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# GOOD PRACTICES IN PUBLIC SECTOR EXCELLENCE TO PREVENT CORRUPTION:

A Lessons Learned Study in Support of the Implementation of the  
United Nations Convention Against Corruption (UNCAC)

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## Preface

Over the past decade, there has been significant progress in the fight against corruption across the world. Because of dedicated efforts to raise awareness on the corrosive impact of corruption, and to advocate for concrete action against corrupt practices, “*anti-corruption*” is now increasingly part of global, regional, and national development agendas. The adoption of the 2030 Agenda for Sustainable Development by 193 Member States in September 2015, which included specific targets addressing corruption and related challenges, not only presented a major breakthrough for the anti-corruption movement, it also established anti-corruption as a global imperative on which hinges the achievement of all sustainable development goals. With Goal 16 in particular, we now have a global consensus that transparency, accountability and integrity (and the reduction of corruption specifically) are fundamental to achieving the peaceful, just and inclusive societies we all aspire for.

We need to accelerate efforts. The battle against corruption unfolds and plays out in development settings that are increasingly complex, as challenges across the social, environmental, economic and political spheres continue apace. We have an opportunity to move the agenda forward through the implementation of the UN Convention on Anti-Corruption which has now reached near-universal ratification (186 state parties as of September 2018), hence providing a comprehensive global framework to combat corruption in alignment with the 2030 Agenda.

Our efforts also need to be comprehensive to effect impactful and meaningful change. There is now a greater understanding of anti-corruption in the broader frame of inclusive and responsive governance. We also have more knowledge on the need to improve the capacity, efficiency and effectiveness of public institutions and to strengthen coordination and monitoring mechanisms. We have come a long way from the focus on ensuring efficient use of resources and effective service delivery to curb corruption, to establishing effective, accountable and transparent public institutions as the way to decisively combat corruption and establish lasting progress.

As one of the core government institutions, the public service plays a key role in this integrity endeavour. It is therefore with great pleasure that I present this study, “*Good Practices in Public Sector Excellence to Prevent Corruption: A Lessons Learned Study in Support of the Implementation of the United Nations Convention Against Corruption (UNCAC)*”.

Part I of the study provides a conceptual framework and formulates an operational definition of both “public sector excellence” and “prevention of corruption”. Part II draws on lessons learned from 18 good practices and provides guidance on how these might be applied to the best possible effect in other contexts, while contributing to the implementation of the UNCAC overall.

I hope the study will provide policy makers and practitioners with a useful resource in support of anti-corruption efforts around the world and stimulate accelerated action to roll back corruption as one of the conditions for achieving the sustainable development goals.



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## Executive Summary

Corruption has long been recognized as one of the main obstacles to development. It corrodes the rule of law and democratic institutions. It hinders economic development by distorting markets and damaging the integrity of the private sector. It may destroy people's trust in the political leadership; and, ultimately, in the fundamental principles of democratic governance.

UNCAC, which is the only legally binding universal anti-corruption instrument with 186 state parties as of 26 June 2018, provides a unique opportunity to integrate and mainstream anti-corruption in ongoing governance reforms and development processes, especially in countries that have ratified UNCAC and are undergoing the second cycle of UNCAC review. Thanks to UNCAC and the recognition of anti-corruption as a major development issue, growing numbers of governments are adopting tougher laws, and establishing or strengthening specific units to fight corruption. The issues of illicit financial flows, asset recovery and transparency of beneficial ownership are also receiving growing attention. The global network and connectivity of anti-corruption experts have significantly increased the sharing of experiences. There is also significant growth in terms of the use of technology to prevent and combat corruption.

On the other hand, despite significant progress on anti-corruption, corruption is still a major obstacle to development. Many governance and anti-corruption surveys and indicators suggest that numerous countries in the world sit at the bottom of their indices (e.g., Corruption Perceptions Index, Corruption Barometer) – and, therefore, there is an urgent need to prevent corruption in public sectors by increasing transparency and accountability to ensure the delivery of essential services to citizen users in diverse sectors such as the health, education, water, infrastructure and justice sectors. In particular, attention needs to be paid to vulnerable and marginalized communities – such as women, children and youth, labour migrants and refugees, indigenous peoples and other minority groups – accessing services without the threat of having to pay illegal and unaffordable bribes for their delivery.

UNCAC, the comprehensive global instrument in the fight against corruption, recognizes the importance of public sector excellence in preventing corruption. UNCAC contains several provisions that are dedicated to preventing corruption in the public sector and public officials:

- **Article 7 – Public sector**  
(Merit-based civil services; Procedures for selection; Education and training; Adequate remuneration and pay scales; Criteria for public office candidates; Political party financing; Conflicts of interest)
- **Article 8 – Codes of conduct for public officials**  
(Promote integrity, honesty and responsibility; Codes or standards of conduct for the correct, honourable and proper performance of public functions; Measures and systems to facilitate the reporting by public officials of acts of corruption; Measures and systems requiring public officials to make assets and interest declarations; Disciplinary or other measures against public officials who violate the codes)
- **Article 9 – Public procurement and management of public finances**  
(Appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making; Declaration of interest in particular public procurements; Screening procedures and training requirements; Measures to promote transparency and accountability in the management of public finances; Preserve the integrity of accounting books, records, financial statements and other documents related to public expenditure and revenue and to prevent the falsification of such documents)
- **Article 10 – Public reporting**  
(Enhance transparency in public administration, including with regard to its organization, functioning and decision-making processes)
- **Article 11 – Measures related to the judiciary and prosecution services**

- **Article 12 – Private sector<sup>1</sup>**

(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)

- **Article 13 – Participation of society**

The objective of this study is to draw lessons from good practices from all regions in the thematic areas of public sector excellence in line with UNCAC articles on preventive measures related to public service. The aim is to broaden the understanding of public sector excellence and the prevention of corruption and to draw on lessons learned in support of the implementation of UNCAC.

More specifically, the present study seeks:

- i. To formulate a definition of ‘public sector excellence’ (PSE) and the ‘prevention of corruption’.
- ii. To reflect the findings of a study that draws together national examples of good practices from all regions in the following thematic areas of public sector excellence (reflecting the preventive framework set out in Chapter II (Preventive Measures) of the UNCAC):
  1. Systems for the recruitment, hiring, retention, promotion and retirement of civil servants (and other non-elected public officials);
  2. Political party financing;
  3. Conflict of interest;
  4. Code of conduct for public officials;
  5. Public procurement and management of public finances; and
  6. Public reporting and transparency in public administration.

Analysing existing literature and interviewing relevant stakeholders, this study presents the following observations: First, the very strength of PSE and ‘prevention of corruption’, as concepts, is that they encourage states to aspire to an exemplar standard and, at the same time, impart an expectation that good practices will be put in place. But, in practice, good practices are often put in place based on international standards or frameworks.

Second, there is a clear theory of change where PSE leads to the prevention of corruption, and vice versa. PSE carries with it an expectation that of effectiveness, accountability and transparency, and an immediate link with corruption prevention is thereby discernible. Moreover, inclusion, the requisite conditions for development and adherence to the Rule of Law (in action, rather than merely in words, and including human rights compliance) are features of excellence in the public administration, but are also practical necessities if corruption is to be prevented.

Third, political economy factors are also important prerequisites for achieving PSE and the prevention of corruption, providing an environment for the achievement of both. However, it should be noted that, in addition to political economy factors, it is invariably motivation (extrinsic and intrinsic) and morale that drive, and are driven by, the pursuit of excellence and the prevention of corruption.

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<sup>1</sup> Although Article 12 is more specific to the private sector, it also has a provision on preventing conflicts of interest.

Fourth, equally, innovation is required. If the public sector is to remain effective, transparent and accountable (and, hence, able to demonstrate excellence and be hostile to corruption), it must be dynamic at state, institutional and individual official levels. At the same time, complacency undermines excellence and an ally to the corrupt because the context in which the public sector operates is constantly shifting and giving rise to fresh challenges.

Fifth, PSE and the prevention of corruption each demand a focus on functions and not form. A particular shortcoming in much anti-corruption effort has been simple transposition of institutional models from one state to another – an approach that, experience shows, is unlikely to bring about sustainable positive outcomes.

The World Bank has identified three core institutional functions that are needed if excellence (and, for that matter, corruption prevention) is to be achieved:

- Commitment;
- Co-ordination; and
- Co-operation.

UNDP, for its part, posits that building an effective interface between administrative, political and societal spheres is only possible when trust and accountability permeate this space; and, furthermore, that ‘drivers’ of integrity and service orientation will then propel public service towards excellence.<sup>2</sup>

To bring about such core functions and an interface between interests, coalitions of change will typically need to be formed and public officials themselves may be part of such coalitions and able to bring considerable value, since the enormous challenge in seeking excellence through change or reform is that leadership, motivation and collective action are needed for initiatives to take place and to have a prospect of success.

It follows, from all the above, that any definition of PSE will necessarily be subject to context-specific considerations that will vary from state to state and be capable of being highly nuanced. Thus, from a human development perspective, PSE could be defined as:

- Consistency and integrity in each of the services delivered;
- Appropriate quality in each of those services;
- With roles and duties being carried out in order to meet national and individual citizens’ needs (with regard to the future, as well as focus on the present);
- And, with those roles and duties performed, with all necessary interaction with and between stakeholders, by adherence to the so-called ‘Seven Principles of Public Life’. As outlined by the Committee on Standards in Public Life, the Seven Principles of Public Life<sup>3</sup> are: Selflessness; Integrity; Objectivity; Accountability; Openness; Honesty; and Leadership.

Turning specifically to a definition of ‘prevention of corruption’ in the public sector, there are primarily two sources that provide a framework or guidance: 1) UNCAC and 2) National Anti-Corruption Strategies (NACS).<sup>4</sup> A helpful starting point is UNCAC itself, given it reflects the international anti-corruption standard and provides the most comprehensive framework to prevention that states have. Immediately, though, it should be noted that it is clear from the instrument itself that ‘prevention’ is about much more than what would generally be seen as purely preventive steps or measures; indeed, even UNCAC’s own Chapter II (Preventive Measures) is only part, albeit a principal one, of corruption prevention. Rather, the whole of UNCAC may be seen as a preventive framework, with enforcement, international co-operation and, of course, asset recovery being important components. Indeed, Article 1 (in the ‘statement of Purpose’) makes it clear that prevention is necessarily multi-pronged and runs throughout the text.

2 <http://www.undp.org/content/undp/en/home/ourwork/global-policy-centres/publicservice/research-hub.html>

3 <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

4 In some countries, national anti-corruption policies and action plans are in place, equivalent to NACS.



Many political economists and governance analysts see corruption essentially as a dynamic, which is a ‘deals-based way’ to sustain agreements among certain individuals or groups. Such a definition challenges much of the thinking that has informed the shaping of anti-corruption preventive activity and reinforces the argument that replicating institutional models that have proved successful in one context is not likely to reduce corruption levels elsewhere. On that basis, political will and commitment at the highest level are important for change to occur. Such commitment should be credible and include a ‘deal’ or ‘bargain’ (e.g., social compact between government and people), so that those in power will not abuse that position for private gain. The challenge, of course, is how to effect such a change.

Corruption prevention has too often been seen as a component or series of components in an anti-corruption strategy, usually tending to be ‘top-down’, focused on strengthening the rule of law and combining steps to improve public sector conditions, with wider preventive measures and enhanced enforcement.

The preventive measures traditionally, for example, include the introduction of codes of conduct and public procurement frameworks. However, based on the experiences of anti-corruption bodies drawn from all regions, an overall definition of the prevention of corruption in general reflects at least the following:

- Identification of risk areas & risk assessment (at national and institutional levels);
- Legislation (e.g., to comply with UNCAC Chapter II provisions on corruption prevention);
- Effective enforcement as a deterrence to corruption;
- Digitalization (particularly in the context of public finance management (PFM), promoting transparency and accountability in public administration);
- Engagement with major stakeholders for collective action and joint advocacy (e.g., coalitions, civil society, media, donors);
- Public awareness raising, through education, etc.;
- National strategy/integrity plan;
- Implementation of the regulations on financing political parties;
- Asset declaration, code of conducts, public ethics and regulations regarding conflict of interests and gifts; and
- Anti-corruption assessment of laws (legislative [corruption] proofing).

In addition to the above components, measuring the success of anti-corruption activities, initiatives and policies should be a prominent feature of corruption prevention and reflected in its definition. However, preventive measures have traditionally proved difficult to measure for a wide range of reasons and this continues to be a challenge with no straightforward or ready answer.

In the second part of the study, lessons drawn from the chosen case studies are set out and examined in detail, based on 18 case studies on the six thematic areas of public sector excellence (reflecting the preventive framework set out in Chapter II (Preventive Measures) of the UNCAC:

1. Systems for the recruitment, hiring, retention, promotion and retirement of civil servants (and other non-elected public officials);
2. Political party financing;
3. Conflict of interest;
4. Code of conduct for public officials;

5. Public procurement and management of public finances; and
6. Public reporting and transparency in public administration.

With reference to the six above-mentioned areas, themes 1, 3, 4, 5 and 6 are directly linked with effectiveness, transparency and accountability in the public sector. As for theme 2, the link between political party financing and public sector excellence may not be obvious; political party financing can indirectly link to public sector excellence. Where political party financing is influenced by corrupt practices aligned with business motives or individual vested interests, it is likely that appointment, recruitment, promotion or procurement are affected by corrupt and illegal practices in political party financing. The 18 case studies thus set out and examine in detail how the good practices contribute to PSE and the prevention of corruption.

Each case study was the subject of literature review and participant interviews, with three questions of central importance:

1. Why were the identified good practices successful in their national context?
2. How did they contribute to preventing corruption?
3. What are the lessons learned, to offer guidance to apply them in other contexts?

In general, the following are major findings from the case studies:

- The value of education, engagement and outreach should never be underestimated;
- Successful initiatives tend to be those that achieve a 'buy-in' and credibility with public servants and the wider population alike;
- Independence and security of tenure are vital for those bodies called upon to supervise, regulate and monitor the implementation of major reforms;
- Regulation of political funding, although challenging, can be an effective tool to bring about PSE and corruption prevention. However, it must be context-specific;
- Transparency, if it is to be meaningful, requires that a complex series of 'trust relationships' be built;
- Electronic systems and processes are capable of being highly effective components in the pursuit of excellence and in preventing corruption, but they need to be 'user-friendly' and as free from complexity as possible;
- Notwithstanding the difficulties of measuring, monitoring/evaluation must not be overlooked; and
- Pilot schemes are sometimes necessary first steps, but a state-wide vision is generally needed to give an initiative or dissemination of good practices sufficient momentum.

In particular, the following are key findings in each theme of preventive measures:

1. **Systems for Recruitment, Hiring, Retention, etc. of Civil Servants (Including Non-Elected Public Officials)**
  - Education and outreach are required within the public sector and across the wider population. Citizen 'buy-in' is a key sustainer for recruitment reforms.
  - Introduction of a pilot scheme(s) should be considered, rather than immediate national 'roll-out'. The body chosen for the pilot should be one that is in need of reform, but not so corrosive that early failure is likely.
  - Vetting for certain posts/responsibilities should be introduced, along with security of tenure for judges and those managing anti-corruption bodies.

## 2. Political Party Financing

- An effective and genuinely independent and non-partisan supervisory body could be effective in regulating political party financing. Its precise form is to be determined by national context.
- Education, prevention and engagement should be prioritized, but should be accompanied by a clear message that enforcement will not be overlooked. Vulnerable areas, such as disguised donations and access to account and accounting information, should be kept in mind.
- A structure (such as a dedicated court or tribunal) should be pre-emptively put in place to manage disputes between the supervisory body and political parties.

## 3. Conflict of Interest

- Clear and concise provisions within a code of conduct or set of regulations must be in place and must be supported by consistent application.
- The emphasis should be put on avoiding, identifying and managing apparent and potential conflict situations in a public servant-inclusive manner. An advice-giving channel should be established.
- A 'top-down' approach should be adopted and every effort must be taken to establish credibility with the wider public and to understand cultural and societal context.

