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HIGHER COUNCIL OF THE JUDICIARY: Minutes no. 5
(Meeting of 14 October 2008) 2776

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**RESOLUTION OF THE NATIONAL PARLIAMENT
no. 25/2008 of 10th of December**

**RATIFIES, FOR ACCESSION, THE UNITED
NATIONS CONVENTION AGAINST CORRUPTION**

The National Parliament resolves, under the terms of sub-
paragraph f) of no. 3 of article 95 of the Constitution of the
Democratic Republic of Timor-Leste, under proposal of the
Government, to ratify, for accession, the United Nations

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Office on Drugs and Crime in preventing and combating corruption,

Recalling the work carried out by other international and regional organizations in this field, including the activities of the African Union, the Council of Europe, the Customs

to state property.

Article 4
Protection of sovereignty

1. States Parties shall carry out their obligations under

fundamental principles of its legal system.

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

Article 12 **Private sector**

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for «commercial activities»;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

(a) The establishment of off-the-books accounts;

(b) The making of off-the-books or inadequately identified transactions;

(c) The recording of non-existent expenditure;

(d) The entry of liabilities with incorrect identification of their objects;

(e) The use of false documents; and

(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Article 13 **Participation of society**

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.

This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the

ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant

criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

Article 20
Illicit enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a

in relation to the commission of offences established in

legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

Article 31

Freezing, seizure and confiscation

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

- (a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;
- (b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this

Each State Party shall take such measures as may be

when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive measures to which the requested State Party does not agree to.

accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
- (e) Where possible, the identity, location and nationality of any person concerned; and
- (f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or

agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 47

Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 48

Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative

purposes;

(d) To exchange, where appropriate, information with or nvcic4r1.4(h)-43(e)2.6(nt)4.3(of5n)-41.089ssary) o3.3()4 5d.

operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

requested and, where available, a legally admissible

Article 60

Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption. Such training programmes could deal, inter alia, with the following areas:

(a) Effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods;

(b) Building capacity in the development and planning of strategic anticorruption policy;

(c) Training competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention;

(d) Evaluation and strengthening of institutions, public service management and the management of public

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Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to that account a percentage of

Convention; and

c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

CHAPTER VIII FINAL PROVISIONS

Article 65 Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.

Article 66 Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 67 Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at United Nations Headquarters in New York until 9 December 2005.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance

or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 68 Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

Article 69 Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and transmit it to the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the States Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the States Parties shall make every

