidents of violence committed against any journalist, including those investigating and reporting on corruption. Cancio Ximenes, Director of weekly newspaper Mata Dalan said that they have been operating for a year in publicizing several corruption issues and none of his journalist been physically harmed.

References:

Tito de Jesus Filipe, President of Timor Lorosa'e Journalists Association (TLJA), February 14th, 2014, Dili.

Cancio Ximenes, Director of weekly newspaper "Mata Dalan", February 21st, 2014, Dili.

Francisco da Silva, Director of Timor Leste Media Development Center (TLMDC), February 21st, 2014, Dili.

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

Comments:

Tito de Jesus Filipe, President of Timor Lorosa'e Journalists Association (TLJA), confirmed that during the year of 2013, there were no journalist killed, including those reporting on corruption in the media. "It has been eleven years of independence now, and I am proud to confirm that yet no journalist has been killed for covering corruption cases." Francisco da Silva, Director of Timor Leste Media Development Center (TLMDC), also confirmed that no journalist has been killed for performing their duties.

References:

Tito de Jesus Filipe, President of Timor Lorosa'e Journalists Association (TLJA), February 14th, 2014, Dili.

Francisco da Silva, Director of Timor Leste Media Development Center (TLMDC), February 21st, 2014, Dili.

Cancio Ximenes, Director of weekly newspaper "Mata Dalan", February 21st, 2014, Dili.

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.

1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

0

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

Yes | **No**

Comments:

There is no current law giving citizens rights to request government information and records. The government has declared its intent to pass such a law (see below), but this has not yet been acted on.

“During the term of the Fifth Constitutional Government legislation will be introduced to the National Parliament to provide a right of citizens to access information held by the government that impacts upon them, as long as it is not against the public interest. While international best practice provides exceptions for information that impacts upon national security, commercial confidentiality, individual privacy and the confidentiality of Council of Ministers discussions, the legislation will provide a broad right of all Timorese citizens to access government documents that impact upon them.” Program of the V Constitutional Government 2012 – 2017 legislature.

References:

Program of the V Constitutional Government 2012 – 2017 legislature. Government website accessed on April 18, 2014. <http://timor-leste.gov.tl/?cat=39&lang=en#toc335313496>

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002.

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | **No**

Comments:

There is no current law giving citizens rights to request government information and records, and as such, no right to appeal. The government has declared its intent to pass such a law (see below), but this has not yet been acted on.

“During the term of the Fifth Constitutional Government legislation will be introduced to the National Parliament to provide a right of citizens to access information held by the government that impacts upon them, as long as it is not against the public interest. While international best practice provides exceptions for information that impacts upon national security, commercial confidentiality, individual privacy and the confidentiality of Council of Ministers discussions, the legislation will provide a broad right of all Timorese citizens to access government documents that impact upon them.” Program of the V Constitutional Government 2012 – 2017 legislature.

References:

Program of the V Constitutional Government 2012 – 2017 legislature. Government website accessed on April 18, 2014. <http://timor-leste.gov.tl/?cat=39&lang=en#toc335313496>

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002.

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

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:

There is no current law giving citizens rights to request government information and records, and as such, no established mechanism for such requests. The government has declared its intent to pass such a law (see below), but this has not yet been acted on.

"During the term of the Fifth Constitutional Government legislation will be introduced to the National Parliament to provide a right of citizens to access information held by the government that impacts upon them, as long as it is not against the public interest. While international best practice provides exceptions for information that impacts upon national security, commercial confidentiality, individual privacy and the confidentiality of Council of Ministers discussions, the legislation will provide a broad right of all Timorese citizens to access government documents that impact upon them." Program of the V Constitutional Government 2012 – 2017 legislature.

References:

Program of the V Constitutional Government 2012 – 2017 legislature. Government website accessed on April 18, 2014. <http://timor-leste.gov.tl/?cat=39&lang=en#toc335313496>

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002.

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

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 to information requests effective?

13

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

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

Comments:

Without a legal requirement for citizen access to government information and records, items available are at the discretion of the government and agencies involved. Some agencies may be more open than others; and some may be proactive in sharing information, while others may or may not respond to specific requests. For instance, budget and procurement information is made available on the online Government Transparency Portal, though this information is not comprehensive nor updated in a regular or timely fashion. Those without online access can only access such information at the main offices in Dili.

References:

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

Florindo de Jesus, Director of Radio Povu Viqueque, March 29th, 2014, phone interview from Dili, Timor Leste.

Armando da Silva, a resident who lives in Baucau District, eastern part of Timor Leste, April, 11th, 2014, phone interview from Dili, Timor Leste.

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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Without a legal requirement for citizen access to government information and records, items available are at the discretion of the government and agencies involved. Some agencies may be more open than others; and some may be proactive in sharing information, while others may or may not respond to specific requests. For instance, budget and procurement information is made available on the online Government Transparency Portal, though this information is not comprehensive nor updated immediately. Those without online access can only access such information at the main offices in Dili.

References:

Domingos Bian, Director of Radio Timor Kmanek, Diocese Radio in Dili, March 29th, 2014, Dili, Timor Leste.

Florindo de Jesus, Director of Radio Povu Viqueque, March 29th, 2014, phone interview from Dili, Timor Leste.

Armando da Silva, a resident who lives in Baucau District, eastern part of Timor Leste, April, 11th, 2014, phone interview from Dili, Timor Leste.

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 NGOs. 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 NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Without a legal requirement for citizen access to government information and records, items available are at the discretion of the government and agencies involved. Some agencies may be more open than others; and some may be proactive in sharing information, while others may or may not respond to specific requests. For instance, budget and procurement information is made

available on the online Government Transparency Portal, though this information is not comprehensive nor updated immediately. Those without online access can only access such information at the main offices in Dili.

The government is reported to be generally open in providing requested information. However, this information may at times only be shared in Portuguese, which is limiting for many (Jose Vieira, interview). Also, some information provided is less than what is requested, and may be more general than needed (Florindo de Jesus, interview).

References:

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

Domingos Bian, Director of Radio Timor Kmanek, Diocese Radio in Dili, March 29th, 2014, Dili, Timor Leste.

Florindo de Jesus, Director of Radio Povu Viqueque, March 29th, 2014, phone interview from Dili, Timor Leste.

Government Transparency Portal website. Accessed on May 15, 2014. <http://www.transparency.gov.tl/english.html>

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

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

100 | 75 | 50 | 25 | 0

Comments:

Without a legal requirement for citizen access to government information and records, items available are at the discretion of the government and agencies involved. There is no formal request process, and no formal appeals process.

References:

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

Florindo de Jesus, Director of Radio Povu Viqueque, March 29th, 2014, phone interview from Dili, Timor Leste.

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.

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

100 | 75 | 50 | 25 | 0

Comments:

Without a legal requirement for citizen access to government information and records, items available are at the discretion of the government and agencies involved. There is no formal request process, and no formal appeals process.

References:

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working as a Legal Advisor for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

Florindo de Jesus, Director of Radio Povu Viqueque, March 29th, 2014, phone interview from Dili, Timor Leste.

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.

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

100 | 75 | 50 | 25 | 0

Comments:

Without a legal requirement for citizen access to government information and records, items available are at the discretion of the government and agencies involved. Some agencies may be more open than others; and some may be proactive in sharing information, while others may or may not respond to specific requests. For instance, budget and procurement information is made available on the online Government Transparency Portal, though this information is not comprehensive nor updated immediately. Those without online access can only access such information at the main offices in Dili.

Where requests for specific information is denied, the government may provide a general reason. However, even if provided, frequently the explanations are vague (Ximenes and Pinto, interviews).

References:

Cancio Ximenes, Director of Weekly Newspaper "Mata Dalan", March 15th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working as a Legal Advisor for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

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.

2.1. Voting and Party Formation

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

Comments:

Any citizen over 17 may vote so long as they are registered (Constitution 7_47) and electoral capacity is given to: All Timorese citizens over 17 years of age residing in the national territory (Law 6/2006, Art. 4 & Law 7/2006 Art. 4)

NOTE, however, that for Presidential and Parliamentary elections, voting is denied to: "Individuals judicially disabled due to a sentence imposed by a court of law; b) Individuals clearly and publicly known as mentally ill even where they are not judicially disabled." (Law 7/2006, Art. 5 and Law 6/2006, Art. 5).

This limitation has effectively been removed for imprisoned and hospitalized voters for presidential and parliamentary elections, but not necessarily for the mentally ill. In Parliamentary elections, "Voters who possess a voter card or the Timorese passport and find themselves hospitalized or being held at penitentiary institutions are entitled to vote by means of the itinerant voting process." (Law 6/2007, Art. 4). Law 8/2011 Art. 4(3) includes the same language, allowing imprisoned and hospitalized voters to vote via itinerant ballot. Yet, neither law says anything about mentally ill voters.

References:

Constitution of the Democratic Republic of Timor-Leste (2002) 7_47

(Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf)

Law 6/2006, Law on Election of Parliament (Dec. 28, 2006) Arts. 2(1) and 4 (Available at: www.jornal.gov.tl/lawsTL/RDRTL-Law/RDRTL-Laws/Law-2006-06.pdf) (note Law 6/2007, First Amendment to Law No. 6/2006: Law on the Election of the National Parliament (May 31, 2007) Available at: www.jornal.gov.tl/lawsTL/RDRTL-Law/RDRTL-Laws/Law-2007-06.pdf, removing Art. 5 regarding mental disability and prison);

Law 7/2006, Law on Election of the President (Dec. 28, 2006) Arts. 2(1), 4 and 5. (Available at: www.jornal.gov.tl/lawsTL/RDRTL-Law/RDRTL-Laws/Law-2006-07.pdf); Law 8/2011, Second Amendment to Law no. 7/2006 of 28 December, Law on the Election of the President of the Republic, Art. 4 (22 June 2011) (Available at: www.jornal.gov.tl/lawsTL/RDRTL-Law/RDRTL-Laws/Law%20no.%208_2011%20Second%20Amendment%20to%20Law%207-2006%20of%20the%2028%20December%20%20Law%20on%20the%20Election%20of%20the%20President%20of%20the%20Republic%20.pdf).

The official texts of the laws are in Portuguese, and can be accessed from the menu in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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

Comments:

The Constitution of Timor-Leste sets term limits but does not set dates for elections. The laws on elections of the Parliament and President set dates within which elections must be called and the procedures to do so.

Law 6/2006 on Parliamentary Elections sets term limits for National Parliament of 5 years– elections to be called by President within a stated time period:

Art. 17(1): "After hearing the Government and the political parties seating in the National Parliament, the President of the Republic shall schedule by decree the election date for the Members of Parliament at least eighty 80 days or, in case of dissolution, 60 days, in advance."

Law 7/2006 Art. 2(2) sets term limits for the President for 5 years.

Law 7/2006 Art. 12 sets procedure for Presidential elections: "1. After consulting the Government and the political parties seating in Parliament, the President of the Republic shall schedule by decree the election date with a minimum of 60 days in advance. . . . 3. The first voting shall be held up to one week before the term of office of the outgoing President expires."

References:

Constitution of the Democratic Republic of Timor-Leste (2002) 7_7_99 and 93(4) (legislature for 5 years) and 7_75(2) (president for 5 years) (Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf, Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf);

Law 6/2006, Law on the Election of the National Parliament, Art. 17(1) (available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2006-06.pdf);

Law 7/2006, Law on Election of the President (Dec. 28, 2006) Arts. 2(2) and 12, (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2006-07.pdf)

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep_blica (official gazette) at <http://www.jornal.gov.tl/>.

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?

83

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

100 | 75 | 50 | 25 | 0

Comments:

In the most recent elections (2012), there were many limitations to all citizens voting in practice. Disabled citizens encountered obstacles in voting. For example, "RHTO project officer and campaign organiser Joel Fernandes said that all but 3 booths in Dili had stairs that created barriers to people with disabilities, many of whom had to be carried up stairs in order to cast their vote. He also reported pregnant voters, the elderly and people with disabilities were not given priority to vote." (People with Disabilities have the Right to Vote, 14 July 2012).

One significant obstacle to practical universal voting is the requirement that voters vote in the local area in which they registered. As a result, many voters were either required to undertake a voyage to their area of registration, often incurring significant cost to do so, or could not vote. This particularly affected students, many of whom had registered in their home village but were in the capital city for schooling. As UNMIT noted, "[while s]uch a requirement does not of itself breach international standards . . . it may in practice, however, have undesirable or discriminatory effects, including restricting access to voting. The observers received a number of reports of voters having to undertake significant travel at their own expense to go to the place where they could vote, and there was an exodus from Dili in the days prior to polling day as people returned to the districts. The costs to individuals of having to under take such travel would in some cases have been considerable, as would have been the economic costs to the state of having people travelling rather doing productive work on the days in question." (UNMIT, p. 34.);

Moreover, the State does not provide a means by which citizens abroad may vote. This requirement resulted in the disenfranchisement of numerous voters who were living and studying abroad who had no means of voting unless incurring a

costly trip back to Timor-Leste. For example, an interview with the representative of a local good-governance NGO noted that: People outside of the country have no ability to vote, including ambassadors, because there is no arrangement for voting anywhere but one's home suco (village). Numerous students were unable to vote in the 2012 elections and held demonstrations regarding this fact because they were at university in Dili but were registered to vote in their home districts and would have to incur travel costs to get there. (Interview, 7 April 2013)

The next elections are not scheduled until in 2017, at the latest, and there will be no by-elections. It is therefore difficult to know whether these issues will be remedied, as Timor-Leste is a young and changing nation. The state has not made an indication that it plans to change the location of registration voting requirement; however, these are changes to the law that often occur a few months before the elections, so it is difficult to predict (Interview, 15 April 2014).

References:

East Timor Law and Justice Bulletin, People with Disabilities have the Right to Vote, 14 July 2012 at <http://www.easttimorlawandjusticebulletin.com/2012/07/people-with-disabilities-have-right-to.html>

UNMIT, Compendium of the 2012 Elections in Timor-Leste (July 2012), Available at: <https://sites.google.com/site/timorlesteelections2012/file-cabinet>

Interview with NGO representative who requested anonymity, Dili, Timor-Leste (7 April 2014 and 15 April 2014).

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

Comments:

Overall, in the most recent elections (held 2012), there were generally no significant concerns of ballot secrecy. There was no evidence of tampering. However, there were some issues that affected the secrecy of the ballot for some voters. For example, observers noted an issue with the configuration of voting booths in some areas that may have led to some compromised secrecy. For example, the EU Election Observer Mission noted, "The decision of the electoral administration to place voting booths facing the interior of polling stations was evaluated by EU observers as detrimental to the secrecy of vote in only a few cases. (EU EOM to Timor-Leste, p. 5).

There were also reports that blind voters had their secrecy of ballot compromised. "In Viqueque [District] blind people, accompanied by a family member were assisted instead by STAE. The President of the polling booth completed the blind person's ballot sheet by reading aloud the party names and numbers for the person and punching the sheet as instructed." (People with Disabilities have the Right to Vote (14 July 2012))

Additionally, UNMIT observers noted that "The most concerning issue was the reported use of mobile phones with a camera function to photograph ballot papers after they had been marked but before they had been deposited in the sealed ballot box. (UNMIT, (July 2012) p. 34). However, this is the only report that the researcher found indicating such an issue. And, the UNMIT report did not consider this a wide-spread or prevalent concern.

The next elections are not scheduled until in 2017, at the latest, and there will be no by-elections. It is therefore difficult to know whether these issues will be remedied, as Timor-Leste is a young and changing nation.

References:

East Timor Law and Justice Bulletin, People with Disabilities have the Right to Vote (14 July 2012) Available at: <http://www.easttimorlawandjusticebulletin.com/2012/07/people-with-disabilities-have-right-to.html>

EU Election Observer Mission to Timor-Leste, Final Report EU EOM Timor-Leste 2012 (Sept. 2012), Available at: http://eeas.europa.eu/eucom/missions/2012/timor-leste/reports_en.htm

UNMIT, Compendium of the 2012 Elections in Timor-Leste (July 2012), Available at: <https://sites.google.com/site/timorlesteelections2012/file-cabinet>

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:

Although Timor-Leste is a nascent democracy with only three rounds of election history by which to gauge consistency of elections, the 2012 elections followed the democratic process for calling of elections. The deadlines for calling elections were respected and the term limits set for both President and Parliament were adhered to. There were no reports that the 2012 elections were irregular in timing.

References:

Interview with representative from local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with First Assistant Secretary General of Timorese political party who requested anonymity (23 April 2014);

UNMIT, Compendium of the 2012 Elections in Timor-Leste (19 June 2012) p. 10-19, available at: <http://unmit.unmissions.org/Portals/UNMIT/DGSU/Compendium%20of%20the%202012%20Elections%20-%2015%20March.pdf>

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?

85

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

Yes | No

Comments:

While citizens generally have the right to form political parties without interference from the government, there are limited legal restrictions prohibiting certain types of parties from being formed, such as those deemed to support racism/xenophobia or terrorism. Moreover, registration requirements such as a numerical and representational minimum and authenticated identification documents may restrict free party formation.

"Every citizen has the right to establish and to participate in political parties." (Const. 46(2)). See also 7(2) and 70(2) (state shall value all parties and rights of political parties to democratic opposition).

Law 6/2006 Art. 51 makes it a crime to obstruct any party from participating in elections.

Law 3/2004 7_11(1)

"The establishment of political parties shall not be subject to authorisation."

But, note: Constitution 7_43 creates restrictions on the right to form political parties by limiting the right to associate based on non-violence, military, terrorism and racism/xenophobia:

"1. Everyone is guaranteed freedom of association provided that the association is not intended to promote violence and is in accordance with the law. 2. No one shall be compelled to join an association or to remain in it against his or her will. 3. The establishment of armed, military or paramilitary associations, including organisations of a racist or xenophobic nature or that promote terrorism, shall be prohibited."

Law 3/2004 7_13 includes registration (through the Ministry of Justice) procedures for all parties, including a minimum number of members (1500, aged 17+) spread proportionately across the country and copies of authenticated identification for applicants.

References:

Constitution of the Democratic Republic of Timor-Leste 7_7_46(2), 43, 7(2) and 70(2) (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Constitution.pdf)

Law 3/2004, Law on Political Parties (Mar 25, 2004) 7_11 (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-3.pdf>)

Law 6/2006, Law on Election of Parliament (Dec. 28, 2006) Art. 51 (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2006-06.pdf)

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jornal da República (official gazette) at <http://www.jornal.gov.tl/>.

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

Comments:

Constitution 46(1): "Every citizen has the right to participate in the political life and in the public affairs of the country, either directly or through democratically elected representatives."

Constitution 63: "1. Direct and active participation by men and women in political life is a requirement of, and a fundamental instrument for consolidating, the democratic system. 2. The law shall promote equality in the exercise of civil and political rights and non-discrimination on the basis of gender for access to political positions."

Constitution 75(1): "To stand as presidential candidates, East Timorese citizens should meet cumulatively the following requirements:

- original citizenship;
- at least 35 (Thirty -five) years of age;
- to be in possession of his or her full faculties;
- to be proposed by a minimum of five thousand voters.

Law 7/2006, Art. 7 creates reasonable limitations on presidential candidates, making ineligible those who currently hold other political positions listed in the article.

Law 6/2006, Art. 7 creates reasonable limitations on parliamentary candidates, making ineligible those who currently hold other political positions listed in the article.

Law 6/2006, Art. 6:

"Timorese citizens with active electoral capacity are eligible to run for the National Parliament." (active electoral capacity is defined as those 17 and older and have registered to vote.)

References:

Constitution of the Democratic Republic of Timor Leste (May 20, 2002) 7_7_ 46(1), 63, and 75(1) (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Constitution.pdf)

Law 7/2006, Law on Election of the President (Dec. 28, 2006) Arts. 6 and 7 (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2006-07.pdf)

Law 6/2006, Law on Election of Parliament (Dec. 28, 2006) Arts. 6 and 7 (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2006-06.pdf)

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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

Comments:

While there is no guarantee of success, political parties may generally be formed freely in Timor-Leste. In 2012, there was no intimidation of groups based on their political beliefs, and there were no reports that requirements or rules were applied unfairly. Indeed, representatives from both a Timorese good governance NGO and a Timorese political party noted that the registration requirements are very easy and fairly applied as evidenced by the large number of small parties who have registered.

Note that in March 2014, the Timorese Parliament passed a resolution condemning the CPD-RDTL as an illegal group due, inter alia, to their conducting military activities and espousing an anti-government platform. This led to the capture and arrest of leader Mauk Moruk who is in preventive detention awaiting trial. Some human rights groups in the country have indicated that this violates the freedom of association as it condemns the entire party rather than a single individual. (See: Parliamentary Res. 5/2014 (not yet online); http://belun.tl/wp-content/uploads/2014/03/Resolution-on-illegal-groups_FINAL-20-Marsu-2014.pdf; and Joint Civil Society Declaration on the Joint PNTL/F-FRDTL Operation Implementing Parliamentary Resolution No. 5/2014 and Council of Ministers Resolution No. 8/2014 (April 22, 2014) at www.loahamutuk.org/Justice/DeklarasaunCSOPNTLFFDTL22Abr2014en.pdf)

References:

Interview with representative for local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with of First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014)

JOINT CIVIL SOCIETY DECLARATION on the Joint PNTL – F-FDTL Operation Implementing Parliamentary Resolution No. 5/2014 and Council of Ministers Resolution No. 8/2014, La'o Hamutuk website, April 22, 2014, <http://www.loahamutuk.org/Justice/DeklarasaunCSOPNTLFFDTL22Abr2014en.pdf> Accessed on May 1, 2014. Accessed on May 1, 2014.

Monitoring Results: Parliamentary Resolution No. 5/2014 Against CRM & CPD-RDTL, Belun Website, March 18, 2014, http://belun.tl/wp-content/uploads/2014/03/Resolution-on-illegal-groups_FINAL-20-Marsu-2014.pdf.

"Parliamentary Resolution 4/2014 'De rep"dio a tentativas de instabilidade e ameaa"as ao Estado de Direito' is online at http://www.jornal.gov.tl/public/docs/2014/serie_1/serie1_no9.pdf

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:

In Timor-Leste, most citizens are eligible to run for office with fairly-applied and transparent guidelines. The financial burden has not generally discouraged people from running for office. While there are no clear reports of this restricting citizens from running for office, a representative from a local good governance NGO noted that some people may be discouraged from running for parliament as party lists discourage independent candidates.

While there are no significant reports of political intimidation discouraging candidates, the First Assistant Secretary General of a Timorese political party noted that there were some instances in 2012 in which the leader of CNRT (also the Prime Minister) used government pressure to support the CNRT Presidential candidate, Taur Matan Ruak.

References:

Interview with representative from good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with director of independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

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. A system of party lists may discourage or prevent independent 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:

In practice in Timor-Leste, opposition parties are represented in the parliament. A top-level official in a Timorese political party reports that the opposition has the ability and the responsibility to pursue its platforms and actively be involved in pushing its agenda in parliament. He notes that there is no unnecessary political pressure stopping the opposition from forcing votes and influencing proceedings.

However, the report of a Timorese good governance NGO notes that the largest opposition party in the country is "choosing" to no longer influence proceedings or play a role as the opposition. Moreover, the director of an independent newspaper indicates that there is often a consensus formed before the debates such that the opposition is not forcing certain issues. The political dynamics in this country—a country only now finding some political stability—have led to a situation in which fear of destabilizing the country may result in stifling opposition. The opposition and leading government parties have found a peaceful middle-ground on which to govern that has kept things calm, but which has also decreased some democratic debate and engagement. This has raised concerns that the opposition party is no longer playing its role in raising opposition or debate of certain issues.

References:

Interview with representative from good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with director of independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014).

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.

2.2. Election Integrity

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

100

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

Yes

No

Comments:

Constitution 65.6: "6. Supervision of voters' registration and electoral acts shall be incumbent upon an independent organ, the competences, [sic] composition, [sic] organization and functioning of which shall be established by law."

Law 5/2006, Art. 2(1): "Electoral administration bodies shall exercise functions relating to all electoral acts pertaining to organs of sovereignty, referenda, or local government."

Law 5/2006, Art. 4(1): "The National Electoral Commission [CNE] is hereby created, and it shall be the competent body to supervise the electoral acts referred to by the present law and regulations enforcing the electoral or referenda laws."

Law 5/2006, Art. 8: "The following shall be the competencies of CNE:

- a) Supervise the electoral process;
- b) Ensure the enforcement of constitutional and legal provisions relating to the electoral process;
- c) Approve the enforcing regulations provided for in the present law and other electoral laws, as well as the codes of conduct for candidates, observers, monitors and media professionals;
- d) Promote the objective clarification of the citizens about the electoral act through the media;
- e) Ensure equality of treatment for citizens in all acts of voter registration and electoral operations;
- f) Ensure equality of opportunities and freedom of propaganda of the candidacies during the electoral campaign;
- g) Examine and certify party coalitions for electoral purposes;
- h) Notify the Office of the Public Prosecution about any acts known to it that may amount to electoral offence;
- i) Prepare and submit to STJ the provisional minutes with the national results so that the final results of the general elections can be validated and proclaimed;
- j) Perform other functions assigned to it by law."

NOTE: Law 6/2006 Arts. 25(1), 45, and 49(1); and Law 6/2007 Art. 7- give the CNE power to hear complaints in Parliamentary elections:

Law 6/2006, Art. 45:

1. Any voter or any of the delegates of the candidacies may raise doubts and file complaints or protests relating to electoral operations.
2. Doubts, complaints and protests presented during the voting or after it has been completed shall be analyzed immediately by the electoral officers and, in case of need, the latter may consult STAE.
3. Complaints must be the object of a decision approved by a minimum of three electoral officers.
4. Decisions shall be communicated to the complainers who, if so wish, may address the complaints to CNE, to be submitted in the respective polling centre or polling station accompanied by all the documents relating to that polling centre."

Law 6/2007, Art. 7 (Amending Art. 45 of Law 6/2006 regarding complaints to note): "5. Complaints presented at district tabulation centers during the counting and tabulation process shall be submitted for the CNE appreciation."

Law 6/2006, Art. 49(1): "Appeals against the provisional tabulation of the national results published by CNE shall be filed within twenty-four hours of their posting with the plenary of STJ, which shall immediately notify the interested parties and make a decision within the same time limit."

Law 7/2006, Arts. 28, 43 and 47 give CNE the power to monitor and hear complaints in presidential elections:

Law 7/2006, Art. 28

"The electoral campaign shall be conducted by observing the following principles:

- a) Freedom of electoral propaganda;
 - b) Equality of opportunities and treatment for all the candidacies;
 - c) Impartiality of public entities insofar as the candidacies are concerned;
 - d) Transparency and monitoring of the electoral accounts.
2. CNE shall verify the compliance with these principles, to be applied from the date of scheduling of the election date, and shall adopt measures that ensure their compliance with, and the peaceful unfolding of, the electoral campaign."

Law 7/2006, Art. 43:

2. Doubts, complaints, and protests presented during the voting or after it has been completed shall be analyzed immediately by the electoral officers and, in case of need, the latter may consult STAE.
3. Complaints must be the object of a decision approved by a minimum of 3 electoral officers.
4. Decisions shall be communicated to the complainers who, if so wish, may address the complaints to CNE, to be submitted in the respective polling centre or polling station accompanied by all the documents relating to that polling centre."

Law 7/2006, Art. 47

- Appeals against the provisional tabulation of the national results published by CNE shall be filed within 24 hours of their posting with the plenary of STJ, which shall immediately notify the interested parties and make a decision within the same time limit.
2. After the time limit provided for in item 1 above has been expired without any appeal being filed, CNE shall forward the minutes of the tabulation of the national results to STJ together with the minutes of district tabulation as well as any other documents it deems important, with a clear indication that no appeal has been filed.

References:

Constitution of the Democratic Republic of Timor Leste (May 20, 2002) 7_ 65.6 (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Constitution.pdf)

Law 7/2006, Law on Election of the President (Dec. 28, 2006) Arts. 6 and 7 (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2006-07.pdf)

Law 6/2006, Law on Election of Parliament (Dec. 28, 2006) Arts. 25(1) and 45 (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2006-06.pdf)

Law 5/2006, Electoral Administrative Bodies (Dec. 28, 2006) Arts. 2(1) and 8 (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2006-05.pdf>)

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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 exists 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?

75

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

Yes | No

Comments:

Law 5/2006, Art. 4(2):

“CNE shall be independent from any bodies of the central or local political power and shall enjoy financial, administrative and organizational autonomy.”

Law 5/2006, Art. 5(4)

“Only citizens of recognized competency with no responsibilities in a political party leadership or in electoral candidacies may be appointed or elected for CNE.”

Law 5/2006, Art. 6(6)

“Members of CNE shall forfeiture their mandate in case they submit their candidacies to any election process for organs of sovereignty or local government.”

Law 5/2006 Art. 6(1)

“Members of CNE cannot be removed from office and shall be independent in the exercise of their mandate, accumulating such mandate with the professional functions they exercise.”

Law 5/2006 Art. 11(1)

“CNE shall be supported by a permanent secretariat and shall have its own budget integrated in the State Budget, pursuant to the law.”

References:

Law 5/2006, Electoral Administrative Bodies (Dec. 28, 2006) Arts. 4(2), 5(4), 6(1), 6(6) and 11(1) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2006-05.pdf>)

The official texts of the laws are in Portuguese, and can be accessed from the menu in the on-line Jornál da República (official gazette) at <http://www.jornal.gov.tl/>.

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

Comments:

Appointments of CNE (National Election Commission) officials are allocated to the President, prosecution, judges, public defenders, parliament, the government, religious entities, and a women’s group. Because the law does not give the power of appointment to only one entity, but instead allots certain numbers of appointments to a variety of actors, appointments to CNE are made that support the independence of the agency.

For the 2012 elections, appointments were not made in such a way that would call into question CNE’s independence (Interview with representative of good governance NGO in Timor-Leste). Indeed, the First Assistant Secretary General in a Timorese political party notes that, although it is sometimes difficult for someone to disguise their party affiliations, appointments are not based on loyalties and CNE officials do not make biased decisions based on political affiliations.

References:

Interview with representative for local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014)

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

Comments:

The CNE is staffed with full-time, qualified and professional staff. Both a top-level official in a Timorese political party and a representative of a Timorese good governance NGO report that the staff of CNE are sufficient to fulfill its mandate. Despite the relative lack of human capital in this newly independent country, CNE staff are professional and well-trained. Moreover, the UNDP reports success with its training of CNE officers, which indicates that the staff are well-qualified and prepared for their tasks. (UNDP, p. 10-13). The UNDP report notes: "CNE's increase in credibility as perceived by all interlocutors is an indication that the institution has grown professionally and acts with integrity. With the possibility that that a number of new commissioners will be appointed in 2013, it will be important to capture lessons learned for institutional memory or facilitate a handover workshop especially as the UN advisors have left at the end of the current project." (UNDP, p. 13).

References:

UNDP, "Evaluation of United Nations Electoral Support Team (UNEST) Project during the Electoral Cycle 2008 to 2012" (2012) (Available at: <http://erc.undp.org/evaluationadmin/reports/viewreport.html?sessionId=783E1A33022BF614A96CFF9AAAD8DB89?docid=6618>);

Interview with representative for local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with First Assistant Secretary General of a Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014)

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:

The main election oversight body in Timor-Leste (CNE) releases reports on election results during the election cycle. However, these reports are not substantive or formal, as they include only information on the election results rather than any additional reports or sensitive information providing deeper detail into their monitoring. There is no deadline by which reports must be released and no timetable for said reports, so there is no predictable timing for the reports.

As the reports include information about election results, the release is generally after the results have been verified and is often something most citizens have already learned from other news sources.

References:

Interview with representative from good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with director of independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

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

Comments:

While CNE has the power to investigate and refer cases to the Public Prosecutor for punishment, there were several reports in the 2012 elections that indicated a lack of political will in some instances. A representative from a local good governance NGO notes that CNE issued comments regarding police forces limiting campaigns, but that there were no punishments issued in this instance. The director of an independent newspaper also notes that there were many cases in which CNE did not show commitment to enforcing penalties. These included the Government giving rice to communities in the lead-up to elections and reports that the Prime Minister met with then-STAE head, Thomas Cabral, shortly before he became Secretary of State for Administrative Decentralization.

Conversely, a high-level official in a Timorese political party noted that CNE can refer cases for prosecution and does so properly, but that the cases are processed slowly in the courts—often taking more than one year. For example, the CNE did refer complaints to the Court of Appeals for several instances. The Court rejected one case filed by a smaller political party regarding 19 votes not counted, and upheld the complaint by a larger party for one vote not counted. (EUEOM Final Report, p. 24-25). The large and powerful CNRT party was accused of corporate and foreign donations violating campaign finance law, with the case referred to the Prosecutor's office. (EUEOM Report, p. 24).