## 4. Code of Conduct for Public Officials

- Whistleblowing protection is a key preventive and enforcement tool, but it should be established as one part of a wider strategy, with the engagement, as far as possible, of all stakeholders.
- For a code of conduct to have ongoing practical effect, a common understanding of standards and expectations should be built and it should be recognized that this often takes time. It should be supported by ongoing monitoring and evaluation.
- Within the public service, it must be recognized that code of conduct workability depends on systems and people working in tandem. Each must support the other. Where a system stands in the way of code requirements, it should be reviewed and amended.

## 5. Public Procurement and Public Finance Management

- Processes and systems should be as simple as practicable (consistent with being fit for purpose). It should be remembered that transparency in this regard depends on data availability; consideration should, therefore, be given to imposing mandatory requirements in respect of data exchange/provision.
- An e-procurement process has to be robust, but, at the same time, free from unnecessary complexity to ensure user-friendliness. With that in mind, pre-emptive stakeholder engagement should be undertaken.
- Public finance management reform must set itself realistic targets, consider pilot 'roll-out' and set priorities in implementation.

## 6. Public Reporting and Transparency in Public Administration

- A state-wide vision should be built and nurtured in order to give momentum and to challenge existing interests.
- Transparency requires a complex series of 'trust relationships' to be built; this requires 'drivers' who bring with them a level of authority to be identified and coalition-building to be undertaken.
- Transparency and public reporting should be shaped with reference to cross-cutting issues, such as human rights considerations and efforts in support of the SDGs.

The report is organized as follows: Section I provides an introduction to the study; Sections II and III discuss the conceptual framework of public sector excellence and the prevention of corruption respectively; Section IV highlights the linkages between public sector excellence and the prevention of corruption; Section V summarizes the major findings from case studies and recommendations from the good practices; while Section VI presents the 18 case studies sorted by the six thematic areas.

# I. Introduction, Public Sector Excellence and the Prevention of Corruption

## Background

The worldwide cost of corruption in 2016 alone has been estimated at between US\$1.5 and US\$2 trillion.<sup>5</sup> There is an urgent need to prevent corruption in the public sector by increasing transparency and accountability and thereby ensuring (particularly for the vulnerable or marginalised in society) the delivery of essential services in a range of key sectors, such as education, health, infrastructure, justice and water, without individuals facing the threat of having to pay bribes for service delivery.

UNCAC, as a globally binding instrument, provides a unique opportunity to integrate and mainstream anti-corruption in ongoing governance reforms and development processes, especially in states that have already ratified/acceded and are undergoing the second cycle of the UNCAC review mechanism.<sup>6</sup> As the comprehensive global instrument in the fight against corruption, UNCAC recognizes the importance of public sector excellence in prevention and contains several provisions dedicated to preventing corruption in the public sector and on the part of public officials:

- **Article 7 – Public sector**  
(Merit-based civil services; Procedures for selection; Education and training; Adequate remuneration and pay scales; Criteria for public office candidates; Political party financing; Conflicts of interest)
- **Article 8 – Codes of conduct for public officials**  
(Promote integrity, honesty and responsibility; Codes or standards of conduct for the correct, honourable and proper performance of public functions; Measures and systems to facilitate the reporting by public officials of acts of corruption; Measures and systems requiring public officials to make assets and interest declarations; Disciplinary or other measures against public officials who violate the codes)
- **Article 9 – Public procurement and management of public finances**  
(Appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making; Declaration of interest in particular public procurements; Screening procedures and training requirements; Measures to promote transparency and accountability in the management of public finances; Preserve the integrity of accounting books, records, financial statements and other documents related to public expenditure and revenue and to prevent the falsification of such documents)
- **Article 10 – Public reporting**  
(Enhance transparency in public administration, including with regard to its organization, functioning and decision-making processes)
- **Article 11 – Measures related to the judiciary and prosecution services**

<sup>5</sup> IMF, Corruption: Costs and Mitigating Strategies (May 2016), p.5, citing an extrapolation by Daniel Kaufmann, based on earlier estimates made by him.

<sup>6</sup> UNODC and UNDP, "Partnering in Anti-Corruption Knowledge: A Guidance Note for Development Partners", November 2013.

- **Article 12 – Private sector<sup>7</sup>**

(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)

- **Article 13 – Participation of society**

It is important for public sector excellence to include key elements: building commitment, enhancing capacity, measuring accurately and communicating effectively at every stage of service planning and delivery. National adoption and implementation of UNCAC's corruption prevention provisions supports the achieving of public sector excellence in a number of ways:

- A code of conduct for public officials to build commitment by defining integrity for leadership and ensuring internal/external accountability;
- Effective systems that promote transparency and prevent conflicts of interest;
- Recruitment, retention and promotion provisions to enhance capacity by rewarding innovation, introducing flexibility, encouraging training;
- Transparent and competitive public procurement and financial management systems/procedures; and
- Public reporting with effective communications that, in turn, increases transparency and brings accountability.

“

**Public sector excellence and the prevention of corruption are inextricably linked and each is a means to an end, aimed at furthering human development for the greater good.**

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Public sector excellence and the prevention of corruption are inextricably linked and each is a means to an end, aimed at furthering human development for the greater good. Yet, strikingly, neither is presently subject to an agreed or generally understood definition. Thus, this study aims to broaden the understanding of public sector excellence and the prevention of corruption and to draw on lessons learned from good practices to provide guidance on how they might be applied to best effect in other contexts.

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<sup>7</sup> Although Article 12 is more specific to the private sector, it also has a provision on preventing conflicts of interest.

## Research Objectives

This report aims:

- i. To seek to formulate a definition of both ‘public service excellence’ (‘PSE’) and the ‘prevention of corruption’;
- ii. To conduct a study that draws together national examples of good practices from all regions in the following thematic areas of public sector excellence, which reflect the preventive framework set out in Chapter II (Preventive Measures) of the UNCAC:
  1. Systems for the recruitment, hiring, retention, promotion and retirement of civil servants (and other non-elected public officials);
  2. Political party financing;
  3. Conflict of interest;
  4. Code of conduct for public officials;
  5. Public procurement and management of public finances; and,
  6. Public reporting and transparency in public administration.

Overall, the study is organised into two parts. The first discusses the concepts while the second focuses on a series of case studies (compiling three or more for each of the above thematic areas) that seek to answer three key questions in respect of each:

1. Why were the identified good practices successful in their national context?
2. How did they contribute to preventing corruption?
3. What guidance might be offered to apply them in other contexts?

In addition, it is intended that the study will contribute to the ongoing body of work and the wider discourse on corruption prevention in the context of PSE as well as with regards to the discussions at the Conference of States Parties to UNCAC and practical inputs to the second cycle of the UNCAC implementation review mechanism (2015 – 2019), which addresses, inter alia, Chapter II (Preventive Measures).

## Research Methodology

The methodology used in this report comprises of:

1. Undertaking of a desk review in order to:
  - Define what is meant by ‘public sector excellence’ and ‘prevention of corruption’.
  - Explain how public sector excellence contributes to, and links into, the prevention of corruption.
  - Identify case studies on each of the six thematic areas set out above and having regard to a balance as between global regions in so doing.
  - Compile a series of questions to be posed for each case study and to be answered by document/ literature research and analysis and targeted Skype interviews with key stakeholders.
  - Plan interviews with key stakeholders for each case study, in conjunction with UNDP Global Anti-Corruption Team and relevant UNDP Country Offices, for the validation of the key findings from the literature review.

2. Conducting document/literature research into each of the chosen case studies and targeted stakeholders' interviews.
3. For each case study, analysing and evaluating the material/product captured in order to:
  - Identify good practices successful in their national context (including the social, economic, cultural and political);
  - Ascertain how they contribute to preventing corruption; and
  - Provide guidance as to how they might be applied to best effect in other contexts.
 (In addition, this aspect of the work will seek to identify:
  - Cross-cutting and overarching issues/themes;
  - Areas for further development, in order to help to inform the forthcoming COSP and the ongoing UNCAC implementation review mechanism.)

## II. Public Sector Excellence

### What is Public Sector Excellence?

The terms PSE and 'prevention of corruption' are often defined as being aspirational, rather than providing an achievable expectation. It might be said that 'excellence' and 'prevention' are each, in their own ways, an expression of perfection or a gold standard, the attainment of which might be entirely unrealistic for many states and state institutions in the short term. Indeed, a dictionary search<sup>8</sup> of 'excellent' will find that its derivation is from the Latin *excellere* (to surpass) and that excellence connotes the quality of being outstanding or extremely good.

However, one of the underlying themes of this study is that the very strength of PSE and 'prevention of corruption' as concepts encourage states to aspire to an exemplar standard. In reality, states aim to put in place and implement practices in accordance with what may be fit according to the country context. There seems to be a significant gap between aspiration and the practical implementation of preventive measures.

There is presently no single or authoritative definition of PSE, even though the term is used in a variety of settings, including:

- PSE awards (e.g., Public Sector Excellence Awards (South Africa); Excellence in Public Service Awards (Singapore); and The Prime Minister's Award for Excellence in Public Sector Management (Australia));
- PSE-titled publications (e.g., Public Sector Excellence Magazine (Abu Dhabi));
- PSE-badged initiatives (see, e.g., Canadian Initiative on Public Service Outcomes);
- Public management and public administration literature;
- Adoption by an interest group (e.g., The Association for Public Service Excellence (APSE)); and
- The 'Excellence Model' in management.

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<sup>8</sup> See the Oxford English Dictionary (OED) entry at [www.oed.com](http://www.oed.com).



There is, however, a range of sources that set out good practices, expectations and standards for the public service and those within it, thereby providing a framework from which a definition of PSE may be drawn. Those sources may be categorized thus:

- National policies;
- Legislation;
- Codes of Conduct & Guidance;
- Treaty obligations (especially UNCAC);
- International 'soft law' or non-binding initiatives (including the 2030 Agenda for Sustainable Development);
- Outreach programmes, capacity building projects, reports & good practice guidance by international organisations & individual states (in respect of multilateral or bilateral assistance);
- Evolved good practices from public administration & public management (from a variety of original sources); and
- Academic research, studies & writing on PSE reforms.

In order to reach a satisfactory and workable definition, it is necessary to ask what PSE is seeking to achieve. Some key assistance is provided by SDG 16.6<sup>9</sup>, which aims to “develop effective, accountable and transparent institutions at all levels”.



Sustainable Development Goals Advocates Reception 2018. UN Photo/Eskinder Debebe

9 <https://unstats.un.org/sdgs/report/2016/goal-16/> and see also the comments in 'The Sustainable Development Goals of the Post-2015 Agenda: Comments on the OWG and SDSN Proposals', German Development Institute, February 2015, at p.81.



To be ‘excellent’, there is certainly an expectation that a public administration must be effective, accountable and transparent and an immediate link with corruption prevention is thereby discernible, with an obvious measure or indicator being the perception among the population of the level of public sector corruption.

But SDG 16 (‘Peace, Justice & Strong Institutions’) taken as a whole itself suggests that PSE is much more all-encompassing and, to an extent, nuanced than might be initially thought, with its self-proclaimed aim being to “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”.

It may, therefore, be said that (i) inclusion, (ii) the requisite conditions for development and (iii) the rule of law (in action, rather than merely in words, and including human rights compliance) are each a part of what would be identified as excellence. Furthermore, SDG 16’s aim conveys a more elusive component of PSE: that it is not excellence in a vacuum, but is excellence for the purposes of human development and for the greater good of the population. Cutting through possible ideological discussions of what the ‘public sector’ is and what its functions should be, PSE also carries with it the fulfilment of the population’s expectation that public service institutions and those within them should actually do what they are supposed to do; in short, an excellent public sector is one that delivers.

**“ Most anti-corruption efforts undertaken globally tend to focus on accountability and transparency. However, ... the need for effectiveness should not be overlooked ”**

Most anti-corruption efforts undertaken globally tend to focus on accountability and transparency. However, in seeking to arrive at a PSE definition, the need for effectiveness should not be overlooked. Indeed, an effective public sector will be more likely to have (subject to other conditions) the capability and resilience that are themselves important features of corruption prevention.

The notion of effectiveness or ‘capability’ encompasses a number of distinct features; an effective public sector will:<sup>10</sup>

- Prioritize rationally/appropriately;
- Allocate (often limited) resources;
- Deliver services;
- Adhere to timeliness in each of the above;
- Encourage/promote participation & inclusion at all levels;
- Seek consensus;

<sup>10</sup> Managing for Excellence in the Public Sector, G. Van der Walddt, D.F. Van der Walddt & P. Du Toit, South Africa, 1999.

- Promote and support medium- and long-term national objectives;
- Comply with international obligations; and
- Help to set the international agenda.

Having accepted that effectiveness, accountability and transparency are integral to excellence, it might be asked whether PSE is anything more than 'good governance' by a different name. The World Bank's generally accepted corporate definition of governance<sup>11</sup> is "the process through which state and non-state actors interact to design and implement policies within a given set of formal and informal rules that shape, and are shaped, by power". However, 'good governance', as a term, has proved itself to be rather indeterminate, certainly insofar as to qualitative standard, although the then UN Secretary-General Kofi Annan, speaking in 1998,<sup>12</sup> set out a practical working definition when he explained, "Good governance is ensuring respect for human rights and the rule of law; strengthening democracy; promoting transparency and capacity in public administration."

Nevertheless, "there is no single and exhaustive definition [...] nor is there a delimitation of its scope that commands universal acceptance. The term is used with great flexibility; this is an advantage, but also a source of some difficulty at the operational level."<sup>13</sup> PSE also embraces the aims and principles of good governance and is informed by its considerable body of literature. Indeed, just as for good governance, so for PSE (and, indeed, for SDG 16): key pre-conditions are security and an environment free from violence and the threat of violence. Inevitably, therefore, any discussion of excellence in the public sector will involve issues and challenges of governance, while, conversely, the concept of governance helps focus on the nature and role of power and its effect on the pursuit of excellence.

Another notion of an excellent public administration is to be impartial and, yet, this is generally not the case. Difficult questions, therefore, arise: Does excellence mean impartially working for the benefit of everyone equally or may it sometimes mean (depending on a given context) working for the benefit of a particular group (be it, for example, the poor, the entrepreneur or the wealthy)? At a strategic level, it may well be that policy does not find impartial expression, but it should not be forgotten that impartiality on the part of front-line bureaucrats will be a major determining factor in shaping the perceptions of citizens and in the way in which they judge the quality of public institutions.

Similarly, trust is often defined as one of the pre-conditions of excellence – particularly the notion of the public sector enjoying the trust of the population, that it is, carrying out its functions effectively, transparently and with accountability. But, as will be seen from the political economy discussion below, this raises many questions: How does politics fit into public service and how does public service fit into politics? Are the controlling and managing functions of the public administration consistent with winning the public's trust? Does a public sector ever have an incentive to work for the population as a whole? Can a meritocratic public sector be technically neutral and is either meritocracy or neutrality a step towards excellence? Does the public sector, in fact, have its own interests ('political' at one or more levels), which it then sets about pursuing? The political economy arguments in this regard are wide-ranging, but, for the individual public servant and for the citizen recipient of public service delivery, motivation (extrinsic and intrinsic) and morale each drive and are driven by the pursuit of excellence.

Motivation has been defined as "the ability of people, institutions and societies to perform functions, solve problems and set and achieve objectives".<sup>14</sup> Motivation has two elements: intrinsic and extrinsic. Simply put, intrinsic motivation refers to doing something that one enjoys, while extrinsic motivation refers to doing

11 Page 2 of World Bank. 2017. World Development Report 2017: Governance and the Law. Washington, DC: World Bank. doi:10.1596/978-1-4648-0950-7. License: Creative Commons Attribution CC BY 3.0 IGO

12 16 April 1998, UN Press Release SC/6502.

