

CORRUPTION AND MONEY-LAUNDERING INVESTIGATION AND ITS CHALLENGES IN TIMOR-LESTE

*Augusto da Costa Castro**

I. INTRODUCTION

In today's world, there is no single country that is immune to the criminal activities regardless of how big or small and how rich or poor it is. The criminals are always trying to explore any opportunities for their illicit interests. It seems that in every moment the criminals are competing with the state to show their existence through the occurrences of the criminal activities that are conducted either in a single show or in a form of organization. As the State manages and organizes itself toward economic and social development to fulfil its citizens' demands and necessities, at the same time the criminals also organize themselves to conduct criminal activities with types and patterns that vary from time to time, utilizing every single moment and loophole to squeeze the State's resources for their private interest.

Comparing the criminal activities in Timor-Leste in the early stages and current situation, it has a significant change, where in its early stages people committed crime in a very traditional way on the basis of retaliation and/or social jealousy because of the economic disparities, and that is quite easy for the authorities to uncover. But in today's era, people who commit crime utilize modern management and technology to conceal their criminal activities and proceeds. Furthermore, the criminal activities that they are involved in are as their routine activities and also as a source of income for economic and financial gain, and the types of crime they commit are the types of crime which can produce massive financial benefits within a short period of time, such as corruption, tax evasion, drug trafficking, fraud, human trafficking and sexual exploitation, smuggling and evasion of excise duties, illegal gaming, organized criminal groups and racketeering, contraband smuggling, counterfeit IT product smuggling, motorbikes and vehicle theft and smuggling of wildlife. Ironically, all proceeds derived from those crimes are stashed and laundered not only within the jurisdiction of Timor-Leste (domestically), but they are also stashed and laundered in foreign jurisdictions as well, such as in neighbouring countries through money-laundering schemes.

Under Timor-Leste's legislation, money-laundering is considered as a follow-up crime because it comes from various predicate offences. According to Article 313 of the Penal Code and its amendment of Law No. 5/2013, a number of predicate offences for the money-laundering and terrorist financing are set out. They include terrorism, trafficking of arms and nuclear products, human trafficking, pornography of minors, corruption, fraud and extortion, tax fraud, illicit exploitation of gaming, trafficking of protective species, and trafficking of human organs and also any other crimes that are punishable above two years of imprisonment.¹

* Deputy Commissioner of Investigation, Anti-Corruption Commission (ACC), Timor-Leste.

¹ The Penal Code was approved with Decree Law No. 19/2009 of 8 April.

With all these predicate offences, corruption is the major crime committed by the perpetrators during the last three years from 2016 to 2018, making this crime the primary source of criminal proceeds. According to the data from the Anti-Corruption Commission (ACC), in 2016 the ACC investigated 29 corruption cases from which the total estimated State loss amounted to about US\$18,615,980.52²; in 2017 the ACC investigated 24 corruption cases and the total estimated State loss was about US\$1,552,100.73³; and in 2018 there were 36 corruption cases investigated and the total estimated State loss was about US\$998,202.85.⁴ Most of the cases involved public officials, which places the public sector at a very high risk for corruption. The vulnerability of the sector is because most of the economic activities are relying on the public investment by the State through the procurement and public works where the systems and controls over these two are considered to be poorly designed and implemented, and also the economy of the country still remains as a cash-based economy where people can easily keep and transport the cash in bulk within or outside of the country for various purposes including money-laundering.

However, Timor-Leste criminalized money-laundering in article 313 of the Penal Code through Decree Law No. 19/2009, and since the beginning there were several money-laundering cases that are being investigated by the law enforcement authorities, but the progress still has a long way to go, especially related to the proceeds of crime that are laundered in foreign jurisdictions because of the difficulties of dealing with the authorities in foreign jurisdictions in terms of cooperation and mutual legal assistance.

II. EFFORTS ON COMBATING MONEY-LAUNDERING IN TIMOR-LESTE

Money-laundering always involves a linkage between predicate offences and proceeds of crimes because when there is no linkage between these two basic elements, there is no money-laundering. So, in Timor-Leste, in order to effectively investigate money-laundering, there are two approaches that are applied by the law enforcement authorities in investigating and prosecuting cases: first, investigation of predicate offences in order to discover and root out any possibility that the perpetrator used money-laundering methods to launder their ill-gotten assets and, second, direct investigation of the money-laundering as independent offences according to article 313 (4) of the Penal Code.