References:

Interview with representative of good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with director of independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014);

Final Report EU EOM Timor-Leste 2012 (Sept. 2012), p. 24, available at: [http://eeas.europa.eu/eueom/missions/2012/timor-
leste/reports_en.htm](http://eeas.europa.eu/eueom/missions/2012/timor-leste/reports_en.htm)

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?

92

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

100 | 75 | 50 | 25 | 0

Comments:

During the most recent elections, which were held in 2012, there were no reports of falsification of registration lists or double voting. In general, there was a transparent voter registration system which generally provided sufficient time and clarity for voters to correct errors; however, there were some issues. For example, The EU election report notes issues with printing new cards and an unexpected increase in voter registration, but does not mention any problems with transparency, noting "The importance of the Voter Register maintained by STAE goes far beyond its electoral functions. As the most comprehensive inventory of the adult population available in the country, it serves in many respects as a de facto civil register." (EU EOM to Timor-Leste, p. 11). And, the UNDP noted successes of the registration system as a result of significant capacity building. It explained: "As a result of UNDP IT support, operational and planning advice and help with a public information campaign, UNEST quite laudably produced a complete voters list by 2011." (UNDP, p. 17).

However, a significant concern that may inhibit the ability for voters to check registration is impeded by the distances they must travel, as registration may only be verified in the village of registration. One anonymous source noted that this thus creates similar problems experienced by the numbers of people who cannot travel– or who incur large expenses to travel– to get to the districts. And, for citizens abroad, it was impossible to verify. (Interview, 7 April 2014).

The next elections are not scheduled until in 2017, at the latest, and there will be no by-elections. It is therefore difficult to predict whether similar circumstances will surround registration in the next elections, as Timor-Leste is a young and changing nation. As an anonymous source notes: Laws like those relating to the registration requirement are often changed a few months before the election, so it cannot be stated whether this requirement will change. (Interview 15 April 2014).

References:

EU Election Observer Mission to Timor-Leste, Final Report EU EOM Timor-Leste 2012 (Sept. 2012), Available at: http://eeas.europa.eu/eueom/missions/2012/timor-leste/reports_en.htm

UNDP, Evaluation of United Nations Electoral Support Team (UNEST) Project during the Electoral Cycle 2008 to 2012 (Oct. 2012), Available at: <http://erc.undp.org/evaluationadmin/manageevaluation/viewevaluationdetail.html?evalid=6207>

Interview with anonymous source, Dili, Timor-Leste (7 April 2014 and 15 April 2014)

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" voting by non-existent voters is common.

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

Yes | No

Comments:

Constitution 7_ 126(2) gives powers to the Supreme Court to verify election results, but does not indicate whether citizens have the right to contest.

Law 6/2006 Art. 45(1): "Any voter or any of the delegates of the candidacies may raise doubts and file complaints or protests relating to electoral operations."

Law 6/2006 Art. 49(1): "Appeals against the provisional tabulation of the national results published by CNE shall be filed within twenty-four hours of their posting with the plenary of [Supreme Court of Justice] STJ, which shall immediately notify the interested parties and make a decision within the same time limit."

Law 7/2006, Art. 47(1):

"Appeals against the provisional tabulation of the national results published by CNE shall be filed within 24 hours of their posting with the plenary of STJ, which shall immediately notify the interested parties and make a decision within the same time limit."

References:

Constitution of the Democratic Republic of Timor Leste (2002) 7_ 126(2)

(Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf).

Law 6/2006, Law on Election of Parliament (Dec. 28, 2006) Art. 45(1), and 49(1) (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2006-06.pdf)

Law 7/2006, Law on Election of the President (Dec. 28, 2006) Art. 47(1) (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2006-07.pdf)

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line *Jornal da República* (official gazette) at <http://www.jornal.gov.tl/>.

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:

In Timor-Leste, the Court of Appeals verifies all election results. The CNE may also hear complaints and may refer any cases to the court that amount to election offenses (UNMIT, p. 101). In the 2012 elections, all sources confirm that CNE provided space to appeal results and that the election results were authorized by the Court. There were no indications that CNE or the Courts were partisan in their acceptance of complaints. And, there were no indications that complaints mechanisms were abused by anyone as a means of delaying the announcement of results.

The EU Election Observer Mission noted: "The polling and counting processes on Election Day resulted in 95 complaints and appeals being lodged with CNE, which deemed three of the complaints to be electoral offences and passed them on to the Prosecutor-General's Office. . . . A total of 43 appeals were made challenging decisions made by electoral officials during the counting process on the validity or invalidity of individual votes. The CNE adjudicated all these types of representations during the national tabulation period. Seven of the complaints were deemed to constitute electoral offences and were forwarded to the Prosecutor-General. . . . After the publication of the national provisional results by CNE, two parties, KHUNTO and Fretilin, filed appeals with the CNE, which were immediately forwarded to the Court of Appeal. The Court rejected KHUNTO's complaint (which claimed that 19 votes received by the party had not been recorded in the national results form) and upheld Fretilin's (which claimed that a vote declared invalid should have been counted as a valid vote for it)." (EUEOM Report, p. 24-25)

The First Assistant Secretary General of one of Timor-Leste's political parties confirms their ability to forward complaints and have them timely adjudicated in 2012. Moreover, the EU Election Observer Missions preliminary report in 2012 noted that "Investigation of electoral offences is given priority by the Prosecutor-General's Office" (EUEOM Preliminary Report, p. 8), indicating that the appeals process cannot be used to delay election results.

References:

European Union, "Final Report EU EOM Timor-Leste 2012" (Sept. 2012), p. 24-25, Available at: http://eeas.europa.eu/eueom/missions/2012/timor-leste/reports_en.htm;

Interview with representative of local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

UNMIT, "Compendium of the 2012 Elections in Timor-Leste" (19 June 2012) p. 101, Available at: <http://unmit.unmissions.org/Portals/UNMIT/DGSU/Compendium%20of%20the%202012%20Elections%20-%2015%20March.pdf>

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:

In the most recent elections, which were held in 2012, there was no overt military or police support for particular candidates or parties. For example, the EU Observer Mission noted no instances of military intimidation or interference. It reported: "In general, voting took place in a very calm atmosphere free from intimidation or disturbances, and attracted large number of voters. (EU EOM to Timor-Leste 2012, p. 5).

The security forces refrained from using force to support or oppose particular candidates, and they generally kept the appropriate distance from polling stations, though there were some exceptions cited by various sources. Minor issues associated with security forces not respecting the distance requirement or carrying weapons to the polling station were noted in UNMIT's report on the elections. However, there is no indication that these issues affected voters or the outcome of the election. And, all issues were appropriately responded to by authorities. UNMIT reported: "During both rounds of elections, security forces were observed to be in compliance with human rights standards and the elections laws in most cases. However, during both rounds some incidents were reported of PNTL members breaching the requirement to stay more than 25 meters away from the polling centre, and to not carry their weapons inside polling sites. HRTJS also noted, however, that PNTL were not always provided with adequate shelter to conduct their duties in the rain or intense sun outside of the 25 meter radius. While F-FDTL maintained a low profile on polling days, there were a few reports of them displaying their weapons outside of the voting station when they exercised their right to vote during the first round, and during the second round, at least one incident was reported of carrying a concealed weapon inside the polling site. These cases involving F-FDTL members were addressed by STAE, CNE and the F-FDTL authorities. (UNMIT, p. 38).

The head of a local good-governance NGO noted that Did not hear of any reports or incidents of violence or other intimidation by security forces. Overall, the source agreed that the police kept distance as necessary despite a few reports of violations. However, the source noted, none of these seemed to result in intimidation or effecting the vote. (Interview, 7 April 2014).

The next elections are not scheduled until in 2017, at the latest, and there will be no by-elections. It is uncertain whether the security forces will behave similarly, as this is too far into the future and Timor-Leste's election system is still quite new. It should be noted, however, that current Prime Minister Xanana Gusmão has indicated that he will not run in 2017, making it all the more difficult to predict the atmosphere of those elections. (The Canberra Times).

References:

Final Report EU EOM Timor-Leste 2012 (Sept. 2012), Available at: http://eeas.europa.eu/eueom/missions/2012/timor-leste/reports_en.htm

UNMIT, Compendium of the 2012 Elections in Timor-Leste (July 2012), Available at: <https://sites.google.com/site/timorlesteelections2012/file-cabinet>

Interview with anonymous source, Dili, Timor-Leste (7 April 2014)

Michael Bachelard, Xanana Gusmao to quit as leader of East Timor, The Canberra Times (Jan. 15, 2014) (Available at: <http://www.canberratimes.com.au/world/xanana-gusmao-to-quit-as-leader-of-east-timor-20140115-30v5.html>).

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 overly 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

Comments:

National and international observers: "Electoral observer shall mean an individual representing a national or international organization who requests his or her registration with STAE and is accepted as such." (Law 6/2006 Art. 68(1) and 7/2006 Art. 68(1))

"The functions of an observer shall namely be the following:

- a) Follow up on the unfolding of the voting operations from the installation of the polling centre or polling station up until its closure;
- b) Follow up the transportation of the ballot boxes, which shall be transparent in colour, as well as other items from the polling centre or polling station to the district tabulation station;
- c) Follow up on the process of counting of votes and tabulation of results;
- d) Prepare a report of the observation whenever so requested." (Law 6/2006 Art. 68(2) and 7/2006 Art. 68(2))

References:

Law 6/2006, Law on Election of Parliament (Dec. 28, 2006) Articles 66(1)-(2) (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2006-06.pdf)

Law 7/2006, Law on Election of the President (Dec. 28, 2006) Arts. 68(1)-(2) (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2006-07.pdf)

The official texts of the laws are in Portuguese, and can be accessed from the menu in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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:

During the most recent elections, held in 2012, domestic and foreign election observers generally had access to all relevant election locations, did not experience any arbitrary or burdensome registration requirements, and overall participated in large numbers of both international and domestic representation. For example, the EU Observer Mission praised Timor-Leste in this regard, noting: "Accreditation was issued, without arbitrary restriction, for over 3,200 national and international observers. (EU EOM in Timor-Leste 2012, p. 5). Similarly, "IRI observers noted the extensive presence of political party polling agents and domestic observers which further contributed to the atmosphere of transparency and inclusivity of the elections.." (International Republican Institute (IRI), Timor-Leste Holds Credible Parliamentary Elections)

UNMIT reported some issues with lack of space in polling stations, which restricted some observers' ability to have full access to voting. However, they also noted that this seemed to be limited to international observers, and did not completely obstruct the ability of observers more generally. UNMIT reports: "While voting station staff were consistently friendly towards observers, there was also a lack of space at some polling stations, meaning observers were in some cases restricted from entering the polling stations to observe the polling process. . . . It should be noted, however, that this problem applied primarily to international observers and that domestic observers and party scrutineers (fiscais) were present at all polling stations observed." (UNMIT, p. 35) Generally, any restrictions on observers were infrequent, and mostly limited by the size of the polling stations, which were often school classrooms.

The next elections are not scheduled until in 2017, at the latest, and Timor-Leste has had little election history as a young and changing nation. There will also be no by-elections. It is therefore difficult to predict whether there observers can expect the same treatment in the next elections. It may be difficult to remedy the restrictions on access to some areas, as these appear to be space considerations that are unlikely to be changed due to the limitations of localities in the country.

References:

Final Report EU EOM Timor-Leste 2012 (Sept. 2012), Available at: http://eeas.europa.eu/eueom/missions/2012/timor-leste/reports_en.htm

International Republican Institute (IRI), Timor-Leste Holds Credible Parliamentary Elections (July 8, 2012), Available at: <http://www.iri.org/news-events-press-center/news/timor-leste-holds-credible-parliamentary-elections>

UNMIT, Compendium of the 2012 Elections in Timor-Leste (July 2012), Available at: <https://sites.google.com/site/timorlesteelections2012/file-cabinet>

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.

89 2.3. Political Financing Transparency

20. Are there regulations governing the financing of political parties?

50

20a. In law, there are limits on individual donations to political parties.

Yes | **No**

Comments:

Law 3/2004 7_ 22 does not restrict individual donations.

Law 6/2008 Art. 9 requires only that donations above \$1000 by any individual be certified and in writing, but does not place an overall cap, nor does it require publication.

Law 6/2008 Art. 4(5) prohibits all funds from foreign individuals; however, this is not a full limitation on individual contributions.

References:

Law 3/2004, Law on Political Parties (Mar 25, 2004) 7_ 22

(Official: http://www.jornal.gov.tl/public/docs/2002_2005/leis_parlamento_nacional/3_2004.pdf. Unofficial: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-3.pdf>).

Law 6/2008, Legal Regime for the financing of political parties (April 16, 2008) Arts. 9 and 4(5)

(Official: http://www.jornal.gov.tl/public/docs/2008/serie_1/serie1_no14.pdf. Unofficial: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2008-06.pdf>).

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | No

Comments:

Law 6/2008 Art. 4(5) "strictly prohibits" funds from national and foreign corporations (as well as foreign individuals): "The raising of revenue not provided for in this law shall be prohibited, and contributions by national corporate bodies and foreign individuals and corporate bodies shall also be strictly prohibited."

Note, however, that Law 3/2004 on Political Parties, 22, limits contributions by public companies, state-owned companies, foreign companies and non-profits, but does not limit corporate donations generally. Law 3/2004 22: "Parties shall be prohibited to accept donations in cash from:

- a) public companies;
- b) companies, the capital stock of which belongs exclusively or mostly to the State;
- c) public service corporations;
- d) corporate bodies of public interest committed to philanthropic or religious activities;
- e) professional, labour or employer's associations;
- f) foundations;
- g) governments or foreign corporate bodies."

References:

Law 3/2004, Law on Political Parties (Mar 25, 2004) 7_ 22 (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-3.pdf>)

Law 6/2008, Legal Regime for the financing of political parties (April 16, 2008) Art. 4(5) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2008-06.pdf>)

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep_blica (official gazette) at <http://www.jornal.gov.tl/>.

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

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

Yes | No

Comments:

Nowhere in the legal regime for financing political parties does it state a maximum expenditure.

References:

Law 6/2008, Legal Regime for the financing of political parties (April 16, 2008) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2008-06.pdf>)

Law 3/2004, Law on Political Parties (Mar 25, 2004) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-3.pdf>)

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep_blica (official gazette) at <http://www.jornal.gov.tl/>.

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

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

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | **No**

Comments:

The legal framework requires only that party accounts be made public and that individual donations above \$1000 be certified in writing. However, this does not create a strict legal framework that requires public disclosure of all individual donations as it limits amount and also does not guarantee the donations will themselves be part of the "party accounts" required to be published.

Law 6/2008, Art. 9 requires donations above \$1000 by any individual be certified and in writing.

Law 3/2004, 26: "Party accounts must be published in the Official Gazette, free of charge, accompanied by the opinion of the competent statutory organ for review."

References:

Law 3/2004, Law on Political Parties (Mar 25, 2004) 7_ 26 (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-3.pdf>)

Law 6/2008, Legal Regime for the financing of political parties (April 16, 2008) Art. 9 (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2008-06.pdf>)

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep_blica (official gazette) at <http://www.jornal.gov.tl/>.

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

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | No

Comments:

Law 6/2008 gives CNE power to conduct an independent audit:

"Competence to consider and validate financial reports submitted by political parties shall rest with the CNE, which shall be assisted by its own or external auditors for such consideration and validation."

Law 3/2004, 7_ 27

"The accounting organisation of the parties must follow the rules of a sound accounting system and must contain, in particular:

a) the annual inventory of the party property with regards to movable and immovable property subject to registration;

b) the breakdown of revenues which shall include those revenues provided for in Section 20;

c) the breakdown of expenses including:

" personnel expenditures;

" expenditures on acquisition of assets;

" loan charges;

" other expenditures related to activities of the party.

d) the breakdown of capital operations pertaining to:

" investments;

" debtors and creditors."

Law 3/2004, 7_ 17

"d) publish the accounts on an annual basis after they have been audited."

References:

Law 3/2004, Law on Political Parties (Mar 25, 2004) 7_ 27 & 17 (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-3.pdf>)

Law 6/2008, Legal Regime for the financing of political parties (April 16, 2008) 13(2) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2008-06.pdf>)

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jornál da República (official gazette) at <http://www.jornal.gov.tl/>.

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes | No

Comments:

Law 6/2008, Art. 13

"1. Submission of detailed financial reports by political parties, as provided for in Section 3, shall be made on a regular basis 45 days before the end of the financial year, and such reports shall be accompanied by comments from the statutory competent body.

2. Competence to consider and validate financial reports submitted by political parties shall rest with the CNE, which shall be assisted by its own or external auditors for such consideration and validation." (emphasis added).

Law 6/2008, Art. 17

"1. The CNE shall consider financial reports submitted to it within 20 days after it has received comments from its auditors.

2. The final decision, besides containing an individual breakdown of financial reports submitted by each political party, shall also include an indication on those parties that have not submitted their reports and those that after submitting them have not revised them following a notification to do so.

4. Financial reports and related final decisions shall be made public in the Official Gazette on a free-of-charge basis and shall be posted on the CNE's website.

5. Where consideration by the CNE proves that obligations provided for in this law and carrying a fine penalty or an imprisonment sentence have not been complied with, transcripts of the financial reports concerned shall be requested and sent to the General Prosecution Service for appropriate legal action."

References:

Law 6/2008, Legal Regime for the financing of political parties (April 16, 2008) Arts. 13 and 17 (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2008-06.pdf>)

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jornál da República (official gazette) at <http://www.jornal.gov.tl/>.

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 the financing of political parties. 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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

21a. In law, there are limits on individual donations to political candidates.

Yes | **No**

Comments:

There is no law on individual candidates. In Timor-Leste, only the presidential election includes individual campaigns rather than party lists. However, there is no specific legislation dealing with presidential candidate's personal financing. The laws related to political parties would apply to these campaigns in the cases were a presidential candidate is supported by a party which is most campaigns.

References:

See generally:

Law 3/2004, Law on Political Parties (Mar 25, 2004) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-3.pdf>).

Law 6/2008, Legal Regime for the financing of political parties (April 16, 2008) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2008-06.pdf>).

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line *Jornal da República* (official gazette) at <http://www.jornal.gov.tl/>.

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes | **No**

Comments:

There is no law on individual candidates. In Timor-Leste, only the presidential election includes individual campaigns rather than party lists. However, there is no specific legislation dealing with presidential candidate's personal financing. The laws related to political parties would apply to these campaigns in the cases were a presidential candidate is supported by a party which is most campaigns.

References:

See generally:

Law 3/2004, Law on Political Parties (Mar 25, 2004) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-3.pdf>).

Law 6/2008, Legal Regime for the financing of political parties (April 16, 2008) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2008-06.pdf>).

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line *Jornal da República* (official gazette) at <http://www.jornal.gov.tl/>.

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | No

Comments:

There is no law on individual candidates. In Timor-Leste, only the presidential election includes individual campaigns rather than party lists. However, there is no specific legislation dealing with presidential candidate's personal financing. The laws related to political parties would apply to these campaigns in the cases where a presidential candidate is supported by a party which is most campaigns.

References:

See generally:

Law 3/2004, Law on Political Parties (Mar 25, 2004) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-3.pdf>).

Law 6/2008, Legal Regime for the financing of political parties (April 16, 2008) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2008-06.pdf>).

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line *Jornal da República* (official gazette) at <http://www.jornal.gov.tl/>.

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

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | No

Comments:

There is no law on individual candidates. In Timor-Leste, only the presidential election includes individual campaigns rather than party lists. However, there is no specific legislation dealing with presidential candidate's personal financing. The laws related to political parties would apply to these campaigns in the cases where a presidential candidate is supported by a party which is most campaigns.

Law 6/2008, Art. 13

"1. Submission of detailed financial reports by political parties, as provided for in Section 3, shall be made on a regular basis 45 days before the end of the financial year, and such reports shall be accompanied by comments from the statutory competent body.

2. Competence to consider and validate financial reports submitted by political parties shall rest with the CNE, which shall be assisted by its own or external auditors for such consideration and validation."

References:

See generally:

Law 3/2004, Law on Political Parties (Mar 25, 2004) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-3.pdf>).

Law 6/2008, Legal Regime for the financing of political parties (April 16, 2008) Art. 13 (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2008-06.pdf>).

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line *Jornal da República* (official gazette) at <http://www.jornal.gov.tl/>.

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. 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 an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if

such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes | No

Comments:

There is no law on individual candidates. In Timor-Leste, only the presidential election includes individual campaigns rather than party lists. However, there is no specific legislation dealing with presidential candidate's personal financing. The laws related to political parties would apply to these campaigns in the cases were a presidential candidate is supported by a party which is most campaigns.

References:

See generally:

Law 3/2004, Law on Political Parties (Mar 25, 2004) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-3.pdf>)

Law 6/2008, Legal Regime for the financing of political parties (April 16, 2008) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2008-06.pdf>)

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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 the financing of individual political candidates' campaigns. 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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

17

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

There is only a legal ban on donations from foreign individuals but no numerical limits on individual donations to political parties is reflected in practice. A top-level official for a Timorese political party notes that the party is not legally held to limits on such donations, nor does it self-impose any such limits. A representative from a good governance NGO also notes relative freedom regarding individual donations, and that the law on foreign contributions is violated regularly. Moreover, the EU Observer Mission covering the most recent election in 2012 noted the overall lack of legislation and therefore lack of constraint on campaign finance.

References:

Interview with representative of good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili-Timor-Leste (25 April 2014);

Interview with the First Assistant Secretary General of a Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014)

European Union, "Final Report EU EOM Timor-Leste 2012" (Sept. 2012) p. 24-25, Available at: http://eeas.europa.eu/eucom/missions/2012/timor-leste/reports_en.htm; Interview with First Assistant Secretary General of Timorese Political Party, Dili, Timor-Leste (23 April 2014)

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Although Timorese law imposes a complete ban on corporate funding, sources indicate that the ban is routinely violated with impunity. Loopholes to the ban have been exploited, such as providing loans to parties (Interview with director of a local civil rights NGO). However, there were also blatant violations of the ban with donations of a significant amount coming from companies including large contributions from foreign corporations. The EU Observer Mission Report noted: "The most serious complaint raised during the election period concerned the financing of the CNRT campaign. The party itself confirmed that at a single fund-raising dinner in May, attended by Xanana Gumoro and his family, \$2.35m was publicly pledged, although the actual pledges made that evening may have been much higher. Among companies making the highest pledges of between \$50,000 and \$250,000 were several Timorese and Indonesian companies and two from China which had received large government contracts." (p. 16)

Indeed, one election observer group noted a need for further focus on corporate finance issues: "Within the context of increasing concerns about the transparency of the letting of government contracts and the willingness of some companies that have benefitted from government contracts [sic] to financially support parties of government, the time is ripe for Timor-Leste's electoral authorities to play closer attention to the issue of campaign financing. In particular, consideration should be given to increasing the transparency of campaign donations, as well as the regularisation of the letting of government contracts, to help limit the perception and possible reality of conflicts of interest." (AusTimorFN)

However, a top-level official for a Timorese political party noted that his party understands and follows the rules against corporate funding and that there are no loopholes utilized by their party such as in-kind support or unregulated loans. He did, however, mention the issue with CNRT during the 2012 elections.

References:

Interview with local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Australia Timor-Leste Friendship Network, "Parliamentary Elections 7 July 2012- Observer Report from AusTimorFN and CCDHR" (9 July 2012) Available at: <http://austimorfn.com/tag/consolidating-democracy/>;

European Union, "Final Report EU EOM Timor-Leste 2012" (Sept. 2012) p. 24-25, Available at: http://eeas.europa.eu/eucom/missions/2012/timor-leste/reports_en.htm; Interview with First Assistant Secretary General of Timorese Political Party, Dili, Timor-Leste (23 April 2014)

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

22c. 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

Comments:

Because the law imposes no limits on total party expenditures, there has been no adherence in practice to any limits. A high-level official of a Timorese political party confirmed that their party follows no limits on total party spending. Moreover, the EU Observer Mission to the most recent election noted: "Law No. 6/2008 requires that party financing should adhere to principles of legality, transparency and full accountability. Breaches of some of these principles have occurred. Moreover, the CNRT, and to a lesser extent other parties in the governing coalition, appear to have exploited the advantages of incumbency. Parties often used state resources, such as government cars and public buildings, during the campaign." (P. 16).

References:

Interview with First Assistant Secretary General of a Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

European Union, "Final Report EU EOM Timor-Leste 2012" (Sept. 2012) p. 16, Available at: http://eeas.europa.eu/eucom/missions/2012/timor-leste/reports_en.htm;

Interview with representative from local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014)

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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The CNE is responsible for identifying and investigating violations of campaign finance and referring those cases to the Anti-Corruption Commission or the Public Prosecutor. While a top-level official of one of Timor-Leste's political parties notes that the CNE routinely (yearly) requires funding reports and audits from all parties, he also notes that the CNE has been hesitant to conduct investigations of politically powerful entities, such as CNRT. A representative from a leading Timorese good governance NGO noted that there had been relatively few investigations and no prosecutions of such issues in 2012. Reluctance to investigate on the part of CNE is partly due to the youth of this entity, the youth of the country and the overall lack of capacity. However, there are also indications that powerful political parties exert influence to discourage such work.

References:

Interview with representative from local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. 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, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The CNE is limited in its effectiveness for enforcing penalties. While it can refer cases to the Public Prosecutor, representatives from both a leading good governance NGO and a Timorese political party note that there have not yet been penalties imposed in relation to election offenses. While CNE referred several cases of election violations to the Public Prosecutor, there were no penalties as a result of these cases. Moreover, during the most recent election in 2012, there have been no punishments for instances in which "the CNRT, and to a lesser extent other parties in the governing coalition, appear to have exploited the advantages of incumbency. Parties often used state resources, such as government cars and public buildings, during the campaign." (EUEOM, P. 16).

There are significant concerns that CNE has not taken on politically powerful people. This may have to do with the youth of the entity and the fact that it does not yet have the courage or skills to investigate and punish. There is, however, no indication that this is a result of partisan politics on the part of CNE.

References:

Interview with representative from good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014)

European Union election observation mission Timor Leste Parliamentary Election 2012 Final Report. http://www.eueom.eu/files/pressreleases/english/east-timor-2012-final-report_en.pdf

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

The CNE conducts a yearly audit of all parties, which is conducted through independent auditing organizations. A top-level official for a Timorese political party confirmed that their party provides financial information each year (including reasoning for late submission if necessary) which is audited by CNE's chosen auditors.

However, the reports submitted are not reliable and only include donations to the party and the party receipts. A representative from a local civil rights organization has mentioned that they do not have access the reports and have been told by political parties that financial documents are secret organizational materials.

References:

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with director of independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party 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.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

Because the law imposes no limits for individual candidate financing, there has been no adherence in practice to any limits. This has resulted in significant donations to candidates based on friendships and business interests. Moreover, the nature of the Timorese system sees political candidates supported through donations to the party system. A top-level official of a Timorese political party confirms that their party knows of and imposes no limits on funding of individual candidates other than those imposed generally on political parties.

References:

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with director of independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014);

Fundasau Mahein, The Practice of Money Politics in the 2012 Presidential Election (28 March 2012) Available at: <http://www.easttimorlawandjusticebulletin.com/2012/03/practice-of-money-politics-in-2012.html>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

Because the law imposes no limits for individual candidate financing, there has been no adherence in practice to any limits. This has resulted in significant donations to candidates based on friendships and business interests. Moreover, the nature of the Timorese system sees political candidates supported through donations to the party system. A top-level official of a Timorese political party confirms that their party knows of and imposes no limits on funding of individual candidates other than those imposed generally on political parties. Moreover, the chairperson of a large business holding in Timor-Leste noted that he often donates to candidates in his private capacity but with the expectation that his company will get a contract if the candidate wins.

References:

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with chairman of large business holding in Timor-Leste who requested anonymity, Dili, Timor-Leste (24 April 2014);

Interview with director of independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014);

Fundasau Mahein, The Practice of Money Politics in the 2012 Presidential Election (28 March 2012) Available at: <http://www.easttimorlawandjusticebulletin.com/2012/03/practice-of-money-politics-in-2012.html>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

Comments:

Because the law imposes no limits for individual candidates, there have been no investigations into individual campaign finance. There were no instances in 2012 of investigations of any individual candidate. Indeed, a report by local watchdog, Fundasaun Mahein, indicates an issue with spending for candidates in the 2012 presidential elections and the overall need for legislation and greater enforcement in this area.

References:

Interview with First Assistant Secretary General of Timorese political party, Dili, Timor-Leste (23 April 2014);

Interview with director of independent newspaper, Dili, Timor-Leste (24 April 2014);

Fundasaun Mahein, The Practice of Money Politics in the 2012 Presidential Election (28 March 2012) Available at: <http://www.easttimorlawandjusticebulletin.com/2012/03/practice-of-money-politics-in-2012.html>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

Comments:

Because the law imposes no limits for individual candidates, there have been no penalties imposed based on individual campaign finance. A top-level official of a Timorese political party confirms that their party knows of and imposes no limits on funding of individual candidates other than those imposed generally on political parties. There were no instances in 2012 of any penalties imposed on any individual candidate.

References:

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Fundasaun Mahein, The Practice of Money Politics in the 2012 Presidential Election (28 March 2012) Available at: <http://www.easttimorlawandjusticebulletin.com/2012/03/practice-of-money-politics-in-2012.html>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

The law imposes no limits for individual candidates, and there have been no audits of individual campaign finance. There is much discussion related to individual candidates disclosing their income and assets; however, no legislation has been made requiring such and no candidates do so.

References:

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with director of local independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns 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.

24. Can citizens access records related to the financing of political parties?

44

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Annual reports by the CNE of party finances are published online each year. While a top-level official of a Timorese political party confirms that their finances are published this way, he notes that the reports may take several months to be posted as they are not released until all parties have provided their information, which delays the process when other parties are tardy in reporting.

References:

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with director of local independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

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

75:

50: Political parties 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 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.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

While a top-level official of a Timorese political party notes that while their finances are published by CNE, the reports are not yet available on the CNE website. The only report in the Official Gazette includes only recommendations, but does not include detailed financial information. Copies of CNE reports on party finances may be obtained for a small fee from the Grafika Nasion¹ in the capital, Dili.

A representative from a local civil rights organization noted that citizens have difficulty accessing detailed financial reports and that they have been told by parties that financial documents are organizational secrets. Indeed, the director of an independent newspaper reports never being able to access such reports.

References:

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with director of local independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

See also: CNE Report (May 2011) Available at: <http://www.jornal.gov.tl/?mod=artigo&id=3422>

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.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Annual audit reports are to be published online by CNE. However, to date, there are no such reports on their website. The only reports are found on the Official Gazette website includes only recommendations, but does not include any financial information.

While no reports are available online, they may be obtained for a small fee from the Grafika Nasion¹ office. This office is located in the capital, Dili, and therefore the cost to obtain such records poses a burden on those who live outside of the city.

References:

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with director of local independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

Timor-Leste Journal da Republika, CNE Report (May 2011) Available at: <http://www.jornal.gov.tl/?mod=artigo&id=3422>

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 NGOs. 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 NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

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

Comments:

While citizens may obtain audit reports from CNE, the reports are not particularly useful. Reports contain basic observations and recommendations regarding party finances. The First Assistant Secretary General of a Timorese political party notes that the report only contains information on contributions and party receipts. While the report is audited by a formal and independent auditor, there is not sufficient information for the reports to be informative. Indeed, civil society organizations report not accessing this information or finding it quite cursory. The director of a local research organization confirms that some more sensitive information is excluded.

References:

Interview with the director of a Timorese research organization who requested anonymity, Dili, Timor-Leste (28 April 2014);

Interview with director of a local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with representative of local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014)

Interview with of First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014)

CNE Report on Finances (11 May 2011) Available at: <http://www.jornal.gov.tl/?mod=artigo&id=3422> (no English translation available)

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Because the law imposes no requirements on individual candidate financing, candidates have not disclosed financial data in practice. Moreover, the nature of the Timorese system sees political candidates supported through donations to the party system, and therefore individual candidate funding often goes through the party and is therefore disclosed only through general party reporting.

There has been momentum demanding that candidates and public officials publicly declare their assets (current law requires public officials to declare assets only to the Court of Appeals); however, this has not taken root, with President Taur Matan Ruak being one of the first to do so, but only after his election.

References:

East Timor Law and Justice Bulletin, New President Taur Matan Ruak publicly declares assets and calls on all public officials to follow (22 Aug. 2012) Available at: <http://www.easttimorlawandjusticebulletin.com/2012/08/new-president-taur-matan-ruak-publicly.html>;

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with director of local independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

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

75:

50: Individual 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: Individual 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.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Financial reports for individual candidates are not required by law and have not, in practice, been generated. They are therefore not accessible quickly as they not available at all. Political parties that support individual candidates are required to generate a financial report which is audited and should be published by the CNE. These reports are to be available for free online; however, there are no relevant reports currently so published.