13 <http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>

14 UNDP (2006). "Incentive Systems: Incentives, Motivation, and Development Performance." UNDP Capacity Development Resource, conference paper no. 8, working draft, November 06.

something in order to receive a particular outcome. Intrinsic motivation can be manifested in many ways, such as the attraction to public policymaking, commitment to public interest and civic duty, willingness for self-sacrifice, and inherent compassion. On the other hand, extrinsic motivation can be influenced by incentives for joining an organization, whether they be financial or non-financial in form.<sup>15</sup> Motivation of public officials is crucial for public service sector effectiveness; because the public service sector is a key pillar of international development, public service motivation is critical to achieving development goals.<sup>16</sup> Moreover, to produce effective and lasting reforms, there must be an internal desire to change, and motivated public officials are best placed to lead this charge.<sup>17</sup>

Innovation is also an important aspect. If a public sector is to remain effective, transparent and accountable (and, hence, able to demonstrate excellence), it must be dynamic at the state, institutional and individual official levels. Complacency could undermine excellence because the context in which the public sector operates will inevitably change over time and new challenges will arise. Ongoing aspiration is needed and is a key to success; at the same time, though, risk has to be weighed in the balance, with the full range of risk and attendant complexity appropriately assessed and managed. As the OECD has highlighted,<sup>18</sup> innovation in the public sector requires impetus, since “problems need to be identified, and ideas translated into projects that can be tested, implemented and shared. To do so, public sector organizations must identify the processes and structures that can support and accelerate innovation.” In an increasingly digitized and innovative world, of course, part of the measure of excellence will be how information, data and knowledge are each managed.

The OECD has further reflected this in its ‘Framework for Public Sector Innovation’,<sup>19</sup> identifying four levels where innovation is able to take place (the innovator (e.g., an individual public official), the organization in which they work, the public sector as a whole, and wider society) and four organizational factors that may encourage (or, conversely, inhibit) innovation (people (the cultural dimension), knowledge, ways of working, and rules/processes).<sup>20</sup>

Such a distillation is also a recognition that the public sector is a complex environment and that excellence requires those within it to realize that:

- It is both multi-disciplinary and inter-disciplinary; and
- It interacts with the macro and micro environments in which it operates.

The macro will include legislation, national policy and regulation/oversight mechanisms, whilst interaction with the population and with stakeholders will involve both macro and micro engagement. Meanwhile, the micro operating space will principally include personnel issues and management styles. In addition, and not to be overlooked, interaction will, of course, occur with the private sector at all levels.

Such complexity is often reflected in prevention of corruption initiatives, where, depending on context, success may lie in a combination of macro and micro projects or in one approach itself acting as a driver or catalyst. Thus, as will be seen below in a case study of Georgia, reform carried out in the macro environment, in the form of civil service reform, has created sustainable corruption reduction, while the experience of Singapore demonstrates the value that initiatives focused on the individual are capable of having, with its programme geared at building and sustaining a meritocratic public service (albeit with such initiative being supported by organizational-level impetus aimed at the public service as a whole).

15 UNDP Global Centre for Public Service Excellence (2014). “Motivation of Public Service Officials Insights for Practitioners”.

16 UNDP (2006). “Incentive Systems: Incentives, Motivation, and Development Performance.” UNDP Capacity Development Resource, conference paper no. 8, working draft, November 06.

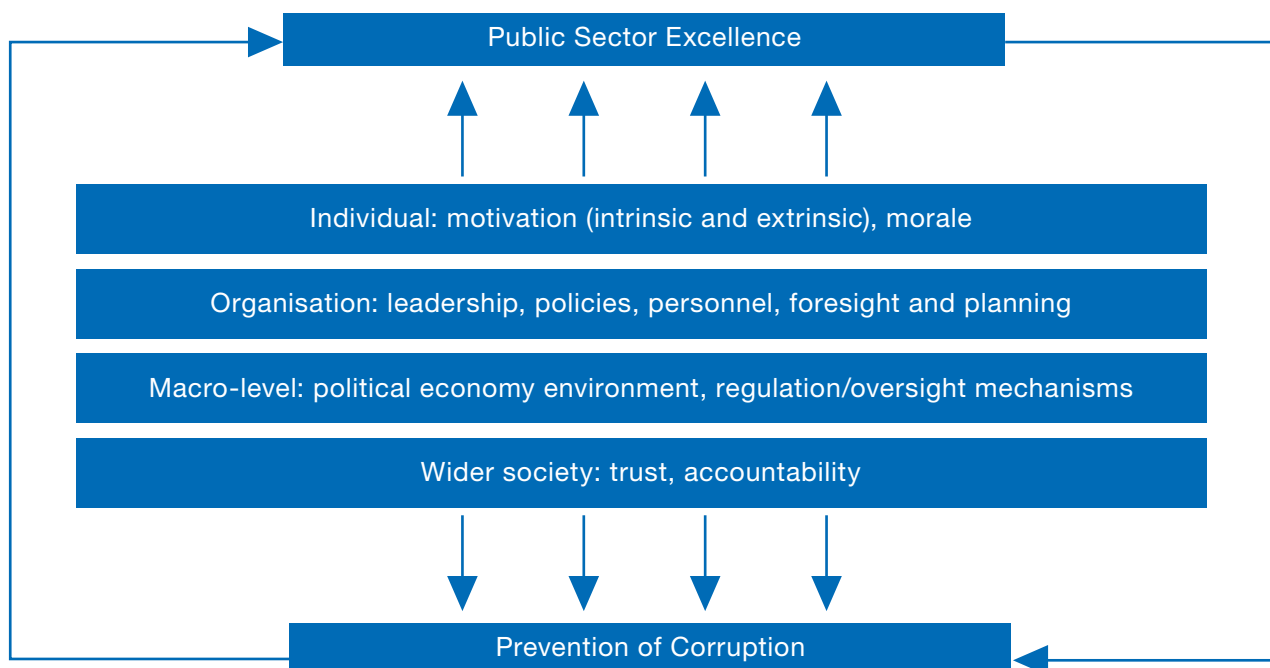
17 UNDP Global Centre for Public Service Excellence (2014). “Motivation of Public Service Officials Insights for Practitioners”.

18 Press Release for OECD publication, Fostering Innovation in the Public Sector (25/4/2017).

19 <http://www.oecd.org/gov/innovative-government/a-framework-for-public-sector-innovation.htm>

20 See also two OECD publications: Fostering Innovation in the Public Sector, 2017, [http://www.keepeek.com/Digital-Asset-Management/oecd/governance/fostering-innovation-in-the-public-sector\\_9789264270879-en#.WbVMnNGQzIU#page1](http://www.keepeek.com/Digital-Asset-Management/oecd/governance/fostering-innovation-in-the-public-sector_9789264270879-en#.WbVMnNGQzIU#page1) and, The Innovation Imperative in the Public Sector, 2015, [http://www.keepeek.com/Digital-Asset-Management/oecd/governance/the-innovation-imperative-in-the-public-sector\\_9789264236561-en#.WbVNGtGQzIU](http://www.keepeek.com/Digital-Asset-Management/oecd/governance/the-innovation-imperative-in-the-public-sector_9789264236561-en#.WbVNGtGQzIU)

Diagram 1. The four levels influencing public sector excellence and anti-corruption efforts



One of the dangers in seeking a definition of PSE is the temptation to define it in terms of an ideal form of public institution, particularly in circumstances where excellence is attempted to be driven by capacity-building or reform projects that have adopted or are seeking to transpose institutional models that have worked well in the context of another state, especially in instances where the other (exporting) state is more developed. This has been a particular shortcoming in much anti-corruption effort, with an emphasis on identifying or defining preferred or suggested forms or characteristics for formal institutions.

Instead, as the World Bank has emphasized,<sup>21</sup> the path to excellence (and the measure of it) for the public sector is the presence of three core institutional functions:

- Commitment;
- Coordination;
- Cooperation.

It expands upon these as follows: “Commitment is about supporting consistent policies over time to ensure that promises are delivered. Coordination is about shaping expectations to enable complementary action. And cooperation is about limiting opportunistic behaviour to prevent free-riding.”

It will be seen that these three functions – commitment, coordination and cooperation – are comprised of, or draw upon, those features of excellence that have already been highlighted. Thus, commitment depends upon trust and, in itself, instils trust; coordination occurs when individuals and institutions have a shared certainty and understanding as to their respective actions and the outcome thereof, which is dependent on context and on the answers to the questions posed, above, as to the very nature the public sector and its ‘drivers’; meanwhile, co-operation requires the building of cohesion, consensus-seeking and the ability to limit self-interested so-called ‘free-riding’.<sup>22</sup> From the standpoint of corruption prevention, it is noteworthy that coordination can be achieved quickly if expectations are meaningfully shaped and this may occur by a

<sup>21</sup> See, for instance, Governance and the Law, World Development Report, World Bank, 2017, at p. 52 ff.

<sup>22</sup> Ibid, at p. 57.

combination of preventive and enforcement measures; meanwhile, one of the core contributors to meaningful co-operation is engagement in the policymaking or rule-making environment – in other words, participation and ownership.

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**...building an effective interface between the administrative, political and societal spheres is only possible when trust and accountability permeate this space. Drivers of integrity and service orientation will then propel public service towards excellence. Achieving ‘excellence’ in public service requires effective political economy dynamics, a strong sense of purpose, a clear vision and pragmatic flexibility.**

”

UNDP, for its part, argues that building an effective interface between the administrative, political and societal spheres is possible only when trust and accountability permeate this space. Drivers of integrity and service orientation will then propel public service towards excellence. Achieving ‘excellence’ in public service requires effective political economy dynamics, a strong sense of purpose, a clear vision and pragmatic flexibility. These four essential determinants are fundamental to successful sustained development as a catalyst of change for PSE:<sup>23</sup>

- Cooperation between political and administrative leadership;
- Motivation of public service officials;
- Adaptive governance: long-term planning, foresight & complexity;
- Innovation in public service.

Taking the above on board, it will be seen that, for excellence to be achieved:

- Effort should be put into the functions, not the form, of the public sector;
- Capacity-building will not be productive unless power imbalances between actors in the beneficiary state are addressed;
- Rule-of-law initiatives must pay attention to promoting accountability and lowering the cost of compliance/increasing the cost of non-compliance – in essence, creating equilibrium in respect of different levels of bargaining power.

Any definition of PSE must necessarily be subject to context-specific considerations that will vary from state to state and be potentially highly nuanced. Given that the term is predicated, for present purposes, on being for human development, PSE may be defined as:

<sup>23</sup> <http://www.undp.org/content/undp/en/home/ourwork/global-policy-centres/publicservice/research-hub.html>

- Consistency and integrity in each of the services delivered;
- Appropriate quality in each of those services;
- With roles and duties being carried out in order to meet national and individual citizens' needs (with regard to the future, as well as focus on the present);
- With those roles and duties performed, with all necessary interaction with and between stakeholders, by adherence to the 'Seven Principles of Public Life'. As outlined by the Committee on Standards in Public Life,<sup>24</sup> the Seven Principles of Public Life are: selflessness; integrity; objectivity; accountability; openness; honesty; and leadership.

## Public Sector Administration and Public Sector Management

The discussion on the definition of PSE should consider the nature and role of public sector management, which may itself be divided into general and function-specific management. Its nature and scope will shape quality and will be capable of being (whatever its motivation) a 'driver' of PSE. As to its character, public sector management may be seen as either synonymous with public sector administration or, in accordance with the prevailing view, integral to it.

There is much literature on achieving excellence in public management<sup>25</sup> and one of many working definitions is,<sup>26</sup> "The public management represents the set of processes and management relations, well defined, which exist between the components of the administrative system by, which, in a public power, the laws are put into force and/or the activities in delivery of services satisfying the public interest are planned, organized, coordinated, managed and supervised."

For its part, public sector administration has been described as "centrally concerned with the organization of government policies and programmes as well as the behaviour of officials (usually non-elected) formally responsible for their conduct".<sup>27</sup>

Meanwhile, UNDP has previously attributed to it two related meanings:<sup>28</sup>

"The aggregate machinery (policies, rules, procedures, systems, organizational structures, personnel and so forth) funded by the State budget and in charge of the management and direction of the affairs of the executive government, and its interaction with other stakeholders in the State, society and external environment";

"The management and implementation of the whole set of government activities dealing with the implementation of laws, regulations and decisions of the Government and the management related to the provision of public services."

On any reading, though, if the principles of good governance are indeed embraced within the concept of PSE, then so must be public sector management, given that good governance necessarily includes efficiency, effectiveness and a use and allocation of resources that might be best described as 'economic'. Furthermore, it is easy to overlook that the complexity inherent in the public sector must be met with qualities that are intrinsically managerial: planning, co-ordination, rational and contextually appropriate decision-making, and interpersonal interaction and cooperation.

<sup>24</sup> <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

<sup>25</sup> See, for instance, *Managing for Excellence in the Public Sector*, G. Van der Walddt, D.F. Van der Walddt & P. Du Toit, South Africa, 1999.

<sup>26</sup> *Characteristics of Public Sector Management*, A. C. Guta, *Annals of the University of Petroşani, Economics*, 12(4), 2012 at p. 95.

<sup>27</sup> UN Economic and Social Council, Committee of Experts on Public Administration, *Definition of Basic Concepts and Terminologies in Governance and Public Administration*, Note by Secretariat, 6 January 2006.

<sup>28</sup> UNDP, *Democratic Governance Group, Public Administration Practice Note*, Bureau for Development Policy, 2003.

## Political Economy Analysis

The assumption that the public service is simply an apolitical or neutral bureaucracy or technocracy, does not take into account the political economy, which has a dominant role in shaping the public sector.

The consistent experience of development assistance providers is that the public sector is, in fact, a much more nuanced environment, subject to a variety of dynamics, and such recognition has prompted the use of political economy analysis in order to understand the capacity building context in a given state or region and to improve and better focus the quality of the assistance provided.

With that in mind, any consideration of PSE would be incomplete without looking through the political economy lens in order better to understand not just what excellence looks like in the public sector, but how it may be feasibly brought about. As has been noted in the context of aid delivery in general, but equally apposite for the building of public service capability:

“Political economy analysis is a powerful tool for improving the effectiveness of aid. Bridging the traditional concerns of politics and economics, it focuses on how power and resources are distributed and contested in different contexts, and the implications for development outcomes. It gets beneath the formal structures to reveal the underlying interests, incentives and institutions that enable or frustrate change.”<sup>29</sup>

A standard definition of political economy analysis is that provided by the OECD Development Assistance Committee (DAC):<sup>30</sup>

“Political economy analysis is concerned with the interaction of political and economic processes in a society: the distribution of power and wealth between different groups and individuals, and the processes that create, sustain and transform these relationships over time.”

This reflects the recognition, which has grown considerably over the last 15 to 20 years, that the building of public service capacity is, in key ways, a political process. In contrast, the model of an ‘ideal’ public administration put forward by Max Weber was corporate, meritocratic and stood aloof from both politics and the pressures from wider society; at the same time, though, it inevitably developed its own structural ideology and its public administrators self-interestedly pursued the objectives that the administration developed from within. It was envisioned as “an organisational structure that is characterised by many rules, standardised processes, procedures and requirements, number of desks, meticulous division of labour and responsibility, clear hierarchies and professional, almost impersonal interactions between employees”.<sup>31</sup>

UNDP’s guidance on ‘Institutional and Context Analysis’<sup>32</sup> (ICA) recognizes that political processes, informal institutions and power relations all play vital roles in the success or failure of development interventions. ICA focuses on political and institutional factors, as well as processes concerning the use of national and external resources in a given setting and how these have an impact on the implementation of programmes.

It informs several points:

- Development requires a change in power relations and/or incentive systems;
- The powerful reward their supporters before anyone else;
- All actors in society have interests and incentives;

29 Political Economy Analysis (DfID Practice Paper, July 2009).

30 Ibid., p.4

31 Bureaucratic Theory by Max Weber: <https://www.toolshero.com/management/bureaucratic-theory-weber/>

32 [http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/oslo\\_governance\\_centre/Institutional\\_and\\_Context\\_Analysis\\_Guidance\\_Note.html](http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/oslo_governance_centre/Institutional_and_Context_Analysis_Guidance_Note.html)



- Resources shape incentives;
- All stakeholders in a society have constraints.

