CHAPTER 13

A Social Movement as an Antidote to Corruption

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Introduction

Corruption has become a very complex and intractable problem facing the world. Billions of dollars earmarked for the poor, including vital education and health sector assistance, ends up in the pockets of a relatively few corrupt people every year (OECD 2014: 2). Studies by the OECD, for example, have estimated that corruption may cost 5 per cent of global gross domestic product, which, according to the World Bank, represents up to US\$1 trillion paid in bribes every year.

Various entities at regional, national and international levels have been attempting to tackle corruption. But it remains well entrenched and is even on the rise in some countries, particularly among those in the developing world. Of course, corruption also occurs in developed countries, but they generally have stronger legal frameworks and mechanisms in place to tackle it. By contrast, many developing countries, such as Timor-Leste, lack effective institutional capacity to deter corrupt practices.

Timor-Leste as a post-conflict society is confronting the problem of corruption and putting in place a number of mechanisms to address problems of accountability and transparency. Central to these efforts has been the establishment and implementation of the *Comissão Anti-Corrupção* (CAC; Anti-Corruption Commission) in 2010. But while efforts have been made to tackle the growing problem of corruption in Timor-Leste, there remain a number of

significant factors that make Timor-Leste at least potentially prone to corruption. Among these factors are the fledgling nature of the state institutions, and the legal framework that remains a work in progress and weak. There is a growing business sector that lacks a culture of accountability, while high unemployment and widespread economic hardship loom large as real challenges.

I argue in this chapter that given the faults of its legal system and the weakness of enforcement in this post-conflict Timor-Leste society, it would be a serious mistake to rely solely on legal mechanisms to fight corruption. This is even more the case given that Timor-Leste has inherited cultures of corruption from two previous colonial regimes that continue to influence contemporary practice. In this context, I argue that comprehensive efforts to combat corruption must go beyond legal measures to involve raising public awareness in the community at large.

There is a very simplistic understanding on the public's part about the capacity of legal mechanisms to counter corruption. It is simply more dramatic and attractive for the public to see alleged corrupters arrested, prosecuted and sent to jail; and it is important to have legal mechanisms that can enable this if due process is followed. However, more comprehensive, non-legal strategies also need to be developed, so that both strategies can be combined to effectively address the issue of corruption.¹

Thus, this chapter is divided as follows. I first describe the state of corruption in Timor-Leste, past and present. This is followed by a discussion of some common challenges facing anti-corruption commissions around the world, and a review of Timor-Leste's efforts in dealing with corruption. I then describe efforts to raise public awareness on this issue, followed by an account of the role of the private sector in economic development and its vulnerability to corrupt practice.

Corruption in Timor-Leste at a glance

Timor-Leste has experienced the ill effects of corruption, from the Portuguese colonial period to 24 years of illegal occupation by the Indonesian regime (1974–99). During both of these dark periods, corruption became entrenched within the colonial architecture and machineries of state.

From the 17th century, the Portuguese imposed a *finta* (collective tax) on the population of Timor-Leste. *Finta* were collected in different forms including corn, rice, cattle, honey, sandalwood and gold (Castro 1867: 375–76). Portuguese soldiers and officers were tasked with collecting *finta* from

1 I have elaborated this line of argument elsewhere (see Soares 2013: 85–97).

the villagers and various petty *reino* (kingdoms) that encompassed the great majority of the population. But this process was prone to corruption, and the amount of *finta* that eventually reached the capital, Dili, was always less than what had been collected. Although Timor made a relatively minor contribution to the coffers of the Portuguese treasury, petty corruption among the Portuguese officers was widespread across the land. Colonial documents note that corruption was rife in the customs sector. It not only involved Portuguese officers and soldiers, but to some extent the Timorese elite—*regulo* (kings) and *suku* (village) leaders—were also involved in the cycle of corruption that affected the majority of Timor's people. History has shown that various rebellions by the Timorese were frequently triggered by resentments over the collection of *finta*, which was often obtained through coercion and the use of violence (Roque 2010: 10).