References:

East Timor Law and Justice Bulletin, New President Taur Matan Ruak publicly declares assets and calls on all public officials to follow (22 Aug. 2012) Available at: <http://www.easttimorlawandjusticebulletin.com/2012/08/new-president-taur-matan-ruak-publicly.html>;

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with director of local independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Financial reports for individual candidates are not required by law and have not, in practice, been generated. They are therefore not accessible for a reasonable fee as they are not available at all. Political parties that support individual candidates will generate a financial report which is audited and should be published by the CNE online. However, there are currently no relevant reports so published.

References:

East Timor Law and Justice Bulletin, New President Taur Matan Ruak publicly declares assets and calls on all public officials to follow (22 Aug. 2012) Available at: <http://www.easttimorlawandjusticebulletin.com/2012/08/new-president-taur-matan-ruak-publicly.html>;

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with director of local independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

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 NGOs. 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 NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Financial reports for individual candidates are not required by law and have not, in practice, been generated. There have therefore been no quality reports generated as there are no reports at all. Political parties that support individual candidates will generate a financial report which is to be audited and published by the CNE. However, there are no reports currently so published. Moreover, a source from a Timorese political party indicates that the party only provides basic information which is so general as to render them useless in understanding a candidate's sources of income and expenditures.

References:

East Timor Law and Justice Bulletin, New President Taur Matan Ruak publicly declares assets and calls on all public officials to

follow (22 Aug. 2012) Available at: <http://www.easttimorlawandjusticebulletin.com/2012/08/new-president-taur-matan-ruak-publicly.html>;

Interview with First Assistant Secretary General of Timorese political party who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with director of local independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ³⁶Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

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

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes | No

Comments:

"Access to courts is guaranteed to all for the defense of their legally protected rights and interests. Justice shall not be denied for insufficient economic means." Article 26.

References:

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002. Article 26. Access to Court.
Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

Jose Vieira, Academic from Universidade da Paz (UNPAZ). Interview.

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.

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

31

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

Alexandre Assis, the Secretary General of Timor Lorosa'e Journalists Association notes that every Wednesday, Timorese government through President of the Council of Ministers issues a press release in three languages (Tetum, Portuguese, English) for the media. This release includes information about every policy and is taken from the weekly council ministers meeting.

Government officials, notably the Prime Minister, are often willing to be interviewed by the media after the regular weekly meeting with the President of the Republic. Fausta da Costa, Advocacy and Program Director of LABEH reports that the government is always willing to give information on policies and such decisions, but are not always honest or forthright in commenting on a reporter's question about issues of corruption.

References:

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Association – TLJA, April 4th, 2014, Dili, Timor Leste.

Domingos Bian, Director of Radio Timor Kmanek, Diocese Radio in Dili, April 4th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 4th, 2014, Dili, Timor Leste.

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.

27b. In law, the judiciary can review the actions of the executive.

Yes | No

Comments:

While the Supreme Court is able to review legislative action, there is no clear mechanism to review executive actions.

Section 126(1) of the Constitution establishes that "It is incumbent upon the Supreme Court of Justice, on legal and constitutional matters:

a) To review and declare the unconstitutionality and illegality of normative and legislative acts by the organs of the State; b) To provide an anticipatory verification of the legality and constitutionality of the statutes and referenda; [and] c) To verify cases of unconstitutionality by omission."

References:

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002.

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary does not effectively review government policy (Jose Vieira). While the law empowers the Supreme Court to review legislation and normative acts, this court has yet to be established, leaving the Court of the Appeals as the highest court. The Court of Appeals does not have explicit authority to review the actions of the executive, and there has been no such judicial review.

References:

Jose Vieira, Academic from Universidade da Paz (UNPAZ), April 4th, 2014, Dili, Timor Leste.

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Legal Adviser to Commission Anti-Corruption, Interviewed by phone, May 10th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 4th, 2014, Dili, Timor Leste.

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 rely 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.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

The Prime Minister usually takes his decisions according to the resolutions approved at the council ministers and national parliament. The Prime Minister also has a regular consultation meeting with President of Republic for discussing the political situation and government programs. While the Prime Minister often relies on Government Decrees and Legislative law, where he desires, he is able to implement policies through oral, formal or informal orders.

References:

Jose Vieira, Academic from Universidade da Paz (UNPAZ), April 4th, 2014, Dili, Timor Leste.

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Legal Adviser to Commission Anti-Corruption, Interviewed by phone, May 10th, 2014, Dili, Timor Leste.

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.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | No

Comments:

The President is given immunity, but is still answerable to the Supreme Court for crimes committed in the exercise of the President's functions. Further, the Parliament with a 2/3 majority can decide to withdraw this immunity for crimes not committed in the exercise of the President's functions.

"The President of the Republic shall enjoy immunity in the exercise of his or her functions." Article 79.1(1)

"The President of the Republic shall be answerable before the Supreme Court of Justice for crimes committed in the exercise of his or her functions and for clear and serious violation of his or her constitutional obligations." Article 79.2.

"It is the incumbent upon the National Parliament to initiate the criminal proceedings, following a proposal made by one-fifth, and deliberation approved by a two-third majority, of its Members." Article 79.3.

"In the cases provided for under the previous item, immunity shall be withdrawn at the initiative of the National Parliament in accordance with provisions of item 3 of this Section. Article 79.7.

References:

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002.

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

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.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes | No

Comments:

According to Constitution of the Republic Democratic of Timor Leste and the Law No7/2007, Statute of the holders of sovereignty bodies, any government official can be investigated, prosecuted or suspended from his or her duties.

"1. Where a member of the Government is charged with a criminal offense punishable with a sentence of imprisonment for more than two years, he or she shall be suspended from his or her functions so that the proceedings can be pursued. 2. Where a member of the Government is charged with a criminal offence punishable with a sentence of imprisonment for a maximum of two years, the National Parliament shall decide whether or not that member of the Government shall be suspended so that the proceedings can be pursued." Article 113. On Criminal liability of the members of Government, Constitution of RDTL.

Law No7/2007, Statute of the holders of sovereignty bodies, Article 26, Criminal accountability, states; "A Government member accused definitively for a crime punishable with imprisonment for more than two years is suspended from office for the duration of the proceedings."

References:

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002.

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

Law No.7/2007, Statute of the holders of sovereignty bodies, July 17, 2007. Article 26. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2007-07.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

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

25

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

Comments:

"A registry of interests is created at the Supreme Court of Justice, consisting in the inscription, in a specific book, of all activities susceptible of causing incompatibilities or impediments, as well as any acts that may generate financial profit or conflicts of interests." Article 6.1, declaration of interests.

References:

Law No.7/2007, Statute of the holders of sovereignty bodies, July 17, 2007. Article 6. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2007-07.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes | No

Comments:

"A registry of interests is created at the Supreme Court of Justice, consisting in the inscription, in a specific book, of all activities susceptible of causing incompatibilities or impediments, as well as any acts that may generate financial profit or conflicts of interests." Article 6.1, declaration of interests.

"The registration of interests covers registrations regarding the holders and members of sovereignty bodies and other persons determined by law." Article 6.2.

"For the purposes of the present law the members of Government are considered as members of sovereignty bodies." Article 1.3, scope of application.

References:

Law No.7/2007, Statute of the holders of sovereignty bodies, Article6, July 17, 2007. Article 1 and 6. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2007-07.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | No

Comments:

There is no article stating about the gifts and hospitality offered to members of the executive branch of government.

References:

Law No.7/2007, Statute of the holders of sovereignty bodies, July 17, 2007. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2007-07.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

29d. 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

Comments:

Pursuant to Law No.7/2007, Statute of the holders of sovereignty bodies, there is no article citing on the legal or regulatory requirements for the independent auditing of executive branch asset disclosures

References:

Law No.7/2007, Statute of the holders of sovereignty bodies, July 17, 2007. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2007-07.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jornál da República (official gazette) at <http://www.jornal.gov.tl/>.

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.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes | **No**

Comments:

Pursuant to Law No.7/2007, Statute of the holders of sovereignty bodies, there is no article banning Heads of State or Government to take positions in the private sector after their time in government.

References:

Statute of the holders of sovereignty bodies, Law No.7/2007, July 17, 2007. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2007-07.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jornál da República (official gazette) at <http://www.jornal.gov.tl/>.

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.

29f. 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 are no regulations restricting post-government private sector employment for national legislators. Many former government members frequently become entrepreneurs after their five year mandate in government is completed. Former Health Minister, Luis Lobato became a new entrepreneur after five years with the government. There is no clear evidence on direct lobbying or influencing by him over his former government colleagues, there is interaction.

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

Heads of State and Government are currently free to accept gifts and hospitality from any outside party. For example, many accept gifts such as a birthday presents or Christmas and New Year gifts. Giving gifts to key members of the executive branch are common. Gifts are mostly given by local entrepreneurs, which is thought to relate to the fact that the current government is offering many tender on infrastructure projects such as the construction of bridges, roads and buildings.

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

There has never been an audit on the asset disclosures of Heads of State and Government. There is no requirement for the disclosures to be audited, and in fact, no audits occur.

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

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.

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

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | **No**

Comments:

"The registry is public and may be consulted by whoever shows a legitimate interest." Article 6.1. Declaration of interest.

According to an interview with a legal expert, the 'legitimate interest' does not include the public, but only refers to the Prosecutor General, Ombudsman Office, Anti-Corruption Commission, Courts, and other similar requestors.

References:

Statute of the holders of sovereignty bodies, Law No.7/2007, July 17, 2007. Declaration of interests, Article 6, Sub Article 4. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2007-07.pdf>

Interview with Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

30b. 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:

The existing assets declaration law requires public office holders to disclose their assets to the Court of Appeal but that disclosure is not required to be made public. Asset declaration by members of the government is not a legal requirement despite Members of Parliament (MP) and some sectors of civil society outcries.

The law indicates that public officeholders must submit their asset declaration to the court but that it not need be public – declarations are only disclosed to those with a 'legitimate interest' which is interpreted to mean the Prosecutor General, Ombudsman Office, Anti Corruption Commission, District Court or other relevant institution. Assets of members of the government have never been released to the public. Armando Alves, a reporter from CJITL, has twice requested such information and has been told that these disclosures are government secrets and will not be made public.

References:

Interview with Armando Alves, reporter from CJITL online (Centru Jornalista Investigativu Timor Leste), May 9th, 2014, Dili, Timor Leste.

East Timor Law and Justice Bulletin, <http://www.easttimorlawandjusticebulletin.com/2012/08/new-president-taur-matan-ruak-publicly.html>.

Tempo Semanal Publication on the assets declaration by the President of RDTL. <http://temposemanaltimor.blogspot.com.au/2012/08/president-tmr-challenges-political.html>

President of National Parliament, Fernando de Araujo La Sama, in his closing remark at the 12th Regional Seminar in Dili, on 24-25 July 2013, Whistleblower Protection and Strengthening Anti Corruption Agencies. <http://www.oecd.org/site/adboecdanti-corruptioninitiative/12thRegionalSeminarTimorLesteVicePMAAddress.pdf>

Interview with Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

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.

30c. 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:

The existing assets declaration law requires public office holders to disclose their assets to the Court of Appeal but that disclosure is not required to be made public. Asset declaration by members of the government is not a legal requirement despite Members of Parliament (MP) and some sectors of civil society outcries.

A journalist from CJITL has twice requested to access such disclosures through the high court and was unsuccessful, being told that the records cannot be shared with journalist and are not for public consumption.

According to the publication of East Timor Law and Justice Bulletin, there were only two countryman who have ever, of their own choice, made their own asset declarations available to the public. In both cases, these were then easy to access by all citizens through print and electronic media.

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, phone interview, March 15th, 2014, Dili, Timor Leste.

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, phone interview, March 15th, 2014, Dili, Timor Leste.

East Timor Law and Justice Bulletin, <http://www.easttimorlawandjusticebulletin.com/2012/08/new-president-taur-matan-ruak-publicly.html> and <http://www.easttimorlawandjusticebulletin.com/2012/08/the-vice-minister-for-foreign-affairs.html>

Armando Alves, reporter from CJITL online (Centru Jornalista Investigativu Timor Leste), May 9th, 2014, Dili, Timor Leste.

Interview with Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

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 NGOs. 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 NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The existing assets declaration law requires public office holders to disclose their assets to the Court of Appeal but that disclosure is not required to be made public. Asset declaration by members of the government is not a legal requirement despite Members of Parliament (MP) and some sectors of civil society outcries.

A journalist from CJITL has twice requested to access such disclosures through the high court and was unsuccessful, being told that the records cannot be shared with journalist and are not for public consumption.

According to the publication of East Timor Law and Justice Bulletin, there were only two countryman who have ever, of their own choice, made their own asset declarations available to the public. When the President published his assets on August 23, 2013 in front of the high court, it showed clear details, including latest bank statements, property's, family bank statements, sources of incomes and financial interest, and also included the assets of his wife and children. The President himself invited reporters to come to the high court to report on the submission event and all reporters were also given full copies of the detailed declaration.

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, phone interview, March 15th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, phone interview, March 15th, 2014, Dili, Timor Leste.

Weekly Newspaper "Tempo Semanal", <https://www.facebook.com/media/set/?set=a.408987449202532.1073741829.273672609400684&type=3>. Updated in 2013; <http://temposemanaitimor.blogspot.com.au/2012/08/president-tmr-challenges-political.html>

Armando Alves, reporter from CJITL online (Centru Jornalista Investigativu Timor Leste), May 9th, 2014, Dili, Timor Leste.

Interview with Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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

25

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, noted that the Anti Corruption Commission has received several cases on abuse of power by the member of national parliament. Recently, the Dili District Court filed a case against a party member at Parliament that used government vehicles for their political campaign in 2012. Based to the current publication of the daily newspaper Jornal Nasional Diariu, a former member of Parliament from Social Democrat Party, Riak Leman, was brought to the court because of the use of the state car to political campaigns.

Based on violations committed by members of government and civil servant, current Prime Minister of RDTL, Xanana Gusmao, has called all the government members and civil servants not to use government cars for personal and party interests.

References:

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 15, 2014, Dili, Timor Leste.

Member of National Parliament brought to the court, Daily Newspaper "Jornal Nasional Diario", February 19, 2014. <http://www.jndiario.com/2014/02/19/reak-leman-ba-tribunal/>

Prime Minister of RDTL, Xanana Gusmao banned the use of government cars for personal and party interests, March 16, 2013. <http://cjitlnoticias.sapo.tl/nasional/pm-gusmao-bandu-membru-governu-35118>

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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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

42

32a. In law, the judiciary can review laws passed by the legislature.

Yes | No

Comments:

Section 126 of the Constitution:

“1. It is incumbent upon the Supreme Court of Justice, on legal and constitutional matters:

- a) To review and declare the unconstitutionality and illegality of normative and legislative acts by the organs of the State;
- b) To provide an anticipatory verification of the legality and constitutionality of the statutes and referenda; [and]
- c) To verify cases of unconstitutionality by omission.”

References:

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002. 126, 149, 150.

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

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).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary does not effectively or regularly review government policy (interview, Jose Vieira). Where review occurs, it is only where requested by designated office-holders, as the court cannot review of its own initiative. While the law empowers the Supreme Court to review laws passed by the legislature, this court has yet to be established, leaving the Court of the Appeals as the highest court to fulfill this role.

Laws passed at National Parliament are sent to the President of the Republic, who is empowered to invite legal actors from the judiciary to provide legal inputs before the ratification (Vieira, interview). While outside of the period of study, there is evidence that the court does, at times, undertake reviews, and that its judgements, when made, are followed.

References:

Jose Vieira, Academic from Universidade da Paz (UNPAZ), April 4th, 2014, Dili, Timor Leste.

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Association – TLJA, April 4th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 4th, 2014, Dili, Timor Leste.

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Legal Adviser to Commission Anti-Corruption, Interviewed by phone, May 10th, 2014, Dili, Timor Leste.

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.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes | **No**

Comments:

"Members of Parliament are neither civilly, criminally nor disciplinarily liable for votes cast or opinions expressed while exercising their functions." Article 10, non liability.

"1. No member of Parliament shall be arrested or placed in pre-trial custody, except for felony punishable with a prison sentence exceeding five years, following authorization from the National Parliament.

2. In the event of an ongoing criminal proceeding against a Member of Parliament and the latter is finally indicted, the National Parliament shall decide whether or not such Member of Parliament should be suspended from office, for prosecution purposes." Article 11, Inviolability.

References:

Law No.5/2004 on the status of members of parliaments, April 28th,2004, Articles 10 and

11. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-5.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jornal da República (official gazette) at <http://www.jornal.gov.tl/>.

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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

0

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes | **No**

Comments:

Pursuant to Law No.5/2004 on the status of members of parliaments, there is no specific article to file an asset disclosure form by the member of legislature.

References:

Law No.5/2004 on the status of members of parliaments, April 28th,2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-5.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jornal da República (official gazette) at <http://www.jornal.gov.tl/>.

"Whistleblower Protection and Strengthening Anti-Corruption Agencies Closing Remarks His Excellency Fernando Lasama de Araujo, Vice Prime Minister of Timor-Leste", ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and Anti-Corruption Commission of Timor-Leste 12th Regional Seminar, Dili, Timor-Leste, 24-25 July 2013. <http://www.oecd.org/site/adboecdanti-corruptioninitiative/12thRegionalSeminarTimorLesteVicePMAAddress.pdf>

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.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes | **No**

Comments:

There is no article banning member of parliament to take positions in the private sector after the given mandate.

References:

Law No.5/2004 on the status of members of parliaments, April 28th, 2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-5.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | **No**

Comments:

There is no law stating about the gifts and hospitality offered to members of the national parliament.

References:

Law No.5/2004 on the status of members of parliaments, April 28th, 2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-5.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes | **No**

Comments:

There is no law citing about the legal or regulatory requirements for the independent auditing of legislative branch asset disclosures.

References:

Law No.5/2004 on the status of members of parliaments, April 28th, 2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-5.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no regulations restricting post-government private sector employment for national legislators. Many of the former member of the National Parliament frequently become entrepreneurs after their five year mandate. As one example, former members Leandro Isaac and Riak Leman are currently construction entrepreneurs and have won government tenders.

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joazito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases 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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Members of the National Parliament are free to accept gifts and hospitality from any outside party, such as a birthday present or Christmas and New Year gifts (Francisco Agustinho Pinto). All interviewed sources confirmed that there is no regulation governing gifts and hospitality for Member of National Parliament.

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014,

Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. 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 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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Francisco Agostinho Pinto, currently working for Anti Corruption Commission, stated that there is no requirement for MPs to disclose their assets, nor has never been an audit performance by entities over the member of National Parliament assets disclosure.

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

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: 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.

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

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes | **No**

Comments:

There is no law citing on the asset disclosure for members of the national legislature.

References:

Law No.5/2004 on the status of members of parliaments, April 28th,2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-5.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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, non-governmental 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.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

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

Comments:

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, said; Timor-Leste has yet to create a proper mechanism for public officials' asset declaration which includes verifications and other regulating aspects into a law. There is currently no requirement that MPs disclose their assets either to the government or to the public.

Fausta da Costa, Advocacy and Program Director of LABEH, says; "The public has no access to this information, since there is no assets declaration made by the member of national parliaments."

While there is currently no such law or practice in force, such laws remain under discussion. According to the President of National Parliament, Fernando de Araujo La Sama, in July 2013, "In Timor Leste we have a new anti corruption law scheduled for discussion by our Parliament, as well as a law on asset declaration."

References:

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 15th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 15th, 2014, Dili, Timor Leste.

President of National Parliament, Fernando de Araujo La Sama, in his closing remark at the 12th Regional Seminar in Dili, on 24-25 July 2013, Whistleblower Protection and Strengthening Anti Corruption Agencies. <http://www.oecd.org/site/adboecdanti-corruptioninitiative/12thRegionalSeminarTimorLesteVicePMAAddress.pdf>

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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, state that since there are no asset declaration laws for national parliamentarians, it falls to NGOs and media organizations to conduct their own study to obtain any such data for the needs of the public, which can be very costly. Cancio Ximenes, Director of Weekly Newspaper Mata Dalan, says: "My newspaper has to spend money to conduct investigation on the wealth of the members of the national parliament" as the information isn't publicly available.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, said that as there are no such disclosures required by law, any attempt at obtaining such information takes substantial time and cost.

References:

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 15, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 15th, 2014, Dili, Timor Leste.

Cancio Ximenes, Director of Weekly Newspaper "Mata Dalan", March 15th, 2014, Dili, Timor Leste.

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 NGOs. 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 NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

According to all sources interviewed, there have never been any asset declarations made by the member of the national parliament, as there is no assets declaration law for MPs in Timor Leste. NGOs and media outlets may undertake their own investigations to uncover financial information on MPs, but these investigations are time and cost intensive.

References:

Joaozito Viana, Deputy Director of Luta Hamutuk, Anti Corruption NGO, Marh 17th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 17, 2014, Dili, Timor Leste.

Cancio Ximenes, Director of Weekly Newspaper, Mata Dalan, March 17th, 2014, Dili, Timor Leste.

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

17

35a. In law, citizens can access records of legislative processes and documents.

Yes | **No**

Comments:

"Legislation and decisions shall be published by the organs of sovereignty in the official gazette." Article 73.1 Publication of legislation and decisions.

However, there is no clear legal provision mandating public right to access more detailed records of legislative proceedings and debates, as well as voting records.

References:

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002. Article 73.

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

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 are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

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

Comments:

The publication of legislative laws and government decrees in the official gazette or "Jornal da republika", sometimes takes up to two weeks to be found on the internet (<http://www.jornal.gov.tl/>). Once published, this information is freely available to all either online, or in hard copy form by visiting Parliament. However, this gazette only includes laws, decrees and resolutions, and does not include details on legislative proceedings or voting records.

Additionally, citizens can access the legislative plenary, voting and debates at times through State TV and there is also space in the plenary room for citizens who wants to directly and to observe the debate.

There are press releases and minutes from the national parliament following the legislative debates in hard copies, highlighting the votes (i.e. number of in favor votes or against votes). It is available in both official languages (Tetum and Portuguese). However, they are not comprehensive (Alexandre Assis).

References:

Prezado Ximenes, President of Timor Leste Radio Community Association, March 15th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk, Anti Corruption NGO, March 15th, 2014, Dili, Timor Leste.

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Association, March 15th, 2014, Dili, Timor Leste.

Official Gazette; Jornal da republika website. Accessed on May 16, 2014. <http://www.jornal.gov.tl/>.

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.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The publication of legislative laws and government decrees in the official gazette or "Jornal da republika", sometimes takes up to two weeks to be found on the internet (<http://www.jornal.gov.tl/>). Once published, this information is freely available to all either online, or in hard copy form by visiting Parliament. However, this gazette only includes laws, decrees and resolutions, and does not include any details on legislative proceedings or voting records.

Additionally, citizens can access the legislative plenary, voting and debates at times through State TV and there is also space in the plenary room for citizens who wants to directly and to observe the debate.

There are press releases and minutes from the national parliament following the legislative debates in hard copies, highlighting the votes (i.e. number of in favor votes or against votes) and it available in both official languages (Tetum and Portuguese); however, it is not comprehensive (Alexandre Assis).

References:

Prezado Ximenes, President of Timor Leste Radio Community Association, March 15th, 2014, Dili, Timor Leste.

Joazito Viana, Deputy Director of Luta Hamutuk, Anti Corruption NGO, March 15th, 2014, Dili, Timor Leste.

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Association, March 15th, 2014, Dili, Timor Leste.

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 NGOs. 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 NGOs trying to access this information.

15
3.3. Conflicts of Interest Safeguards & Checks and Balances:
Judicial Branch

36. Are judges appointed fairly?

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

Comments:

The President of Supreme Court is appointed by the President (86(j)) and ratified by Parliament (95(3(a))). (Constitution, Articles 86 and 95).

Section 125 of the Constitution:

"The Supreme Court of Justice shall consist of career judges, magistrates of the Public Prosecution or jurists of recognised merit in number to be established by law, as follows:

- a) One elected by the National Parliament;
- b) And all the others designated by the Superior Council for the Judiciary."

Section 128 of the Constitution:

"The Superior Council for the Judiciary shall be presided over by the President of the Supreme Court of Justice and shall have the following members:

- a) One designated by the President of the Republic;
- b) One elected by the National Parliament;
- c) One designated by the Government;
- d) One elected by the judges of the courts of law from among their peers;"

Article 29 – Law No. 11/2004

1. The President of the Supreme Court of Justice shall be appointed by the President of the Republic from among judges of the Supreme Court for a four-year term of office, subject to ratification by the National Parliament.
2. Counsellor Judges shall be appointed by the Superior Council for the Judiciary from among first-class state judges with "Very Good" rating and at least eight years" practice in the class, and jurists of recognised merit, with at least fifteen years" professional practice in the area of law.
3. The National Parliament shall elect one Counsellor Judge from among magistrates and jurists who meet the requirements set out in term 2 above.
4. The Supreme Court of Justice may initially be composed of a minimum of 5 Counsellor Judges."

Article 30 – Law No. 11/2004

"State judges shall be appointed by the Superior Council for the Judiciary."

References:

Law No. 11/2004. Amending The Statutes of Judicial Magistrates. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-11.pdf>

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002.

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

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.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

To qualify as a judge in Timor Leste, a candidate has to be a Timorese national who holds a degree in law. This initial qualification ensures that the candidate has had adequate training in legal concepts and is familiar with procedures of court. The candidate must also be able to write and speak Portuguese and Tetum before becoming a judge. After the restoration of independence, almost all judges imported from abroad, especially Portugal (i.e. former president of court of appeal, Claudio Ximenes and Former Prosecutor General, Anna Pessoa); in spite of this, the state recently began to give credence to the local judges. For example this year, The President of the Republic appointed Guilhermino da Silva as president of court of appeal and also Jose Ximeens da Costa Ximenes as the Prosecutor General (Jose Vieira).

The recent appointment of Jose da Costa Ximenes as Prosecutor General is emblematic of selections made to official legal positions in Timor-Leste. He was selected based on relevant qualifications and experience.

References:

East Timor Law and Justice Bulletin, April 13, 2014, Published by National Daily Suara Timor Lorosa'e. <http://www.easttimorlawandjusticebulletin.com/2013/04/new-public-prosecutor-appointed-in.html>

President of the Republic of Democratic of Timor Leste, Taur Matan Ruak, Press Statements on the appointment of Prosecutor General, April 11, 2014. <http://presidenciarepublica.tl/?p=1746&lang=en>

Luis Sampaio de Oiveira, Director of Judicial System Monitoring Program, Monday, March 17, 2014.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), May 9th, 2014, Dili, Timor Leste.

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.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes

No

Comments:

While there is, in law, a confirmation process independent of appointing for the President of the Supreme Court, such a process is lacking for other national level judges, such as those on the Court of Appeal.

The President of Supreme Court is appointed by the President (86(j)) and ratified by Parliament (95(3(a))). (Constitution, Articles 86 and 95).

Section 125 of the Constitution:

"The Supreme Court of Justice shall consist of career judges, magistrates of the Public Prosecution or jurists of recognised merit in number to be established by law, as follows:

- a) One elected by the National Parliament;
- b) And all the others designated by the Superior Council for the Judiciary."

Article 29 – Law No. 11/2004

"1. The President of the Supreme Court of Justice shall be appointed by the President of the Republic from among judges of the Supreme Court for a four-year term of office, subject to ratification by the National Parliament.

2. Counsellor Judges shall be appointed by the Superior Council for the Judiciary from among first-class state judges with "Very Good" rating and at least eight years" practice in the class, and jurists of recognised merit, with at least fifteen years" professional practice in the area of law.

3. The National Parliament shall elect one Counsellor Judge from among magistrates and jurists who meet the requirements set out in term 2 above.

4. The Supreme Court of Justice may initially be composed of a minimum of 5 Counsellor Judges."

Section 128 of the Constitution:

"The Superior Council for the Judiciary shall be presided over by the President of the Supreme Court of Justice and shall have the following members:

- a) One designated by the President of the Republic;
- b) One elected by the National Parliament;
- c) One designated by the Government;
- d) One elected by the judges of the courts of law from among their peers;"

Article 110 from Law No. 11/2004. Amending The Statutes of Judicial Magistrates.

"Court of Appeal

1. The Court of Appeal shall exercise the competencies specifically falling under the purview of the Supreme Court of Justice until such a time as the latter becomes operational.

2. Until such time as the Supreme Court of Justice is established and starts functioning, judges for the Court of Appeal shall be appointed by the Superior Council for the Judiciary from among judges, with a level inferior to that of first-class judges, or probationary judges, taking into consideration their

evaluation or rating, or from among jurists of recognised merit with at least eight years' legal practice.

3. One of the judges for the Court of Appeal shall be elected by the National Parliament, as provided for by item 2, Section 125 of the Constitution, from among people who meet the requirements indicated in item 2 above.

4. The President of the Court of Appeal shall be appointed by the President of the Republic from among the judges of the said Court, for a four-year, renewable term of office.

5. Judges with a level inferior to that of first-class judges and probationary judges appointed to the Court of Appeal shall maintain their respective level and the positions that they hold shall be advertised three years after their appointment.

6. The President of the Court of Appeal shall be sworn in before the President of the Republic and all other judges of the said Court shall be sworn in before the President of the Court of Appeal."

References:

Law No. 11/2004. Amending The Statutes of Judicial Magistrates. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-11.pdf>

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002.

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

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

25

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | **No**

Comments:

There is no law clearly requiring that judges explain their decisions.

References:

Law No. 8/2002 Statute of Judicial Magistrates, November 5th, 2002. Amended by Law No. 11/2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/index-e.htm>

The official texts of the laws are in Portuguese, and can be accessed from the menu in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

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

Comments:

After the decision-making process, the ruling judge will issue a press release or press conference to explain the decisions taken in court. After the decision made, the judge explains the reason for his decision and the article being used. Usually this is a verbal explanation or press release, and it is often a few paragraphs or less.

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March 29th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), May 9th, 2014, Dili, Timor Leste.

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.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes | No

Comments:

Section 128 of the Constitution
(Superior Council for the Judiciary)

"1. The Superior Council for the Judiciary is the organ of management and discipline of the judges of the courts and it is incumbent upon it to appoint, assign, transfer and promote the judges."

Article 15 of Law No. 11/2004

"1. It shall be incumbent upon the Superior Council for the Judiciary:

a) to appoint, assign, re-assign, promote, dismiss and appreciate professional merits of, exercise disciplinary action over, and generally conduct all acts of a similar nature regarding, judicial magistrates;

b) to appreciate professional merits of, and exercise disciplinary action over, judicial officers, without prejudice to disciplinary competencies given to judges;

c) to appoint the Council Secretary, judicial inspectors, accounting inspectors and inspection secretaries; [and]d) to order the conduction of special inspections, investigations and inquiries into court.,"

References:

The Constitution of Timor-Leste, 2002. Section 128. http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

Law No. 11/2004 on Amending the Statutes of Judicial Magistrates. Article 15. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-11.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to 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.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes | **No**

Comments:

Pursuant to law No 8/2002, statutes of Judicial Magistrates, there is no rules establishing that the superior council of judiciary is protected from political interference by the government and national parliament.

The Superior Council for the Judiciary is itself staffed with four members, three of whom are placed in their positions directly by the President, the Government and the Parliament. According to Law 11/2004, Article 9:

"1. The Superior Council for the Judiciary shall be presided over by the President of the Supreme Court of Justice and composed of the following representative members:

- a) One designated by the President of the Republic;
- b) One elected by the National Parliament;
- c) One designated by the Government;
- d) One judicial magistrate elected by his or her peers;"

References:

Law No 8/2002, statutes of Judicial Magistrates, November 5th, 2002. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/index-e.htm>

Law No. 11/2004 on Amending the Statutes of Judicial Magistrates. Article 9. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-11.pdf>

The Constitution of Timor-Leste, 2002. Article 128. http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

The official texts of the laws are in Portuguese, and can be accessed from the menu in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative 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 executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

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

Comments:

During the period of the study, there have been no publicly reported cases of either investigation, or sanction by, the Council.

The primary duty of the Superior Council of the Judiciary is to manage the judges and judicial officers of Timor Leste. The Council has the power to initiate investigations into suspected wrongdoing by any judges through Judicial Inspection, as well as to sanction offending judges (Jose Vieira). Judicial Inspection is a department within the Council that employs judicial and accounting inspectors. All of the inspectors are chosen by the Council, subject to approval by the Minister of Justice. Inspectors must be judges that have demonstrated excellent ratings in the past. These would then investigate and then reports to the Council for ruling.