ICA's assumptions and questions are similar to those that underpin political economy analyses, which usually examine the interaction of politics and resources. However, unlike political economy analyses, ICA is not restricted to an analysis of economic issues, nor are the relevant actors always political. ICA provides a general approach to development matters, which may not be purely economic in nature. It goes beyond these dimensions to facilitate a more holistic understanding of diverse contexts (which can include the role of religion, gender relations and informal institutions and the influence of external factors), with a view to achieving better results for the ultimate benefit of the national partners in question.

Subsequent debate by political economists has evolved and fragmented, with arguments as to whether (i) development assistance has resulted in overdeveloped bureaucracies, (ii) public sector reforms have proved capable of serving the interests of the wider population (rather than simply a ruling elite) and (iii) the public administration may be said to be 'autonomous' and possessing of a 'self-unity'.<sup>33</sup>

However, for present purposes, it may be said that a survey of political economy literature and research does show that 'politics', in the broadest of senses, is of central importance to the success or otherwise of the public sector in achieving 'excellence'. Well-meant projects that have focused on transposing public sector practices from one (developed) State to another (developing) State have not tended to yield positive outcomes, with results varying from a re-entrenchment of the power of an elite (either by the elite subverting the initiative for its own purposes or simply ignoring what an initiative is trying to lay down) to what has been described as "isomorphic mimicry"<sup>34</sup> that is lacking in contextual connection. The lesson, particularly when seeking to achieve corruption prevention through the achieving of public sector excellence, is that context needs to be carefully considered and, in particular, regard should be had in advance as to how the proposed capacity enhancement and public sector reforms are likely to affect the balance and distribution of power within a state.

But having highlighted 'politics', what do we mean by it? It has been claimed repeatedly, and in many different states, that the public sector has become more and more politicized,<sup>35</sup> with examples including what are increasingly seen as overt political appointments into administrative positions and the appointment on temporary civil service contracts. Using political, rather than merit-based, criteria for selection and advancement (and thereby embedding influence as well as providing reward) is one level, but a more subtle recognition is that any public service is necessarily political in some way and measure, since it is implementing and delivering the effects of political policy and, in so doing, is also inevitably detailing, further shaping and refining that policy. Added to this, the pattern of public sector development has been to draw parameters beyond which the political should not encroach, in order to better ensure both efficiency and equality in delivering to the population. The challenge, then, in a given context and if it is accepted that there will always be a political element to the public sector, is to ensure that politicization remains at what might be best described as an 'appropriate' level and that it does not obstruct or detract from making progress towards excellence.

Although politicization might mean more efficient and effective policy implementation in some cases, and thereby a stronger link between the electorate on the one hand and policymakers and those implementing policy on the other, in essence, a politically neutral and competent public service might not be more pre-disposed to achieving excellence than a 'political' one. Then, a question arises as to what model or models of achieving excellence should be adopted, with an implicit recognition that taking into account the political economy environment is important.

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<sup>33</sup> See GCPSE paper.

<sup>34</sup> Ibid.

<sup>35</sup> *The Politicization of the Civil Service in Comparative Perspective: A Quest for Control* (Routledge Studies in Governance and Public Policy) (p. 4). Taylor and Francis. Kindle Edition.



This may lead to a pragmatic or accepting approach to the status quo and existing dynamics of a particular state. In political economy, writers such as Brian Levy<sup>36</sup> have recognized this in arguing for a so-called ‘working with the grain’ approach that requires a necessarily greater flexibility by those seeking to encourage development and enhanced capacity, with the imperative being “to find feasible entry points; seemingly modest changes in one part of the system that can evoke adaptations in other parts, in an ongoing cumulative process”.<sup>37</sup>

At the same time, if searching for the best ‘conditions’ to encourage excellence, it should be remembered that the ‘political’ is not confined to politicians in the formal sense; and this is equally applicable to the public sector. Furthermore, in a state that is developing, it is more likely that there is, in practice, little, if any, distance between politicians and officials, with the two interest groups working closely together and with the bureaucracy itself enjoying wide-ranging autonomy.

Given the above discussion, one key takeaway message is that such an interpretation of the inter-relationships and tensions of the public sector has significant impact not just on how PSE might be achieved, but on how effective corruption prevention might be put in place, with the need for a highly context-specific approach to public sector reform and a building of interests and coalitions (see the further discussion on ‘Prevention of Corruption’, below).

Public officials themselves may be part of such coalitions of change and bring considerable value, since the enormous challenge in seeking excellence through change or reform is that authority is needed for any such initiative to take place and to have a prospect of success, and it is a ‘buy-in’ that is often difficult to attain.<sup>38</sup> The requisite authority is likely to vest in more than one official and becomes especially difficult where significant risk factors are present. Given the complexity of the public sector environment, particularly when anti-corruption measures are sought to be introduced, thought and planning should be given to drawing up “an explicit strategy to establish an appropriate authorizing environment”.<sup>39</sup>

Another important observation from the literature is that prevailing practices on PSE tend to focus more on efficiency (and less on transparency and accountability). On the other hand, major practices on the prevention of corruption focus on transparency, accountability and integrity, rather than on efficiency. In this regard, Sustainable Development Goal 16 – in particular, Target 16.6, “Develop effective, accountable and transparent institutions at all levels” – seeks to bring together these three important concepts.

### III. The Prevention of Corruption

#### What Is the Prevention of Corruption?

It is often argued that prevention is better than cure. The prevention of corruption is often referred to as setting up policies, strengthening institutions, improving ethics and integrity, reforming finance and procurement processes, enforcing asset declaration and code of conduct mechanisms and improving the effective, transparency and accountability of the public sector for service delivery. Given the comprehensiveness and complex interactions of various mechanisms and institutions to be effective in preventing corruption, some criticize that the term ‘prevention of corruption’ often tends to ‘set the bar too high’, as talk of prevention may equate to an expectation of corruption eradication. Thus, a more apt phrase could include ‘combat’, ‘counter’ or ‘reduce’ corruption.

36 Working with the Grain: Integrating Governance and Growth in Development Strategies (New York: Oxford University Press, 2014).

37 Ibid.

38 Managing Your Authorizing Environment in a PDIA Process, M. Andrews, L. Pritchett & M. Woolcock, Working Papers, Center for International Development at Harvard University, 2016.

39 Ibid.

However, as with PSE, one of the strengths of the use of ‘prevention’ is that it encourages an aspirational anti-corruption striving and, at the same time and on its dictionary meaning,<sup>40</sup> it accurately reflects what is expected of states, namely, taking proper steps and efforts, often known as preventive measures, to keep corruption from happening and to stop individuals from engaging in corrupt acts.

There is, presently, no definition of ‘prevention of corruption’ by any of the international standard setting bodies<sup>41</sup> or major anti-corruption actors. Even the Open-Ended Working Group on Prevention<sup>42</sup> has so far not arrived at one, preferring instead to highlight the measures, tools and good practices that may be adopted under each of the Articles contained in UNCAC’s Chapter II (Preventive Measures). Some analogy might be drawn with the international counter-terrorism framework, where particular acts have been identified as amounting to ‘terrorism’, but no agreement as to an internationally accepted definition has yet been reached. It might be thought that the prevention of corruption should be approached in a similar way, with a focus on what should be included within the preventive framework, rather than focusing on selection of a concise or pat form of words.

UNCAC is the only global legally binding document that sets the international anti-corruption standard. It does not define the prevention of corruption, but provides guidance on preventive measures (Chapter II); it is clear from the instrument itself that ‘prevention’ is about much more than what would generally be seen as purely preventive steps or measures.



15th Anniversary of Adoption of United Nations Convention against Corruption. UN Photo/Eskinder Debebe

In essence, the whole of UNCAC may be seen as a preventive framework, with enforcement, international co-operation and, of course, asset recovery being important components. Article 1 (in the ‘statement of Purpose’) of UNCAC makes it clear that prevention is necessarily multi-pronged and runs through the whole instrument:

<sup>40</sup> See OED definition of ‘prevention’: “to keep something from happening; to stop someone from doing something”.

<sup>41</sup> UNODC, OECD, FATF, etc.

<sup>42</sup> A subsidiary body of UNCAC’s Conference of the States Parties.

The purposes of this Convention are:

- (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- (c) To promote integrity, accountability and proper management of public affairs and public property.

Meanwhile, UNODC's Technical Guide to UNCAC<sup>43</sup> explains the broad application of prevention:

"Emphasis should be given to prevention because it not only safeguards the integrity of government and the political system and ensures the application of rules, procedures and funds, but has wider benefits in promoting public trust and managing the conduct of public officials."

The Legislative Guide summarizes UNCAC's approach to preventive measures helps shape an important component of any definition:

"The Convention requires States parties to introduce effective policies aimed at the prevention of corruption. It devotes an entire chapter to this issue, with a variety of measures concerning both the public and the private sector. The measures range from institutional arrangements, such as the establishment of a specific anti-corruption body, to codes of conduct and policies promoting good governance, the rule of law, transparency and accountability. Significantly, the Convention underscores the important role of the wider society, such as nongovernmental organizations and community initiatives, by inviting each State party to actively encourage their involvement and general awareness about the problem of corruption."

Before moving to examine how UNCAC strengthens prevention, consideration should be given to those issues of political economy, equally important to both PSE and the prevention of corruption. Just as questions arise as to the nature of the public sector, its 'ownership', its relationship with politics and the extent to which it may exist to further its own aims, so any definition of the prevention of corruption must have regard to the nature of corruption itself.

Lawyers, anti-corruption professionals and policymakers have traditionally defined corruption, insofar as it lends itself to a single definition, to include the use of public office for private gain or as an act or transaction that amounts to the breaking of the confidence entrusted to an individual (usually, but not always, a public official). Transparency International's (TI) working definition is along similar lines (but shaped to include private and public sectors), with corruption regarded as "the abuse of entrusted power for private gain".<sup>44</sup> However, it should also be noted that corruption has a demand side and a supply side (e.g., bribe-payers and bribe-receivers) and some corruption offences, such as bribery and trading in influence, that may not be captured by the abovementioned definitions.

Political economists and governance analysts might offer a different understanding, with corruption being seen as essentially a dynamic that is "a deals-based way to sustain agreements among certain individuals or groups".<sup>45</sup> On this basis, the possible short-term economic benefit of corruption is then followed by longer-term stunted growth and damage caused by diverting resources, inequity through the disproportionate benefit given thereby to a powerful elite and a public perception that state decision-making is intrinsically unfair.

Such a definition challenges much of the thinking that has informed the shaping of anti-corruption preventive activity and suggests that transposing or replicating institutional models that have proved successful in

43 [https://www.unodc.org/documents/corruption/Technical\\_Guide\\_UNCAC.pdf](https://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf) at p.4

44 <https://www.transparency.org/what-is-corruption/>

45 M. Khan and A. Mungiu-Pippidi, 'Spotlight 1: Corruption' in *Governance and the Law*, World Development Report, World Bank, 2017.

one context is not likely to bring about a reduction in corruption levels. Instead, as was raised, above, in the context of PSE, the commitment of those in power has to be secured as a prerequisite and must carry credibility, namely, that those in power will not abuse that position for private gain. The challenge, of course, is how to effect such a change.

Corruption prevention has generally been seen as a component or series of components in an anti-corruption strategy, usually tending to be 'top-down', focused on strengthening the rule of law and combining steps to improve public sector conditions, with wider preventive measures (reflecting those in Chapter II of UNCAC) and enhanced enforcement. But, of course, such an approach sets itself squarely against the entrenched groups or networks of the powerful. Reference was made to the concept of 'governance' in the discussion, above, of PSE; here it is to be noted that corruption is, by its nature, woven into the working of governance, with personal status and impersonal considerations coming together. The result is, unsurprisingly, a complexity that provides stark challenge to preventing and combating corruption.

**“ For effective corruption prevention, it is important to build the ability of wider society to contest and challenge those in power. ”**

Given the difficulties faced by putting into effect traditional notions of what amount to prevention, it might be that, as with PSE, a clearer understanding of the term 'prevention of corruption', vis-à-vis the political economy, is required. The changes or reforms to legal and institutional frameworks that have been the 'spine' of many anti-corruption programmes remain as valuable preventive steps and are capable of bringing about a redistribution of power and a shift in policy norms.<sup>46</sup> However, these need to be part of a wider strategy design that identifies and implements feasible and impactful measures, as well as finding shared interests among key stakeholders, including those in business and the private sector, that are capable of being utilized to enhance anti-corruption efforts.

For effective corruption prevention, it is important to build the ability of wider society to contest and challenge those in power (e.g., strengthening or empowering the population through greater transparency and public reporting). Promoting freedom of information and embracing technology and e-management will play an important role in establishing effective accountability of those in power.

Based on the experiences of many preventive anti-corruption agencies around the world,<sup>47</sup> the definition of what is preventive is reflected in at least the following:

- Identification of risk areas & risk assessment (at national and institutional levels);
- Legislation (e.g., to comply with UNCAC Chapter II provisions on corruption prevention);
- Effective enforcement as a deterrence to corruption;

<sup>46</sup> See A. Mungiu-Pippidi, Background Note on Corruption, Governance and the Law, World Development Report, World Bank, 2017.

<sup>47</sup> UNDP, A Practitioners Guide to Assessing the Capacities of ACAs, 2011

- Digitalization (particularly in the context of public finance management (PFM), promoting transparency and accountability in public administration);
- Engagement with major stakeholders for collective action and joint advocacy (e.g., coalitions, civil society, media, donors);
- Public awareness raising, through education, etc.;
- National strategy/integrity plan;
- Implementation of the regulations on financing political parties;
- Asset declaration, code of conducts, public ethics, and regulations regarding conflict of interests and gifts;
- Anti-corruption assessment of laws (legislative [corruption] proofing).

In addition to the above components, measuring the success of anti-corruption activities, initiatives and policies should be a prominent feature of corruption prevention and reflected in its definition. However, preventive measures have proved difficult to measure for a range of reasons:

- The lack of standard methodologies, tools, indicators and data to quantify and quality corruption and track progress on the prevention of corruption;
- The lack of sufficient prevention 'success' case studies from which to draw. Invariably, studies and research on 'success' have been centred on investigations and prosecutions of high-level officials and on asset recovery, which are seen as benchmarks of success, but result in the more important prevention arena being neglected;
- The absence of an emergence of transferable 'good practices' that are capable of being adapted for context-specific use;
- The focus of existing evaluation tools on addressing the underlying mischief (e.g., public sector bribery), rather than the prevention of it.

Additional understanding of the challenges in measuring may also be gleaned from the findings of a 2015 study conducted by TI,<sup>48</sup> which advanced a number of reasons for the limitation on assessing the success of preventive strategies:

- Evaluations are usually conducted shortly after a strategy has been implemented; this does not give it time to embed and, therefore, an assessment of its impact of success is self-limiting;
- Surveys invariably focus on the 'big picture' (i.e., consider the relevant article as a whole) rather than breaking it down into component parts;
- Few interventions had any impact and, in any event, there was generally insufficient evidence to support findings;
- There was a lack of clear understanding of the theory of change to guide the results achieved due to various preventive measures/interventions.

However, TI did come to the view that reforms in public finance management (enhancing transparency and accountability) produce promising signs in reducing corruption, particularly where such reforms are required, and supported, by donors.