A. The Investigation of Predicate Offences

As stated in the previous paragraphs, according to the Timor-Leste Penal Code there are several predicate offences for money-laundering offences such as terrorism, trafficking of arms and nuclear products, human trafficking, pornography of minors, corruption, fraud and extortion, tax fraud, illicit exploitation of gaming, trafficking of protective species, trafficking of human organs and also any other crimes punishable by more than two years of imprisonment. With all these predicate offences, the ACC is only mandated to investigate the corruption crimes with all of its forms, such as passive corruption for illicit acts, passive corruption of licit acts, active corruption, embezzlement of moveable and immovable State assets or properties, abuse of power and economic participation in public affairs that are committed by public officials during and after

² Comissão Anti-Corrupção (CAC), *Relatório Anual 2016*, Dili, March 2017, pg. 8.

³ Comissão Anti-Corrupção (CAC), *Relatório Anual 2017*, Dili, March 2018, pg. 16.

⁴ Comissão Anti-Corrupção (CAC), *Relatório Anual 2018*, Dili, April 2019, pg. 20.

performing their official duties. During investigating of these corruption crimes, the ACC conducts parallel investigation of criminal elements of the offences on one hand and financial investigation on the other. In the investigation of the elements of crime mainly focused on the fulfilment of subjective and objective elements of each crime, financial investigation is focusing on the financial elements and assets which are derived from the practicing of each of the corruption crimes starting from the ways of acquisition until final use of the assets. While conducting the financial investigation, the ACC asks the FIU for assistance through formal requests in order to do financial analysis on the incoming and outgoing transactions and flow of the money in suspect bank accounts. After receiving the financial analysis report from the FIU, the ACC immediately follows up with detailed analysis, such as net worth analysis and expenditure analysis. During this detailed analysis and upon detecting that there is a gap between legal income, expenditures and accumulated assets and the investments of the suspect, the ACC will inform the General Prosecutor's Office through interim reports in order to open money-laundering cases against the suspects' investment businesses. When the case is open, as the agency in charge of criminal proceedings,⁵ the General Prosecutor's Office will order the ACC, based on the available evidence, to proceed with further investigation for freezing and confiscating all assets and investments until recovering them when proved in court.

One of the prominent cases that came from this process is an embezzlement case that finally became a money-laundering case. The crime was committed by Mr. Ritimoko, a Timorese national, who worked as a financial officer in the Planning and Financial Management Capacity Building Programme (PFMCBP) of the Ministry of Finance. In this case, when we started investigating it was a normal embezzlement case involving a tax fund totalling US\$ 346,712.33. Mr. Ritimoko, as a financial officer, had to transfer this amount of money to the East Timor Revenue Services (ETRS, the then tax authority) account at UNB Bank, 10% of the income tax withholding that came from monthly staff salaries who work for the PFMCBP. Instead of transferring the money to the ETRS account, he opened a new account on his own called East Timor Services (ETS) at the same bank, and he started depositing the money into this account on a monthly basis, totalling about US\$ 34,671.23 each month for 10 consecutive months starting from March to December 2011. Mr. Ritimoko used the money firstly to build three fuel stations, and then one and a half years later he bought four passenger busses, then fifteen head of cattle (buffalo), 2 hectares of rice fields and he built a luxurious two-story house complete with sport facilities such as a swimming pool and tennis and basketball courts in his home town. The case was revealed three years later in 2014 when the ETRS sent a notification letter to the head of the PFMCBP for the ten months of unpaid income tax, and then the PFMCBP initiated an internal investigation and finally the case reached us in the middle of 2015. We started to investigate it thoroughly and solved it in the middle of 2018. In this case the suspect committed embezzlement and domestic money-laundering crimes which were successfully investigated and, finally, all of the proceeds of crime were recovered by the state.