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March 29th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

Florindo de Jesus, Director of Radio Povu Viqueque, March 29th, 2014, phone interview from Dili, Timor Leste.

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Associatiom – TLJA, April 4th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), April 4th, 2014, Dili, Timor Leste.

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.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

During the period of the study, there have been no publicly reported cases of either investigation, or sanction by, the Council.

The primary duty of the Superior Council of the Judiciary is to manage the judges and judicial officers of Timor Leste. The Council has the power to initiate investigations into suspected wrongdoing by any judges through Judicial Inspection, as well as to sanction offending judges (Jose Vieira). Judicial Inspection is a department within the Council that employs judicial and accounting inspectors. All of the inspectors are chosen by the Council, subject to approval by the Minister of Justice. Inspectors must be judges that have demonstrated excellent ratings in the past. These investigate and then reports to the Council for ruling.

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, April 4th, 2014, Dili, Timor Leste.

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Associatiom – TLJA, April 4th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), April 4th, 2014, Dili, Timor Leste.

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.

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

0

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | **No**

Comments:

Pursuant to Law No. 8/2002 as amended in Law No 11/2004, there is no specific requirement for all members of judiciary to file a disclosure of their assets.

References:

Law No 11/2004. Amending the Statutes of Judicial Magistrates. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-11.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes | **No**

Comments:

There are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary.

References:

Law No 11/2004. Amending the Statutes of Judicial Magistrates. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-11.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes | **No**

Comments:

Pursuant to Law No. 11/2004 Amending the Statutes of Judicial Magistrates and Law No. 9/2011, Organic Law of the Chamber of Auditors of the Administrative, Fiscal, Auditors High Court, there is no requirement for asset disclosures nor for the independent auditing of national-level judiciary asset disclosures.

References:

Law No 11/2004. Amending the Statutes of Judicial Magistrates. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-11.pdf>

Law No. 9/2011, Organic Law of the Chamber of Auditors of the Administrative, Fiscal, Auditors High Court, August, 17, 2011. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law%209-2011.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | **No**

Comments:

There is no restriction for national-level judges entering the private sector after leaving the government.

References:

Law No 11/2004. Amending the Statutes of Judicial Magistrates. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-11.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

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

Comments:

There are no regulations restricting post-government private sector employment for national level judges, and judges are free to accept private sector positions after government employment.

The absence of this regulations does persuade judges in the court to step away from his office. For example, three years ago Francisco Agostinho Pinto left his job as a national judge at Dili District Court and worked for the International Center for Journalists – ICFJ (an american based organization) before joining the Commission of Anti Corruption last year (interview, Pinto).

References:

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Jose Vieira, Academic at Universidade da Paz (UNPAZ), May 9th, 2014, Dili, Timor Leste.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases 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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

Judges are free to accept gifts and hospitality from any outside party. All interviewed sources confirmed that there is no such regulation governing gifts and hospitality for national-level judges. Gifts to judges are common in a gift-oriented culture; however, influential judges receive larger gifts than typical citizens would expect from friends and acquaintances (Jose Vieira).

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. 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 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.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, currently working for Anti Corruption Commission, noted that there has never been an audit performance by entities over the national-level judiciary assets disclosure, as there have been no asset disclosures made by judges in the absence of any legal requirement.

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

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: 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.

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

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | **No**

Comments:

There is neither a requirement for asset disclosure by members of the national-level judiciary nor citizen access to any such records.

References:

Law No 11/2004. Amending the Statutes of Judicial Magistrates. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-11.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

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

Comments:

According to all sources interviewed, there had never been any asset declaration by judicial member. This is due to lack of assets declaration law for judges in Timor Leste.

References:

Joaozito Viana, Deputy Director of Luta Hamutuk, Anti Corruption NGO, Marh 17th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 17, 2014, Dili, Timor Leste.

Cancio Ximenes, Director of Weekly Newspaper, Mata Dalan, March 17th, 2014, Dili, Timor Leste.

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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to all sources interviewed, there had never been any asset declaration by any judicial member. This is due to lack of assets declaration law in Timor Leste.

References:

Joaozito Viana, Deputy Director of Luta Hamutuk, Anti Corruption NGO, Marh 17th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 17th, 2014, Dili, Timor Leste.

Cancio Ximenes, Director of Weekly Newspaper, Mata Dalan, March 17th, 2014, Dili, Timor Leste.

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 NGOs. 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 NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

According to all sources interviewed, there had never been any asset declaration by the judicial member. This is due to lack of assets declaration law for in Timor Leste.

References:

Joaozito Viana, Deputy Director of Luta Hamutuk, Anti Corruption NGO, Marh 17th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 17, 2014, Dili, Timor Leste.

Cancio Ximenes, Director of Weekly Newspaper, Mata Dalan, March 17th, 2014, Dili, Timor Leste.

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

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

50

40a. In law, the legislature can amend the budget.

Yes | No

Comments:

"It is also incumbent upon the National Parliament: To deliberate on the State Plan and Budget and the execution report thereof," Section 95.3.d.

The National Parliament has the right to remove, add, and alter a the budget, with the final decision being reached at a plenary debate and voting.

References:

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002. Article 95. On the National Parliament. [http://timor-
leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf](http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf)

Law No. 13/2009, Budget and Financial Management, October 21, 2009.

<http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law%2013-2009.pdf>

Amended by laws no. 3/2013 and 4/2013. http://www.jornal.gov.tl/public/docs/2013/serie_1/serie1_no27.pdf

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

Interview with Aderito Hugo da Costa, Second Vice President of National Parliament, May 9th, 2014

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.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance said, National Parliament must approve the annual state budget. According to the law, Government submits the proposed budget to the National Parliament by 15 October. Parliament then debates the budget, including asking questions of all Ministers about their budget and to the Minister of Finance about the budget in general. Only once the budget is passed can the government begin their expenditures for the year.

According to Fausta da Costa, all forms of government budget proposals are discussed openly in Parliament. The government can also submit additional budget proposal in the middle years, called rectified budget, the Parliament may approve through public plenary debate. This is required when overall spending levels are altered (IBP).

However, once the overall budget is approved, the budget can be adjusted by shifting funds either between administration units, or across line items, without legislative approval. Thus, while the legislature may approve the initial budget, they are not always able to approve some specific large expenditures (IBP).

References:

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, April 4th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 4th, 2014, Dili, Timor Leste.

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March April 4th, 2014, Dili, Timor Leste.

International Budget Partnership's Open Budget Survey, 2012 (IBP). Accessed on April 17, 2014. <http://survey.internationalbudget.org/#profile/TL>

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.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, noted that there are seven committees in the Parliament and each committee generally has sufficient staff and financial advisers to perform their budgetary oversight role. Parliament has two important instruments – the plenary support service and committee support service, which provide necessary input to the members of the committees and Parliament in general.

However, other assessments, including the most recent international Open Budget Survey on Timor-Leste, are less positive. "There is a specialized budget research office, but its staffing and other resources, including adequate funding, are insufficient to carry out its tasks."

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March April 4th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, April 4th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 4th, 2014, Dili, Timor Leste.

International Budget Partnership's Open Budget Survey, 2012 (IBP). Accessed on April 17, 2014. <http://survey.internationalbudget.org/#profile/TL>

Join declaration of the National NGOs on the negligence and inability of the National Parliament, October 22nd, 2013. <http://www.laohamutuk.org/econ/OGE14/DeklOrsPN2014te.pdf>

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.

41. Can citizens access the national budgetary process?

42

41a. 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

Comments:

During the annual budget process, the general legislative debate is supposed to be public knowledge, with media reporting actively on the process. However, for the last two years (2013 and 2014), the main state budget debates were not broadcast live to the public through state television. Instead, the substantive negotiations took place in closed-door meetings, which included an ad hoc committee meeting that was held at the Ministry of Finance Building (Viriato). The ad hoc committee led by Prime Minister and the meeting included a selected group from parliament to review and amend the specific government items before the budget went to a brief open plenary debate for final approval.

While the public does not have access to every step in the process, they are able to observe some of the process.

References:

Government Media Release. "2014 State Budget before the National Parliament", November 13th, 2013. Accessed on April 17, 2014. <http://timor-leste.gov.tl/?p=9341&lang=en>

Tempo Semanal publication on the Prime Ministers speech during the 2013 state budget debates, February 2013, <http://temposemanal.com/nasional/item/160-xanana-gusmao-east-timor>
<http://temposemanal.com/nasional/item/160-xanana-gusmao-east-timor>

International Budget Partnership's Open Budget Survey, 2012 (IBP). Accessed on April 17, 2014. <http://survey.internationalbudget.org/#profile/TL>

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, June 4th, 2014, Dili, Timor Leste.

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.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

According to the most recent (2012) international Open Budget Survey, in Timor-Leste, "Public hearings are held, covering key administrative units, in which testimony from the public is heard." However, there are indications that during the study period, this process sought less public input. However, the 2014 budget process was not conducted in this way, as outside input was significantly limited.

As one example, La'o Hamutuk had been asked for input into seven state budget processes since 2009, and had made submissions or presentations to committees or similar budget workshops twelve times, they were not invited to provide input into the 2014 budget process, and instead submitted their own letter of recommendations. Since 2009, La'o Hamutuk was invited by Parliamentary committee to testify in their hearing, but was not welcomed in 2014, which was a more closed process with very limited outside input.

Fausta da Costa notes that National Parliament generally does invite ideas and state budget analysis submissions from NGOs and other stakeholder institutions before the budget itself comes to live plenary discussions through state radio and television transmission.

References:

Lao Hamutuk, a Timor-Leste Institute for Development Monitoring and Analysis, November 8, 2013. <http://www.laohamutuk.org/econ/OGE14/LHKartaOGE14PN8Nov2013en.pdf>

Luta Hamutuk's submission to Commission E of National Parliament on the State budget, August 2013. <http://www.lutahamutukinstitute.org/activity/detail/index/62/>

Fausta da Costa, Advocacy and Program Director of LABEH, Lalenok Ba Ema Hotu, a National Anti Corruption NGO, March 7, 2014, Dili.

International Budget Partnership's Open Budget Survey, 2012 (IBP). Accessed on April 17, 2014. <http://survey.internationalbudget.org/#profile/TL>

Juvinal Diaz, Researcher from La'o Hamutuk, June 5th, 2014, Dili, Timor Leste.

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

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

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

Citizens, journalists and NGO's can access a detailed budget allocation through the Ministry of Finance Website, which currently has the approved 2014 budget allocation available, as well as historical budgets stretching back to 2005.

Additionally, general details on allocations and expenditures can be accessed on the government budget transparency portal (<http://www.transparency.gov.tl/>). However, the portal itself not always updated by the government and often out date and/or lacking in sufficient detail (Fausta da Costa).

References:

Florindo de Jesus, Director of Radio Povu Viqueque, March 29th, 2014, phone interview from Dili, Timor Leste.

Domingos Bian, Director of Radio Timor Kmanek, Diocese Radio in Dili, March 29th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Ministry of Finance Website. Accessed on May 28, 2014. <https://www.mof.gov.tl/category/documents-and-forms/budget-documents/2014-state-budget/?lang=en>

Government Budget Transparency Portal website. Accessed on May 28, 2014. <http://www.budgettransparency.gov.tl/public/index?&lang=pt> and https://www.mof.gov.tl/wp-content/uploads/2014/03/Budget_Book_2_PORT.pdf

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

75:

50: Citizens, journalists and NGOs 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.

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

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

Comments:

Committee C is mandated to handle the public finance. This committee consists of eleven members and chaired by a member of parliament from the ruling party (CNRT).

References:

Law No.14/2002 Organic Law of the National Parliament, July 10th, 2002. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2002-04.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

"The Committees of the Timor-Leste National Parliament", October 7, 2013. Accessed on May 28, 2014. East Timor Law and Justice Bulletin. <http://www.easttimorlawandjusticebulletin.com/2012/10/the-committees-of-timor-leste-national.html>

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).

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

58

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, explained that quarterly reports on physical and financial progress of the budget are presented to the Commission C, which is in charge Public Finance at National Parliament.

According to International Budget Partnership's most recent (2012) survey, the ministries release quarterly expenditure reports. However, more recently, there have not been regular reports made, and those that have been made are too general in detail. Indeed, the Parliament has frequently had to issue calls to Ministers to come to Parliament to report, when they were not coming on schedule. In some cases, the first summons have gone unheeded as Parliament waits (Viana and Vieira).

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March 29th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Timor-Leste Budget Transparency Portal. Accessed on April 17, 2014. <http://www.budgettransparency.gov.tl/public/index>

International Budget Partnership, 2012 Survey of Timor-Leste. <http://survey.internationalbudget.org/#profile/TL>

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.

43b. 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:

The Committee C of Public Finance in National Parliament is comprised of 11 members, which consists of: 7 people from the government coalition parties and 4 people from the opposition party. The commission is headed by a President coming from the government coalition parties.

Considering all forms of decision-making is done through a vote in parliament, it is seen from the number of members that the opposition party has no influence in the decision making because less than 50%. As an example, during the 2014 annual state budget discussion in February, shown live at State TV, the opposition sought to reduce the allocation of funds in several ministries but were unsuccessful in each effort.

References:

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Association, May 9th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

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.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

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

Comments:

Commission C – National Parliament conducts a financial assessment every 3 months and the commission where required invites particular government members to explain the expenditure and the implementation of government budgets (Viriato Seac). However, the committee does not aggressively pursue investigations.

In 2013, LABEH sent a report to Parliament detailing a disturbing lack of openness in the government public bidding process. Since submission, there has been no further feedback from Parliament, and there has been no indication of action (Fausta da Costa). During the period of Jan-December 2013, the 5th Constitutional government has published 554 projects both invitation to bid and intend to award, 23% of which is not transparent (127 out of 554 published projects lack transparency), however, there has been no further action or audits from Commission C (Fausta da Costa).

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March 29th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

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.

Category 4. Public Administration and Professionalism

4.1. ⁵⁶Civil Service: Conflicts of Interest Safeguards and Political Independence

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

50

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes | No

Comments:

According to the statute of the civil service, Law No.8/2004, Article 6.1. on Impartiality, states; "A civil servant shall respect the principle of equality of citizens before the law". And Article 6.2. reads that; "In the exercise of his or her public functions, a civil servant shall act with full impartiality."

"In the exercise of his or her functions, a civil servant shall abide by an honest, integral, and ethical conduct under penalty of criminal and disciplinary liability." Article 7. on Honesty and Integrity.

"A civil servant or an agent of the public administration in the exercise of his or her functions is solely at the service of the public interest, and he or she shall reject any external interference." Article 75.2 on Disciplinary offenses.

References:

Law No.8/2004, the statute of the civil service, Jun 16th, 2004. Articles 6, 7 and 75. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf> as amended by Law no 5/2009 http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf

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.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes | No

Comments:

"Efforts shall be made in the public service to select and recruit qualified candidates without discrimination, and according to assessment solely based on a candidate's skills and performance." Law No.8/2004, Article 8.1.

"The following competitive applications shall be adhered to in the public administration: a) public competitive applications, open to any candidate; b) internal competitive applications, open to civil servants; or c) internal competitive applications of limited access, only open to civil servants assigned to the service taking in candidates." Article 15 on types of competitive applications

"Promotion" is the nomination of a civil servant to a step higher than his or her current one, based on merit criteria and subject to a specific competitive application." Article 22 on Promotion.

"Admission and access to professional careers shall be based on the criterion of merit and, as a general rule, shall be made by public competitive applications to assess how a candidates' knowledge and experience matches the requirements to assume the responsibilities of the function." Article 37 on Admission and forms of access.

"1. The penalties of compulsory retirement and dismissal shall in general apply to disciplinary offences that, by their gravity, disrupt or prevent the continuation of a labour relationship.
2. The penalties provided for under item 1 above shall apply to a public servant or an agent of the public administration where:
h) He or she is found involved in acts of corruption, favouritism or nepotism." Article 88.

Articles 73 – 117 outline detail disciplinary processes, including investigations, hearings and right of appeal.

References:

Law No.8/2004, the Statute of the Civil Service, Jun 16th, 2004. Articles 8, 15, 22, 37 and 88. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf>
as amended by Law no 5/2009 http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf

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.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | No

Comments:

The redress mechanism flows directly through a supervisor and/or courts, and there is no clear mechanism in law for filing grievances outside the normal chain of command.

8/2004, Article 48 on Reporting irregularities, states; "A civil servant who learns about any case that may be construed as a violation of this Statute or any other applicable regulation shall be under an obligation to report the case to his or her supervisor."

"A civil servant or an agent of the public administration shall enjoy the following rights: To report to the immediately superior entity whenever he or she believes that his or her rights have been infringed upon." 8/2004 Article 49. on Rights of a civil servant or an agent of the public administration.

"Where a civil servant or an agent of the public administration feels aggrieved as a result of a violation of his or her rights by public authorities, he or she shall have the right to an appeal in accordance with specific established legislation, to recognition of the invoked right, to annulment of the act, and to relief for damage, as the case may be and as required by applicable law." 8/2004 Article 107 on Violation of rights.

"An internal appeal shall be lodged with the authority that made the decision appealed against, or with the relevant superior authority for such purposes." 8/2004 Article 108 on Internal appeal.

"A contentious appeal shall be lodged with appropriate authorities or jurisdictions under the terms and conditions that govern such type of appeal." 8/2004 Article 109 on Contentious appeal.

References:

Law No.8/2004, the statute of the civil service, June 16th, 2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf> as amended by Law no 5/2009 http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf

Law No. 7/2009 of 15 June on Establishing the Civil Service Commission. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law%207-2009.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menu in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | **No**

Comments:

While there are rules for dismissal of civil servants, there is no absolute requirement for dismissal in certain cases nor ban on future government employment.

“A civil servant or an agent of the public administration who breaches his or her duties, abuses his or her functions or otherwise undermines the prestige of the State shall be subject to disciplinary punishment, without prejudice to criminal or civil action.” Article 73 on General principles.

“The penalty of removal from active duty shall apply to a civil servant or an agent of the public administration in case of behaviour seriously tarnishing the dignity and prestige of the function, notably where: He or she uses or allows a third party to use any property of the public administration under his or her custody for unauthorized purposes.” Article 87.f. on Removal from active duty.

“A contract shall come to an end upon completion of its duration, termination, cancellation, or death, retirement, or application of a dismissal penalty.” Article 116.2. on Termination of a labour relationship.

References:

Law No.8/2004, the statute of the civil service, June 16th, 2004. <http://www.jornal.gov.tl/laws/TL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf> as amended by Law no 5/2009 http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf

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 or if the ban is not a lifetime ban.

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

44

45a. In practice, civil servants are protected from political interference.

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

Comments:

Civil servants are typically free from political interventions, however there were a few cases of harassment and abuses of power occurred in recent years (Jose Vieira). More political appointees at the higher levels of an agency manage civil servants, and at times these lower level civil servants can be subject to political pressure. Such political pressure is frequent, and can be found in such ministries as the ministry of education, ministry of health and ministry of state administration (Jose Vieira).

One example of Ministerial interference, was in 2013, when the Health Minister Sergio Lobo issued a circular constraining all directors of hospitals in Timor Leste from engaging with reporters on the system's performance (Joaozito Viana).

References:

Jose Vieira, An Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

Domingos Bian, Director of Radio Timor Kmanek, Diocese Radio in Dili, March 29th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

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.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants are professionally recruited and evaluated by the public service commission, an independent institution that is free from political interventions without being instructed by any entity. Civil servants appointed by the commission are required to meet the set qualifications of the position being filled. The commission, however, holds considerable sway, and deciding members have been known to impose candidates based on personal or family connections.

References:

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

Domingos Bian, Director of Radio Timor Kmanek, Diocese Radio in Dili, March 29th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

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.

45c. 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:

The recruitment of civil servants is still far from transparent. Many civil servants are recruited because of family background, as case that can be found in several ministries where civil servants employed have certain family ties. Ministers of the current government have also appointed their family members and friends to favorable positions in their office.

References:

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

Joaosito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

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.

45d. In practice, civil servants have clear job descriptions.

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

Comments:

Job descriptions are available for all positions, but the job descriptions are frequently very general and overlapping in implementation (Fausta da Costa). At times, the actual work required may be outside of the job description details (Adelia Maria). Most of the government vacancies do not have a clear job description posted, and details on duties lacking in the advertising for the position. (Jose Vieira).

Additionally, job descriptions for civil servants are largely prepared in the Portuguese language, which in many cases is difficult for some Timorese, especially the younger generation.

References:

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaosito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Interview with Administration Officer at a government office (interviewee requested anonymity) May 12th, 2014, Dili, Timor Leste.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility 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.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

According to an administration officer at a government office, as a permanent civil servant to the government, civil servants earn one extra salary month or "Salary Thirteenth" at the end of the year as a bonus to a full time contract with the government. All civil servants receive the same bonus (salary 13th) where the bonus received are equal to the monthly salary received (Fausta da Costa).

References:

Interview with Administration Officer at a government office (interviewee requested to be anonymous) March 29th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

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.

45f. 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:

The government does publish a list of open positions (though not regularly) and the publications are available at major newspapers and state TV and Radio.

There is notification of what positions are recruited for and filled. From January to September 2013, civil servant commission recruited 1,140 persons to be new civil servants and divided into two categories; 693 persons are for general regime and another 447 persons are for special regime (STL Online).

The number of civil servant positions in each ministry at each salary grade are part of the published State Budget, as well as the numbers filled during the previous year. For the 2014 budget, this is totaled on page 16 of Budget Book 2, which also includes tables for each Ministry.

References:

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Florindo de Jesus, Director of Radio Povu Viqueque, March 29th, 2014, phone interview from Dili, Timor Leste.

Suara Timor Lorosa'e – STL Online, October 22nd, 2013. <http://suara-timor-lorosae.com/kombate-korrupsaun-funsiariu-133-simu-pena-disiplinar-2013-kfp-rekruta-funsiariu-foun-1-140/>

Ministry of Finance, State Budget 2014 – Book 2. Accessed on May 28, 2014. https://www.mof.gov.tl/wp-content/uploads/2014/03/Budget_Book_2_PORT.pdf

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.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

The Civil Service Commission is inactive in terms of any investigations. For example, in early 2014, the national parliament asked the Civil Service Commission to run an investigation against poor medical services in National Hospital Guido Valadares, based in part on poor service recently received by the President of the Republic. Until now there has never been any investigation result published or further action taken, there is a strong presumption that there is pressure from the Minister of Health to hold up any such investigation (Fausta da Costa).

References:

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Florindo de Jesus, Director of Radio Povu Viqueque, March 29th, 2014, phone interview from Dili, Timor Leste.

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.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

Last year a number of civil servants (new health workers) in the Ministry of Health had delays on the payment of their salaries of up to six months. There have been a number of other cases relating to the delay in salary payment for civil servants.

In 2013, the Ministry of Health appointed young nurses to all 13 districts. They signed a contract with the government to be placed in every district throughout Timor Leste. However, they only received their salary after 3 to 6 months, and delays have since continued (Fausta da Costa). In another reported instance, an employee in the Ministry of Health said that she signed a contract beginning work in July 2013 and only received her first salary payment in October 2013.

References:

Interview with Administration Officer at a government office (interviewee requested anonymity) March 29th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

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.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

There is no official system of legal requirement to blacklist former employees who were dismissed based on corruption, and no prohibition on the employment of convicted civil servants in practice (Fausta da Costa).

Alternatively, the Center for Community Radio, being a government institution, does report that they are prohibited from employing those who have been dismissed for corruption. However, there is no formalized system of blacklisting, and no generally applied prohibition across the civil service.

References:

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 31th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 31th, 2014, Dili, Timor Leste.

Luis Evaristo Soares, Director of Center for Community Radio (CRC), May 12th, 2014, Dili, Timor Leste.

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. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

6

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

Comments:

Pursuant to Law No.8/2004, the statute of the civil service, there is no such regulation in the law .

References:

Law No.8/2004, the statute of the civil service, June 16th, 2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf> as amended by Law no 5/2009 http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf

Yes: A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes | **No**

Comments:

Pursuant to Law No.8/2004, the statute of the civil service, there is no such requirement.

References:

Law No.8/2004, the statute of the civil service, June 16th, 2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf> as amended by Law no 5/2009 http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf

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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes | **No**

Comments:

Pursuant to Law No.8/2004, the statute of the civil service, there is no such restriction.

References:

Law No.8/2004, the statute of the civil service, June 16th, 2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf> as amended by Law no 5/2009 http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf

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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | **No**

Comments:

In Article 42, section h, civil servants are prohibited to "Receive from any person gifts or mementos that may be suspected as being connected to his or her official functions." However, there is no specific guidelines regarding what gifts and hospitality might be allowable.

References:

Law No.8/2004, the statute of the civil service, June 16th, 2004. Article 42. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf> as amended by Law no 5/2009 http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf

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.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

Yes | **No**

Comments:

Pursuant to Law No.8/2004, the statute of the civil service, there are no laws requiring either asset disclosures or the auditing of any such disclosures.

References:

Law No.8/2004, the statute of the civil service, June 16th, 2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf> as amended by Law no 5/2009 http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

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

Comments:

There are no regulations restricting post-government private sector employment for civil servants.

Additionally, it is reported that there are civil servants who secretly consult for private institutions while in their civil service positions. As one low level example, some technicians (IT person) in the civil service from state radio and television secretly accept consultant jobs with private and community radios in Dili (Fausta da Costa).

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, currently working for Anti Corruption Commission, said that civil servants are free to accept gifts and hospitality from any outside party – such as a birthday present or Christmas and New Year's gifts, which are common in a culture in which gift giving is expected. Some gifts may be intended to curry favor, but it is difficult to discern without detailed regulation. All interviewed sources confirmed that there is no clear regulation governing gifts and hospitality for civil servants.

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. 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.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no clear laws mandating recusal, and Civil Servants do not always recuse themselves from decisions affecting personal interests, including the interests of their close family or friend connections.

For instance, in the recruitment of new civil servants, the civil service commission forms interview panels, and these panel members do not regularly recuse themselves from making key decisions on the hiring of their friends or family connections.

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Cancio Ximenes, Director of Weekly Newspaper, Mata Dalan, March 28th, 2014, Dili, Timor Leste.

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.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Francisco Agostinho Pinto, a lawyer and media law specialist currently working for Anti Corruption Commission, noted that as there is no such law, there has never been an audit performance by entities over the civil servant assets disclosure. Additionally, due to the absence of requiring law, no civil servants have had to disclose their assets to the public.

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service 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: Civil service 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.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

Comments:

Senior civil servants are not required to file an asset disclosure, and thus no such disclosures are available to citizens.

References:

Law No.8/2004, the statute of the civil service, June 16th, 2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf> as amended by Law no 5/2009 http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf

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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All interviewed sources confirm that, there had never been any asset declaration by the senior civil servants, as there is such assets declaration law in Timor Leste. Cancio Ximenes, Director of the weekly newspaper Mata Dalan noted that without any asset declarations, his assigned reporter had to spend more then one month to discover the wealth of the senior civil servants.

References:

Joaozito Viana, Deputy Director of Luta Hamutuk, Anti Corruption NGO, Marh 28th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Cancio Ximenes, Director of Weekly Newspaper, Mata Dalan, March 28th, 2014, Dili, Timor Leste.

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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to all interviewed sources, there is no requirement of asset disclosure, and no senior civil servants have made asset disclosures. Cancio Ximenes, Director of the weekly newspaper Mata Dalan noted that without any asset declarations, his assigned reporter had to spend over one month to discover the wealth of the senior civil servants.

References:

Joaozito Viana, Deputy Director of Luta Hamutuk, Anti Corruption NGO, Marh 28th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Cancio Ximenes, Director of Weekly Newspaper, Mata Dalan, March 28th, 2014, Dili, Timor Leste.

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 NGOs. 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 NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

All interviewed sources noted that due to the absence of such a requirement, no senior civil servants disclose their assets. As such, there are no clues that can indicate the quality of the asset disclosure. Cancio Ximenes, Director of the weekly newspaper Mata Dalan noted that without any asset declarations, his assigned reporter had to spend over one month to discover the wealth of the senior civil servants.

References:

Joaozito Viana, Deputy Director of Luta Hamutuk, Anti Corruption NGO, Marh 28th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Cancio Ximenes, Director of Weekly Newspaper, Mata Dalan, March 28th, 2014, Dili, Timor Leste.

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals’ sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals’ sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

44

48a. 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

Comments:

There are no specific protections for public-sector whistle blowers by such name. However, the Law on the Civil Service (8/2004) requires civil servants to report law violations, and then also protects them from penalization thereafter.

Article 48 – Reporting irregularities

“A civil servant who learns about any case that may be construed as a violation of this Statute or any other applicable regulation shall be under an obligation to report the case to his or her supervisor”

Article 114 – Report against a superior or fellow-employee

“1. A civil servant or an agent of the public administration that reports a violation committed by a superior or a fellow-employee in the light of Article 48 of this Statute shall not be liable to any type of penalisation, threat or discrimination, whether the alleged facts are proved or not, except where it is established beyond reasonable doubt that the report was made in bad faith with a deliberate damaging intent.

2. Where a civil servant reports an irregularity in the light of this Article, his or her identity shall be kept in confidence by the entity receiving the report, unless the provisions of item 3 below apply.

3. A civil servant who, with bad faith and damaging intent, allegedly reports against his or her superior or fellow-employee in the light of Article 48 of this Statute shall be liable to the appropriate disciplinary proceeding.”

References:

Law No. 8/2004 That Approves the Statute of the Civil Service, 16 June 2004. Articles 48 and 114. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf> as amended by Law no 5/2009 http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf

Law no.2/2009 on Protection of witnesses. May 6th, 2009. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law%202-2009.pdf>

Law No. 8/2009 on Commission of Anti-Corruption (CAC). July 7th, 2009. Article 22. <http://www.laohamutuk.org/econ/corruption/Law%208-2009En.pdf>

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.

48b. 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

Comments:

Reports within the Civil Service as well as to the Anti-Corruption Commission have a mechanism which allows for anonymity in order to help protect themselves. Another mechanism is the commission may sign an agreement with the whistle blowers to protect their identity (Francisco Pinto). Though there are general legal provisions against retribution, the laws are weak and civil servants are often fearful of potential repercussions from whistleblowing.

Additionally, when the media receive reports of corruption from civil servants, they provide anonymity to aid in their protection. Every week LABEH receives 3-4 civil servants who want to report the bad things that happen in their office and their identities are never published. They always ask that their identity to be protected due to their fear that they will be fired or subject to sanctions if their names become known (Fausta da Costa). For example, a civil servant from the finance ministry was transferred to a different department by superiors, on suspicion of leaking information. Initially he worked in procurement unit and was transferred to the human resources unit.

References:

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Legal Adviser to Commission Anti-Corruption, Interviewed by phone, March 10th, 2014, Dili.

Fausta da Costa, Program Director LABEH, May 12th, 2014, Dili, Timor Leste.

Cancio Ximenes, Director of Weekly Newspaper Mata Dalan, May 12th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

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.

48c. 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:

Pursuant to the general provisions of Law no.2/2009 on Protection of witnesses, there is no specific protection for private-sector whistle blowers. Also, pursuant to article 22, Anti Corruption Commission Law, No 8/2009, there is no further citation about the witness protection.

References:

Law no.2/2009 on Protection of witnesses. May 6th, 2009. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law%202-2009.pdf>

Law No. 8/2009 on Commission of Anti-Corruption (CAC). July 7th, 2009. Article 22. <http://www.laohamutuk.org/econ/corruption/Law%208-2009En.pdf>

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.

48d. 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

Comments:

The vagueness in Law No.2/2009 on Protection of witnesses, does not fully guarantee safety for those who report corruption cases to anti-corruption commission. When private sector employees who come to report corruption cases to the media, they always ask that their identity to be protected due to their fear that they will be fired or subject to specific sanctions from their company (Fausta da Costa).

In general, witnesses are anxious about the level of protection offered should they come forward with an accusation. The Anti-Corruption Commission often receives reports from the public about some particular case, but the complainant prefers to enter the document anonymously in an envelope compared to be interviewed by the commission, due to legitimate fear of reprisal (Francisco Agostinho Pinto).

References:

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Legal Adviser to Commission Anti-Corruption, Interviewed by phone, March 10th, 2014, Dili

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, Interviewed by phone, March 10th, 2014.

Zy Ximenes, Secretary General of JAK – Joventude Anti Korupsi (Youth Movement Against Corruption), March 10th, 2014.

Law no.2/2009 on Protection of witnesses, May 6th, 2009. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law%202-2009.pdf>

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.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49a. 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 law establishing the civil service only affords for an “an obligation to report the case to his or her supervisor” (Article 48).

Pursuant to the general provisions of Anti Corruption Commission Law, No 8/2009, there is no clear citation about any particular mechanism through which civil servants can report cases of graft, misuse of public funds, or corruption. However, the Anti Corruption Commission is mandated to receive allegations on corruption, and is available for civil servants.