During the 24 years of the Indonesian occupation, the experience of corruption in Timorese society was perpetuated and solidified. Indonesian military and senior government officers were involved in massive corruption while running Timor-Timur—as it was known during the occupation—as a branch of the Indonesian company, P.T. Denok Hernandez International. This company had the monopoly on coffee exports from East Timor and was used by the Indonesian military as a cash cow for the generals (Taylor 2000: 125). In addition, the top Indonesian civilian officers emptied the public purse by diverting Jakarta's money into their own pockets (Carrascalão 2006: 145–49). The web of corruption became wider as many Timorese elite, who were in positions of power, also benefited directly from corruption with their Indonesian patrons. The culture of corruption in the public sector became entrenched in daily life.

Both petty and grand corruption flourished during the occupation. Thus, the attempt to integrate Timor-Leste into the Republic became, among other things, a project of massive plunder throughout the territory, quite apart from the human rights atrocities widely documented elsewhere. Even General Kiki Syahnakri, the then military commander in Timor-Leste, lamented that Timorese people rejected the politics of integration into Indonesia because of the massive corruption committed by both military and civilian leaders in the territory (Syahnakri 2013: 346). Of course, Syahnakri's comment is only partly correct, as there were more fundamental reasons for the Timorese to oppose integration, but his criticism did put corruption at the centre of the Indonesian's administrative machinery in Timor-Leste at the time. The same observation came from Mário Viegas Carrascalão, the then Indonesian-appointed governor in Timor-Leste. According to Carrascalão, during his tenure, the central government used to

appoint one high-level military retiree as the 'Pimpro' (*pimpinan proyek*; project leader), who had the task of granting government contracts to individuals preferred by the regime, without any proper procurement mechanisms.²

In post-independence Timor-Leste, there is no doubt that corruption is on the rise. For a start, there is more cash floating around, especially in the public sector, while the oversight mechanisms that are in place remain very weak. Timor-Leste is one of the most oil- and gas-dependent countries in the world. State revenues from oil and gas exceed 90 per cent. This also makes the country vulnerable to corruption, like the experience of many oil-rich countries in the world where the public sector's culture of accountability is still very underdeveloped. The dramatic increase in the annual state budget since 2007—even though the capacity to execute the budget remains highly constrained—has opened more opportunities for corruption by public servants in collusion with the private sector. Although Timor-Leste has one of the best oil and gas trust funds in the world, designed with Norwegian advice following independence, the issue of expending substantial quantities of this fund in the state budget raises serious questions.

Tensions between time and expectations

The experience of many anti-corruption commissions established around the world shows that there is a very high public expectation when the commission is first established. The public often expects the commission to work quick miracles in combating corruption. They expect the commission to act quickly in the shortest time frame possible, putting additional pressures on the commission. However, such expectations are bound to be unmet if state support for a new commission is insufficient. State support can manifest through strong political will, the provision of a sufficient budget, a judicial system that is truly based on the rule of law, and so forth. Support from the public can be expressed in various ways, including an abhorrence of bribery, encouraging people to inform relevant institutions about instances of suspected corruption, and support for anti-corruption campaigns.

The Independent Commission Against Corruption of Hong Kong and the Corruption Prevention and Investigation Bureau of Singapore are successful because they had these conditions in place. However, Ghana, Malawi, Tanzania, Uganda and Zambia have all established anti-corruption commissions but failed to combat corruption because they lacked these safeguards (see Doig et al. 2005).

2 See 'Saya Bukan Pengkhianat' [I am not a traitor], Tempo's interview with Carrascalão. setiyardi. wordpress.com/2009/04/03/mario-viegas-carrascalao-saya-bukan-pengkhianat/.

It is one of the paradoxes of combating corruption in post-conflict countries that on one hand, the legal system is generally weak (including the judiciary), but on the other hand, public expectation is very high, and to some extent unequal to the efficacy of that country's legal system. This is understandable, as the public is anxious about social ills (corruption) that have negative impacts on people's lives. The public want to see swift, tangible results, such as imprisoning criminals. Therefore, to be successful in combating corruption, there should be realistic support measures in place and an anti-corruption push that should not be monopolised by any anti-corruption commission. Instead, there should be a widespread social movement across the country. Today, with the expansion of global capitalism, organised crime has also expanded. For this reason, efforts need to be expanded beyond state borders. Timor-Leste's endeavours in fighting corruption post-independence illustrate this paradox very well.