B. Direct Investigation of Money-Laundering as Independent Offences

Aware of the serious threat of money-laundering to the Timor-Leste economy and financial sector, the direct investigation is also considered important as an effective way to fight against money-laundering in Timor-Leste. In this process, the State authorities can investigate and prosecute money-laundering as an independent crime. In order to start, the financial and non-

⁵ According to article 132 (1) of the Timor-Leste Constitution, the Public Prosecutor's Office is the only institution that can execute the criminal proceeding, which includes criminal investigation and prosecution.

financial institutions are required to report any suspicious transactions to the Financial Intelligence Unit (FIU) on the movement and transaction of money and assets of someone that are not compatible with his or her profile. After analysing the suspicious transaction report (STR), the FIU is required to report its final result to the General Prosecutor's Office in order to follow it up with the opening of a money-laundering case and investigate the case either by itself or dispatched through the delegation of competence directly to the Scientific Criminal Police Investigation⁶ (*Polícia Científica de Investigação Criminal*, or PCIC, in Portuguese) to conduct further criminal investigation regardless of the nature of the predicate offences. According to the data from the FIU, in 2018 there were 109 STRs reported. From this number about 20 STRs were substantiated and reported to the General Prosecutor's Office for further criminal proceedings.⁷ Of the 20 STRs that were reported to the General Prosecutor's Office, six of them were officially opened and investigated by the PCIC.⁸

III. CHALLENGES

The investigation of money-laundering has made some progress; however, there are still some challenges faced along the way:

A. Cash-based Economy

One of the major challenges of effective fighting against corruption and money-laundering crimes in Timor-Leste is that the country's economy is still relying on cash. According to the Central Bank of Timor-Leste, only about 45% of the adult population has access to financial services.⁹ This situation brings difficulties to the law enforcement authorities when conducting an effective investigation, such as paper or electronic trails using tracing methods. This also exposes the vulnerability of the country's economy and financial system to illicit funds and counterfeit money.

B. Lack of International Cooperation on Mutual Legal Assistance

International cooperation on mutual legal assistance in criminal matters is one of the ways that is available for the states to cooperate and help each other in gathering evidence and some other matters as stated in article 46 of UNCAC in order to support the cases in the investigation, prosecution and other judicial proceedings. According to Law No. 15/2011 on International Cooperation on Criminal Matters, article 19 (1) designates the General Prosecutor's Office as the central authority for the management of the outgoing and incoming requests for mutual legal assistance, but there have been no positive results in this area due to the reluctance of the foreign authorities to fulfil MLA requests from Timor-Leste.

⁶ PCIC is a one of the criminal police bodies that is mandated to investigate organized crime including money-laundering cases.

⁷ Unidade Informasaun Financeira (UIF), *4th Edition of Annual Report 2018*, Dili, April 2019, pg. 28

⁸ Polícia Científica de Investigação Criminal (PCIC), *1^a Edição Balanço das Realizações das Actividades de 2015 a 2018*, Dili, 2018, pg. 11.

⁹ Comissão Nacional para a Implementação das Medidas Destinadas ao Combate ao Branqueamento de Capitais e ao Financiamento do Terrorismo (CNCBC), *National Risk Assessment of Money Laundering and Terrorist Financing*, Dili, June 2016, pg. 23.

C. Lack of Human Resources

Another challenge in fighting against corruption and money-laundering in Timor-Leste is limited human resources in terms of quality and quantity. There are only twenty-four investigators at the ACC and only five specialized public prosecutors that are dedicated to handle corruption, money-laundering and organized crime for the entire country. Besides insufficient numbers, the quality is also an issue when coordinating, communicating and cooperating with foreign authorities on mutual legal assistance and joint investigation.

IV. CONCLUSION

The threat of money-laundering in Timor-Leste is significant. Since the beginning, the law enforcement authorities are putting serious effort into fighting against not only money-laundering as an independent crime but also its predicate offences such corruption, among others, through very rigorous investigation using tracing methods. Nationally, corruption is the primary source of the illicit income of the offenders in committing money-laundering crimes either domestically or transferring their proceeds of crime to a foreign country. There are a number of money-laundering investigations, and those which were committed domestically are having some good progress, but when dealing with foreign money-laundering cases, the results are far from expected. This is because during the investigation processes, Timor-Leste authorities are facing difficulties in obtaining cooperation from foreign authorities. In order to overcome this situation, there should be intensive dialogue between Timor-Leste authorities and their foreign counterparts in order to overcome barriers and achieve successful investigation, prosecution and asset recovery to serve justice for all in Timor-Leste.