References:

Law No. 8/2009 on Commission of Anti-Corruption (CAC), Article 22, July 7th, 2009. <http://www.laohamutuk.org/econ/corruption/Law%208-2009En.pdf>

Law No. 8/2004 That Approves the Statute of the Civil Service, 16 June 2004. Articles 48 and 114. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf> as amended by Law no 5/2009 http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf

Law no.2/2009 on Protection of witnesses, May 6th, 2009. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law%202-2009.pdf>

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

56

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants may report on corruption either through their internal chain of command or through the Anti-Corruption Commission. The Anti-Corruption Commission has a full staff that is sufficient in number, but experience and capacity to conduct thorough investigations is limited.

Anti Corruption Commission Investigators lack the ability to pursue more complex corruption cases and the commission itself still too weak to be rely on (Pedro da Costa and Francisco Miranda Branco). The commission has investigated five to six former ministers and only one (Former Justice Minister) has proceeded to the courts for conviction.

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March April 2nd, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 2nd, 2014, Dili, Timor Leste.

Joazoto Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, April 2nd, 2014, Dili, Timor Leste.

Pedro da Costa, Member of national parliament from the ruling party and Francisco Miranda Branco from Opposition party questioned the ability of the investigators of Anti Corruption Commission. November 7, 2013. <http://www.thediliweekly.com/ti/news/news/11771-mps-anti-corruption-commission-still-weak>

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.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants may report on corruption either through their internal chain of command or through the Anti-Corruption Commission. The Anti-Corruption Commission has regular and reliable sources of funding. The budget is largely consistent every year and the amount of the budget may be increased or decreased in accordance with the proposals of the commission (Francisco Agostinho Pinto).

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March April 2nd, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 2nd, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, April 2nd, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

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.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants may report on corruption either through their internal chain of command or through the Anti-Corruption Commission. The CAC is not quick in its response or investigations, and is known to seriously delay even on investigations into serious matters, such as into allegations of corruption in Parliament.

According to a June 2013 Luta Hamutuk press release on the backlog of corruption cases for investigation and potential prosecution, "CAC is too slow in its response to the cases, currently, there are 49 corruption cases on the table and there is no clear mechanism between CAC and office of prosecutor general (Ministeriu Publico) to further investigate the cases"

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 2nd, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, April 2nd, 2014, Dili, Timor Leste.

Cancio Ximenes, Director of Weekly Newspaper, Mata Dalan, April 2nd, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, Marh 28th, 2014, Dili, Timor Leste.

Luta Hamutuk Institute Press Release, 18 June 2013, <http://lutahamutukinstitute.org/news/detail/pressrelease/106/>.

Jornal Nasional Diario, February 18th, 2014, <http://www.jndiario.com/2014/02/18/gopac-pn-husu-investiga-indikasaun-korupsaun-ih-pn/>.

Interview with representative from local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014)

Luta Hamutuk Press Release, June 25, 2013. <http://www.lutahamutukinstitute.org/news/detail/index/153/>

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.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

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

Comments:

Civil servants may report on corruption either through their internal chain of command, or through the Anti-Corruption Commission (CAC). The CAC is less than fully effective in launching its own investigations, and rely significantly on outside pressure to begin investigations. The CAC may fail to investigate serious acts of corruption and there are reports of delays in investigations that are undertaken.

Luta Hamutuk is still concerned with CAC's work since most of the results in combatting corruption are below people's expectation. Even when cases fall within their authority, they have been delayed in taking any action (Luta Hamutuk). During the period of the study, the CAC received public criticism from the Prime Minister for its work in investigating the government, proving its decisions to undertake the related investigations were independent (Law and Justice Bulletin). However, the CAC is believed to still be too slow to react against corruption cases as there are also cases which considered as public scandal since this involve ministries, former ministries and directors which still within investigation process (Luta Hamutuk).

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 2nd, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, April 2nd, 2014, Dili, Timor Leste.

Cancio Ximenes, Director of Weekly Newspaper, Mata Dalan, April 2nd, 2014, Dili, Timor Leste.

Luta Hamutuk Institute Press Release, 18 June 2013, <http://lulahamutukinstitute.org/news/detail/pressrelease/106/>.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

Anti Corruption Commissioner Adérito de Jesus Soares held coordination meeting with the Prosecutor-General José Ximenes, March 26th, 2014. <http://cac.tl/2014/03/today-263-anti-corruption-commissioner-aderito-de-jesus-soares-held-discussions-with-the-prosecutor-general-jose-ximenes-in-the-last-coordination-meeting-of-the-first-mandate-of-the-commission-c/>

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.

51. Is the public procurement process effective?

45

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

Comments:

Law no. 10/2005 on public procurement, Article 32

"1. The civil servants and Civil Service Agents shall observe, in relation to their participation in the procurement operations, the rules on conflict of interest established by the Civil Service Statute.

2. The Civil Service, in their intervention on the procurement procedures, cannot be represented or in any way advised by the following persons:

a. family members to the second degree in blood relation, spouses or those maintaining business relations with one of the bidders;

b. those within the last three years, counting from the date of the tender opening, who have been partners with any of the bidders.

3. The Public Service cannot adjudicate a contract to family members until the second degree of blood or associates of consultants which intervened at any stage in the proceeding."

The statute of the civil service notes, "A civil servant shall be barred from having any direct or indirect interest in an organization under the control of, or with commercial relations to, the civil service." Article 10.1. on Conflict of interest.

Also, Article 104. Patrimonial Declaration, states; "Each civil servant or Civil Service agent of the services in charge of conducting procurement operations, shall present a goods declaration that integrate their personal wealth/assets and of their spouse or those who live as spouses, within the terms to be established in the joint decree of the Ministry of Planning and Finance and the Ministry of State Administration."

References:

Government Decree-Law n. 10 / 2005 of the Procurement Legal Regime (PLR). Articles 32 and 104. https://www.mof.gov.tl/wp-content/uploads/2011/05/Decree_Law_10_2005_EN.pdf

The statute of the civil service, Law No.8/2004, June 16th, 2004. Article 10. www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>

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.

51b. In law, there is mandatory professional training for public procurement officials.

Yes | No

Comments:

There is no mandatory training regime found in the Procurement Legal Regime (Law no 10/2005). While the Statute of the Civil Service does afford the right to attend vocational training courses (Article 49), there is no specific mandatory training required.

References:

Government Decree-Law n. 10 / 2005 of the Procurement Legal Regime (PLR). https://www.mof.gov.tl/wp-content/uploads/2011/05/Decree_Law_10_2005_EN.pdf

The statute of the civil service, Law No.8/2004, June 16th, 2004. Article 10. www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf as amended by Law no 5/2009 http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf

Yes: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

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.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Conflict of interest regulations for public procurement officials exist, but are not effective. Many government officials continue to ignore the regulations (Jose Vieira).

Not only are regulations on procurement officials themselves ignored, but the procurement process has, in the past, also been sidestepped by politicians seeking to enrich friends or family members. Though just prior to the period of study, the Emilia Pires case is a strong example of the bypassing of a competitive procurement process, whereby the Minister of Finance approved a procurement from a company founded, owned and directed by her husband Warren McLeod (Tempo Semanal).

References:

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, April 4th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 4th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), April 4th, 2014, Dili, Timor Leste.

“Minister of Finance Emilia Pires Approves Budget for Her Husband:”, Tempo Semanal, 27 November 2012. <http://temposemanaltimor.blogspot.com/2012/11/minister-of-finance-emilia-pires.html>

“PN Konsidera Sergio Lobo Komete Mal Administrasaun”, February 26, 2014. <http://www.jndiario.com/2014/02/26/pn-konsidera-sergio-lobo-komete-mal-administrasaun/>

“MOP: Seidauk Tempu Black List G&S, Atramor Ho TLIC”, February 5, 2014. <http://www.jndiario.com/2014/02/05/mop-seidauk-tempu-black-list-gs-atramor-ho-tlic/>

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.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes | No

Comments:

While the Procurement Legal Regime requires asset declarations by those in charge of conducting procurement operations, there is no ongoing mechanism established for monitoring the assets, income and spending habits of those officials.

Pursuant to Law No. 7/2004, Statute Of The Office of The Ombudsman For Human Rights And Justice, Decree Law No. 22/2009, Statute of the office of the General Inspectorate of the State, and Law No. 8/2009 on the Anti-Corruption Commission, there is no specific mechanism that monitors the assets, incomes and spending habits of public procurement officials.

References:

Decree-Law n. 10 / 2005 of the Procurement Legal Regime (PLR). Article 104. https://www.mof.gov.tl/wp-content/uploads/2011/05/Decree_Law_10_2005_EN.pdf

Law No. 8/2009 on the Anti-Corruption Commission. <http://www.laohamutuk.org/econ/corruption/Law%208-2009En.pdf>

Law No. 7/2004, Statute of the office of The Ombudsman For Human Rights And Justice, May 26th, 2004. <http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf>

Decree Law No. 22/2009, Statute of the office of the Inspector General, June 10th, 2009. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree%20Law%2022-2009.pdf>

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.

51e. In law, major procurements require competitive bidding.

Yes | No

Comments:

"Public Tender, required as compulsory in the procedures with a value greater than USD\$ 50,000 (fifty thousand United States Dollars), in which any interested person can present a bid, as long as they meet the requisites required in the tender documents." (Article 37)

"In the case of procurement of goods, construction or services, with an equal or lesser value to USD\$ 100,000 (one hundred thousand United States Dollars) the tender shall be compulsorily national." (Article 38).

"The international public tender is compulsory in the following cases:

- a. the public works construction, which value is estimated to exceed USD\$1,000,000 (one million United States Dollars);
- b. the contracts for the purchase of goods or relative to technical services, which value is estimated to exceed the USD\$250,000 (two hundred and fifty thousand United States Dollars);
- c. the consultancy services contracts, which value is estimated to exceed the USD\$200,000 (two hundred thousand United States Dollars).
- d. following the announcement of a pre-qualification procedure period without at least three bidders having been pre-qualified." (Article 39)

Article 44.

"Procurement by Direct Appointment

1. The procurement procedure by Direct Appointment is an exceptional procedure, by which the Public Service can direct to one or to determined suppliers to satisfy the specific procurement needs and pre-existence of special circumstances in the terms espoused in the articles 92 to 94.
2. In this procedure the choice for the contract recipient rests with the Public Service itself without developing a tender"

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

References:

Government Decree-Law n. 10 / 2005 of the Procurement Legal Regime (PLR), https://www.mof.gov.tl/wp-content/uploads/2011/05/Decree_Law_10_2005_EN.pdf

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).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

Comments:

Article 92.

Process for Procurement by Direct Appointment

"1. The Public Service may choose direct appointment, in the following cases:

- a) whenever there is a single goods supplier, work or services to be delivered, without another alternative or reasonable substitute;
- b) when there is a supplier that has specific rights in relation to goods, construction work or services (and) no alternative or reasonable substitute exists;
- c) when the contract has as an object an expert regime, investigation, experimentation, study or development or the acquisition or restoration of historical art works and it is not possible to tender, because the supplier is the only one capable and immediately available to achieve the objective;
- d) when accordingly to another contract initially signed by a determined supplier, the adjudicatary responsible for the project design requires the purchase of vital items from a specific supplier as a condition of execution guarantee or of quality in the contract;
- e) in the cases of emergency purchases;
- f) in the cases of the supply of additional parts or parts substitution of a bidder which offer has already been accepted, in other contract signed"

References:

Government Decree-Law n. 10 / 2005 of the Procurement Legal Regime (PLR), https://www.mof.gov.tl/wp-content/uploads/2011/05/Decree_Law_10_2005_EN.pdf

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.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes | No

Comments:

Article 96

Right to claim

1. The bidders that considered to be affected during the course of the procurement procedure have the right to present a claim to the Public Service, in the following causes: a) the non-compliance with the rules established in the present decree or their complementary rules; b) the non-compliance with the terms and conditions declared in the per-qualification or tender documents; c) the non-compliance of a decision adopted by the jury, which may have violated the legal rules in force.

2. In the cases of the paragraphs a) and b) of the last number, this claim can be done within five days, after the causal event occurring.

3. In the case of paragraph c) of the number 1, the deadline to the claims shall be posted in the pre-qualification or tender documents and also advertized in the decision publication notice.

Article 101

Right to Hierarchical appeal of claims

1. The bidders not conforming with the decision taken in relation to their claim, can put in an hierarchical appeal to the competent authority, within five days, after the date of notification of the decision on their claim.

2. The hierarchical appeal can suspend the procedure for a maximum period of five days.

References:

Decree-Law n. 10 / 2005 of the Procurement Legal Regime (PLR), Article 96 and 101. https://www.mof.gov.tl/wp-content/uploads/2011/05/Decree_Law_10_2005_EN.pdf

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes | No

Comments:

There is no express provision allowing for appeal via the courts. As the law is written, the appeals process is within the Ministries and agencies themselves and may involve the Prime Minister.

"The bidders not conforming with the decision taken in relation to their claim, can put in a hierarchical appeal to the competent authority, within five days, after the date of notification of the decision on their claim." Article 101. section 1. Right to hierarchical appeal of claims. "The hierarchical appeal can suspend the procedure for a maximum period of five days." section 2.

Article 102 – Competent entities to decide on the hierarchical appeal

"1. The senior leaders of the other sovereign institutions, as well as the Ministers and the Secretaries of State, are competent to acknowledge and decide the hierarchical appeals in procurement matters, in the terms of the respective organic laws, with respect to the appeals interposed against the decisions adopted by:

a) the Heads expressly nominated and authorized by them to conduct procurement operations.
b) the senior leaders of the Autonomous Services, public entities and other entities granted with administrative and delegated financial autonomy

c) the other groups with capital participation of the State more than 50% (fifty percent) that, although they don't have an entrepreneurial nature, follow eminent public purposes;

2. The Prime Minister is the competent entity to acknowledge and solve hierarchical appeals in procurement matters, presented against the decision adopted in the first instance to senior leadership of the remaining sovereign institutions, as well as the Ministers and the Secretaries of State.

3. In the cases that the Contracts Committee shall provide opinion for the contract approval, before resolving the hierarchical appeal there shall be a hearing by this Committee, in relation to the claim presented"

References:

Decree-Law n. 10 / 2005 of the Procurement Legal Regime (PLR), Article 101. Right to hierarchical appeal of claims and Article 102. Competent entities to decide on the hierarchical appeal. https://www.mof.gov.tl/wp-content/uploads/2011/05/Decree_Law_10_2005_EN.pdf

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes | No

Comments:

Pursuant to the Decree-Law n. 10 / 2005 of the Procurement Legal Regime (PLR), there is no article in the law prohibiting any such companies to participate in future procurement bids.

References:

Decree-Law n. 10 / 2005 of the Procurement Legal Regime (PLR). https://www.mof.gov.tl/wp-content/uploads/2011/05/Decree_Law_10_2005_EN.pdf

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

Yes: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. 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:

There is no regulation or system in the current procurement law prohibiting guilty companies from participating in future procurement bids, and there are no legally mandated blacklists or systems to keep such companies from participating in procurement bids. Parliament has recommended a set list of companies to be blacklisted, but this list is not exhaustive nor effectively enforced.

There have been a number of violations committed by companies in the implementation of government projects.

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March April 2nd, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 2nd, 2014, Dili, Timor Leste.

Joazito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, April 2nd, 2014, Dili, Timor Leste.

"MOP: Seidauk Tempu Black List G&S, Atramor Ho TLIC", February 5, 2014. <http://www.jndiario.com/2014/02/05/mop-seidauk-tempu-black-list-gs-atramor-ho-tlic/>

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.

52. Can citizens access the public procurement process?

71

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

According to Section 73 or the Constitution, "Legislation and decisions shall be published by the organs of sovereignty in the official gazette." All procurement laws and decrees are therefore officially published publicly and accessible to the public via the official gazette. Also, according to Decree-Law n. 10 / 2005 of the Procurement Legal Regime (PLR), Article 7 section 4, "The present decree-law, its complementary rules, the decisions and general applicable administrative directives, related to the procurement procedures, as well as all their amendments, shall be promptly provided to the public and updated in a systematic manner."

References:

The Constitution of Timor-Leste, 2002. Section 73(1).

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

Government Portal, Ministry of Finance on Procurement Law. <https://www.mof.gov.tl/category/documents-and-forms/procurement-documents/procurement-law/?lang=en>

Decree-Law n. 10 / 2005 of the Procurement Legal Regime (PLR) Article 7. Principles of Transparency and Publicity. https://www.mof.gov.tl/wp-content/uploads/2011/05/Decree_Law_10_2005_EN.pdf

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

Comments:

Decree-Law n. 10 / 2005 of the Procurement Legal Regime (PLR) Article 89: Publication of the decision:

"1. The notice relative to the jury decision, containing the pre-qualified bidders or the intention of a contract award to one bidder, is posted in the usual places that the Public Service used to initiate the procedure, indicating in a summarized way, the reasons for the choice.

2. After its publication, this notice shall stay visible to the public by at least five days in the pre-qualification procedures and in the tender procedures by at least fourteen working days."

Article 7 on the Principles of Transparency and Publicity is more detailed in publishing requirements, which includes the provision of decisions to the public:

"1. The criteria for award shall be well defined ahead of the proceedings and the information will be guaranteed to the interested parties starting from the date of opening.

2. The choice of proposals shall be always substantiated in writing.

3. The Public Service shall guarantee that the intention to contract is publicized, except in special regimes foreseen in this decree and other regulations applicable.

4. The present decree-law, its complementary rules, the decisions and general applicable administrative directives, related to the procurement procedures, as well as all their amendments, shall be promptly provided to the public and updated in a systematic manner."

References:

Decree-Law n. 10 / 2005 of the Procurement Legal Regime (PLR) Article 89 https://www.mof.gov.tl/wp-content/uploads/2011/05/Decree_Law_10_2005_EN.pdf

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The main public procurement regulations or laws are easy to access as it often goes directly to the government portal after its approval from the President of Republic and published at official gazette (Fausta da Costa). The regulations are relatively easy to access, and being available online can be accessed immediately by anyone with internet access (Ministry of Finance Procurement Law Portal). While the website lists the applicable laws and allows for downloads in English, download links to Portuguese, Tetum and Indonesian translations were not active when last accessed (April 16, 2014).

However, some regulations are not available on the portal, which is not completely comprehensive nor always updated in a timely fashion. These must be accessed in hard copy (Vieira).

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 2th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, April 2th, 2014, Dili, Timor Leste.

Florindo de Jesus, Director of Radio Povu Viqueque, April 2th, 2014, phone interview from Dili, Timor Leste.

Government Procurement Law at Ministry of Finance Website. Accessed on April 16, 2014. <https://www.mof.gov.tl/category/documents-and-forms/procurement-documents/procurement-law/?lang=en>.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

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.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The regulations are relatively low-cost to access, and being available online can be accessed immediately by anyone with internet access (Ministry of Finance Procurement Law Portal). While the website lists the applicable laws and allows for downloads in English, download links to Portuguese, Tetum and Indonesian translations were not active when last accessed (April 16, 2014).

However, some regulations are not available on the portal, which is not completely comprehensive nor always updated in a timely fashion. These must be accessed in hard copy (Vieira).

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 2th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, April 2th, 2014, Dili, Timor Leste.

Florindo de Jesus, Director of Radio Povu Viqueque, April 2th, 2014, phone interview from Dili, Timor Leste.

Government Procurement law at government portal. Accessed on April 16, 2014. <https://www.mof.gov.tl/category/documents-and-forms/procurement-documents/procurement-law/?lang=en>.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

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 NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

According to Florindo de Jesus, a Community Radio Station Manager in Viqueque (Southern of Timor Leste) says; there are advertisements on such bidding processes in the media, however it often limited to the state channels such as TV and radio and the main daily newspapers. These advertisements are not available in the private media and community radio in remote areas outside of Dili. Additionally, most ads are posted using Portuguese language, which is not understood by the majority of citizens.

During the period of Jan-December 2013, the 5th Constitutional government has only published 433 projects both invitation to bid and intend to award, with other procurements being unpublished (Fausta da Costa). Many tenders are listed on the government's e-Procurement Portal.

However, during a review in early 2013, La'o Hamutuk used the e-Procurement Portal to determine that the vast majority of procurements were restricted, and thus not advertised (90% of reviewed procurements were single source at the time of review).

References:

Florindo de Jesus, Director of Radio Povu Viqueque, April 2th, 2014, phone interview from Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 2th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk, Anti Corruption NGO, April 2th, 2014, Dili, Timor Leste.

Timor-Leste e-Procurement Portal. Accessed on May 28, 2014. <http://www.eprocurement.gov.tl/public/index>

"Interesting items on Timor-Leste's Procurement Portal" La'o Hamutuk website. March 14, 2013. Accessed on May 28, 2014. <http://www.laohamutuk.org/econ/portal/ProclIndex.htm>

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.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

The government has established a dedicated website for bidding information (<http://www.eprocurement.gov.tl/public/index>) that

contains information on open and closed tenders, including the results of major procurement bids. Though much information is available and updated regularly, it has been reported that not all information is posted, and some information is posted only after a substantial (6 month) delay (Fausta da Costa).

Usually, the results of many major procurements will go public through daily newspapers (Timor Post, Suara Timor Lorosa'e, Jornal Independente and Jornal Diario Nasional), and interested citizens or journalists may come to government ministries for further details (Jose Vieira and Fausta). Typically, however, the information that goes to newspaper are not complete. For example, the government or certain procurement unit may omit the tender reference number or total amount of the awarded project (Fausta da Costa).

References:

Florindo de Jesus, Director of Radio Povu Viqueque, April 2th, 2014, phone interview from Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 2th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, April 2th, 2014, Dili, Timor Leste.

The Timor-Leste e-Procurement Portal website. Accessed on May 16, 2014. <http://www.eprocurement.gov.tl/public/index>

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

75

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes

No

Comments:

"The procedure to sell property by public tender shall be done by way of proposals presented in a sealed letter by the candidates." Article 10.1.

"The public tender announcement shall be made public in the national media." Article 10.2.

As for leasing of state property:

"Any individual or corporate body, whether national or foreign, legally residing in Timor-Leste and civil capacity to enter into a contract and assume an obligation may enter into a leasing contract with the State." Article 9, Requirements and Procedures.

References:

Decree Law No.19/2004 on the Juridical regime of property; official allocation and leasing of private property of the state, Article 9, December 17th, 2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2004-19.pdf>

Decree Law No 32/2011 Management and Disposal of State Movable Property, November 27th, 2011. Article 10 on public tender. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/index-e.htm>

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.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes | No

Comments:

Pursuant to Decree Law No.19/2004 on the Juridical regime of property and Decree Law No 32/2011 on the Management and Disposal of State Movable Property, there is no specific article regulating conflicts of interest between official public duty and private interests for privatization officials.

However, Article 10 on Conflict of Interests in the Statute of the Civil Service defines conflicts of interest for all civil servants, a group that would include those involved in the privatization of state assets.

"1. A civil servant shall be barred from having any direct or indirect interest in an organization under the control of, or with commercial relations to, the civil service.

2. A civil servant shall also refrain from having any direct or indirect interest in a public or private organization, where such interest may cause a conflict between the civil servant's private interests and the duties arising from his or her official position."

References:

Decree Law No.19/2004 on the Juridical regime of property, December 17th, 2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2004-19.pdf>

Law No. 8/2004 on The Statute of the Civil Service. Article 10. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf>

Decree Law No 32/2011 Management and Disposal of State Movable Property, November 27th, 2011. Article 10 on public tender. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/index-e.htm>

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.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Conflict of interest regulations for civil servants exist, but are generally not effective. Many government officials ignore the regulations (Jose Vieira).

Indeed, many civil servants are now occupying government land and house for personal gain. The land and houses were abandoned after Indonesia left the country. With poor management of government owned land and housing by the current government, civil servants have been able to take advantage of the situation.

There are few official privatizations, and the process can suffer through significant delays. For instance, one auction process (for vehicles) approved in 2012 had yet to be completed by April 2014 (Oliveira, April 15, 2014).

References:

Joazito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, April 2th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 2th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), April 2th, 2014, Dili, Timor Leste.

“PNTL cars still not auctioned”, Venidora Oliveira, The Dili Weekly. April 15, 2014. <http://www.thediliweekly.com/en/news/security-defence/justice/12320-pntl-cars-still-not-auctioned>

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.

54. Can citizens access the terms and conditions of privatization bids?

70

54a. In law, citizens can access privatization regulations.

Yes

No

Comments:

According to Section 73 or the Constitution, “Legislation and decisions shall be published by the organs of sovereignty in the official gazette.” Any laws and decrees related to privatization are therefore officially published publicly and accessible to the public via the official gazette.

Additionally, in Article 10(4) of Decree Law No 32/2011 on Management and Disposal of State Movable Property, public notices are required to give the following details:

- “a) Description of the goods to be disposed of;
- b) Base value of the bid, in situations where this can apply;
- c) Payment conditions and deadlines of the property by the successful bidder;
- d) Place, deadline, date and time limit for delivery of proposals;
- e) Days and times that the property can be visited;
- f) Place, day and time that the proposals will be opened”

References:

The Constitution of Timor-Leste, 2002. Section 73(1).

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

Acts of Parliament of Timor Leste – Jornal da Republica. Accessed on April 16, 2014. http://www.jornal.gov.tl/?mod=secao_1&id=2

Decree Law No 32/2011 Management and Disposal of State Movable Property, November 27th, 2011. Article 10 on public tender. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/index-e.htm>

Decree Law No.19/2004 on the Juridical regime of property, December 17th, 2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2004-19.pdf>

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.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

According to Florindo de Jesus, a Community Radio Station Manager in Viqueque (Southern of Timor Leste) and Domingos Bian, Director of Radio Timor Kmanek, there are advertisements on privatization processes in the media, but they are often limited to the common state channels such as TV and radio and preeminent daily newspapers. These advertisements are not available in the private media and community radio in remote areas. Additionally, most ads are posted using Portuguese language, which is not understood by the majority of citizens.

References:

Florindo de Jesus, Director of Radio Povu Viqueque, March 29th, 2014, phone interview from Dili, Timor Leste.

Domingos Bian, Director of Radio Timor Kmanek, Diocese Radio in Dili, March 29th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

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.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

Comments:

Pursuant to Decree Law No.19/2004 on the Juridical regime of property, there is no article that requires the government to publicly announce the results of the privatization process.

References:

Decree Law No.19/2004 on the Juridical regime of property, December 17th, 2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2004-19.pdf>

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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The governing regulations or laws themselves are available to access on-line through the government law portal.

While the regulations and laws are accessible, according to Florindo de Jesus, a community radio station manager in the eastern of Timor Leste, grass roots reporters and citizens are rely on records on specific privatizations that are advertised in newspapers. This access is hindered and not current, as it can take almost one week for the newspapers to circulate in the countryside.

References:

Jornal da Republica – Government Law Portal. Accessed on April 16, 2014. http://www.jornal.gov.tl/?mod=secao_1&id=2

Florindo de Jesus, Director of Radio Povu Viqueque, March 29th, 2014, phone interview from Dili, Timor Leste.

Domingos Bian, Director of Radio Timor Kmanek, Diocese Radio in Dili, March 29th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The governing regulations or laws themselves are available to access on-line through the government law portal.

While the regulations and laws are accessible, according to Florindo de Jesus, a community radio station manager in eastern Timor Leste, grass roots reporters and citizens are rely on records on specific privatizations that are advertised in newspapers. This access is hindered and not current, as it can take almost one week for the newspapers to circulate in the countryside, and interested parties must purchase the papers (Domingos Bian).

References:

Jornal da Republica – Government Law Portal. Accessed on April 16, 2014. http://www.jornal.gov.tl/?mod=secao_1&id=2

Florindo de Jesus, Director of Radio Povu Viqueque, March 29th, 2014, phone interview from Dili, Timor Leste.

Domingos Bian, Director of Radio Timor Kmanek, Diocese Radio in Dili, March 29th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

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 NGOs. 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 NGOs trying to access this information.

5.1. National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

Comments:

The role of the *Provedor Direitus Umanus no Justica (PDHJ)* (Ombudsman for Human Rights) consists of the following: "The Human Rights and Justice Ombudsman shall be empowered to investigate violations of fundamental human rights, freedoms and guarantees, maladministration, illegality, manifest injustice and lack of due process." (Law 7/2004 Art. 23)

In executing this role: "The Office shall have the power to review complaints, conduct investigations and forward to the competent organs the recommendations deemed appropriate to prevent or redress illegality or injustice." (Art. 5(2)).

The Ombudsman for Human Rights and Justice shall, within the scope of his or her monitoring powers, be empowered to (Art. 24):

- "(a) oversee the functioning of public authorities, notably the Government, its agencies and private entities fulfilling public functions and services and may conduct enquiries into systematic or widespread violations of human rights or maladministration;
- (b) submit to the Government, the National Parliament or any other competent body, on an advisory basis, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights and good governance;
- (c) request the Supreme Court to declare the unconstitutionality of legislative measures, including unconstitutionality through omission in accordance with Sections 150 and 151 of the Constitution of Timor-Leste;
- (d) monitor and review regulations, administrative instructions, policies and practices in force or any draft legislation for consistency with customary international law and ratified human rights treaties;
- (e) recommend the adoption of new legislation, and propose the amendment of legislation in force and the adoption or amendment of administrative measures."

Law 7/2004 Art. 4(1)(n) defines public entities, which the PDHJ is charged with monitoring, as:

"... (i) the departments of State and the governmental agencies, including the legislative and administrative branches of the State, the judicial branch only to the extent of its administrative actions, the National Police of Timor-Leste referred to as "PNTL", and the Falintil-Defence Force of Timor-Leste referred to as "F-FDTL"; (ii) the local government administration; (iii) the governmental committees and agencies; (iv) State-owned companies; (v) companies where the Government owns over 50% of the capital; (vi) any other body as prescribed by law."

For the purpose of performing his or her functions (described in Articles 23 to 27), the Ombudsman for Human Rights and Justice has the powers outlined in Art. 28, which include: receiving complaints, investigation and inquiry, ordering others to appear before him/her should they have information, accessing relevant areas, goods, documents or information for investigation, interrogating relevant parties, visiting detention and treatment centers, to refer complaints to competent jurisdictions or resources, to make recommendations, to provide advice, and to report to the National Parliament.

References:

Constitution of the Democratic Republic of Timor-Leste (2002) 27 creates the *Provedor Direitus Umanus no Justisa nian (PDHJ)* (Ombudsman for Human Rights and Justice) (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Constitution.pdf);

Law No. 7/2004, the Law Approving the Statue of the Office of the Ombudsman for Human Rights and Justice (26 May 2004) Arts. 23, 5(2), 24, 28, and 4(1) (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-7.pdf); as amended by law no 8/2008, http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line *Jornal da República* (official gazette) at <http://www.jornal.gov.tl/>.

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.

56. Is the national ombudsman effective?

59

56a. In law, the ombudsman is protected from political interference.

Yes | No

Comments:

Constitution 27(1): "The Ombudsman shall be an independent organ in charge to examine and seek to settle citizens' complaints against public bodies, certify the conformity of the acts with the law, prevent and initiate the whole process to remedy injustice."

Law 7/2004 Art. 5(1): "The Office shall operate as an independent statutory body and shall not be subject to the direction, control or influence of any person or authority."

References:

Constitution of the Democratic Republic of Timor-Leste (2012) 7_27.1 (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Constitution.pdf)

Law 7/2004, Law No. 7/2004, the Law Approving the Statute of the Office of the Ombudsman for Human Rights and Justice (26 May 2004) Article 5(1) (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-7.pdf)

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line *Jornal da República* (official gazette) at <http://www.jornal.gov.tl/>.

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.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

While the legal framework isolates the Ombudsman for Human Rights and Justice (PDHJ) from political interference, the Ombudsman is still influenced by negative and positive political incentives that deter investigations and action. The Deputy Ombudsman for Good Governance reports that the office has no political interference in its work and that appointments are made based on qualifications of candidates in a call for applications. However, a representative in a good governance NGO in Timor-Leste noted the PDHJ has been relatively inactive, which could be a result of political pressures or other circumstances.

References:

Interview with Deputy Ombudsman for Good Governance, Dr. Rui Pereira dos Santos, Dili, Timor-Leste (23 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with representative from good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014)

US Department of State, 2013 Human Rights Report for Timor-Leste. <http://www.state.gov/documents/organization/220447.pdf>.

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.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

PDHJ serves a defined term with protection from arbitrary removal. Given that Timor-Leste's entry as an independent nation occurred just over 10 years ago, there have been few opportunities to observe the risk of removal. However, the PDHJ is currently serving his defined term without threat of removal through official or unofficial pressure. The Deputy Ombudsman for Good Governance also confirms that there has been no official or unofficial pressure to resign.