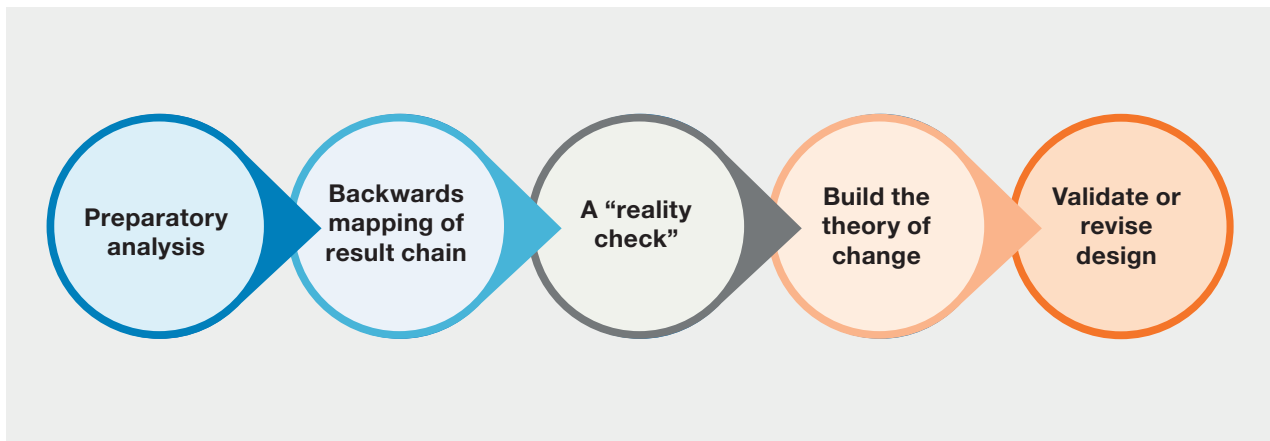
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48 Transparency International, *Successful Anti-Corruption Reforms* (bulletin), 30 April 2015



It must be noted that, without a theory of change, anti-corruption efforts cannot be effectively measured or monitored. U4 Resource Centre provides guidance on “Theories of change in anti-corruption work”, focusing on how and why an initiative works.<sup>49</sup> The guidance presents a five-step methodology for building a theory of change for a programme or project:

Diagram 2. U4’s methodology for building a Theory of Change



**Step 1 – Preparatory analysis:** Review the general literature on ‘what works’ in the specific area of anti-corruption. Analyse the context to identify the actors, incentives and interests that may hinder or aid implementation.

**Step 2 – Backwards mapping of results chain:** Construct the results chain by beginning with the overall goal and then working backward, identifying first outcomes, then outputs, and finally activities.

**Step 3 – Reality check:** Assess the coherence of the internal logic of the programme and then test it by considering relevant external influences.

**Step 4 – Build the theory of change:** Identify the links in the results chain where the assumed automatic causality depends upon the fulfilment of preconditions and identify a possible, plausible pathway to achieve the desire objective.

**Step 5 – Validate the theory of change:** Test the theory of change logic by another round of backward-and-forward mapping and validate the preconditions identified by reference to documented evidence.

Work undertaken on monitoring and measuring has played an important role in defining corruption prevention generally. For example, TI’s National Integrity System<sup>50</sup> (NIS) evaluates the principal ‘pillars’ in a state’s governance system. The NIS is predicated on the basis that corruption prevention, to be effective, requires each of its pillars to be functioning effectively; indeed, it may be said to be equally effective as both a guide to achieving, and measure of, wider PSE, given that it is promoting the broader good governance and public administration standards that are entirely reminiscent of what is needed in striving for PSE. The pillars of an NIS assessment (covering formal framework of each institution and its actual practice) will usually comprise:

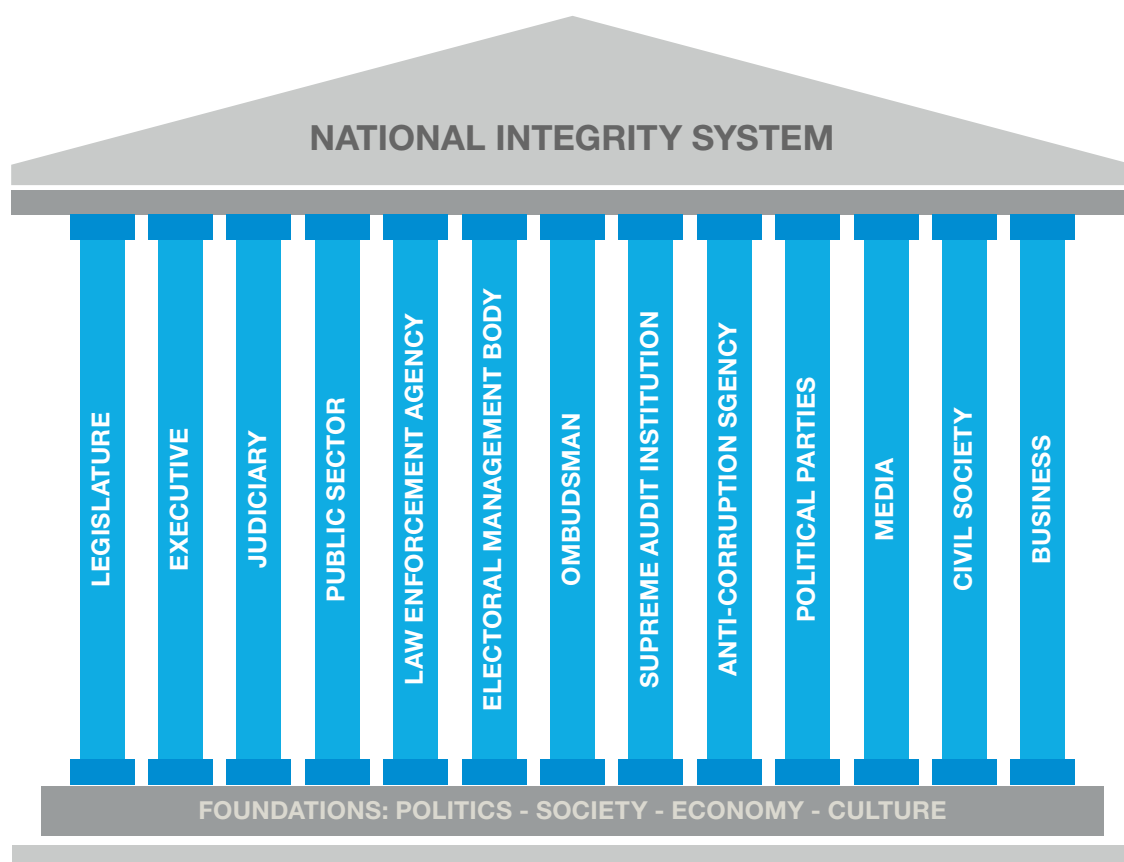
- Legislative branch of government
- Executive branch of government

<sup>49</sup> <https://www.u4.no/publications/how-to-monitor-and-evaluate-anti-corruption-agencies-guidelines-for-agencies-donors-and-evaluators-2.pdf>

<sup>50</sup> <https://www.transparency.org/whatwedo/nis>

- Judiciary
- Public sector
- Law enforcement
- Electoral management body
- Ombudsman
- Audit institution
- Anti-corruption agencies
- Political parties
- Media
- Civil society
- Business

Diagram 3. Pillars of a National Integrity System (from TI's NIS Assessment Toolkit)



With all of the above in mind, and within the context of this study, ‘prevention of corruption’ means the steps, measures and programmes, in the widest sense, that a state should put in place and the actions and initiatives it should take to address and mitigate the risk of corruption within its public sector (institutional, functional and individual). Each aspect should, however, be informed by context and have due regard for complexity and appropriate entry points. The range of preventive measures and constituent obligations set out in Chapter II of UNCAC are integral to prevention, but the full extent of corruption prevention should pay attention to these points:

- To prevent corruption effectively, there is a need to determine how, where and when it happens and to understand past and existing corruption schemes and scenarios to determine corruption risks.
- Once corruption risks have been properly identified (in terms of people who may corrupt or become corrupt, organizational processes that could be compromised, as well as organizations that could be penetrated), then specific measures should be taken to prevent such corruption risks.
- There is a need to put in place a system of periodic reviews of the corruption risks, to determine whether they have been effectively mitigated and to ascertain whether new risks need to be addressed.

## UNCAC (Chapter II): Preventive Measures

Although the preventive measures contained in Chapter II of UNCAC do not, then, reflect ‘prevention’ in its entirety, they do represent one of its most significant components and are key tools in seeking to bring about not just corruption prevention, but also wider PSE. For that reason, they fall to be considered in some detail:<sup>51</sup>

### Article 5: Preventive Anti-Corruption Policies and Practices

The requirement on states parties to have in place preventive policies and procedures is the bedrock for prevention in UNCAC. Article 5 provides that each state party must provide the context and framework to implement the Convention by devising, developing and implementing an anti-corruption strategy that addresses corruption directly and indirectly. Demonstrating the holistic approach that UNCAC seeks to take, it envisages that this will be achieved through the promotion of the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. The strategy could provide a road map for reforming the public sector.

Each state party is, therefore, required to review its existing legislative, institutional and procedural provisions to strengthen what is in place and to introduce what is required in order to develop a coherent and coordinated anti-corruption strategy/policy. To this should be added, however, the context-specific and developmental considerations already outlined. In undertaking this scoping and evaluation exercise, each state party should include participation of its citizens in the planning and implementation of the strategy. Additionally, as prevention is so informed by exchanges of experience and learning, each state party should also work with other states parties to share good practice and to ensure practical cooperation and mutual support.

The UNODC Technical Guide<sup>52</sup> sets out key issues for state parties in relation to the creation of an anti-corruption strategy, which will form the underlying blueprint for preventive efforts. It provides that:

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<sup>51</sup> This analysis is informed by the UNCAC text, supplemented by UNODC’s Legislative Guide (2006) and Technical Guide (2009): [https://www.unodc.org/pdf/corruption/CoC\\_LegislativeGuide.pdf](https://www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf) and [https://www.unodc.org/documents/corruption/Technical\\_Guide\\_UNCAC.pdf](https://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf)

<sup>52</sup> Ibid.



“States parties should consider:

- Who is the main developer of the strategy?
- Does this require coalition-building in order to ensure the participation of the government and non-governmental actors or will consultation suffice?
- Who will own or oversee implementation?
- How will progress be assessed?
- How with the strategy be reviewed and revised?”

And, in so doing, hints at the challenge of vested interests and existing elites and highlights the need to establish or strengthen coalitions and identify and align with an authority (which might be more than an single individual) who will drive, or help to drive, the process.

UNCAC recognizes that government has the main responsibility for developing the building blocks for the policy drafting process, but stresses (through both UNODC Guides) that it should do so in a consultative and inclusive manner. Civil society participation has to be a feature of prevention and its promotion should be an objective and a condition precedent for any anti-corruption strategy.

Those building blocks for the policy drafting process include, principally, the collection, collation and analysis of where corruption occurs, and why; a process to devise a strategy that ensures public participation; a strategy that includes the coordination and linkage between the various Articles in Chapter II; the establishment (if not already in place) of an anti-corruption body or bodies (see the discussion below on Article 6) in order to ensure the implementation and review of the strategy; and the capability to ensure regional and international cooperation.

As to the anti-corruption strategy itself, particularly as a preventive framework, to be effective it should set out clear objectives, timelines and the order in which specific objectives should be reached. Given the importance of transparency, these should be in the public domain, thereby also assisting to garner the support of the population and to create an expectation or pressure to achieve the stated objectives. There must, of course, also be a means for meaningful review and revision, given that contexts change and new factors emerge, in order to plan ongoing actions and to allow for evaluation of activities and initiatives that have already taken place.

The strategy should reflect a strategic and aspirational approach that will engage all stakeholders and prioritized and measurable actions that provides ownership by relevant bodies and a proper foundation for ongoing monitoring, *ex post facto* review and future revision. Fundamentally, the strategy and the policies surrounding and within it must be credible and not simply a declaration of intent. Effective prevention, as detailed throughout this study, is context-driven, coordinated and comprised of defined and measurable objectives.<sup>53</sup>

The UNDP report ‘Anti-Corruption Strategies: Understanding What Works, What Doesn’t and Why? Lessons learned from the Asia-Pacific Region’<sup>54</sup> provides a detailed assessment of the effectiveness of anti-corruption strategies and highlights the gaps found at different stages of these strategies, which hinder the effectiveness of preventing and combating corruption. These are, in particular:

- **In strategy development:**  
Lack of initial sound diagnostic and evidence-base to understand risk areas and gaps; limited involvement of stakeholders in the process to develop a common vision; and deficient mechanisms to institutionalize the strategy and ensure its sustainability.

<sup>53</sup> See also the discussion of measuring in corruption prevention.

<sup>54</sup> [http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic\\_governance/anti-corruption-strategies.html](http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/anti-corruption-strategies.html)

- **In the design of its content:**

Common pitfalls include setting overly ambitious goals; disconnecting the anti-corruption strategy from national development strategies and other reform agendas; and having a poor implementation mechanism, which may stem from a lack of prioritization or unclear assignment of responsibilities.

- **In the monitoring and evaluation of strategy:**

This is probably the most prevalent weakness of anti-corruption strategies, which often do not build in a monitoring mechanism from the design phase.

The report also highlights the importance of political changes taking place in a given country, which provides an opportunity for the sustainability of anti-corruption strategies. In almost all the countries reviewed, anti-corruption agencies are at the centre stage of the development and implementation of anti-corruption strategies. Anti-corruption strategies will be able to coordinate the implementation of strategies only if they are supported by the political level – with sufficient resources, capacity and power to prevent and combat corruption by providing overall coordination while the central government should help steer the overall process of strategy development, implementation and monitoring.

UNODC's 'Practical Guide for Development and Implementation of National Anti-Corruption Strategies'<sup>55</sup> provides technical assistance for the development or review of anti-corruption strategies and offers recommendations for countries considering drafting or revising a national anti-corruption strategy. The five key aspects of an effective national anti-corruption strategy document are as follows:

- The drafting process for the strategy should be overseen by a body that has sufficient autonomy, expertise and political backing, and should involve substantive input from key stakeholders from inside and outside the government;
- The strategy should contain a preliminary evaluation and diagnosis of the main corruption challenges that the country faces, including the obstacles to the implementation of an effective anti-corruption policy. The preliminary diagnosis should also identify gaps or limitations in current knowledge or understanding of those issues;
- Based on the preliminary evaluation and diagnosis, the strategy should contain an anti-corruption policy that lays out ambitious but realistic objectives, identifies top priorities in the near term and longer term and establishes the appropriate sequencing of reforms;
- The strategy should include an implementation plan in which responsibility for overseeing its execution is assigned to a coordination unit and mechanisms to ensure that the various agencies carrying out different aspects cooperate with one another and are provided for;
- The strategy should contain a plan for monitoring and evaluating the plan's implementation and impact to ensure that the elements of the policy plan are properly executed, that they are having the desired impact and that they can be revised as necessary.

The UNODC guidance emphasizes that the strategy should create a sense of ownership and commitment among those inside and outside the government and should establish targets and benchmarks that enable domestic and foreign audiences to hold the government accountable to the goals it has set for itself. It should also strike a balance between ambition and realism – to address a country's most pressing corruption concerns and generate the excitement, focus and pressure needed to make significant progress in preventing and combating corruption.

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<sup>55</sup> [https://www.unodc.org/documents/corruption/Publications/2015/National\\_Anti-Corruption\\_Strategies\\_-\\_A\\_Practical\\_Guide\\_for\\_Development\\_and\\_Implementation\\_E.pdf](https://www.unodc.org/documents/corruption/Publications/2015/National_Anti-Corruption_Strategies_-_A_Practical_Guide_for_Development_and_Implementation_E.pdf)

## Article 6: Preventive Anti-Corruption Body or Bodies

Article 6 requires a specialized anti-corruption body to be established (if that has not already been done). Although the Article is mandatory, the Article does not prescribe whether there should be a single agency or more than one agency (in addition to the specialized agency required for enforcement purposes by Article 36). The main focus of the body or bodies should be preventive, with a specific focus on delivering on the obligations and responsibilities set out in Article 5.