Anti-corruption efforts post-independence

During Timor-Leste's transition to independence from 1999 to 2002, the United Nations established the Office of the Inspectorate General (OIG), which still exists under the auspices of the Timor-Leste government. The main task of the OIG is to conduct internal audits of alleged maladministration and corruption in the public sector. It submits its reports to the prime minister, who has the discretionary power and the final say on whether there should be further investigations, whether to impose administrative sanctions, or to archive the cases. Following the establishment of the *Provedor de Direitos Humanos e Justiça* (PDHJ; Human Rights Commission) in 2006, the OIG has worked side by side with the PDHJ in the area of good governance. Both institutions have the power to carry out investigations: OIG for internal administrative audits; the PDHJ for independent non-criminal investigations, which it submits to the *Ministério Público* (Office of the Public Prosecutor). The mandate to investigate corruption was removed from the PDHJ when the new CAC was established in 2010. The CAC was given a broad mandate of conducting criminal investigations and as well as awareness-raising (Soares 2013). However, the CAC, as in the case of the PDHJ, has to submit its final investigations to the prosecutor. The prosecutor then decides whether to pursue cases should they demonstrate strong admissible evidence.

There are still areas of overlap in this institutional arrangement. For instance, it is hard to avoid allegations of corruption being investigated simultaneously by two state institutions in the early stages of a case. This is partly because of confusion created by the laws governing the mandates of these institutions.³

3 An analysis of the legal framework is of utmost importance; however, it is not the focus of this chapter.

Some of this confusion emerges from weak institutional leadership and, to some extent, competition between the institutions. This occurred in the case of the relationship between the CAC and the *Ministério Público*. Given that the prosecutor's office controls and supervises all criminal investigations under Timorese law, this institution has the discretionary power to decide which cases it investigates and which can be delegated to the CAC.

With the establishment of the Audit Court in 2012, which is mandated to audit all government expenditure, another institutional player has been added to the list of oversight in this country of a little over one million people.

The imperative of awareness-raising

Since its inception in 2010, the CAC has been very active in raising awareness about the causes and consequences of corruption in public life. The CAC's vision was to 'create a strong culture of rejecting corruption' in Timorese society. As such, awareness-raising was central to realising this objective, given the dark trajectory of corruption in modern Timorese society. As the inaugural CAC commissioner, I believe that combating corruption can only be successful if it becomes a widespread social movement involving all segments of Timorese society (Soares 2010).

It is important to note that prior to the establishment of CAC, awareness-raising about corruption had been carried out by other institutions, including some non-government organisations (NGOs), albeit in an unsystematic way and with a much smaller audience than the one CAC managed to reach. According to a commissioned survey, 52.5 per cent of respondents did not understand what was meant by the term corruption (CAC 2011). Only a very small percentage of respondents knew how to report corruption cases to the proper authorities. According to the survey, over 60 per cent of respondents agreed that the CAC had to intensify its public outreach.

In 2013, more than 7,000 people attended the CAC's public outreach meetings and seminars across the country (CAC Annual Report 2013), with a much larger audience reached via media reports on these meetings. Apart from the objective of encouraging the public to report corruption cases to the CAC or other competent authorities—such as the *Ministério Público*—the other important objective of this outreach was to inspire the civic spirit of citizens, and encourage them to join anti-corruption efforts, to help them understand the consequences of corruption, and to prevent them from becoming involved in corrupt behaviour. Target audiences at public outreach events varied from

youth groups to community leaders, district governance officers, women's groups, and students from primary school to university. The CAC reached out to all 13 districts in Timor once it began effective operations in January 2011.⁴

The CAC conducted outreach programs in collaboration with other entities such as NGOs, youth groups, schools, universities, and religious organisations, especially the Catholic Church. The form of public outreach varied. For instance, the CAC organised essay and speech competitions with various schools and universities. It also disseminated basic information about corruption to community leaders and public servants in various districts.

As for public servants, the CAC combined two approaches: disseminating basic information; and discussing preventative strategies with them. One example of successful public outreach was the celebrations of 9 December for International Anti-Corruption Day. Since 2010, CAC has held large events on this day. For instance, in 2013, in collaboration with the *Comissão da Função Pública* (CFP; Public Service Commission), the CAC organised a one-day conference, attended by 1,500 people, including all directors general and heads of department from the civil service. The country's leaders also attended and addressed the forum.