References:

Interview with Deputy Ombudsman for Good Governance, Dr. Rui Pereira dos Santos, Dili, Timor-Leste (23 April 2014);

Interview with representative from local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014)

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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Despite the human capital crunch in Timor-Leste, the PDHJ has numbers of staff sufficient to fulfill its mandate. A representative of a local good governance organization notes that the PDHJ's office has a very large staff to complete their work. However,

another expert noted that the technical capabilities of the staff hinder their ability to conduct the analysis and investigations required.

The Deputy Ombudsman for Good Governance confirms that their staff is sufficient to fulfill its mandate, with 100 staff currently in the office. However, he does note that the PDHJ has only 4 district offices, which is insufficient to ensure easy access for the widely-dispersed populations. This, however, does not appear to be an issue related with staff numbers and skills but, instead, with location.

References:

Interview with Deputy Ombudsman for Good Governance, Dr. Rui Pereira dos Santos, Dili, Timor-Leste (23 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with representative from good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014)

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.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Appointments made are largely based on professional qualifications with no issue related to appointment based on party loyalties. The Deputy Ombudsman for Good Governance reports that all appointments and staffing are made based on an open call for applications in which qualifications are reviewed in a clear and fair manner based on the applicants' qualifications through a competitive application process.

However, a representative in a good governance NGO in Timor-Leste noted that appointments for positions are not really independent. For example, the director of a local independent newspaper notes that the current Ombudsman was a friend of the ruling party when he was appointed. In a small, interconnected country with a relative lack of human capital, however, it is not clear whether such appointments are due to political pressures or qualifications.

References:

Interview with Deputy Ombudsman for Good Governance, Dr. Rui Pereira dos Santos, Dili, Timor-Leste (23 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with representative from good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014)

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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The PDHJ's office has a predictable source of funding which comes from the annual government budget. This funding is subject to the same political pressures experienced in the entire state budget, but no political considerations have been a major factor in denying or reducing funding for the PDHJ. Indeed, the Deputy Ombudsman for Good Governance reports that the budget has not only been sufficient, but that it has increased each year, in-line with other increases of the state budget.

References:

Interview with Deputy Ombudsman for Good Governance, Dr. Rui Pereira dos Santos, Dili, Timor-Leste (23 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with representative from good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014)

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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman's office makes at least one (annual) report publicly available; however, this does not cover all cases and lacks specific or controversial issues. Annual reports are issued by the PDHJ to the legislature and made available for free online. The annual report contains overviews of the PDHJ's work and highlights some cases. However, there are no publicly available reports on other cases or investigations.

Moreover, the case highlights in the annual report are only cursory and do not provide significant details of cases, investigations or outcomes. While the Deputy Ombudsman for Good Governance noted that their office creates a report for each case, these reports are not made public and are only sent to those involved in the case, the relevant ministry and at times the relevant supervising ministry. Indeed, a representative of a local good governance NGO noted that he had not seen any PDHJ reports on cases and the director of a local civil rights NGO noted that they had only accessed the annual report.

References:

Interview with Deputy Ombudsman for Good Governance, Dr. Rui Pereira dos Santos, Dili, Timor-Leste (23 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with representative from good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014)

See also Provedoria dos Direitos Humanos e Justiça, "Annual Report" (2012). <http://www.provedor-jus.pt/?idc=16>. Accessed on May 1, 2014.

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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The PDHJ relies on external requests and influence to begin investigations, as it has not opened many cases on its own initiative. Indeed, civil society organizations note the relative inaction of the PDHJ in beginning investigations and responding to complaints. There is, however, no indication that this inaction is due to political pressures, and the PDHJ appears fair in its application of power. The office does appear to coordinate well with others to investigate. For example, the director of a local civil rights NGO reported that the PDHJ often coordinates with other agencies, especially the police (PNTL) and the Anti-Corruption Commission (CAC).

NOTE: The only data available from the PDHJ is from 2012 as that report was released in June 2013 and statistics for 2013 will not be available until June 2014. Of the 202 cases the PDHJ received in 2012, 80 were investigated (Annual Report, p. 64). The office also opened on its own initiative four cases. (Annual Report, p. 69).

References:

Interview with Deputy Ombudsman for Good Governance, Dr. Rui Pereira dos Santos, Dili, Timor-Leste (23 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with representative from good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014)

See also Provedoria dos Direitos Humanos e Justiça_a, "Annual Report" (2012). <http://www.provedor-jus.pt/?idc=16>. Accessed on May 1, 2014.

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.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Because the PDHJ is only given power in law to refer cases to the Public Prosecutor or other relevant authorities and to make recommendations to the government, the office must coordinate with other entities to impose penalties. There were no reports for the relevant period of penalties as a result of PDHJ investigations or referrals.

The PDHJ is fair in its application of power, though it may be hesitant to take-on politically powerful offenders, as most of its cases have dealt only with low-level leaders such as community/village leaders or police officers. The Deputy Ombudsman for Good Governance notes that they have referred many cases to the Public Prosecutor's office and made recommendations to the

government through their work. Once the cases have been referred, the cases are subject to an overburdened and slow judicial system.

References:

Interview with Deputy Ombudsman for Good Governance, Dr. Rui Pereira dos Santos, Dili, Timor-Leste (23 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with representative from good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014)

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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

While the government has acted on some PDHJ recommendations, this was mainly in the case of low-level offices, such as community/village leaders. For example, the Deputy PDHJ for Good Governance reported that their office has successfully gotten officials suspended or removed from office. He explained that the government must act on the PDHJ's report within 60 days of its publication or the PDHJ may publish the issue in the media. However, the director of a local research organization notes that they know of no instances of government action on PDHJ reports.

References:

Interview with the director of a Timorese research organization who requested anonymity, Dili, Timor-Leste (29 April 2014);

Interview with director of a local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with Deputy Ombudsman for Good Governance, Dr. Rui Pereira dos Santos, Dili, Timor-Leste (23 April 2014)

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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

Comments:

While the PDHJ has the ability to receive complaints quickly through boxes in district and sub-district offices, individual complaints may go unacknowledged for months. The Deputy Ombudsman for Good Governance reports that they respond to all cases reported to their office within 10 days, and that cases within their purview must be investigated and referred, with processing times up to one month. Conversely, however, a representative of a local good governance NGO noted that the NGO had reported cases to the PDHJ and had never heard any updates on their case. Similarly, a representative from a local civil rights NGO noted that the processing time depends on the investigation, which may elongate case processing times.

It is important to note that the relative youth of the Timorese system, especially the court system, leaves many cases with long processing times. Thus, cases referred by the PDHJ may languish in the courts even if referred in a timely fashion by the PDHJ for action.

References:

Interview with Deputy Ombudsman for Good Governance, Dr. Rui Pereira dos Santos, Dili, Timor-Leste (23 April 2014);

Interview with representative from local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014)

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.

57. Can citizens access the reports of the ombudsman?

25

57a. In law, citizens can access reports of the ombudsman(s).

Yes | **No**

Comments:

Under Timorese law, the PDHJ is required only to issue an annual report, which does not include all case information. The office may also prepare various additional reports as necessary or as the PDHJ so desires. There is no legal requirement that a publically available report on each and every case be published.

Article 46 (emphasis added)

"1. The Ombudsman for Human Rights and Justice shall, not later than 30 June of each year, submit to the National Parliament a detailed report of his or her activities, initiatives, statistics on cases and the results obtained during the calendar year ending on the preceding 31 December.

...

3. The annual report shall be published through any means accessible to the general public.

4. The Ombudsman for Human Rights and Justice may submit to the National Parliament special reports on cases or matters of a serious nature, if deemed fit or necessary.

5. The Ombudsman for Human Rights and Justice may, from time to time, in the public interest or in the interest of any person or entity, publish reports on the exercise of his or her functions or on any particular cases or situations investigated under this law."

Law 7/2004 Art. 26(1)(a) allows reporting to be sent to the prosecutor general when dealing with corruption.

Law 7/2004 Art. 28(m) "For the purpose of performing his or her functions under Articles 23 to 27 [investigations and preventing peddling, respectively], the Ombudsman for Human Rights and Justice shall have the following powers" _ to report to the National Parliament in relation to the findings of an investigation or in relation to his or her recommendations."

Law 7/2004 Art. 34: "1. The Ombudsman for Human Rights and Justice shall report annually to the National Parliament on the performance of his or her functions.
2. Where circumstances so require, the Ombudsman for Human Rights and Justice may decide to address the public directly or to issue communications or publish information on his or her opinions, recommendations and reports on specific cases or on his or her activity."

Constitution of Timor-Leste 27(2). "Citizens may present complaints concerning acts or omissions on the part of public bodies to the Ombudsman, who shall undertake a review, without power of decision, and shall forward recommendations to the competent organs as deemed necessary."

References:

Law 7/2004, Statute of the Office of the Ombudsman for Human Rights and Justice (May 20, 2004) Arts. 46, 26(1)(a), 28(m) and 34
(Available at www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-7.pdf).

Constitution of the Democratic Republic of Timor-Leste (May 20, 2002) 7_27(2) (Available at www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Constitution.pdf)

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line *Jornal da República* (official gazette) at <http://www.jornal.gov.tl/>.

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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

As the PDHJ's office only releases an annual report, and other non-substantive reports from time to time, the only reporting to which citizens have access is available only once per year. Since specific case reports are not available, there are significant delays in accessing politically sensitive records that may not be included in the annual report. Indeed, this information would not be accessible if it is part of a confidential PDHJ report not released to the public. As there is currently no legislation on freedom of information, there is no way to force release of such information. Moreover, the annual report is not released until at least June of each year, making access to up-to-date information difficult. Indeed, the director of a local research organization notes that relevant reports are not quickly available if they are available at all.

References:

Interview with the director of a Timorese research organization who requested anonymity, Dili, Timor-Leste (29 April 2014);

Interview with director of a local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with Deputy Ombudsman for Good Governance, Dr. Rui Pereira dos Santos, Dili, Timor-Leste (23 April 2014)

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.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

Comments:

Although the office does not publish many specific reports, those that they do make available are all free online at: <http://pdhj.info/media-publications/>. It should be noted, however, that while some reports are available online, the internet is not widely accessible in Timor-Leste and this therefore does not significantly ease access for most people. Moreover, the director of a local research NGO notes that attempts to access other PDHJ reports often has required several visits to the central office in Dili.

References:

Interview with the director of a Timorese research organization who requested anonymity, Dili, Timor-Leste (29 April 2014);

Interview with director of a local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014);

Interview with Deputy Ombudsman for Good Governance, Dr. Rui Pereira dos Santos, Dili, Timor-Leste (23 April 2014)

PDHJ Website, Available at: <http://pdhj.info/media-publications/> (Accessed 12 August 2014)

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

Comments:

The Constitution [129](#) creates the High Administrative, Tax and Audit Court (hereinafter HTAC) as “a single instance to monitor the lawfulness of public expenditure and to audit State accounts.”

Under the law, the HTAC, through its Chamber of Auditors, has a broad mandate of coverage over government entities. (Law 9/2011 Art. 3). The Plenary of Judges of HTAC has a general mandate that allows monitoring of finances.

Law 9/2001 Article 2

“1. High Court shall, through its Chamber of Auditors, exercise its powers of public financial control, with jurisdiction and powers of financial control within the scope of the legal system of the Democratic Republic of Timor-Leste, both on the national territory in relation to services and abroad in relation to State bodies or representations.

2. The Administrative, Fiscal, Auditors High Court, through its Chamber of Auditors, supervises the legality of the revenues and public expenditure, examines the financial management and summons those responsible for financial offences. “

Law 9/2011 Art. 60

"1. The Plenary of the Chamber of Auditors shall be responsible:

- a) for approving the report and opinion on the General Accounts of the State;
- b) for approving the annual report of the Chamber of Auditors;
- c) for approving draft budgets and triennial and annual action plans;
- d) for approving internal rules of procedure and instructions of the Chamber of Auditors;
- e) for appraising any other matter which due to its importance or general interest, so justifies,
- f) for knowing the resources;
- g) for deliberating on the refusal of approval;
- h) for appraising and approving the audit and internal account verification Reports.

2. A Judge shall be responsible:

- a) for granting approval;
- b) for making judgements to which articles 67 to 72 refer and to practice other acts of the declaratory and executive procedure;
- c) for performing duties not assigned to the plenary or to the section."

References:

Constitution of the Democratic Republic of Timor Leste (2002) 7_ 129 (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Constitution.pdf)

Law 9/2011, Organic Law of the Chamber of Auditors of the Administrative, Fiscal, Auditors High Court (Oct. 12, 2011), Ars. 3 and 60 (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law%209-2011.pdf>), amended by law no 3/2013 (Available at http://www.jornal.gov.tl/public/docs/2013/serie_1/serie1_no32a.pdf).

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

59. Is the supreme audit institution effective?

72

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

Comments:

Law 9/2011 Art. 5

"1. The Chamber of Auditors shall exercise its powers in an independent manner.

2. The guarantees of independence to which paragraph 1 above refers shall be the self-governance, irremovability and irresponsibility of its judges and their exclusive subjection to this law.

3. Only in cases especially established in legislation can judges be subject to civil, criminal or disciplinary liability, for reasons related to their duties.

4. With the exception of cases where the facts constitute a crime, responsibility for judicial decisions always lies with the State, the State having the right of recourse against such judge."

References:

Law 9/2011, Organic Law of the Chamber of Auditors of the Administrative, Fiscal, Auditors High Court (Oct. 12, 2011), Art. 5 (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law%209-2011.pdf>), amended by law no 3/2013 (Available at http://www.jornal.gov.tl/public/docs/2013/serie_1/serie1_no32a.pdf).

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Many of Timor-Leste's institutions are only beginning to operate in this nascent democracy. This is the case for the "High Court for Tax and Audit," which is functioning as part of the Court of Appeals as the country builds its human capital. It has therefore been staffed by appointed judges. Judges assigned to the Chamber of Auditors (C mera da Contas) are chosen by rotation from the existing Court of Appeals Judges, and there is no which has been appointed "head" of the Chamber of Auditors (C mera da Contas). There is therefore no evidence regarding whether this appointee is protected from removal.

The judges for the Court of Appeals are appointed for defined terms and there have been no instances of removal to-date. As this institution is only now beginning to function, it is difficult to fully gauge its independence. However, until today, there have been no instances of removal of officers.

According to the law, the President of this unit would, once fully operational, serve a four-year term and exercises significant independence.

References:

Interview with director of local justice monitoring NGO who requested anonymity, Dili, Timor-Leste (2 May 2014);

Interview with representative of local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with Aidil Oliveira, Auditor Estagiaria C mera da Contas who requested anonymity, Dili, Timor-Leste (5 May 2014)

Law 9/2011, Organic Law of the Chamber of Auditors of the Administrative, Fiscal, Auditors High Court (Oct. 12, 2011), Art. 5 (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law%209-2011.pdf>).

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.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Many of Timor-Leste's institutions are only beginning to operate in this nascent democracy. This is the case for the "High Court for Tax and Audit," which is functioning as the Chamber of Auditors (C mera da Contas) in part of the Court of Appeals as the country builds its human capital. The court systems in Timor-Leste have been overwhelmingly disadvantaged by the lack of human capital in the country. However, the C mera da Contas is attempting to remedy this by sending 15 selected representatives to Portugal to learn skills and improve their language abilities to run the Court. These staff applied for the program through a closed but fair process (Interview with local justice monitoring NGO, 2 May 2014) which had an open call for applications based on qualifications. There are 15 staff and four international advisors currently at the C mera da Contas. These staff were chosen from 600 applicants through a competitive process.

However, it is important to note that the institution was originally charged with auditing anything above \$500,000; however, this amount was raised to \$5 million. An attempt to restrict the entity's work, it is also a product of the fact that the country does not yet have the capacity to process numerous cases and therefore needs to restrict its work to the most pressing issues. However, such a high amount does indicate more than a resource crunch.

References:

Interview with director of local justice monitoring NGO who requested anonymity, Dili, Timor-Leste (2 May 2014);

Interview with representative of local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with Luis Mota, International Adviser, and Aidil Oliveira, Auditing Intern, C mera da Contas, Dili, Timor-Leste (5 May 2014)

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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Many of Timor-Leste's institutions are only beginning to operate in this nascent democracy. This is the case for the "High Court for Tax and Audit," which is functioning as part of the Court of Appeals as the country builds its human capital. As the country has only been independent for just over 10 years, and as this institution is only now beginning to function, it is difficult to gauge its independence. However, the director of a local justice systems NGO noted that the recent process in late 2013 to recruit auditors for training in Portugal followed a closed but fair process, with successful applicants having no clear political allegiances. Moreover, representatives from the institution explain that appointments follow a clear process designed to ensure transparency. It follows the Intosai Code of Ethics in all areas. In order to become an auditor for the institution, one must apply through a public competition and pass a written and oral exam. Moreover, the institution substitutes auditors if there is a conflict of interest. For example, one auditor was substituted in 2013 when reviewing the Port Authority because her uncle was staff at the port. (Interview with C mera da Contas).

References:

Interview with director of local justice monitoring NGO who requested anonymity, Dili, Timor-Leste (2 May 2014);

Interview with representative of local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with Luis Mota, International Adviser, and Aidil Oliveira, Auditing Intern, C mera da Contas, Dili, Timor-Leste (5 May 2014)

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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Many of Timor-Leste's institutions are only beginning to operate in this nascent democracy. This is the case for the "High Court for Tax and Audit," which is functioning as part of the Court of Appeals as the country builds its human capital. As the country has only been independent for just over 10 years, and as this institution is only now beginning to function, it is difficult to gauge the regularity of funding.

However, since the office's inception, there have been no instances of inadequate funding for this office. The fact that the court is functioning as part of the Court of Appeals rather than its own independent institution is not a product of political financial wrangling, but is due the fact that human capital does not yet allow two institutions to function independently and necessitates that the few skilled legal and judicial minds in the country are utilized expeditiously.

References:

Interview with director of local justice monitoring NGO who requested anonymity, Dili, Timor-Leste (2 May 2014);

Interview with representative of local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with Luis Mota, International Adviser, and Aidil Oliveira, Auditing Intern, Câmara da Contas, Dili, Timor-Leste (5 May 2014)

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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Many of Timor-Leste's institutions are only beginning to operate, and this is the case for the "High Court for Tax and Audit," which is functioning as the Chamber of Auditors (Câmara da Contas) as part of the Court of Appeals as the country builds its human capital. The first reports of the Chamber of Auditors were only recently issued in relation to an audit from 2010-2012. Reports from the institution are not required to be released (Interview 2 May 2014), but the public can request them once they are complete. To do so, this requires accessing the main offices in the capital of Dili. Representatives from the Chamber of Auditors indicate that the institution intends to release all reports online in the future.

References:

Interview with director of local justice monitoring NGO, Dili, Timor-Leste (2 May 2014);

Interview with director of local research NGO, Dili, Timor-Leste (29 April 2014);

Interview with Luis Mota, International Adviser, and Aidil Oliveira, Auditing Intern, Câmara da Contas, Dili, Timor-Leste (5 May 2014)

Tribunais de Timor Leste website. <http://www.tribunais.tl/?q=node/22> accessed on May 5, 2014.

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.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

Many of Timor-Leste's institutions are only beginning to operate in this nascent democracy. This is the case for the "High Court for Tax and Audit," which is functioning as part of the Court of Appeals as the country builds its human capital. The first reports of the Chamber of Auditors (C mera da Contas) were only issued in April 2014, and related to an audit from 2010-2012. There is no data relevant to the this current period to indicate whether the government has acted on the institution's findings.

References:

Interview with director of local justice monitoring NGO who requested anonymity, Dili, Timor-Leste (2 May 2014);

Interview with director of local research NGO who requested anonymity, Dili, Timor-Leste (29 April 2014);

Interview with Luis Mota, International Adviser, and Aidil Oliveira, Auditing Intern, C mera da Contas, Dili, Timor-Leste (5 May 2014)

Tribunais de Timor Leste website. <http://www.tribunais.tl/?q=node/22> accessed on May 5, 2014.

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.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

Many of Timor-Leste's institutions are only beginning to operate in this nascent democracy. This is the case for the "High Court for Tax and Audit," which is functioning as the Chamber of Auditors (C mera da Contas) as part of the Court of Appeals as the country builds its human capital. It is important to note that the institution was originally charged with auditing anything above \$500,000; however, this amount was raised to \$5 million. While this could indicate an attempt to restrict the entity's work, it is also a product of the fact that the country does not yet have the capacity to process numerous cases and therefore needs to restrict its work to the most pressing issues. However, such a high amount does indicate more than a resource crunch.

The director of a local research NGO notes that most institutions charged with accountability measures are not yet particularly confident to initiate investigations, especially as regards powerful political leaders. However, as the Chamber of Auditors is newly functioning, representatives from the institution note that they have not received significant pressure.

References:

Interview with director of local justice monitoring NGO who requested anonymity, Dili, Timor-Leste (2 May 2014);

Interview with director of local research NGO who requested anonymity, Dili, Timor-Leste (29 April 2014);

Interview with Luis Mota, International Adviser, and Aidil Oliveira, Auditing Intern, C mera da Contas, Dili, Timor-Leste (5 May 2014)

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.

60. Can citizens access reports of the supreme audit institution?

58

60a. In law, citizens can access reports of the audit agency.

Yes | **No**

Comments:

There is no requirement to publish all reports. Reports on judgments that resulted in jurisprudence and annual reports are required to be made publically available (through the Official Journal); however, this does not include all reports, as the SAA is given the option to publish any reports and decisions it “understands should be published.” (Law 9/2011, Art. 7).

Law 9/2011 Art. 7

“1. The following shall be published in the Official Journal:

- a) The report and opinion on the General Account of the State;
 - b) Judgements [sic] which establish jurisprudence;
 - c) The yearly report of activities of the Chamber of Auditors;
 - d) The instructions and rules and regulations of the Chambers of Auditors;
 - e) The lists of entities dispensed from providing accounts or subject to documenting the accounts under the simplified arrangements, indicating the corresponding values;
 - f) The reports and decisions that the Chamber of Auditors understands should be published, upon notification to the interested parties.
2. The Chamber of Auditors may also decide to publish its reports by way of any of the media, upon notification to the interested parties.”

References:

Law 9/2011, Organic Law of the Chamber of Auditors of the Administrative, Fiscal, Auditors High Court (Oct. 12, 2011), Art. 7 (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law%209-2011.pdf>).

The official texts of the laws are in Portuguese, and can be accessed from the menu in the on-line Jorn”l da Rep”blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

60b. In practice, citizens can access audit reports within a reasonable time period.

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

Comments:

Many of Timor-Leste’s institutions are only beginning to operate in this nascent democracy. This is the case for the “High Court for Tax and Audit,” which is functioning as the Chamber of Auditors (C”mera da Contas) in part of the Court of Appeals as the country builds its human capital. The first reports of the Chamber of Auditors (C”mera da Contas) were issued in April 2014 and related to audits covering 2010-2012.

Representatives from the Chamber of Auditors note that there are no timelines by which they must publicly release their audit report. However, as the Chamber of Auditors currently functions, it requires the report be decided upon by the judges in the Court of Appeals. Once the Chamber of Auditors provides the report to the judges for action, they must make a decision and publish the report within 5 days of receiving the report.

References:

Interview with director of local justice monitoring NGO who requested anonymity, Dili, Timor-Leste (2 May 2014);

Interview with director of local research NGO who requested anonymity, Dili, Timor-Leste (29 April 2014);

Interview with Luis Mota, International Adviser, and Aidil Oliveira, Auditing Intern, C mera da Contas, Dili, Timor-Leste (5 May 2014)

Tribunais de Timor Leste website. <http://www.tribunais.tl/?q=node/22> accessed on May 5, 2014.

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.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Many of Timor-Leste's institutions are only beginning to operate in this nascent democracy. This is the case for the "High Court for Tax and Audit," which is functioning as the Chamber of Auditors (C mera da Contas) as part of the Court of Appeals as the country builds its human capital. The first reports of the Chamber of Auditors were only issued in April 2014 (outside the scope of this report), and related to an audit from 2010-2012. These reports, however, are accessible on the Court of Appeals' website and the Chamber of Auditors indicates its plans to continue posting these reports online, as well as expectations to post annual reports and other information online. The reports are also made available in hard copy at the central office in Dili as necessary.

It should, however, be noted that the reports are only in Portuguese, which most citizens do not speak or read as widely as the native, Tetum. Therefore, while the reports are accessible in that they are online and free, they may not be relevant to a significant portion of the population unable to read them. No reports in Tetum are available in paper or online.

References:

Interview with director of local justice monitoring NGO who requested anonymity, Dili, Timor-Leste (2 May 2014);

Interview with director of local research NGO who requested anonymity, Dili, Timor-Leste (29 April 2014);

Interview with Luis Mota, International Adviser, and Aidil Oliveira, Auditing Intern, C mera da Contas, Dili, Timor-Leste (5 May 2014)

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 NGOs. 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 NGOs trying to access this information.

5.3. ⁷⁷Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

Comments:

Note: law 8/2008 lists the Tax Administration throughout as the body responsible for various tax duties, and instills it with the power to make decisions and receive filings, complaints, forms, etc. related to tax. It is therefore clear that the Tax Administration under the Ministry of Finance is the body charged to collect taxes.

Law 8/2008 7_1- definitions

“Tax Administration” means the central services and other public bodies upon which it is incumbent to carry out the liquidation and to collect taxes and duties, the Minister of Finance or another competent member of the Government, when exercising their administrative powers in relation to tax matters.”

Law 8/2008 91 makes clear that the Tax Administration under the Ministry of Finance is the only agency empowered to collect taxes: “No taxes or duties have effect in Timor-Leste unless they are included in, or authorized by, the present law.”

References:

Law 8/2008, Taxes and Duties Act (June 30, 2008) 1 & 91 <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law%208-2008%20.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menu in the on-line Jornál da República (official gazette) at <http://www.jornal.gov.tl/>.

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.

62. Is the tax collection agency effective?

88

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Despite a general lack of human capital in Timor-Leste, there is sufficient staff to fulfill the tax collection agency’s basic mandate. This includes many international advisers and sufficient numbers of local staff. The Ministry of Finance publishes vacancy announcements for staff as necessary to fill the tax office.

The director of an independent newspaper note that there are only a few staff assigned to direct services, which has caused delays in processing. He also notes that most staff are only trained through “on the job training,” which is a product of the overall

lack of human capital in the country.

References:

Representative from local economic advocacy NGO who requested anonymity, Dili, Timor-Leste (23 April 2014);

Chairman of large local business holding who requested anonymity, Dili, Timor-Leste (24 April 2014);

Interview with director of independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

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 tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Funding for the tax office is part of the state budget and cannot be changed outside of the annual budget process. The same political considerations that are included in the state budget for each ministry are involved; however, this does not affect funding for the tax agency in such a way as to implicate political pressures on the agency. There were no reports of threats or cuts, and funding for the agency has been reliable.

References:

Representative from local economic advocacy NGO who requested anonymity, Dili, Timor-Leste (23 April 2014);

Chairman of large local business holding who requested anonymity, Dili, Timor-Leste (24 April 2014);

Interview with director of independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

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 tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

Comments:

In general, tax laws are applied in a non-discriminatory and non-arbitrary manner. However, because regulations to help interpret the law are lacking and the tax system overall is not widely understood, some groups evade taxes. Moreover, overall enforcement is weak. While large businesses report consistently following tax laws and being taxed according to the law (Interview with chairman of local business, 24 April 2014), small organizations and individuals often escape payment because the office does not have the ability or will to enforce the law with these groups. (Interview with economic advocacy NGO, 17 April 2014). Moreover, the US Government’s Guide to Doing Business notes that “Taxation records are also unreliable and may not have been filed even by legitimate businesses.” (Doing Business in Timor-Leste, p. 11). An independent newspaper also reports that several businesses have “negotiated” lower tax rates with the tax office. These evasions, however, are generally not due to political connections or bribery, but overwhelmingly due to a lack of capacity as the country develops.

References:

Interview with the Chairman of a large local business holding who requested anonymity, Dili, Timor-Leste (24 April 2014);

Interview with representative of local economic advocacy NGO who requested anonymity, Dili, Timor-Leste (17 April 2014);

US Dep’t of Commerce, Guide to Doing Business in Timor-Leste (2013) Available at: http://www.google.tl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CDYQFjAC&url=http%3A%2F%2Fphotos.state.gov%2Flibraries%2Ftimor-leste%2F788%2Fpdfs%2F2013-ccg-sept-23-final.pdf&ei=zhpnu44bhBoOhugSo5oDwBA&usq=AFQjCNEjgI8_bTakCNqJ2zBHwWWtk7DmiQ&sig2=ZuIYZ3yA5mXdvvZdVSLvdA&bvm=bv.657882

The World Bank Doing Business Report, 2014: Timor-Leste. Available at <http://www.doingbusiness.org/data/exploreconomies/timor-leste>.

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.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | No

Comments:

Decree Law 9/2003 7_ 2(1)

“The competencies and duties of the Customs Service of Timor-Leste are as follows:

- ...
- (b) To define the territory’s customs system;
- (c) To ensure the discharge and collection of customs duties and any other taxes, fees or charges the reception of which the Service is entitled by law.
- (d) To Define and regulate the customs regimes applicable to the movement of people and goods entering, staying at, transiting through or departing from, the customs territory, and ensure the regular application thereof;
- (e) To take customs monitoring action on people and goods;
- (f) To define the foreign monitoring policy and co-ordinate the application thereof, promoting, namely, the articulation of the Customs Service with other monitoring bodies of the Public Administration, so as to maximise results;
- (g) To combat tax evasion and fraud, particularly the illegal drug or weapons trafficking, and collaborate with other national, foreign and international bodies in activities related to anti-fraud fight;
- (h) To fulfil fiscal justice-related duties as may be entrusted thereto by law or regulation;
- (i) To examine and issue opinions on conventions, agreements or other international normative instruments of a customs nature

or that contain provisions falling within the scope of customs;

(j) To monitor the execution thereof and assess, at the national level, the consequences arising out of the application of the studies and opinions referred to in the previous paragraph;

(k) To ensure the representation of Timor-Leste at meetings and activities of specialised customs bodies, foreign or international;

(l) To collaborate with other state departments in pursuing their own goals, namely in the fields of economy, defence, security, morality, public hygiene and health, tourism, veterinary and phytopathologic control, protection of trademarks and patents and preservation of the country's cultural and artistic heritage, insofar as that co-operation is indispensable to the realisation of those goals;

(m) To increase the awareness of the users of its services, namely on the contents and interpretation of customs laws, in order to facilitate its correct enforcement;

(n) To examine and promote the improvement of the customs system." (emphasis added)

Decree Law 10/2004, 7_7_ 37 & 38: provide the Customs Service and Min. of Finance as the responsible bodies for enforcing customs tax offenses

Decree Law 11/2004, Art. 2

"The provisions necessary to the enforcement of the Customs Code shall be the object of a ministerial order, and shall be the competence and initiative of the Minister of Planning and Finance."

Decree Law 11/2004, Art. 165(4)

"The hierarchical appeal shall be addressed to the Minister of Planning and Finance, who shall consult the Customs Controller, if he or she so decides."

References:

Decree-Law No. 9/2003, On the Duties and Competencies of the Customs Service of Timor-Leste (July 22, 2003), 7_2(1) (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2003-09.pdf)

Decree Law 10/2004 on Customs Tax Offenses in Timor-Leste (RJIFATL) (19 May 2004) 7_7_ 37 & 38 (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2004-10.pdf)

Decree Law 11/2004, Customs Code of Timor-Leste (May 19, 2004) Arts. 2 and 165(4) (Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2004-11.pdf)

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line "Jornal da República" (official gazette) at <http://www.jornal.gov.tl/>.

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.

65. Is the customs and excise agency effective?

75

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

While there were no reports that the office lacks numbers of trained staff, there are, at times, backlogs or delays in customs.

In order to improve the quality of its present staff, the customs service notes that they have received full training programs from well-known customs experts, and that customs officers have received training overseas to learn how best to apply their skills.

References:

Interview with chairman of large local business holding who requested anonymity, Dili, Timor-Leste (24 April 2014);

Interview with representative from international NGO who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with representative from local economic advocacy NGO who requested anonymity (23 April 2014);

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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Funding for the customs office is part of the state budget. The same political considerations that are included in the state budget for each ministry are involved; however, this does not affect funding for the customs office for overtly political reasons. There are indications that the office may lack sufficient funding for administrative work, which opens possibilities for corruption (Chairman of large Timorese company).