An effective prevention-focused body (or bodies) will have:

- A fair and consistent approach across all its areas of work and competence;
- A basis in law or regulation to enable work across sector boundaries with equal authority;
- The means to ensure the coordinated implementation of policies and to undertake inquiries and reviews;
- Demonstrable impartiality in its staffing appointments, along with security of tenure for staff;
- The necessary independence, in accordance with the fundamental principles of its legal system, to allow the effective performance of the body or body's mandate;
- Sufficient resources and ongoing budget, coupled with an appropriate line of reporting (such as to parliament) that does not compromise independence.

Again, the UNODC Technical Guide will assist states in shaping the anti-corruption body and provides that “[t]he body or bodies shall develop, maintain, revise and monitor the implementation of effective, coordinated anti-corruption policies within the State Party’s strategy mandated by Article 5. This strategy would designate responsibilities across the public sector, the private sector, the voluntary or NGO sector, and civil society.”

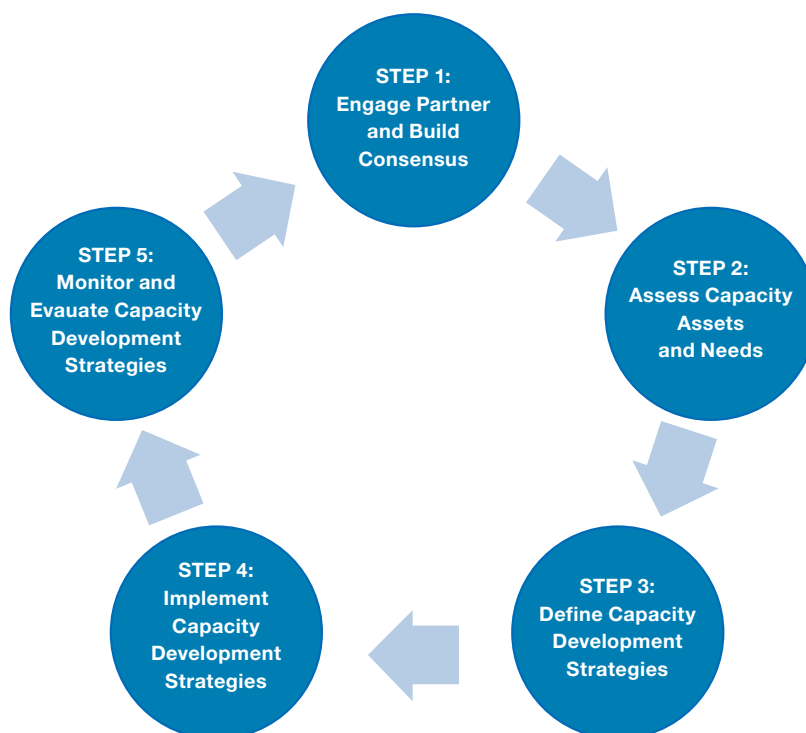
In relation to the anti-corruption strategy itself, the state must ensure that it does positively and proactively put in place and promote effective practices aimed at prevention. In particular, it should be in a position to undertake periodic evaluation of the relevant laws, legal instruments and administrative/regulatory measures with a view to determining their adequacy and effectiveness as preventive tools.

UNDP’s ‘Practitioner’s Guide to Capacity Assessment of Anti-Corruption Agencies’<sup>56</sup> provides users with a simple tool to assess the existing capacities of a target anti-corruption agency (ACA), keeping in mind the capacities that the ACA actually needs in order to discharge its mandate. The results from the capacity assessment of ACAs provide the basis to develop and implement a comprehensive capacity development plan, thereby linking analysis with action. This Capacity Development Plan usually comprises an integrated set of sequenced actions designed to address the capacity development needs of a given ACA. The specific indicators and benchmarks established during the capacity assessment process can serve as a foundation for subsequent monitoring and evaluation of the implementation of the Capacity Development Plan of the ACA.

The capacity development approach offers a comprehensive and multi-disciplinary approach to assessing the capacity of an ACA to effectively prevent and combat corruption. An internally owned process is therefore required, which can bring about transformation within anti-corruption agencies through a facilitated, iterative process of stakeholder engagement (Step 1 in the capacity development process), a capacity assessment of an anti-corruption agency (Step 2), formulation of a capacity development plan (Step 3), implementation of the capacity development plan (Step 4) and monitoring and evaluation (Step 5). This iterative process can be used to continue to improve legislation and regulatory frameworks, organizational systems and mechanisms, and individual knowledge, skills and behaviour.

<sup>56</sup> <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/Guide-to-Capacity-Assessment-of-ACAs.html>

Diagram 4. UNDP's Capacity Development Approach



Similarly, U4 Resource Centre's guidance for agencies, donors and evaluators on 'How to monitor and evaluate anti-corruption agencies'<sup>57</sup> provides technical, methodological and practical assistance for staff of ACAs in undertaking monitoring and evaluation and shows how the outcomes and impact of the work of ACAs can be evaluated in an objective, evidence-based manner. Recognizing that evaluations of ACAs will not always be able to use the statistically strongest research design (based on randomization or statistical matching), three methods in particular can be used to build the strongest possible evaluation design of ACAs:

- Basing the evaluation on a strong theory of change, deriving indicators and research hypotheses and questions from this;
- Using an evaluation design with mixed methods; and
- Utilizing multiple indicators of different types at the outcome and impact levels to increase construct validity and to break down complex constructs such as corruption, with more detailed analysis.

## Article 7: Public Office Requirements

Article 7 builds on the broad definition of 'public official' contained in Article 2 and seeks to lay down standards applicable to all who hold positions in public sector services, as well as elected public office. It seeks to create a framework of ethical and anti-corruption requirements for elected and appointed public officials, effectively laying the ground for subsequent specific provisions in respect of, for instance, conflicts of interest and transparency. Selection for office is central to the Article and it makes it explicit that recruitment appointment and promotion should be on merit, with transparent policies and procedures. The Article recognizes that a fundamental pillar for an efficient/effective, transparent and accountable public sector is the staffing of posts with individuals possessing both requisite skills and integrity.

<sup>57</sup> <https://www.u4.no/publications/how-to-monitor-and-evaluate-anti-corruption-agencies-guidelines-for-agencies-donors-and-evaluators-2.pdf>

It specifically provides for Convention-consistent criteria for election to public office, albeit giving states a discretion in application:<sup>58</sup> “Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.” But it also seeks to address the difficult arena of political funding from the preventive standpoint by providing that:<sup>59</sup> “Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.”

The importance of political funding cannot be overemphasized. It is all too easy to regard corruption prevention and PSE generally as being concerned with the public servant in the narrow sense, rather than the elected public official. The issue of political party financing could directly/indirectly impact the performance of the entire public sector. The relationship between and the respective roles of the appointed public servant and the elected official is complex, but it lies at the heart of achieving PSE and presents a particular challenge in many states that are undergoing reform and development since the relationship between the two categories of officials will often be close, with many roles and functions, in practice, overlapping. Rules to govern political campaigning and political party financing present great challenges, but have proved successful across many regions in corruption prevention.<sup>60</sup> States such as Canada, Mexico and the Republic of Ireland have set up a public body or bodies responsible for a range of matters, including registering voters and managing elections, registering parties, monitoring party finances, reviewing candidate eligibility and financial disclosures, administering political campaign financing legislation and investigating breaches (including criminality) arising therefrom.

It should be borne in mind, though, that there is a range of preventive issues to be considered in relation to regulated and transparent funding, principally:<sup>61</sup>

- Establishment of parameters for the limits, purpose and time periods of campaign expenditures; limits on contributions;
- Means of donor identification (including whether anonymous, foreign and third-party donations or loans are permissible, restricted or prohibited);
- The nature and extent of benefits-in-kind that are allowable;
- The form and time limits for submission and publication of accounts and expenditure by parties;
- The means to verify income and expenditure;
- Whether to allow for tax relief to donors and funders;
- How to ensure that an existing government does not deploy state resources for electoral purposes.

## Article 8: Codes of Conduct for Public Officials

States parties must actively promote personal standards, such as integrity, honesty and responsibility, and the correct, impartial and proper performance of public functions for all public officials. To bring this about, guidance should be issued on how public officials should conduct themselves in relation to those standards and how they may be held accountable for their actions and decisions. States parties should, in particular, have in place

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<sup>58</sup> Article 7(2)

<sup>59</sup> Article 7(3)

<sup>60</sup> See, further, the case study examples below.

<sup>61</sup> Guidance contained in Article 7 discussion in [https://www.unodc.org/documents/corruption/Technical\\_Guide\\_UNCAC.pdf](https://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf)



the key preventive tools such as mechanisms for reporting suspicions of corruption, handling conflict-of-interest rules and procedures, ensuring a code of conduct, and disciplinary requirements for public officials.

The importance of the code of conduct is illustrated within the case studies below and falls to be highlighted, as it serves significant purposes for elected and non-elected officials:

- Setting out requirements and expectations for a public official;
- Building ethical standards;
- Providing a basis for training, to ensure that all public officials know the standards (the seven principles of public life) by which they should perform their official duties.

Article 8(4) also addresses reporting by public officials and the often vexed issue of ‘whistleblowing’; for a detailed discussion, reference should be made to UNODC’s technical guides.

The reporting provision, in conjunction with a code of conduct generally, is to reinforce to public officials the responsibilities that their work carries with it and their consequent duty to report lapses or breaches of those standards by other public officials (and, indeed, by members of the wider public). States, for their part, should introduce specific reporting procedures (such as instituting ‘persons of trust’, specified mailboxes, telephone hotlines or designated third-party agencies). Regard must be had to the security and confidentiality of any reporting through the establishment of systems to ensure that those who report suspicions of corruption in good faith are fully protected against reprisals. At the same time, though, experience from many states has shown that anonymity (as opposed to confidentiality) is not practicable in the case of most whistleblowing frameworks. Thus, protection is also necessary to protect a reporting official from any form of disguised or indirect discrimination and from damage to career in the future as a result of having made a report of corruption or other misconduct.



Deputy Police Commissioner of UNMISS. UN Photo/Nektarios Markogiannis

## Conflict of Interest<sup>62</sup>

Respecting the principle that it is forbidden for any public official to place him/herself in a position of conflicting interests and to hold incompatible functions or illicitly engage in unacceptable activities, states parties are required to introduce general provisions on conflicts of interest, given that conflicts are a fundamental impediment to achieving PSE and are likely to be particularly insidious when linked with political donations and funding.

Changes that have taken place in the public service across the world, and in particular the greater mobility of personnel between public and private sectors, the growth of public-partnerships and enhanced cooperation between the public and business sectors, have all increased the 'grey areas' where the private interests of public servants can, or can be perceived to, unduly influence the way in which those public servants perform their official functions. These difficulties tend to be particularly acute in small jurisdictions.

A conflict of interest, whether real or apparent, may not in itself amount to corruption, but conflicts between, on the one hand, the private interests of a public official and, on the other, his or her public duties, may result in corrupt activity unless the conflict is managed. A bar on a public official having any private interests is, of course, unworkable and may well lead to unfairness. The aim of the solutions set out below is to maintain integrity by reducing the potential for abuse and ensuring that a conflict of interest, where one exists, is brought to notice and results in preventive or punitive measures being applied as appropriate.

What is 'conflict of interest'? A useful working definition is that put forward by Michael McDonald,<sup>63</sup> who defines it as "a situation in which a person, such as a public official, employee, or a professional, has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties". On that definition, there are three elements to a conflict of interest:

- A private or personal interest (which may, or may not, be financial);
- An official duty, usually due to the office or position held;
- Interference with objective professional judgment (or a perceived risk of the same).

The OECD 'Guidelines for Managing Conflict of Interest in the Public Service'<sup>64</sup> (the OECD Guidelines), meanwhile, adopt a definition that, aiming to be simple and practical, provides that: "A conflict of interest involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of [his/her] official duties and responsibilities".

Two further categories may be added to the above definition: the apparent conflict of interest, where it appears that a public official's private interests could improperly influence the performance of official duties, but they have not in fact done so, and the potential conflict of interest where the private interests are such that a conflict would arise if the official in question became involved in official duties relevant to his/her private interests.

The political scientists Kernaghan and Langford have gone further and produced seven typologies of conflict of interest:<sup>65</sup>

- 'Self-dealing': the using of an official post or position to ensure that a contract is awarded to oneself or to relatives/associates;

<sup>62</sup> Please note that UNCAC provides guidance on Conflict of Interest in Articles 7, 8 and 12.

<sup>63</sup> See "Ethics and Conflict of Interest" (2007), University of British Columbia.

<sup>64</sup> These guidelines were adopted by the OECD Council in June 2003 and are available on the OECD website <http://www.OECD.org>

<sup>65</sup> Ken Kernaghan and John Langford, "The Responsible Public Servant", Institute for Research, Ontario

- Accepting benefits, i.e., gift receiving;
- Influence-peddling: where, typically, the public servant seizes benefit or gift in exchange for exerting his or her influence;
- Using the employer's property for private advantage: for instance, using office supplies or technology to carry out private work;
- Using confidential information for private ends;
- Taking additional work or employment; in other words, 'moonlighting';
- Post-employment activities: the typical example of the public servant who goes into business in the same field as that of his former employer and takes a share of the business of those with whom he worked; alternatively, in his new position, persuading or lobbying his former department to action or to contract closure.

A strategy to address and manage conflict of interest should take account of the core principles set out in the OECD Guidelines, which have proved effective for OECD and non-OECD states. These provide that an unresolved conflict of interest may result in abuse of public office and that counter measures should have the following core principles in mind:

- A public official should serve the public interest;
- Public officials and the organizations/ministries for which they work should act in a way which supports transparency and scrutiny;
- The public service should promote individual responsibility and personal example;
- An organizational culture in the public service should be engendered that is intolerant of conflicts of interest.

Given the risk of apparent and potential conflicts, it is important to recognize that a conflict of interest may arise in one of two broad ways: the behaviour may, in fact, be unlawful (in which case it is likely that a corruption or 'misconduct in public office' offence will have been committed), or society – in other words, 'the public' – may think that unlawful behaviour has taken place. Given, therefore, the importance of perception, transparency and accountability must be addressed.

Good practice from a number of states indicates that one way of achieving, or at least contributing, to this is to introduce a requirement of declaration of interests by public officials in general or, at least, by public officials in key positions (such as within procurement). Any declaration requirement should address financial interests of the official in general – for example, a declaration of assets. Thus, property and investments should be included, along with shareholdings and directorships (in those jurisdictions where public officials are allowed to be directors of public companies). In addition, the declaration requirement should extend to the declaration of a 'potential' conflict of interest before it arises. A procurement officer, for instance, who is faced with a relative or associate tendering for a contract should be required to declare as soon as s/he becomes aware of the relative's or associate's presence in the process. A third requirement for declaration should address acceptable gift-giving. In other words, a threshold value for gifts should be decided upon and any official receiving a gift below that value should be required to declare the same in a register. That register should, ideally, be open to public inspection, perhaps online. In addition, an explicit prohibition should be introduced preventing the acceptance of gifts above the threshold value, but, at the same time, providing that, in circumstances where a refusal would offend the giver, the gift itself should be sold and the sum realized put into the public coffers or towards charitable cause.

It will be important that the public official know from the outset what is required in relation to identifying and declaring conflict of interest situations. Accordingly, the process should begin on an official taking up a post



and should require initial declaration/disclosure at that stage, along with steps being taken to give detailed guidance to the official to assist him/her in complying with the obligation. The declaration requirement should then continue whilst the official is in post and at the conclusion of time in post. At all times, the responsibility for the adequacy of any declaration must rest, and be seen to rest, with the post-holder.

As to the extent to which the public should have access to the full breadth of declaration, again transparency should be the determining factor. Arguably, at the very least, a senior public official or politician should expect that such declarations be available for public inspection in all regards.

Experience shows that declaration requirements will be effective only if supported by a number of other measures, including a clear and comprehensive code of conduct that explicitly provides for declaration and makes it a disciplinary offence at least for an unmanaged conflict 'situation' to be allowed to continue.