The CAC encourages the public to report any allegation of corruption across Timorese society. As a result, in 2011, CAC received 103 reports from the public. The number declined a little in 2012 with 60 reports, followed by 75 reports in 2013 (CAC 2014). However, these reports did not all necessarily translate into potential corruption cases. Indeed, only a small percentage of the reports were followed up by the CAC. On investigation, many of these reports were found to be unrelated to corruption but linked to other issues, including human rights violations and civil cases such as divorce.

Public awareness-raising and monitoring activities carried out by NGOs and the media are of the utmost importance in this context. However, Dili-based NGOs and media need to focus their attentions more at the district level, particularly as development and high-value infrastructure projects are increasingly taking place at the subdistrict and district levels. In order to broaden the network of security, it is also important to break the 'exclusivity' of NGO agendas by involving communities at the local level.

4 CAC was established with the swearing-in of its first commissioner in February 2010, however, its effective operation only commenced in January 2011. The first year (2010) was basically used to establish infrastructure and recruit staff and investigators, as well as to train the first recruits.

With the increasing roles of the private sector in Timor-Leste's economy, in conjunction with the presence of substantial foreign private sector enterprise—many of which do not have good reputations on transparency and accountability, a cautious look at these actors is also required.

Private sector fetishism and the need for raising public awareness

No one could deny the importance of the private sector in a modern liberal economy. However, caution is needed in post-conflict societies such as Timor-Leste. It is noticeable that from independence to the present, the government has prioritised the private sector—in this case, mostly national contractors who rely on government projects—to fuel economic development and job creation. On the other hand, the government also has been trying hard to convince international/foreign investors to invest in Timor-Leste. One example was the strategy of lowering company tax to attract foreign investors.

This fetishising of the private sector in development can result in favouritism towards certain businesses, bypassing laws and procedures, and lead to corruption. For instance, the government has awarded infrastructure projects through single source mechanisms to a small group of national contractors known as the *Consortio Nasional de Timorese* (Timorese National Consortium) that has strong connections with those in power. These apparent conflicts of interest have evoked some public criticism as potentially leading to corruption.⁵ From independence to the present, there have been many government projects awarded to individual businesses through the single source process. Thus, this discretionary power of leaders in terms of awarding government projects has created the perception of corruption, if not actual collusion.

Favouritism shown to the private sector by the government could also jeopardise the economy of Timor-Leste. This is because most of the private sector lacks the interest or capacity to invest in alternative areas such as agriculture and fisheries, but relies instead and almost solely on government (infrastructure) projects. At the same time, many have also become brokers to foreign investors who have taken part in many of the state's recent multimillion-dollar project tenders. This dependency could create a networking of patron–client relationships

5 See *Tempo Semanal*, *PM Eskolta Samuel-Xanana Protetor Korrupor* [PM escorted Samuel-PM protected corruptor]. www.temposemanal.com/nasional/pm-eskolta-samuel-xanana-protetor-korrupor. *Consortio Nasional de Timorese* is composed of several Timor business groups such as Tinolina Lda, owned by Agostinho Gomes; Suai Indah Ltd, owned by Americo; Marabia, Lda, owned by Jorge Serano; Jonice Ltd, owned by Nilton Gusmão; Hidayat Lda, owned by Ahmad Alkatiri; and Montana Diak Lda and GS Lda.

across the Timorese economy. Fetishising the private sector could also lead to a marginalisation of other groups, such as farmers, and the informal sectors that also have great potential to contribute to equitable economic development.

Engaging the private sector from the outset in activities directed to awareness-raising is crucial in combating corruption. This has not happened to any extent in Timor-Leste. In early 2014, the CAC in collaboration with the Timor-Leste *Câmara de Comércio e Indústria* (Chamber of Commerce and Industry), held a one-day conference to consider ways to prevent corruption. The seminar attracted a small number of participants compared to other public awareness-raising initiatives. Thus, a serious dialogue with the private sector on how to combat corruption is needed, as they have strong leverage in terms of capital and are well connected to local power-holders and influential elites.

Conclusion

I have briefly discussed the current state of corruption in Timor-Leste and the opportunities for combating it. I have highlighted the importance of awareness-raising in order to create social movements to combat corruption. I have also raised some notes of caution in relation to the private sector's role in the economic dynamics of post-conflict societies like Timor-Leste.

A weak legal system and continuing fragile state institutions could be compensated by a massive public education campaign against corruption. Combining two approaches could well thwart corruption at the outset. The power of social movements and vocal public criticism, combined with a swift investigation, is a more thorough antidote to combat this ill.

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