References:

Interview with representative from international NGO who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with representative from local economic advocacy NGO who requested anonymity, Dili, Timor-Leste (23 April 2014);

Email interview with Timor-Leste Customs Adviser, Alejandro Garcia (30 April 2014);

Interview with chairman of large local business holding who requested anonymity, Dili, Timor-Leste (24 April 2014)

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

25

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

There are several indications that customs and excise laws are unequally applied. Because customs laws and regulations are a mix of several laws, there is much space for confusion and exploitation of gaps. There are reports that the private sector often complains about having to pay the import tax and "additional taxes" such as a bribes to get items through customs. Indeed, the chairman of a large company noted the need for improving the work system in ports because there are reports that the ports have

increased some rules and there is a possibility that mafia-like groups within the ports increase bureaucratic measures in the ports in order to extract bribes.

References:

Interview with representative from local economic rights NGO who requested anonymity, Dili, Timor-Leste (23 April 2014);

Interview with Chairman of large Timorese business holding who requested anonymity, Dili, Timor-Leste (24 April 2014);

Interview with representative from international NGO who requested anonymity, Dili, Timor-Leste (23 April 2014)

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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

Comments:

Under the law, there is no specific agency that oversees state-owned companies. However, each ministry is responsible for overseeing companies allocated to it based on the legislation creating the company. For example, the Timor Gap Legislation (Decree Law 31/2011) assigns the project to the Ministry of Natural Resources to oversee. And, the Counsel of Ministers in the Parliament is charged with overseeing this spending generally.

Decree Law 31/2011, Preamble:

"Thus, the responsibilities in connection with business activities previously exercised by the body of the State's direct administration responsible for supervising the oil industry are transferred to a State-owned company "TIMOR GAP, E.P." which pursuant to this decree-law is subject to the supervisory powers of the Government agency with oversight over the oil sector, which exercises at all times control powers over the legality of its actions."

References:

Decree Law 31/2011, Decree Law on Timor GAP- Timor Gas & Petroleum, E.P. (27 July 2011) Available at: www.jornal.gov.tl/laws/TL/RD/TL-Law/RD/TL-Decree-Laws/Decree-Law%2031-2011..pdf

The official texts of the laws are in Portuguese, and can be accessed from the menu in the on-line Jornal da República (official gazette) at <http://www.jornal.gov.tl/>.

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several

government agencies or ministries oversee different state-owned enterprises. 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, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

45

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | **No**

Comments:

There is no particular agency monitoring state-owned companies; instead, the body charged with monitoring each individual company is subordinated within the relevant ministry. Additionally, the major body overseeing state-owned businesses is the Counsel of Ministers within Parliament, which is not independent of the government. The Decree Law on Public Companies requires a monitoring board created within the company, which reports to the relevant ministry and the Counsel of Ministers. (See Generally Decree Law 14/2003 Section 13). The Counsel of Ministers and the individual ministries charged with supervising the companies are not independent of the government as they themselves are the government. Section 3(2) notes: "The constitutive instrument of a public company shall mention the organ of the state machinery to which the company is subordinated."

For example, the Timor GAP company's legislation gives power to the Ministry of Natural Resources:

Decree Law 31/2011, Preamble:

"Thus, the responsibilities in connection with business activities previously exercised by the body of the State's direct administration responsible for supervising the oil industry are transferred to a State-owned company "TIMOR GAP, E.P." which pursuant to this decree-law is subject to the supervisory powers of the Government agency with oversight over the oil sector, which exercises at all times control powers over the legality of its actions."

References:

Decree Law 31/2011, Decree Law on Timor GAP- Timor Gas & Petroleum, E.P. (27 July 2011) Available at: www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law%2031-2011..pdf

Decree Law 14/2003, Decree Law on Public Companies (Aug. 8, 2003) Available at: http://www.jornal.gov.tl/public/docs/2002_2005/decreto_lei_governo/14_2003.pdf

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line "Jornal da República" (official gazette) at <http://www.jornal.gov.tl/>.

Yes: A YES score is earned only if the agency, series of agencies, 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

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

Comments:

There is currently no central oversight body, nor is there an independent agency within various bodies monitoring state-owned businesses. Instead, the Timorese system gives oversight to the relevant ministry associated with the state-owned company. The Counsel of Ministers in the National Parliament has overall financial oversight of all ministries and their respective organs. Beyond direct oversight, the Court of Appeals (through the Chamber of Auditors (Câmara da Contas)) acts as a high audit court for all government spending. The Anti-Corruption Commission is also charged as an independent agency to provide general monitoring of all government activities.

There are no concerns that the CAC office lacks sufficient staff. Each of the ministries and the national parliament are sufficiently staffed. Despite a general lack of human capital in Timor-Leste, the government offices tend to draw and keep skilled professionals on staff. Moreover, the National Parliament, ministries and Chamber of Auditors are supported with international advisers that augment and train these staff.

References:

Interview with Head of Advocacy at local economic advocacy NGO, Dili, Timor-Leste (17 April 2014);

Interview with director of local research NGO, Dili, Timor-Leste (29 April 2014);

Interview with head of international development agency anti-corruption project who requested anonymity, Dili, Timor-Leste (6 May 2014)

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

There is currently no central oversight body, nor is there an independent agency within various bodies. Instead, the Timorese system gives oversight to the relevant ministry associated with the state-owned company. The Counsel of Ministers in the National Parliament has overall financial oversight of all ministries and their respective organs. Moreover, the Chamber of Auditors (Câmara da Contas) within the Court of Appeals provides overall government auditing. All ministries overseeing state-owned companies receive consistent and sufficient funding and there are no reports that the Parliament or courts lack necessary funding.

References:

Interview with Head of Advocacy at local economic advocacy NGO who requested anonymity, Dili, Timor-Leste (17 April 2014);

Interview with director of local research NGO who requested anonymity, Dili, Timor-Leste (29 April 2014);

Interview with head of international development agency anti-corruption project who requested anonymity, Dili, Timor-Leste (6 May 2014)

100: The agency, series of agencies, 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 agency, series of agencies, 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There is currently no central oversight body, nor is there an independent agency within various bodies. Instead, the Timorese system gives oversight to the relevant ministry associated with the state-owned company. During the relevant period, there were no investigations of any state-owned business, but there is evidence that strong oversight is limited.

The Counsel of Ministers in the National Parliament has overall financial oversight of all ministries and their respective organs. The Court of Appeals (through the Chamber of Auditors (Câmara da Contas)) acts as a high audit court for all government spending. And, the Anti-Corruption Commission is charged with overall monitoring and investigations in coordination with the Public Prosecutor for all corruption crimes.

References:

Interview with Head of Advocacy at local economic advocacy NGO who requested anonymity, Dili, Timor-Leste (17 April 2014);

Interview with director of local research NGO who requested anonymity, Dili, Timor-Leste (29 April 2014);

Interview with director of local independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

Interview with representative from the Anti-Corruption Commission (8 May 2014).

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is currently no central oversight body, nor is there an independent agency within various bodies. Instead, the Timorese system gives oversight to the relevant ministry associated with the state-owned company. During the relevant period, there were no investigations into nor penalties imposed on state-owned businesses.

The Counsel of Ministers in the National Parliament has overall financial oversight of all ministries and their respective organs. The Court of Appeals (through the Chamber of Auditors (Câmara da Contas)) acts as a high audit court for all government spending and can publish reports on the audit. The Anti-Corruption Commission is charged with overall monitoring and investigations. All penalties for violations much come from the Public Prosecutor, who receives cases from the above-mentioned offices.

References:

Interview with Head of Advocacy at local economic advocacy NGO who requested anonymity, Dili, Timor-Leste (17 April 2014);

Interview with director of local research NGO who requested anonymity, Dili, Timor-Leste (29 April 2014);

Interview with director of local independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014);

Interview with representative from Anti-Corruption Commission who requested anonymity, Dili, Timor-Leste (8 May 2014)

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

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

25:

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

69. Can citizens access the financial records of state-owned companies?

35

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

Comments:

Decree Law 14/2003 Section 26(1) and (4):

"1. A public company shall prepare, with June 30th of each year as the reference date, the following documents:

- The Board of Directors report, giving account of the way the company's goals have been achieved and reviewing its efficiency in the various fields of its activity;
- A balance sheet and a statement of outputs;
- A breakdown of its stock and of the medium- and long-term investments realised;
- A chart of origin on the application of funds.

4. A public company shall have the Board of Directors annual report, the balance sheet and the statement of outputs, as well as the opinion of the Monitoring Board, published in the Office [sic] Gazette."

References:

Decree Law 14/2003, Law on Public Companies (Aug. 8, 2003) Art. 26, Available

at: http://www.jornal.gov.tl/public/docs/2002_2005/decreto_lei_governo/14_2003.pdf

The official texts of the laws are in Portuguese, and can be accessed from the menu in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

Some, but not all, government procurement and budget information is published on the Ministry of Finance's "Transparency Portal." This information, however, is quite cursory and does not include detailed financial records of state-owned businesses.

There is very little history of reporting by which to gauge the regularity and quality of SOE reports. There is no required schedule for filing information, but some NGOs report that it may take several months to access relevant information on state-owned businesses, when it is available at all.

Currently, there is little to no indication that companies misstate reported information. However, the director of an independent newspaper notes that they have seen reports which indicate misstated information for the state-owned Radio and Television Timor-Leste company regarding newspaper distribution programs, as the records report proper spending, but the independent newspaper has seen areas where no distributions have occurred.

References:

Interview with head of advocacy at local economic advocacy NGO who requested anonymity, Dili, Timor-Leste (17 April 2014);

Interview with director of local research NGO who requested anonymity, Dili, Timor-Leste (29 April 2014);

Interview with director of local independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

See also: <http://eiti.org/TimorLeste/reports>

100: State-owned companies always publicly 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, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

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

Comments:

In general, no government body is exempt from the annual audit of the public budget. In 2013, this audit was conducted by an international firm. This audit, however, only reviews the total government budget, and would therefore review only the records submitted to the relevant ministry by the state-owned company related to cashflow and profits-losses. The Chamber of Auditors (Câmara da Contas), functioning as the high audit court for Timor-Leste, can audit all state-owned companies, but did not undertake an audit of any of them during the period of study.

As there are currently less than five state-owned companies in the country which have been functioning for less than 10 years, there is very little history by which to gauge the quality of auditing and financial reporting. There are no known audits by the state-owned companies. As relates to the overall state budget audit, there has been little to no indication that companies use flawed or deceptive accounting procedures. The state audit itself accords with international accounting procedures. There is no indication that auditors collude with the companies, as their audits are performed by international auditors. However, because the audit is limited to only that information submitted through the relevant Ministry, the reports lack some necessary information.

References:

Interview with head of advocacy at local economic advocacy NGO who requested anonymity, Dili, Timor-Leste (17 April 2014);

Interview with representative of state-owned business who requested anonymity, Dili, Timor-Leste (2 May 2014);

Interview with Head of international aid organization project on anti-corruption who requested anonymity, Dili, Timor-Leste (6 May 2014)

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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Annual reports and overall government spending and procurement are published for free on the Ministry of Finance’s “Transparency Portal.” However, this information is not comprehensive, nor does it include all SOE information. Additionally, the director of an independent Timorese newspaper notes that they have attempted many times to obtain records from various state-owned entities and have been required to travel to their offices if they received them at all. As comprehensive records are overwhelmingly difficult to access, accessing them, when possible at all, would largely require incurring costs of persistent travel and contact with the entities.

A local economic advocacy NGO reports that it has tried to get detailed reports but has waited more than 6 months to receive them”this for projects that had 3 month durations. The country’s overall annual audit is available yearly online, and the “Transparency Portal” has some up-to-date procurement and budget information covering some SOEs.

References:

Interview with head of advocacy at local economic advocacy NGO, Dili, Timor-Leste (17 April 2014);

Interview with director of local research NGO, Dili, Timor-Leste (29 April 2014);

Interview with Head of international aid organization project on anti-corruption who requested anonymity, Dili, Timor-Leste (6 May 2014)

See also: <http://eiti.org/TimorLeste/reports> and <http://www.transparency.gov.tl/english.html>

Interview with director of independent newspaper who requested anonymity, Dili, Timor-Leste (24 April 2014)

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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Annual reports and overall government spending and procurement are published for free on the Ministry of Finance’s “Transparency Portal.” However, this information is not comprehensive, nor does it cover all SOEs. A local economic advocacy NGO notes that they have attempted to get other records, which has required several trips to the relevant government office and constant follow-up to obtain contracts and procurement documents. Additionally, the director of an independent Timorese newspaper notes that they have attempted many times to obtain records from various state-owned entities and have been required to travel to their offices if they received them at all. As comprehensive records are overwhelmingly difficult to access, accessing them, when possible at all, would largely require incurring costs of persistent travel and contact with the entities.

References:

Interview with head of advocacy at local economic advocacy NGO, Dili, Timor-Leste (17 April 2014);

Interview with director of local research NGO, Dili, Timor-Leste (29 April 2014);

Interview with Head of international aid organization project on anti-corruption who requested anonymity, Dili, Timor-Leste (6 May 2014)

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 NGOs. 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 NGOs trying to access this information.

60
5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

44

70a. In law, anyone may apply for a business license.

Yes | No

Comments:

Decree Law 24/2011, Art. 6 allows business licenses to be applied for by “any individual or collective entity,” which does not exclude any group of category of citizens”indeed, it also includes non-citizens.

References:

Decree Law 24/2011, Licensing of Commercial Activities (May 31, 2011) Art. 6 (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree%20Law-24-2011.pdf>).

See also: Decree Law No. 18/2010, Special Regime for the Immediate Incorporation of Companies (Dec. 1, 2010) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree%20Law%2018-2010.pdf>).

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn”l da Rep”blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | No

Comments:

Decree Law 24/2011 gives the right to complain, but is not clear on an official mechanism for appeal. Article 13(3) "In those cases where the licensing request is refused, the refusal shall mandatorily include statement of facts and the legal basis for the decision taken." Article 13(4) "If the licensing request is refused, the interested party may repeat the request provided the reasons that determined the refusal have been remedied, without prejudice to the right to complain."

The MCIA – Ministry of Commerce, Industry and Environment – is given authority over most licensers as well as sanctions; and any sanctions can be appealed "in accordance with the laws in force" (Art. 31) however this is too vague to give the statute meaning.

References:

Decree Law 24/2011, Licensing of Commercial Activities (May 31, 2011) Art. 13 and 31 (Available at: <http://www.jornal.gov.tl/laws/TL/RDTL-Law/RDTL-Decree-Laws/Decree%20Law-24-2011.pdf>)

The official texts of the laws are in Portuguese, and can be accessed from the menu in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

70c. 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

Comments:

Most citizens can obtain a business license within about one week if they are able to access the office in Dili – however, there are several other procedures required to register and launch a small business. A representative from an international NGO working on business licensing in Timor-Leste noted the new approach designed to streamline the process – "SERVE" (Service for Registration and Verification of Entrepreneurs) one-stop-shop system with an average time of about 10 days in 2013. Moreover, registration is now to be automatically issued to low risk applicants, with high-risk taking about 13 working days and natural resource registration taking more than 90 days. The chairman of a large company reported no issues with accessing business licenses for all citizens so long as they prepare the necessary paperwork.

However, the above are only a limited portion of the steps required to fully license and register a business. According to the World Bank 2014 Doing Business Report, starting a business in TL takes 8 procedures, requires 94 days, and requires 136% of income per capita as paid-in minimum capital. TL ranks 154 of 189 economies on ease of starting a business. On the particular items of registering the company with the Ministry of Justice, WB says three weeks, plus another 7 days to get a taxpayer ID number and 21 days to register with MCIA.

References:

Interview with Chairman of large local business holding who requested anonymity, Dili, Timor-Leste (24 April 2014);

Interview with representative from international NGO who requested anonymity, Dili, Timor-Leste (23 April 2014);

US Department of Commerce, Doing Business in Timor-Leste: 2013 Country Commercial Guide for U.S. Companies (2013) Available at: <http://timor-leste.usembassy.gov/doing-business-local.html>

World Bank Doing Business Report 2014: Timor-Leste. <http://www.doingbusiness.org/data/exploreeconomies/timor-leste>

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.

70d. 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

Comments:

According to the World Bank Doing Business Report, the costs associated with launching a business are quite low at 3.1% of the income per capita. While the base cost of licensing is quite manageable, the fact that licensing and registration is only available in the capital, Dili, can pose a financial burden on applicants based in any of the areas outside the capital, as travel and transportation infrastructure is lacking. The base cost of licensing is free for the first year and \$105 per year thereafter. The head of a large local company cites no known issues with the cost of business licensing.

References:

World Bank Doing Business Report 2014: Timor-Leste. <http://www.doingbusiness.org/data/exploreeconomies/timor-leste>

US Department of Commerce, Doing Business in Timor-Leste: 2013 Country Commercial Guide for U.S. Companies (2013) Available at: <http://timor-leste.usembassy.gov/doing-business-local.html>;

Interview with Chairman of large local business holding who requested anonymity, Dili, Timor-Leste (24 April 2014);

Interview with representative from international NGO who requested anonymity, Dili, Timor-Leste (23 April 2014)

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.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

67

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes | No

Comments:

The relevant codes are available online at www.jornal.gov.tl in English and Portuguese, and they clearly state the legal regulations related to public health and safety. This allows most citizens access to transparent rules regarding public health. However, it should be noted that laws are only available in English and Portuguese, rather than Tetum, which is the most widely-spoken official language. As few people in Timor-Leste speak basic Portuguese or English, much less legal Portuguese or English, the language issue may pose an effective barrier to access for many people.

References:

Decree Law 28/2011, Food Industry and Marketing Regulation (July 20, 2011) Art. 1, <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law%20%2028-2011%20Food%20Industry%20Marketing%20Regulation.pdf>

Decree Law 7/2009, Regulations for Restaurants and Similar Establishments (Jan. 15, 2009) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law%20%20%207-2009.pdf>).

Decree Law 33/2008, Hygiene and Public Order (Aug. 27, 2008) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree%20Law%2033-2008.pdf>).

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jornál da República (official gazette) at <http://www.jornal.gov.tl/>.

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.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes | No

Comments:

The legal regime regarding environmental regulations related to businesses is available online in English and Portuguese. This allows most citizens access to transparent rules regarding environmental regulations. However, it should be noted that laws are only available in English and Portuguese, rather than Tetum, which is the most widely-spoken official language. As few people in Timor-Leste speak basic Portuguese or English, much less legal Portuguese or English, the language issue may pose an effective barrier to access for many people.

References:

Decree Law 5/2011, Environmental Licensing (Feb. 9, 2011) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree%20Law%20%205-2011.pdf>).

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jornál da República (official gazette) at <http://www.jornal.gov.tl/>.

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.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes | No

Comments:

There are no laws available on public safety issues in regards to building codes and construction standards. The regulations for public safety are available online in English and Portuguese. This allows most citizens access to transparent rules regarding public health. However, it should be noted that laws are only available in English and Portuguese, rather than Tetum, which is the most widely-spoken official language. As few people in Timor-Leste speak basic Portuguese or English, much less legal Portuguese or English, the language issue may pose an effective barrier to access for many people.

References:

Decree Law 33/2008, Hygiene and Public Order (Aug. 27, 2008) (Available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree%20Law%2033-2008.pdf>).

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jornál da República (official gazette) at <http://www.jornal.gov.tl/>.

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.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

0

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

As a burgeoning democracy, Timor-Leste's institutional mechanisms and enforcement procedures are still quite limited. While basic public health information is available in law, there is no indication that these standards are uniformly enforced or understood in practice. This has led to uneven enforcement as it opens opportunities for bribes to extract favorable treatment from those unfamiliar with the process.

The US "Doing Business in Timor-Leste" report for 2013 notes that "The regulatory system is still in its formative stages. It appears that existing tax, labor, environment, health and safety, and other laws and policies as written do not particularly distort or impede investment. Uncertainty about the content of future regulation, uneven implementation, and non-enforcement are impediments to investment." (US Embassy Report). A local businessman reports that these standards are not well-known to him and that enforcement is varied. And, a representative of an international NGO working on business issues noted that they knew of very little enforcement or frameworks for proper enforcement of the standards.

References:

US Embassy 2013 Investment Climate Statement – Timor-Leste (Feb. 2013) Available at: <http://timor-leste.usembassy.gov/business/investment-climate-statement.html>;

Interview with Chairman of large local business holding, Dili who requested anonymity, Timor-Leste (24 April 2014);

Interview with representative from international NGO who requested anonymity, Dili, Timor-Leste (23 April 2014)

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.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

As a burgeoning democracy, Timor-Leste's institutional mechanisms and enforcement procedures are still quite limited. While environmental health standards are available in law, there is no indication that these standards are uniformly enforced or understood in practice. This has led to uneven enforcement as it opens opportunities for bribes to extract favorable treatment. The US "Doing Business in Timor-Leste" report for 2013 notes that "The regulatory system is still in its formative stages. It appears that existing tax, labor, environment, health and safety, and other laws and policies as written do not particularly distort or impede investment. Uncertainty about the content of future regulation, uneven implementation, and non-enforcement are impediments to investment." (US Embassy Report).

A local businessman reports that these standards are not well-known to him and that enforcement is varied. And, a representative of an international NGO working on business issues noted that they knew of very little enforcement or frameworks for proper

enforcement of the standards. For example, a large bridge project built in Dili in 2013 has not yet even applied for an environmental license despite being nearly complete (La'o Hamutuk, Environmental Licensing- Who Needs It?).

References:

US Embassy 2013 Investment Climate Statement – Timor-Leste (Feb. 2013) Available at: <http://timor-lesite.usembassy.gov/business/investment-climate-statement.html>;

Interview with Chairman of large local business holding who requested anonymity, Dili, Timor-Leste (24 April 2014);

Interview with representative from international NGO who requested anonymity, Dili, Timor-Leste (23 April 2014)

La'o Hamutuk, Environmental Licensing " Who Needs It? (8 May 2014) Available at: <http://laohamutuk.blogspot.com/2014/05/environmental-licensing-who-needs-it.html>

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.

72c. 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

Comments:

As a burgeoning democracy, Timor-Leste's institutional mechanisms and enforcement procedures are still quite limited. While basic public safety standards are available in law, there is no indication that these standards are uniformly enforced or understood in practice. This has led to uneven enforcement as opens opportunities for bribes to extract favorable treatment.

The US "Doing Business in Timor-Leste" report for 2013 notes that "The regulatory system is still in its formative stages. It appears that existing tax, labor, environment, health and safety, and other laws and policies as written do not particularly distort or impede investment. Uncertainty about the content of future regulation, uneven implementation, and non-enforcement are impediments to investment." (US Embassy Report). A local businessman reports that these standards are not well-known to him and that enforcement is varied. And, a representative of an international NGO working on business issues noted that they knew of very little enforcement or frameworks for proper enforcement of the standards.

References:

US Embassy 2013 Investment Climate Statement – Timor-Leste (Feb. 2013) Available at: <http://timor-lesite.usembassy.gov/business/investment-climate-statement.html>;

Interview with Chairman of large local business holding who requested anonymity, Dili, Timor-Leste (24 April 2014);

Interview with representative from international NGO who requested anonymity, Dili, Timor-Leste (23 April 2014)

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.

Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ~~Anti~~ Anti-Corruption Law

73. Is there legislation criminalizing corruption?

89

73a. In law, attempted corruption is illegal.

Yes | No

Comments:

According to Penal Code of The Republic Democratic of Timor Leste, article 292 – 302; any form of attempted act for corruption is criminal. Article 292, sub article 1, on Passive corruption for an unlawful act, states; “Any official who, directly or through a third party endorsed by the former, requests or accepts, for him or herself or any third party, any undue material or immaterial benefit, or promise thereof, in exchange for an act or omission contrary to the duties attached to the office, even if prior to said request or acceptance, is punishable with 3 to 15 years imprisonment.”

References:

Penal Code of The Republic Democratic of Timor Leste, Decree Law No. 19/2009, Article 292, March 30th, 2009. http://www.wipo.int/wipolex/en/text.jsp?file_id=243617. Official: http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no39.pdf

Yes: A YES score is earned if corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes | No

Comments:

According to Penal Code of The Republic Democratic of Timor Leste, article 270 and 294; any form of active or passive corruption, such as; extortion or any other act of abuse of power is public crime. Article 270 on extortion, states; “Any person who, with intent to obtain unlawful gain for him or herself or a third party, compels another, by means of violence or threat of serious harm, to dispose of any property, thus causing loss to said or to any other party, is punishable with 2 to 6 years imprisonment.”

Also, article 297 on Abuse of Power, says; “Any official who abuses powers or violates duties inherent to his or her office with intent to obtain, for him or herself or any third party, any unlawful benefit or to cause loss to another, is punishable with 1 to 4 years imprisonment if no heavier penalty is applicable by virtue of another legal provision.”

References:

Penal Code of The Republic Democratic of Timor Leste, Decree Law No. 19/2009, Article 270 and Article 297, March 30th,

2009. http://www.wjpo.int/wjpolex/en/text.jsp?file_id=243617. Official: http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no39.pdf.

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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes | No

Comments:

According to Penal Code of The Republic Democratic of Timor Leste, article 292 – 302; any form of active or passive corruption including offering bribe is public crime. Article 294, sub article 1, on active corruption, says; “Any person who, directly or through a third party with consent or endorsement of the former, gives or promises an official or third party who knows the official, any material gain or other benefit not due to said official, for the purpose described in article 292, is punishable with 3 to 10 years imprisonment.”

References:

Penal Code of The Republic Democratic of Timor Leste, Decree Law No. 19/2009, Article 292, March 30th, 2009. http://www.wjpo.int/wjpolex/en/text.jsp?file_id=243617. Official: http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no39.pdf.

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

Comments:

According to Penal Code of The Republic Democratic of Timor Leste, article 292 – 302; any form of active or passive corruption including receiving a bribe is public crime. Article 293, sub article 1, on Passive corruption for a lawful act, says: “Any official who, directly or through a third party endorsed by the former, requests or accepts, for him or herself, any undue material or immaterial benefit, or promise thereof, in exchange for an act or omission not contrary to the duties attached to the office, even if prior to said request or acceptance, is punishable with up to 3 years imprisonment or a fine.”

Also sub article 2. says: “The same penalty shall apply to any official who, directly or through a third party endorsed by or with consent of the former, requests or accepts, for him or herself or a third party, any undue material or immaterial benefit from a party who has, has had or will have any interest that depends on performance of the his or her official duties.”

References:

Penal Code of The Republic Democratic of Timor Leste, Decree Law No. 19/2009, Article 293, March 30th, 2009. http://www.wjpo.int/wjpolex/en/text.jsp?file_id=243617. Official: http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no39.pdf.

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | No

Comments:

Pursuant to the Decree Law No. 19/2009 of Penal Code, Articles 292 – 302 on active and passive corruption includes bribing a foreign official as subject to the same rules as local officials. Article 302 on Concept of official, Sub Article 1 and section e, states; "For the purposes of the above provisions of the Criminal Code, an "official" shall include;

- A public servant;
- A public service agent;
- Any person who, even if temporarily, with remuneration or free of charge, voluntarily or forcefully, has been called to perform or participate in the performance of an activity included in the public or judicial administration; and
- A foreign public servant who is the holder of legislative, executive, administrative or judicial office of a foreign country, already appointed, or the person who holds public office in a foreign country, including in a public body or a State-owned company.

Pursuant to Article 302.2 of the Penal Code, the anti-corruption provisions also apply to those who are entrusted with political, government or legislative functions.

References:

Penal Code of The Republic Democratic of Timor Leste, Decree Law No. 19/2009, Article 302, March 30th, 2009. http://www.wipo.int/wipolex/en/text.jsp?file_id=243617. Official: http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no39.pdf.

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes | No

Comments:

According to Penal Code of The Republic Democratic of Timor Leste, Decree Law No. 19/2009, Article 295, sub article 1, on Embezzlement, says, "Any official who unlawfully appropriates, for his/her own use or that of another, money or any moveable property, public or private, which has been placed in his/her custody, possession or is accessible by virtue of his or her office, is punishable with 3 to 10 years imprisonment if no heavier penalty is applicable by virtue of another legal provision."

Also, Article 296, on Misappropriation of public assets, says; "Any official who uses or allows another to use any vehicle or other moveable asset of significant value in his or her responsibility or possession or to which he or she has access due to the office held, for purposes other than those intended, to obtain for him or herself or any third party, any unlawful benefit or to cause loss to another, is punishable with up to 2 years imprisonment, if said assets were in possession of the official or accessible by reason of his or her office."

References:

Penal Code of The Republic Democratic of Timor Leste, Decree Law No. 19/2009, Article 295 and 296, March 30th, 2009. http://www.wipo.int/wipolex/en/text.jsp?file_id=243617. Official: http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no39.pdf.

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.

73g. In law, using confidential state information for private gain is illegal.

Yes | No

Comments:

Article 42 – Prohibitions

"A civil servant shall not:

...

m) Use State secrets he or she becomes acquainted with for personal or group advantages;"

References:

LAW No. 8/2004 the Statute of the Civil Service, 16 June 2004. Article 42. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-8.pdf>
as amended by Law no 5/2009 http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf

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.

73h. In law, money laundering is illegal.

Yes | No

Comments:

According to Article 313 of the Penal Code of The Republic Democratic of Timor Leste, Decree Law No. 19/2009 on Money Laundering, states, "Any person who, knowing that assets or products are proceeds from any form of participation in the commission of crimes of terrorism, trafficking in arms or nuclear products, human trafficking, child pornography, corruption, fraud or extortion, tax fraud, trafficking in protected species or human organs or tissues or any other serious crime carrying a maximum sentence of over 4 years imprisonment: a) Converts, transfers, assists or facilitates any transaction of conversion or transfer of said assets or products, wholly or in part directly or indirectly, with the aim of hiding or disguising their illicit origin or aiding any party involved in the commission of any of said crimes to avoid the legal consequences of his or her acts; or b) Hides or disguises the true nature, origin, location, disposition, movement or properties of said assets or proceeds or rights related thereto; or c) Acquires or receives said gain under any wise or uses or holds or maintains the same, shall be punishable by 4 to 12 years imprisonment." (Penal Code, 313.1)

"Money laundering shall constitute a crime and be punishable under the terms of article 133 of the Criminal Code." Article 37 (Law no 17/2011)

"Prevention of money laundering and financing of terrorism in financial and non-financial institutions

1. The institutions referred to in article 3 shall devise and implement programmes aimed at the prevention of money laundering and financing of terrorism which include the following: a) Guidelines, internal policies, procedures and controls, including appropriate provisions to ascertain their fulfilment and appropriate procedures to ensure there are demanding criteria for the hiring of employees; b) Continuous training for executives and employees in order to improve the identification of transactions and actions which may be connected with money laundering or financing of terrorism and instruct them on the procedures to be adopted in such cases; c) Internal audit regulations." Article 16 (Law no 17/2011).

References:

Penal Code of The Republic Democratic of Timor Leste, Decree Law No. 19/2009, Article 313, March 30th, 2009. http://www.wjpo.int/wjpolex/en/text.jsp?file_id=243617. Official: http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no39.pdf.

Law 5/2013 , the First Amendment to Law n. 7_ 17/2011 of 28 December, which approves the Legal Regime for Combating Prevention of Money Laundering and the Financing of Terrorism and Third Amendment to the Criminal Code, adopted by Decree-Law n. 7_ 19/2009 of 8 April. http://www.jornal.gov.tl/public/docs/2013/serie_1/serie1_no28.pdf

Law no 11/2011 Legal Regime Covering the Prevention of and Combat Against Money Laundering and Financing of Terrorism. Article 16 and 37 on Money laundering. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/index-e.htm>

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.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes | No

Comments:

While there are laws specifically addressing terrorism, money-laundering and other such crimes, there are no specific laws outlawing general conspiracy to commit a crime or targeting organized crime.

Any person who promotes or establishes a terrorist group, organization or association, joins, participates in or supports the same shall be punishable with 12 to 25 years imprisonment.” Article 131.2.

“Any person who commits any of the crimes provided for in subarticles 131.1(a) to (c) and (e), or any other crime by employing the means referred to in subarticles 131.1(d) or (f) with the intent referred therein, shall be punishable with 12 to 25 years imprisonment,...” Article 132.

“Any person who, by whatever means, directly or indirectly and with intent, supplies, collects or holds funds or assets of any type, as well as products or rights that may be converted into funds and attempts to do so, with a view to be used or knowing that they may be used, totally or partially, in the planning, preparation or commission of the acts referred to in subarticle 131.1, or commits such acts with the intent referred to in subarticle 132.1, shall be punishable with 12 to 25 years imprisonment.” Article 133.
Funding of terrorism

References:

Penal Code of The Republic Democratic of Timor Leste, Decree Law No. 19/2009, Article 131, 132 and 133. March 30th, 2009. http://www.wipo.int/wipolex/en/text.jsp?file_id=243617

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

Comments:

There is an Anti Corruption Commission (CAC), established under the Law No. 8/2009. Pursuant to article 4 of the law, states that; “The mission of the Commission is to undertake preventive action and criminal investigation action against corruption in any of its forms, embezzlement, abuse of power, trafficking of influences and financial participation in public affairs, as defined by penal legislation. “

Pursuant to article 5, The Commission shall consist of a Commissioner, Deputy Commissioners and support staff.