If declarations and a concise code are to be effective, the code should address in terms: how a conflict may be resolved (including divestment of interest, recusal from involvement in the affected decision-making process, transfer to another post and resignation) and the options available to management, as well as the individual official.

In addition, appropriate criminal sanctions should be considered. These might extend to non-compliance in respect of some or all aspects of the declaration requirements. Certainly, the declaration of assets and of financial interests should be obligatory on pain of criminal proceedings. However, the particular environment of a state will determine whether those other aspects of declaration, such as the gift-giving provisions, are addressed through disciplinary procedures or the criminal courts.

Whether disciplinary or criminal, each offence must be clear, and the provisions should be accessible to those capable of being affected by it, and these provisions must be effectively enforced.

In determining the sanction, thought should be given to the real purpose of the declaration requirement. For most states, the need for declaration serves not just to produce a public register of public officials' interests, but to instil public confidence in the workings of government, both at the central and local levels, and to identify the corrupt or potentially corrupt by their coming to notice via non or late declaration. It is therefore important that time limits for declaration be set and that late declaration be also penalized.

There are a number of instances of states having introduced a declaration requirement, but having cast the requirement too wide with the result that no examination or monitoring of the declarations themselves takes place. It is better, particularly for a small state, for a limited number of public officials in key positions to have to make very thorough financial interest declarations and for those declarations to be properly scrutinized, than for a blanket requirement to be extended to all public officials in circumstances where it is common knowledge that the declarations themselves will be too numerous for any effective analysis to take place. If declarations are thrown into disrepute in this way, the whole system of conflict of interest management in the state in question becomes meaningless.

## Article 9: Public Procurement and the Management of Public Finances

Given that the procurement process is vulnerable to corruption, collusion, fraud and manipulation, states parties are required to develop procurement procedures in accordance with Article 9. It must be ensured that all public income and expenditure are fully disclosed to public scrutiny and are subject to effective internal and external audit. There is a range of agencies to support the development of audit principles and practice, especially the International Organisation of Supreme Audit Institutions<sup>66</sup> (INTOSAI) and its seven regional working groups.

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<sup>66</sup> <http://www.intosai.org/>

The 'Guidebook on anti-corruption in public procurement and the management of public finances'<sup>67</sup> developed by UNODC uses case examples to outline good practices in ensuring compliance with Article 9 of the UNCAC and helps enhance the understanding of the forms of corruption that can arise in procurement.

According to Article 9 (1) of the UNCAC, a sound procurement system features transparency, competition and objective criteria in decision-making. In ensuring these fundamental principles, Article 9 (1) of UNCAC sets out measures to be taken:

- Public distribution of information;
- Publication of conditions for participation;
- Use of objective and predetermined criteria for decision-making;
- Effective systems of domestic review; and
- Measures to regulate matters regarding personnel responsible for procurement.

Article 9 (2) focuses on public finance management. Corruption can damage public finances, public confidence in the government and delivery of services to the citizens. Article 9 (2) requires each state party to take "appropriate measures to promote transparency and accountability in the management of public finances". These include:

- Procedures for the adoption of the national budget;
- Timely reporting of expenditures and revenues;
- A system of accounting and auditing standards and related oversight;
- Effective and efficient systems of risk management and internal control; and
- Corrective actions to remedy non-compliance of UNCAC requirements where appropriate.

Article 9 (3) of UNCAC requires each state party to "take such civil and administrative measures as may be necessary [...] to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents." The integrity of records helps to provide accurate information for fiscal forecasting and establishes an audit trail to deter corruption. In this regard, for instance, recent electronic technologies have changed the basic model and security requirements of record keeping. Governments may have to choose whether to start afresh with electronic systems now or to phase in electronic records technology later while keeping the old manual system.

## Article 10: Public Reporting

The Article 10 preventive framework requires that such measures as may be necessary be taken to enhance transparency in the public administration. Those include measures relating to its organization, functioning and decision-making processes and may include:

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<sup>67</sup> [https://www.unodc.org/documents/corruption/Publications/2013/Guidebook\\_on\\_anti-corruption\\_in\\_public\\_procurement\\_and\\_the\\_management\\_of\\_public\\_finances.pdf](https://www.unodc.org/documents/corruption/Publications/2013/Guidebook_on_anti-corruption_in_public_procurement_and_the_management_of_public_finances.pdf)

- Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
- Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- Publishing information, which may include periodic reports on the risks of corruption in its public administration.

## Article 11: Measures relating to the Judiciary and Prosecution Services

Article 11 requires measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary and the prosecuting authority. States parties have the benefit of well-established guidance, including The Bangalore Principles of Judicial Conduct 2002<sup>68</sup> and, at the time of writing, the soon-to-be-launched Global Judicial Integrity Network.<sup>69</sup>

The Bangalore Principles on Judicial Integrity are intended to establish standards for ethical conduct of judges.<sup>70</sup> They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct that bind the judge. The values of the Bangalore Principles are: (1) Independence; (2) Impartiality; (3) Integrity; (4) Propriety; (5) Equality; and (6) Competence and Diligence.<sup>71</sup>

UNODC's 'Resource Guide on Strengthening Judicial Integrity and Capacity'<sup>72</sup> supports and informs those who are tasked with reforming and strengthening the justice systems of their countries, as well as development partners, international organizations and other providers of technical assistance who provide support to this process. The guide focuses on the following topics:

- Recruitment, professional evaluation and training of judges (chapter 1);
- Function and management of court personnel (chapter 2);
- Case and court management (chapter 3);
- Access to justice and legal services (chapter 4);
- Court transparency (chapter 5);
- Assessment and evaluation of courts and court performance (chapter 6); and
- Judicial codes of conduct and disciplinary mechanisms (chapter 7).

68 [www.unodc.org/pdf/corruption/corruption\\_judicial\\_res\\_e.pdf](http://www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf)

69 <http://www.unodc.org/dohadecaration/topics/judicial-integrity.html>

70 <https://www.judicialintegritygroup.org/the-bangalore-principles-of-judicial-conduct>

71 [https://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf)

72 <https://www.unodc.org/documents/treaties/UNCAC/Publications/>

ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709\_ebook.pdf



SDG Media Zone. UN Photo/Rick Bajornas

### Article 13: Participation of Society

Article 13 requires that appropriate measures be taken to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations (NGOs) and community-based organizations, in corruption prevention and to raise public awareness in respect of the existence of, causes of and gravity of, and the threat posed by, corruption. Such civil society participation should be strengthened by measures such as:

- Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- Ensuring that the public has effective access to information;
- Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. (Subject only to the parameter to such freedom envisaged by international human rights law.)

Additionally, states parties must ensure that their relevant anti-corruption bodies are made known to the public and are accessible, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with UNCAC.

Several good practices regarding the participation of society must be highlighted:

1. The use of new technologies has been a growing trend, in terms of reporting corruption and preventing the risk of corruption.
2. Access to information/right to information movement provides a conducive environment to enhance the participation of society to prevent corruption.
3. There is clear recognition that collective action is needed to fight the complex issue of corruption. There is no monopoly of a single actor (be it the state or civil society); rather, the fight against corruption must engage multiple stakeholders for collective action, including governments, private and public sector, civil society, media, etc.

## IV. Linkages Between Public Sector Excellence and the Prevention of Corruption

The many cross-cutting themes across PSE and the prevention of corruption have been emphasized throughout this study. Public sector excellence contributes to the prevention of corruption (**Diagram 5**), while anti-corruption efforts also contribute to effective public service delivery (**Diagram 6**). The common factors that affect PSE and prevention of corruption are also presented below (**Diagram 7**), suggesting that strengthening governance reforms and measures will contribute to the achievement of public sector excellence and the prevention of corruption.

Diagram 5. The tenets of public sector excellence contributing to the prevention of corruption



Diagram 6. How anti-corruption efforts contribute to public sector excellence

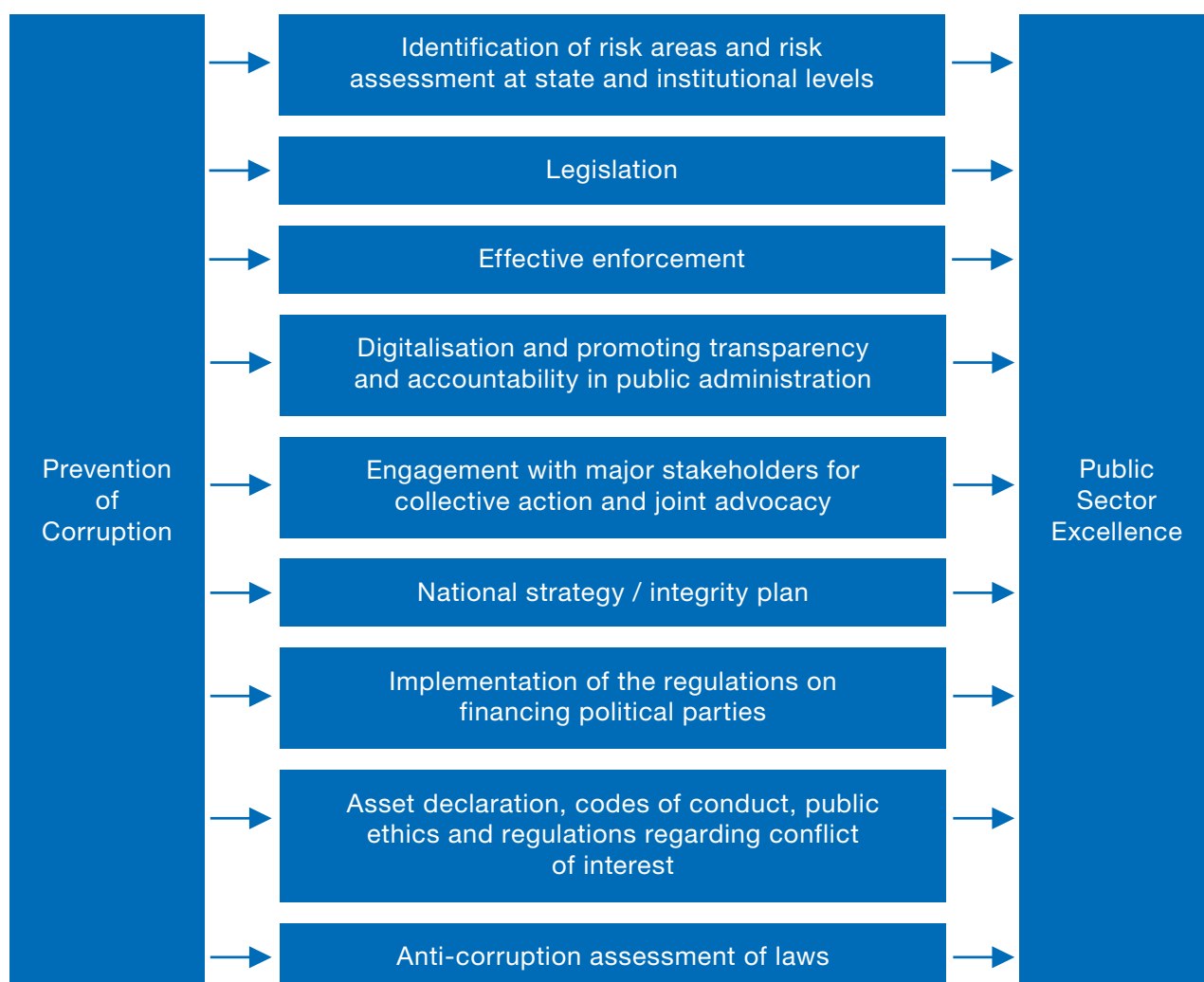


Diagram 7. Common factors contributing to public sector excellence and the prevention of corruption

Public Sector Excellence	Prevention of Corruption
<ul style="list-style-type: none"> <li>· Effectiveness, accountability and transparency</li> <li>· Adherence to the rule of law</li> <li>· Human rights compliance</li> <li>· Motivation (extrinsic and intrinsic)</li> <li>· Innovation and dynamism</li> <li>· Focus on functions and not form</li> <li>· Commitment, coordination and cooperation</li> <li>· Trust and accountability permeating administrative/political/societal spheres</li> <li>· Drivers of integrity and service orientation for building trust relationships and coalitions</li> <li>· An enabling political economy environment</li> </ul>	



## V. Recommendations: Public Sector Excellence and the Prevention of Corruption

1. States should embrace the notion of 'excellence' in the public sector and recognize it as both aspirational and achievable.
2. In building institutional capacity, effectiveness is as important as accountability and transparency. They co-exist and are co-dependent. Without effectiveness, the core function of the public sector, service delivery, is incapable of being performed.
3. Innovation in the public sector should be encouraged and nurtured. At the same time, the complexity of the public sector must be recognized and due regard paid to ever-changing national contexts.
4. Function within a body or ministry, not its form, is key to building excellence. For functions to be addressed, commitment, coordination and cooperation are required.
5. Integrity is essential for building strong and effective institutions and is crucial in delivering sustainable responses to corruption and in fostering trust among the population. Integrity-building should be understood as a whole-of-society approach, and not just within the public sector, i.e., a holistic approach including also the private sector, individuals and organizations, all of whom interact with the public sector.
6. Programmes for change or capacity-building should avoid the simple transposition of institutional models. Instead, feasible and impactful actions should be identified and then made subject to a context-specific and early strategy.
7. Effective training for civil servants can be an important entry point to building excellence; for instance, ethics and integrity training can be a part of performance assessment (retention and promotion). However, it cannot, alone, lead to an efficient, transparent and accountable public sector – occasional training may not result in changing public sector behaviour and norms if the entire political environment is corrupt. Capacity-building measures should pay attention to the broader political economy context, as well as institutional and individual motivation (intrinsic and extrinsic), to result in sustainable impact of any training for civil servants.
8. Individual preventive measures, such as those set out in UNCAC, Chapter II, are of great importance, but prevention should be multi-pronged, and it must be recognized that measures are co-dependent with one another and with wider actions (including, for instance, enforcement). At the same time, enforcement does not, in itself, equate to prevention.
9. States and development assistance providers should undertake more work on how to measure success in corruption prevention.
10. An anti-corruption strategy that is dynamic and capable of implementation is a preventive prerequisite, but it must be set according to the national context, recognize and address the barriers to tackling corruption, be subject to review and revision, and have objectives that are capable of being measured. Similarly, any anti-corruption body to be established must be fit for purpose in the state concerned; generic transposition of a model that has proved effective elsewhere should not take place.
11. Effective coordination, trust and enabling political economy environment are some themes that contribute to the achievement of both public sector excellence and the prevention of corruption. The strengthening of governance reforms and measures is important in ensuring progress in both public sector excellence and corruption prevention.



## VI. Major Findings from Case Studies: Recommendations from Good Practices

This study has explored 18 case studies (presented in Section VII) to understand the context of their reforms and the ways in which each has contributed to the prevention of corruption, as examples of good practices across the globe. Based on the major findings from the 18 case studies, the following outlines the recommendations from lessons learned from the 18 good practices, according to the six thematic areas of public sector excellence (reflecting the preventive framework set out in Chapter II (Preventive Measures) of the UNCAC):

### 1. **Systems for Recruitment, Hiring, Retention, etc. of Civil Servants (Including Non-Elected Public Officials) – Kenya, Jordan, Romania**

- Education and outreach are required within the public sector and across the wider population. Citizen 'buy-in' is a key sustainer for recruitment reforms.
- Introduction of a pilot scheme(s) should be considered, rather than immediate national 'roll-out'. The body chosen for the pilot should be one that is in need of reform, but not so corrosive that early failure is likely.
- Vetting for certain posts/responsibilities should be introduced, along with security of tenure for judges and those managing anti-corruption bodies.

### 2. **Political Party Financing – Canada, Mexico, Ireland**

- An effective and genuinely independent and non-partisan supervisory body could be effective in regulating political party financing. Its precise form is to be determined by national context.
- Education, prevention and engagement should be prioritized, but should be accompanied by a clear message that enforcement will not be overlooked. Vulnerable areas, such as disguised donations and access to account and accounting information, should be had in mind.
- A structure (such as a dedicated court or tribunal) should be pre-emptively put in place to manage disputes between the supervisory body and political parties.