References:

Law No. 8/2009 on Commission of Anti Corruption (CAC), Article 4 & 5, July 7th, 2009. <http://www.laohamutuk.org/econ/corruption/Law%208-2009En.pdf>. Official: http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf.

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.

75. Is the anti-corruption agency effective?

75

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | No

Comments:

According to Law No. 8/2009 on Commission of Anti Corruption, Article 3 section 1 on Nature of the Commission, states, "The Commission is a legal person governed by public law, given a legal personality with technical independence and administrative and financial autonomy." Also article 8 on eligibility specifies that the Commissioner should not have a political affiliation. "The applicant to the post of Commissioner shall be recognized by his or her high level of independence and impartiality."

Pursuant to chapter II of the law, article 29 section 1 notes, "The Commission shall have a yearly budget sufficient to cover its operational costs and adequate to maintain its independence, impartiality and efficiency, as set out under the terms of the law."

References:

Law No. 8/2009 on Commission of Anti Corruption (CAC), July 7th, 2009. <http://www.laohamutuk.org/econ/corruption/Law%208-2009En.pdf>. Official: http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no25.pdf.

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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

By law, the Commission is an independent body reporting only to Parliament and totally independent from Executive Government. According to the government's press release, "It will be a matter for the new Commissioner, Mr. Adérito de Jesus, to determine its priorities, organizational structure and strategy, within the laws establishing the Commission..."

Under Commissioner Soares, CAC has: Investigated several high-level government officials accused of corruption, receiving dispatch orders from the Prosecutor-General's office for 73 cases of which we investigated and completed a report for 69 of these cases."

The Commission is generally believed to be an independent institution responsible in conducting prevention and investigation toward corruption cases. However, it has been slow to act against some corruption cases and the institution hasn't been able to sufficiently control corruption that has occurred within public institution (Luta Hamutuk). In April of 2013, Prime Minister Gusmao openly critiqued the Commission after it initiated a series of investigations into members of the government (East Timor Law and Justice Bulletin).

References:

Luta Hamutuk Institute Press Release, 18 June 2013, <http://lutahamutukinstitute.org/news/detail/pressrelease/106/>.

Commissioner Soares Presents 2013 Annual Report to National Parliament, March 4, 2014, <http://cac.tl/2014/03/commissioner-soares-presents-2013-annual-report-to-national-parliament/>

"Prime Minister Gusmao lashes out at Anti-Corruption Commission", East Timor Law and Justice Bulletin, April 13, 2013. <http://www.easttimorlawandjusticebulletin.com/2013/04/prime-minister-gusmao-lashes-out-at.html>

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.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

According to Francisco Agostinho Pinto, Lawyer and Media Specialist, who currently working with Anti Corruption Commission, "Directors and all employees at the commission are recruited by the public service commission under the Law No.14/2004 the statute of civil servant, which will also be terminated or sanctioned by the public service commission. Dismissals from the position as director or employee can be carried out in accordance with the evaluation of the public service. The head of the Anti Corruption Commission, once elected for four years term by National Corruption can only be removed by national parliament and there has never been any attempt to do so the period of study (Joaozito).

References:

Joaozito Viana, Deputy Director of Luta Hamutuk, Anti Corruption NGO, Marh 17th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Specialist, Currently working with Anti Corruption Commission, March 17th, 2014, Dili, Timor Leste.

Law No.14/2004 the statute of civil servant, September 16th, 2005. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2005-14.pdf>

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.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

In 2010, the Timorese Parliament officially elected Aderito de Jesus Soares to take up the post of the anti-corruption (CAC) commissary. De Jesus defeated two other candidates, Timorese current Ombudsman of human rights and justice, Sebastião Diaz Ximenes and the ex-deputy Prosecutor General Ivo Valente. Aderito de Jesus Soares won with 40 votes in favor, Sebastião gets 19 votes and Ivo Valente gets three votes.

De Jesus was well-qualified for the position, as he had been active on the advisory board of La'o Hamutuk, a respected non-governmental organization that monitors the performance of the government and international institutions operating in the fledgling state. He was a drafter of the Timor Leste's Constitution and is currently doing a doctorate in international human rights law in Australia.

The commissioners are appointed by the National Parliament, by absolute majority of the Members of Parliament and the candidates must be chosen from among lawyers, public defenders, public prosecutor or judges (Joazito). Parliament votes from a list (names) purposed by government. Candidates must have no political affiliation, as both the list as well as the selection from the list are based on relevant qualifications.

References:

Monsignor Basilio do Nascimento, Baucau Diosece Bishop, Speaking to Timor Post daily on February 21st 2014. http://www.guidetotimor.com/pages/page_37.pdf

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joazito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

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.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

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

Comments:

The Anti Corruption Commission is staffed adequately, but the Commission has acknowledged that it "needs to do a lot to lift the capacity of its staff so that CAC can be more successful in implementing its mandate, with a clear plan to strengthen and increase these specific capacities of the organisation" (Law and Justice Bulletin). The staff's experience and capacity to conduct thorough investigations is limited.

Currently, Anti Corruption Commission has 15 investigators and 60 staffs in total. All staff recruited as civil servants through a rigorous process of Civil Service Commission (Francisco Agostinho Pinto). The Commission led by a national commissioner and two vice commissioner. The commissioner was elected by national parliament and the two vices were nominated by the elected commissioner.

Anti Corruption Commission investigators lack the ability to pursue more complex corruption cases and the commission itself still too weak to rely on (Pedro da Costa and Francisco Miranda Branco). The commission has investigated five to six former ministers and only one (Former Justice Minister) has proceeded to the courts for conviction.

References:

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joazito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

"Prime Minister Gusmao lashes out at Anti-Corruption Commission", East Timor Law and Justice Bulletin, April 13, 2013. <http://www.easttimorlawandjusticebulletin.com/2013/04/prime-minister-gusmao-lashes-out-at.html>

Pedro da Costa, Member of national parliament from the ruling party and Francisco Miranda Branco from Opposition party questioned the ability of the investigators of Anti Corruption Commission. November 7, 2013. <http://www.thediliweekly.com/tl/news/news/11771-mps-anti-corruption-commission-still-weak>

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.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Every year, the Anti Corruption Commission receives an annual budget that approved by the national parliament and ratified by the President. The budget is largely consistent every year and the amount of the budget may be increased or decreased in accordance with the proposals of the commission (Francisco Agustinho Pinto).

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 29th, 2014, Dili, Timor Leste.

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.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Anti Corruption Commission submits its annual report to the national parliament once a year, and the last submission was on 4th of April 2014, which was presented directly by Commissioner Adérito de Jesus Soares, accompanied by Deputy Commissioners, José de Jesus Neves and Manuel Bucar Corte-Real to the plenary and was televised by the state television (Fausta da Costa). The National Parliament is now in the process of appointing the next Commissioner as Aderito has completed his 4 year term on February 22nd.

The full reports for 2012 and 2013 was not available to the public (Fausta da Costa). There is no clear mechanism requiring the public disclosure of the full report.

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

Anti Corruption Commission website: “President of Anti Corruption Commission, presented annual report to the National Parliament”, March 4, 2014. <http://cac.tl/2014/03/commissioner-soares-presents-2013-annual-report-to-national-parliament/>

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.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

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

Comments:

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, said, “In terms of criminal investigation, the Commission has the power to conduct inquiries or practice acts of inquiry delegated to it by the Public Prosecutor’s Office including to make the necessary notification.” However, the Commission cannot arrest and bring suspects to trial. Rather, the Commission may submit a report to the Public Prosecutor’s Office and can send the proceedings on to the relevant authorities for further action (Joaozito Viana).

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Joaozito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The commission (CAC) is given the status of specialized and independent criminal police authority. As a special criminal police body, the commission has the power to receive records of any cases of corruption reported by the public such as written or unwritten reports. The commission also accepts other cases recommended by government agencies such as the Inspector General of State, Ombudsman as well as Civil Service Commission Office (Francisco Agustinho Pinto).

Luta Hamutuk is still concerned with CAC's work since most of the results in combatting corruption are below people's expectation. Even when cases fall within their authority, they have been delayed in taking any action (Luta Hamutuk). During the period of the study, the CAC received public criticism from the Prime Minister for its work in investigating the government, proving its decisions to undertake the related investigations were independent (Law and Justice Bulletin). However, the CAC is believed to still be too slow to react against corruption cases as there are also cases which considered as public scandal since this involve ministries, former ministries and directors which still within investigation process (Luta Hamutuk).

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Luta Hamutuk Institute Press Release, 18 June 2013, <http://lutahamutukinstitute.org/news/detail/pressrelease/106/>.

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

Anti Corruption Commissioner Aderito de Jesus Soares held coordination meeting with the Prosecutor-General Jose Ximenes, March 26th, 2014. <http://cac.tl/2014/03/today-263-anti-corruption-commissioner-aderito-de-jesus-soares-held-discussions-with-the-prosecutor-general-jose-ximenes-in-the-last-coordination-meeting-of-the-first-mandate-of-the-commission-c/>

"Prime Minister Gusmao lashes out at Anti-Corruption Commission", East Timor Law and Justice Bulletin, April 13, 2013. <http://www.easttimorlawandjusticebulletin.com/2013/04/prime-minister-gusmao-lashes-out-at.html>

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.

76. Can citizens access the anti-corruption agency?

38

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to Joaozito Viana, Deputy Director of Luta Hamutuk Institute, the Anti-Corruption Commission is too slow in addressing the issue of corruption were reported. For example, in January of this year, both media and NGOs reported about the possibility of the practice of corruption in the National Parliament, and the President of National Parliament himself asked the Commission to conduct an investigation on the allegation; however, until now the Commission has not published the results of any investigation.

The Anti Corruption Commission is too slow to act against the report by the Global Organisation of Parliamentarians Against Corruption (GOPAC-PN) that there is an indication of corruption in the national parliament that requires urgent investigation. Also,

the current investigations seem to be abandoned as the commission is awaiting a new commissioner to be elected by the national parliament as the past Commissioner has just finished his term (Fausta da Costa).

References:

Joazito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, Marh 28th, 2014, Dili, Timor Leste.

Luta Hamutuk Institute Press Release, 18 June 2013, <http://lutahamutukinstitute.org/news/detail/pressrelease/106/>.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Jornal Nasional Diario, February 18th, 2014, <http://www.jndiario.com/2014/02/18/gopac-pn-husu-investiga-indikasaun-korupsaun-iha-pn/>.

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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

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

Comments:

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, currently working for Anti Corruption Commission also said that the commission has a robust mechanism to protect whistle blowers. Based to the first four year experience of the commission, many people have been sending files via the complaint box that located in front of the commission's office and some are openly send to the office.

However, the vagueness of the law does not fully guarantee either the safety or the careers of those who report corruption cases to the anti-corruption commission. According to LABEH's experience, those who report corruption cases to LABEH are always asking their identity to be protected as they are afraid of being fired or subject to specific sanctions from their company (Fausta da Costa). According to an editorial by Jose Below, there is insufficient protection for whistleblowers, who come forward with fear for their "reputations, jobs, or personal security" (Pacific Media Centre)

References:

Joazito Viana, Deputy Director of Luta Hamutuk Institute, Anti Corruption NGO, Marh 28th, 2014, Dili, Timor Leste.

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, March 28th, 2014, Dili, Timor Leste.

Francisco Agustinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 28th, 2014, Dili, Timor Leste.

"Tempo Semanal, whistleblowers and investigative journalism in East Timor", Jose Antonio Belo, Pacific Media Centre, July 26, 2013. <http://www.pmc.aut.ac.nz/articles/tempo-semanal-whistleblowers-and-investigative-journalism-east-timor>

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
6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

83

77a. In law, there is a general right of appeal.

Yes | No

Comments:

Constitution Section 125 – Functioning and Composition

“1. The Supreme Court of Justice shall operate:

- a) In sections, like a court of first instance, in the cases provided for in the law;
- b) In plenary, like a court of second and single instance, in the cases expressly provided for in the law”

According to Constitution of the Republic of Democratic of Timor Leste, article 152. On Appeals on constitutionality, states that, “The Supreme Court of Justice has jurisdiction to hear appeals against any of the following court decisions: a) Decisions refusing to apply a legal rule on the grounds of unconstitutionality; b) Decisions applying a legal rule the constitutionality of which was challenged during the proceedings.”

Law Article 4 – Independence

“Judicial magistrates shall adjudicate in accordance with the Constitution, the law and their conscience and they shall not be subject to orders, instructions or directions, except for the duty of lower courts to obey to decisions awarded by higher courts on cases appealed against.”

References:

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002.

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

Law No. 11/2004 “Amending the Statutes of Judicial Magistrates”. Article 4. 29 December 2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-11.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menu in the on-line Jornál da República (official gazette) at <http://www.jornal.gov.tl/>

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.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance says, there are several

cases where the appeals process may take almost year to resolve. According to Luis Sampaio de Oliveira, Executive Director of Judicial System Monitoring also says; completion of the appeals process can at times take a substantial amount of time, due the limitations of the capacity of the appeals court. Former Administrator of Dili, Ruben Braz de Carvalho had entered prison in early february 2014 after a trial and the appeals process has been ongoing since 2010 (Jornal Nasional Diario).

References:

Jose Vieira, Academic from Universidade da Paz (UNPAZ), April 4th, 2014, Dili, Timor Leste.

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, April 4th, 2014, Dili, Timor Leste.

Luis Sampaio de Oliveira, Executive Director of Judicial System Monitoring, April 4th, 2014, Dili, Timor Leste.

Luta Hamutuk Institute Press Release, 18 June 2013, <http://lutahamutukinstitute.org/news/detail/pressrelease/106/>.

Jornal Nasional Diario, February 14th, 2014. <http://www.jndiario.com/2014/02/14/ruben-braz-tama-prizaun-tinan-3/>

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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Manuel Tilman, Secretary General of Timor Leste's Lawyer Association (AATL) stated that every appeal mechanism in Timor Leste is free of charge for all classes of Timorese people. Attorney fees for the criminal appeals are covered by the current government through the state budget, therefore citizens who use the services of lawyers with expenses borne by the government.

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance also stated that Legal Aid Institutions and Timor Leste's Lawyers Association receive financial assistance from the government through the department of civil society from the prime minister's office. This assistance is given to the lawyers for providing free legal assistance to people in need, including middle class citizens.

References:

Manuel Tilman, Secretary General of Timor Leste's Lawyer Association (AATL), April 4th, 2014, Dili, Timor Leste.

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, April 4th, 2014, Dili, Timor Leste.

Luis Sampaio de Oliveira, Executive Director of Judicial System Monitoring , April 4th, 2014, Dili, Timor Leste.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

75

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Jose Vieira, an academic from Universidade da Paz (UNPAZ) stated that most of the legal process in the courts follow the written law, but in cases of corruption involving members of the current government as Minister of Foreign Affairs, Jose Luis Guterres and the Minister of Finance Emilia Pires, there seems to be an exception based on political concern. Criminal judgment in the courts usually follows the protocols, but that when government officials are involved the cases are seriously delayed and not resolved on time, and the officials in question are often exonerated.

References:

Jose Vieira, An Academic from Universidade da Paz (UNPAZ), April 4th, 2014, Dili, Timor Leste.

Filomeno de Brito Carvalho, Director of Center for Investigative Journalists of Timor Leste – CJITL, April 4th, 2014, Dili, Timor Leste.

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, April 4th, 2014, Dili, Timor Leste.

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.

79. In practice, are judicial decisions enforced by the state?

75

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

All state organs are to comply with any judicial decision (Viriato da Costa Seac). Recently, no cases were published in the media about the violations of implementing a court's decision. Last year, the court asked the government and parliament to release the immunity of Secretary of State of Institutional Development, Francisco Borlako, and both government and national parliament approved this request by releasing him to face the court (Filomeno de Brito Carvalho). However, a ruling against him was not immediately carried out.

References:

Jose Vieira, An Academic from Universidade da Paz (UNPAZ), April 4th, 2014, Dili, Timor Leste.

Filomeno de Brito Carvalho, Director of Center for Investigative Journalists of Timor Leste – CJITL, April 4th, 2014, Dili, Timor Leste.

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, April 4th, 2014, Dili, Timor Leste.

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.

80. Is the judiciary able to act independently?

69

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

Comments:

According to Constitution of Republic Democratic of Timor Leste (RDTL), Section 119. states; "Courts are independent and subject only to the Constitution and the law."

"In performing their functions, judges are independent and owe obedience only to the Constitution, the law and to their own conscience." Section 121.2. Judges.

References:

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002. http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf (English version).

Law No. 8/2002, Statutes of Judicial Magistrates, September 20, 2002, amended on December 29, 2004 as Law No 11/2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-11.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep_blica (official gazette) at <http://www.jornal.gov.tl/>

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 includes 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.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

National-level judges are largely free from political considerations in their judgements. However, one of the obstacles in the effort to enforce justice in Timor Leste is that there is limited cooperation between judicial system and other state organs such as Government and National Parliament. As an example, the Minister of Finance is under allegation of corruption and a tribunal has requested the government and the parliament to release the Minister from her immunity to face the court, but this release has not been given.

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March April 2nd, 2014, Dili, Timor Leste.

Luis Sampaio de Oliveira, Executive Director of Judicial System Monitoring Program, March 31th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 31th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 31th, 2014, Dili, Timor Leste.

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.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes | **No**

Comments:

There is no law clearly explaining an objective and transparent system for the distribution of cases to national-level judges.

References:

Law No. 8/2002, Statutes of Judicial Magistrates, September 20, 2002, amended on December 29, 2004 as Law No 11/2004. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-11.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menu in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>

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.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes | No

Comments:

"Judges have security of tenure and, unless otherwise provided for by law, may not be transferred, suspended, retired or removed from office." (Constitution, Article 121.3.)

"Judicial magistrates shall not be reassigned, suspended, promoted, made to retire, removed from office or otherwise have their situation changed, unless in cases provided for by these Statutes." (Statutes, 6).

The Statutes of Judicial Magistrates establishes the Superior Council of the Judiciary as the disciplining body (15.1), as well as delineates the formal rules for punishment or removal (61-70).

References:

Constitution of The Republic Democratic of Timor Leste (RDTL) March 20, 2002, Article 121 Judges. http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf (English version).

Law No 8/2002: Statutes of Judicial Magistrates, amended as 11/2004. Sections 6, 15, 61-

70. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2002-08.pdf>; <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law-2004-11.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn"l da Rep_blica (official gazette) at <http://www.jornal.gov.tl/>

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.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

Comments:

During this period of research there were no documented cases of judges being assaulted because of their involvement in a corruption case (Viriato da Costa Seac). Last year Dili District Court sentenced several high level officials including Former Minister of Justice Lucia Lobato and there were neither serious threats nor physical harm against judges (Jose Vieira).

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March 31th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 31th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 31th, 2014, Dili, Timor Leste.

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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes | No

Comments:

During this period of research there were no cases of judges being killed related to their involvement in a corruption case.

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March 31th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 31th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 31th, 2014, Dili, Timor Leste.

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.

82. Do citizens have equal access to the justice system?

54

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

As per JSMP's monitoring during the period of study, there is no finding on racial or ethnic groups that suffer from discrimination at the judicial decision in four district courts in Suai, Baucau, Oekusi and Dili (Jose Luis Oliveira Sampaio). This was confirmed by all interviewees.

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March 31th, 2014, Dili, Timor Leste.

Jose Luis Oliveira Sampaio, Director of Judicial System Monitoring Program – JSMP, May 12, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 31th, 2014, Dili, Timor Leste.

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.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The situation faced by women in the courts is extremely worrying (JSMP). Problems identified by JSMP include a general failure of the prosecution on domestic violence related crimes with limited access to legal recourse, with repeated and lengthy delays in their cases leading to significant barriers for female victims to access justice. Some such cases are being processed in an ineffective and insensitive manner. These problems reveal an in-practice gender-bias by court actors and the judicial system.

For the case of Domestic Violence, victims (woman in particular) had no difficulty to access to the courts, the main concern is the judicial process is insensitive, too long and delayed; a single case may be resolved up to three months (Luis Sampaio de Oliveira).

References:

Luis Sampaio de Oliveira, Director Executive of Judicial System Monitoring Program – JSMP, March 31th, 2014, Dili, Timor Leste.

Francisco Agostinho Pinto, Lawyer and Media Law Specialist, Currently working for Anti Corruption Commission, March 31th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 31th, 2014, Dili, Timor Leste.

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.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes | No

Comments:

Section 26 – Access to courts

“Access to courts is guaranteed to all for the defence of their legally protected rights and interests. Justice shall not be denied for insufficient economic means.”

References:

Constitution of The Republic Democratic of Timor Leste (RDTL) 2002.

Official: http://www.jornal.gov.tl/public/docs/ConstituicaoRDTL_Portugues.pdf. Unofficial: http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf

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.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

There is a public defender institution that established and funded under state budget, which provides free legal assistance for impoverished defendants in the court (Luis Sampaio de Oliveira). The budget allocated also covers salaries for legal aid staff. There are also several legal aid institutions funded by government through the Prime Minister Office (Viriato da Costa Seac). All impoverished defendants are empowered to access the sufficient representation covered through the government's allocation. However, in practice in some cases, the less connected and impoverished do not receive full access to such services, and await service or representation for longer than should be the case.

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March April 2nd, 2014, Dili, Timor Leste.

Luis Sampaio de Oliveira, Executive Director of Judicial System Monitoring Program, March 31th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 31th, 2014, Dili, Timor Leste.

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.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

There there is no prominent difference of attorney's fees to any citizen seeking justice in the courts (Viriato da Costa Seac). Usually, attorneys' fees depends on how complicated the case. USD1,500 – USD3,000 is a cost that typically requested by a private attorney (Jose Vieira).

While the legal system officially be accessed by all classes, the cost of attorney's fees are substantial in relation to average income. According to La'o Hamutuk's reporting on the most recent income survey (2011), the median household income is US\$40 monthly, with the mean for urban households being US\$93. An expense of USD1,500 to 3,000 for attorney fees, being 3-6 times the average annual income, represents a serious constraint on access.

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March April 2nd, 2014, Dili, Timor Leste.

Luis Sampaio de Oliveira, Executive Director of Judicial System Monitoring Program, March 31th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 31th, 2014, Dili, Timor Leste.

"Understanding Timor-Leste's context", La'o Hamutuk. 13 June 2013. <http://laohamutuk.blogspot.com/2013/06/understanding-timor-lestes-context.html>

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The legal system in Timor-Leste is open to all levels of society, including small retail businesses (Viriato da Costa Seac). Of course, fees can be substantial hindrances depending on the size and profit-level of a business. Usually, attorneys' fees depends on how complicated the case. USD1,500 – USD3,000 is a cost that typically requested by a private attorney (Jose Vieira).

In the World Bank's 2014 Doing Business report, Timor-Leste scores the worst in the world in contract enforcement, with average attorney costs of 156% of the claim and an average of 3.5 years to get a judgment. With the majority of small businesses in Timor being low-profit endeavors, this is highly prohibitive.

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March April 2nd, 2014, Dili, Timor Leste.

Luis Sampaio de Oliveira, Executive Director of Judicial System Monitoring Program, March 31th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 31th, 2014, Dili, Timor Leste.

World Bank Doing Business Report 2014, Timor-Leste. <http://www.doingbusiness.org/data/exploreeconomies/timor-leste/>

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

There are four district courts in Timor Leste serving 13 total districts; the district courts are located in Baucau (East), Oecusse (West), Suai (South) and Dili (Middle). Their locations are not too strategic to the public and are difficult to access for some of the rural population. For example, Baucau District court is too difficult to reach by citizens residing in other districts unserved by their own courts such as Viqueque, Manatuto and Lospalos (Jose Vieira). District courts are the only access to judicial system that rural populations have.

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March April 2nd, 2014, Dili, Timor Leste.

Luis Sampaio de Oliveira, Executive Director of Judicial System Monitoring Program, March 31th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 31th, 2014, Dili, Timor Leste.

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

67

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

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

Comments:

The current National Police Commander, Longinhos Monteiro was not selected based on professional criteria and not someone that has a good knowledge of the institution; his appointment as a civilian was against the statute of national police (Joao Almeida Fernandes & Luis de Oliveira Sampaio).

The Prime Minister, who also serves as minister of Defense and Security appointed Longinhos Monteiro (former attorney general) to lead the Police institution from 2009. Civil society organizations opposed this decision as an unqualified appointment (Jose Vieira). He continues to serve in his post.

However, the deputy police commander and other commanders have been chosen according to the personal achievement inside the police body.

References:

Joao Almeida Fernandes, Vice Director of Fundasaun Mahein, April 4th, 2014, Dili, Timor Leste.

Luis Sampaio de Oliveira, Executive Director of Judicial System Monitoring Program, April 4th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), May 12, 2014, Dili, Timor Leste.

East Timor Law and Justice Bulletin, September 21, 2012. <http://www.easttimorlawandjusticebulletin.com/2012/09/east-timor-legal-news-21-september-2012.html>

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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The National Police of Timor Leste is under the supervision of the Secretary State of Security and it has clear budget allocation, which approved annually at the national parliament. The National Police of Timor-Leste (PNTL) has had a sufficient budget each year. PNTL's proposed 35 million U.S. Dollars for the year of 2014 which has been fully approved by the national parliament (Jose Vieira). Including infrastructure and training allotments, the approved 2014 budget for PNTL is 47 million.

References:

Joao Almeida Fernandes, Vice Director of Fundasaun Mahein, April 4th, 2014, Dili, Timor Leste.

Luis Sampaio de Oliveira, Executive Director of Judicial System Monitoring Program, April 4th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 31th, 2014, Dili, Timor Leste.

Jornal Nasional Diario quoting Secretary State of Security, Francisco Guterres, January 16, 2014 on the budget allocation for the Timorese National Police – PNTL. <http://www.jndiario.com/2014/01/16/oje-2014-ses-propoin-dollar-35-miloens/>

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.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

After the United Nations ended its mission in December 2012, the National Police of Timor Leste took over full authority to enforce the law. Over the past two years, PNTL performance has improved, acting increasingly freely from political interference and handling criminal cases more professionally (Joao Almeida Fernandes and Jose Vieira). Timorese national police are directly under the auspices of the government (State Secretary of Security), and PNTL are an important instrument (Jose Vieira).

However, criticism of the PNTL has come from several angles. Criticism has come from National Parliament, NGO's and ordinary people due to the close ties between the Government and PNTL – they always support and protect each other.

References:

Joao Almeida Fernandes, Vice Director of Fundasaun Mahein, April 4th, 2014, Dili, Timor Leste.

Luis Sampaio de Oliveira, Executive Director of Judicial System Monitoring Program, April 4th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 31th, 2014, Dili, Timor Leste.

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.

84. Can law enforcement officials be held accountable for their actions?

75

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

Comments:

Citizens may complain about police (Polisia Nasional Timor Leste – PNTL) actions through the mechanisms of the Ombudsman: “The Ombudsman for Human Rights and Justice shall exercise his or her functions within the scope of action of public entities, notably the Government, the PNTL, the Prison Service, and the F- FDTL.” Article 3.

References:

Law No. 7/2004 Of 26 May 2004, The Statute of the Office of the Ombudsman for Human Rights and Justice, Article 3. Scope of Action. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/index-e.htm>

The official texts of the laws are in Portuguese, and can be accessed from the menu in the on-line Jornál da República (official gazette) at <http://www.jornal.gov.tl/>.

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

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen’s complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Even in relation to response to reports of crimes, PNTL can take a long time. For other cases that reported by community it may takes one month to resolve (Jose Vieira).

If not attempting to complain directly up the chain of PNTL command, citizens may complain about the PNTL to the Ombudsman (PDHJ). While the PDHJ has the ability to receive complaints quickly through boxes in district and sub-district offices, individual complaints may go unacknowledged for months. The Deputy Ombudsman for Good Governance reports that they respond to all

cases reported to their office within 10 days, and that cases within their purview must be investigated and referred, with processing times up to one month. Conversely, however, a representative of a local good governance NGO noted that they had reported cases to the PDHJ and had never heard any updates on their case. Similarly, a representative from a local civil rights NGO noted that the processing time depends on the investigation, which may elongate case processing times.

It is important to note that the relative youth of the Timorese system, especially the court system, leaves many cases with long processing times. Thus, cases referred by the PDHJ may languish in the courts even if referred in a timely fashion by the PDHJ for action, meaning significantly delayed action on many citizen requests.

References:

Viriato da Costa Seac, Legal Advisor and Acting Legal Coordinator for Legal Office at Ministry of Finance, March April 2nd, 2014, Dili, Timor Leste.

Luis Sampaio de Oliveira, Executive Director of Judicial System Monitoring Program, March 31th, 2014, Dili, Timor Leste.

Jose Vieira, Academic from Universidade da Paz (UNPAZ), March 31th, 2014, Dili, Timor Leste.

Interview with Deputy Ombudsman for Good Governance, Dr. Rui Pereira dos Santos, Dili, Timor-Leste (23 April 2014);

Interview with representative from local good governance NGO who requested anonymity, Dili, Timor-Leste (7 April 2014);

Interview with director of local civil rights NGO who requested anonymity, Dili, Timor-Leste (25 April 2014)

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.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

Comments:

The Anti Corruption Commission is the entity mandated to investigate and prosecute corruption committed by law enforcement officials.

Article 4 – Mission of the Commission

“The mission of the Commission is to undertake preventive action and criminal investigation action against corruption in any of its forms, embezzlement, abuse of power, trafficking of influences and financial participation in public affairs, as defined by penal legislation.”

References:

Law No. 8/2009 on Commission of Anti-Corruption (CAC). July 7th, 2009. Article 22. <http://www.laohamutuk.org/econ/corruption/Law%208-2009En.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menus in the on-line Jorn”l da Rep”blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

Media and civil society organizations have often reported bribes and other corruption allegation committed by the member of National Police of Timor Leste (PNTL) to the Office of Ombudsman for Human Right and Justice, but there is no positive indication given that the case is under investigation by the Office of Ombudsman (Fausta da Costa).

In 2013, Anti Corruption Commission (CAC) investigated the National Police Institution (PNTL) on the debt of USD4.00 million that PNTL made to a petrol company in which there is suspected fraud petrol by PNTL officers (Francisco Agostinho Pinto). CAC has completed the investigation and has recommended to the public prosecutor to proceed to trial.

References:

Fausta da Costa, Advocacy and Program Director of LABEH – Lalenok Ba Ema Hotu, Anti Corruption NGO, April 4th, 2014, Dili, Timor Leste.

Filomeno de Brito Carvalho, Director of Center for Investigative Journalists of Timor Leste – CJITL, April 4th, 2014, Dili, Timor Leste.

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Association – TLJA, April 4th, 2014, Dili, Timor Leste

Francisco Agostinho Pinto, Legal Advisor to the Anti Corruption Commission (CAC), June 12th, 2014, Dili, Timor Leste.

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.

84e. In law, law enforcement officials are not immune from criminal proceedings.

Yes | No

Comments:

There is no law providing special protection from criminal investigation or prosecution to the National Police force.

References:

Decree Law No.8/2004, The Organic Law of National Police of Timor Leste (PNTL), May 5, 2004, Article 6, Police hierarchy and divisions. <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Decree-Laws/Decree-Law-2004-8.pdf>

The official texts of the laws are in Portuguese, and can be accessed from the menu in the on-line Jorn"l da Rep"blica (official gazette) at <http://www.jornal.gov.tl/>.

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.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

Law enforcement officials are subject to investigation and prosecution for professional misconduct, although the courts may not follow through in allotting any punishment (Daily Suara Timor Lorosa'e). The Commander of the Criminal Investigation Unit of National Police of Timor Leste, Calisto Gonzaga declared his readiness to face the court for the the allegation of the abuse of power that was alleged by the Prosecutor General (November 21, 2013). Calisto was presented to the court at the next day (November 22nd), but the case itself has yet to get a final decision from the court until now, though he was recently (May 2014) suspended from his position (Filomeno de Brito Carvalho).

References:

Daily Suara Timor Lorosa'e, On November 21st, 2013, reports; the Commander of the Criminal Investigation Unit of National Police of Timor Leste ready to face court. <http://suara-timor-lorosae.com/komadante-sikn-calisto-ba-hatan-ija-tribunal/>

Filomeno de Brito Carvalho, Director of Center for Investigative Journalists of Timor Leste – CJITL, April 4th, 2014, Dili, Timor Leste.

Alexandre Assis, Secretary General of Timor Lorosa'e Journalists Association – TLJA, April 4th, 2014, Dili, Timor Leste