### 3. **Conflict of Interest – United Kingdom, Australia, Hong Kong**

- Clear and concise provisions within a code of conduct or set of regulations must be in place and must be supported by consistent application.
- The emphasis should be put on avoiding, identifying and managing apparent and potential conflict situations in a public servant-inclusive manner. An advice-giving channel should be established.
- A 'top-down' approach should be adopted and every effort must be taken to establish credibility with the wider public and to understand cultural and societal context.

### 4. **Code of Conduct for Public Officials – South Africa, Mauritius**

- Whistleblowing protection is a key preventive and enforcement tool, but it should be established as one part of a wider strategy, with the engagement, as far as possible, of all stakeholders.
- For a code of conduct to have ongoing practical effect, a common understanding of standards and expectations should be built and it should be recognized that this often takes time. It should be supported by ongoing monitoring and evaluation.
- Within the public service, it must be recognized that code of conduct workability depends on systems and people working in tandem. Each must support the other. Where a system stands in the way of code requirements, it should be reviewed and amended.

#### 5. **Public Procurement and Public Finance Management – Brazil, Chile, Cambodia, Albania**

- Processes and systems should be as simple as practicable (consistent with being fit for purpose). It should be remembered that transparency in this regard depends on data availability; consideration should, therefore, be given to imposing mandatory requirements in respect of data exchange/provision.
- An e-procurement process has to be robust, but, at the same time, free from unnecessary complexity to ensure user-friendliness. With that in mind, pre-emptive stakeholder engagement should be undertaken.
- Public finance management reform must set itself realistic targets, consider pilot 'roll-out' and set priorities in implementation.

#### 6. **Public Reporting and Transparency in Public Administration – Georgia, South Korea, India**

- A state-wide vision should be built and nurtured in order to give momentum and to challenge existing interests.
- Transparency requires a complex series of 'trust relationships' to be built; this requires 'drivers' who bring with them a level of authority to be identified and coalition-building to be undertaken.
- Transparency and public reporting should be shaped with reference to cross-cutting issues, such as human rights considerations and efforts in support of the SDGs.

## VII. Case Studies

### Theme 1: Systems for Recruitment, Hiring, Retention, etc. of Civil Servants (Including Non-elected Public Officials)

#### Kenya<sup>73</sup>

“We found a judiciary that was designed to fail. We found an institution so frail in its structures; so thin on resources; so low on its confidence; so deficient in integrity; so weak in its public support that to have expected it to deliver justice was to be wildly optimistic.” – former Chief Justice (CJ) Mutunga<sup>74</sup>

#### BACKGROUND

To understand and appreciate the judicial reforms that have been put in place in Kenya to address and prevent corruption, it is important to set out the historical context. Following independence in 1963, Kenya inherited a judicial system that had been devised and implemented by Britain, with one significant change: the Privy Council, as the final appellate court, was substituted with the East African Court of Appeal (for Kenya, Uganda and Tanzania) as an overt marker of decolonization and as an intended step on the road to creating a mature local judiciary across the region. The East African Community (EAC) broke down in 1977 along with the EA Court of Appeal. Thereafter, Kenya had its own national court structure.

In the years following independence, the Courts started to earn a reputation for inefficiency, corruption and political bias, thanks largely to political appointments of senior judges becoming the norm, with those appointees then being in thrall to their political masters. By the 1990s, the judiciary in Kenya had come into utter disrepute and had lost the wider public confidence: it was seen as corrupt, inept and not fit for purpose. Those in legal practice at that time describe a concern among parts of the legal profession and some of the wider public that Kenya could not continue with a judiciary entirely lacking in credibility. The 2002 elections were largely won on an anti-corruption platform and promises of reform. The general mood of the public and wider society was hostile and unsympathetic and the public called for the removal of all judges and magistrates, irrespective of their conduct: a position that was equally untenable.

This led to the creation of a Commission to assess each member of the judiciary and to make recommendations on whether the incumbent should be referred to a tribunal. As a result of such a public dissatisfaction and demand for effectiveness, transparency and accountability, a large proportion of the judges and magistrates were referred to the tribunal and, consequently, most opted to resign. New appointees took up judicial office; however, despite

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#### 73 Sources:

1. Interviews with Jesse Wachanga, former Magistrate and UNODC anti-corruption expert, and Samuel Kimeu, Executive Director, TI Kenya.
2. Speech by Chief Justice Willy Mutunga at the Centre for Strategic And International Studies, 7 September 2012, Washington D.C: [https://csis-prod.s3.amazonaws.com/s3fs-public/legacy\\_files/files/attachments/120907\\_Speech\\_CJ\\_Willy\\_Mutunga.pdf](https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/attachments/120907_Speech_CJ_Willy_Mutunga.pdf)
3. Judiciary Transformation Framework, 2012–2016, Laying the foundations for the transformation of the Kenyan Judiciary: <http://kenyalaw.org/kl/fileadmin/pdfdownloads/JudiciaryTransformationFramework.pdf>
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8. Maia Gainer, November 2015, Transforming The Courts: Judicial Sector Reforms In Kenya, 2011–2015, Innovations for Successful Societies by, Princeton University

74 Speech by former Chief Justice Dr. Willy Mutunga, D. Jur, SC., EGH on 19 October 2011 when he presented his first public progress report in Kenya.

the concerns of judicial corruption and lack of integrity, the power of vested interests meant that no corruption prevention measures were put in place; it led to the same consequence: corruption continued unheeded and the conduct of the judiciary followed the same pattern as that of its predecessors.

According to local anti-corruption experts and literature reviews, one of the key challenges in Kenya, and Africa-wide, is that corruption prevention is interpreted to mean the same as enforcement. Investigation and prosecution measures are seen as performing both a deterrence and prevention function. Similarly, education is equated with prevention as it helps to raise awareness in the wider society. Although enforcement has a deterrent (and, arguably, preventive) effect, education helps to raise wider awareness across society.

In 2010, the Constitution introduced wide-sweeping and fundamental reforms and reorganized the judiciary in its entirety: new vetting and recruitment systems were put in place, 'the monarchical power and character of the office of the Chief Justice'<sup>75</sup> eliminated, the Supreme Court established, and the composition of the Judicial Service Commission reformed: in essence, the Constitution transformed the judiciary and the reforms were led by the then Chief Justice, Willy Mutunga (between 2011–2016).

Following the Constitution reforms and with the ongoing concerted efforts of the Chief Justice, in 2011, the Judges and Magistrates Vetting Board was established to vet all members of the judiciary and those whose conduct fell below judicial standards, were removed from office. Additionally, corruption prevention measures were introduced through:

1. Code of Conduct and Ethics
2. Judicial Transformation Agreement (which adopts the Code of Conduct without actually formally incorporating it)

The Judiciary Transformation Framework (JTF), introduced in 2012, set out the strategic objectives for the judiciary reforms for the next four years (2012 to 2016) along four pillars. The JTF explicitly recognized the shortcomings of the judiciary and the need to put its house in the following terms:

The decline in public confidence, the disdain from other arms of government, and the dissipation of internal confidence within the Judiciary, are the enduring legacies of the Judiciary's own historical injustices – evidence of an institution that hungers for renewal and a restoration of its lost constitutional mission. The overweening influences of the Executive created an enfeebled Judiciary, an arm of government strikingly reluctant to play its classical [sic] role in the defence and upholding of the constitutional principle of separation of powers. This capture by narrow interests created an institution plagued by corruption and inefficiency – a veritable figure of scorn at odds with the public interest. While many members of its staff worked diligently under extraordinarily difficult circumstances, this has been an institution in the vice-grip of a crisis of confidence.<sup>76</sup>

The strategic plan called 'Sustaining Judicial Transformation: A Service Delivery Agenda 2017 – 2021' (SJT 2017 – 2021) is built on the pillars of the Judiciary Transformation Framework and has introduced, amongst other measures, the need to enhance individual and institutional accountability through oversight bodies, such as the Judiciary Ombudsperson and the Judicial Service Commission (JSC) (with its disciplinary processes). In addition, it maps the way forward for systems of selection and promotion to address one of the key contributors to corruption within the judiciary: the lack of fair and open recruitment.

The public outrage against the judiciary forced the government to consider new measures that would help to build public confidence and also restore its own and judiciary's confidence in the long run. It set up open recruitment for judicial appointments to the High Court, Court of Appeal and Supreme Court through a rigorous procedure, with live broadcast of the interviews and provision for public participation. The then CJ Mutunga led the initiative by accepting this method of recruitment "As part of this new constitutional dispensation, I assumed

<sup>75</sup> Speech by former CJ Mutunga, *ibid*.

<sup>76</sup> Page 2, Preface to the Judiciary Transformation Framework, 2012 – 2016.

office in a manner and method that I believe is unprecedented in any part of the world! I was interviewed in public — the three arms of government participated in my appointment (almost four, given that we have a Dual Executive that must consult and concur before such appointments are made) [...]!”<sup>77</sup>

The SJT 2017 – 2021 also expressly provides for vetting, transparent and meritorious recruitment and promotion of all members of the judiciary (including staff) and measures to monitor transfers of judicial officers and staff. In addition, it provides for ‘targeted lifestyle audits on employees’.<sup>78</sup>

## WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

The success in Kenya was attributed to the combination of a few factors: public awareness, public outrage against the judiciary and public commitment to creating an accountable, transparent and effective judiciary, and committed government. Moreover, open recruitment also encouraged and enforced engagement of key stakeholders such as civil society, media and donors. The strong leadership to establish good practices and enforce robust compliance played a key role in driving their success.

### HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

The cumulative measures of effective enforcement through legislation, public awareness and involvement, government’s commitment through national strategies and code of conducts and ethics helped to achieve a level of success and led to a number of positive outcomes in preventing corruption:

- Restored a greater level of public confidence in the judiciary and judicial institutions;
- Provided a real opportunity to removal judges who had abused judicial office, and recruit those with integrity through a transparent process;
- Re-established the standards of behaviour expected of judicial office holders and the removal of the impunity that had previously been enjoyed by them;
- It has created an inclusive recruitment system for candidates who would have been denied an opportunity under the old recruitment system;
- The adoption of a rigorous and transparent procedure (including live broadcast) of judicial appointments along with public participation;
- The setting up of the Judges and Magistrates Vetting Board to conduct preliminary checks as to the suitability of candidates;
- Legislative changes under the Constitution have ensured the access to justice capable of being realized across the country with better service delivery;
- The creation of a Judicial Training Institute that has played a key role in introducing regular training for the entire judiciary.

<sup>77</sup> Speech by then Chief Justice Mutunga to the Open Society Foundation, Washington, 7 September 2012.

<sup>78</sup> Recommendation of the Action Plan, page 34, ‘Sustaining Judicial Transformation: A Service Delivery Agenda 2017–2021’.

## LESSONS LEARNED

Although concerns as to judicial corruption remain<sup>79</sup> and new allegations continue to surface, there has been a demonstrable change. Whether the experience of Kenya in addressing judicial corruption through transparent recruitment and other corruption prevention measures can be replicated, the main lesson learned is to ensure inclusiveness, transparency, accountability and, most importantly, government commitment to tackle the issue of judicial corruption. Governments should aspire to achieve public sector excellence and prevent corruption through effective, enforced, and compliant measures. An engaged public is also a key in involving all levels of society, thus, raising awareness through education initiatives is vital. The following points of guidance must be borne in mind:<sup>80</sup>

1. Create clear objectives and aims for the proposed reform (and examine what is being addressed and how will it improve and contribute to corruption prevention). In the case of Kenya, the new Constitution provided the impetus for the introduction of transparency and accountability across the public sector, with emphasis on the judiciary.
2. Where corrupt practices are deep-rooted, there is a need to adopt a holistic approach rather than piecemeal changes.
3. Build consensus amongst key stakeholders (citizens, professional bodies, parliamentary and executive bodies).
4. An open appointment system and processes should be adopted, especially where trust and confidence in the judiciary have been eroded. This also helps to avoid accusations of bias by the judiciary.
5. Address political appointees through a rigorous vetting system.
6. Strong government support (e.g., budget) of the reforms is a key component.
7. It is critical that any oversight body is de-politicized; this was the case with JSC, which gave it 'the teeth' necessary to address the scale of judicial corruption.
8. Judges must have security of tenure.
9. Public participation has proved to be a valuable tool in Kenya and can be replicated.
10. Codes of conduct and a supporting procedure for their implementation and for disciplinary sanction should be put in place.
11. There is a need to put in place service charters setting out the standards members of the public can expect from the judicial service.
12. Define the clear standards of behaviour required and set those out explicitly.
13. There should be the capability to lodge a complaint against a member of the judiciary to an oversight body (in the case of Kenya, it is the Judicial Service Commission (JSC) or Judicial Ombudsman).
14. There is a need to sustain the changes through regular monitoring and a level of self-governance.
15. A recognition that public outcry carries a real risk of intimidation of the judiciary and should be factored into the reforms.

<sup>79</sup> <http://www.business-anti-corruption.com/country-profiles/kenya;>

<http://www.dw.com/en/corruption-scandal-in-kenyan-judiciary/a-19071166>

<sup>80</sup> Jesse Wachanga, former Magistrate and UNODC anti-corruption expert, 1 September 2017.



## Jordan<sup>81</sup>

### BACKGROUND

Worldwide, the public sector is by far the largest employer in any state; therefore, robust systems of recruitment, hiring, retention, promotion and retirement are critical to its functioning, as well as to effective delivery of service to the community (including the private sector and business). Practices such as nepotism, or '*wasta*', undermine this objective, hinder the development of a state, destroy public confidence in the state apparatus, promote corrupt practices and undermine the rule of law.

*Wasta* is recognized in Jordan, and in the Middle East generally, as part of Arab cultural heritage that 'is a social norm with positive rather than negative connotations in large areas of Arab societies. Resorting to it is individually rational, but collectively harmful'.<sup>82</sup> In Jordan, the prestige of public sector employment meant that *wasta* played a direct role in the recruitment, hiring and promotion of public officials. This was coupled with an antiquated system under the 1955 regulations, which lacked a systematic approach to recruitment, was haphazard and promoted reliance on *wasta*. As a direct consequence, entirely unsuitable candidates occupied junior and senior posts across the public sector.

It came to be recognized as a major impediment to the success of the public sector and its overall integrity and a barrier to open recruitment. The drive to address and eventually remove *wasta* from recruitment in the public and private sectors has been the focus of the efforts by senior leadership and by King Abdullah II since the 1990s, with Jordan becoming one of the first states in the MENA region to recognize and acknowledge the corrosive effect of *wasta* and act upon it.

A series of reforms, spearheaded by the King, were introduced, including: the creation of the Public Service Bureau; adoption of codes of conduct, the introduction of regulations (public service regulations) to govern the application process (along with clear criteria for each public position); the setting up of electronic sifting of applications to remove any bias based on *wasta*; the creation of strong oversight bodies (for instance, the Jordanian Integrity and Anti-Corruption Commission and the Audit Bureau); and engagement with civil society

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82 German Development Institute: A Study on '*Wasta*' in Jordan, 2007.

organizations. Importantly, the 2006 Code of Conduct to create open and transparent recruitment was itself supplemented by a law that expressly prohibited the use of *wasta* in state-business relations.<sup>83</sup>

Article 10 of the 2006 Code of Conduct addressed *wasta* in the following terms:

“The employee should [...] take actions related to the selection or appointment of staff or upgrading, training, evaluation or reward or transferred or assigned or seconded or any of the matters relating to their work, transparency and absolute impartiality, and free from any considerations of kinship or friendship [...] by following the foundations of merit and competency and competitiveness, and full compliance with the terms of reference and adopted work procedures. [...] Refrain, directly or indirectly, from providing any preferential treatment for any person through *wasta* or nepotism.”

In implementing the Code, Jordan sought assistance from the OECD and its Joint Learning Studies (JLS) to bring together national (Jordanian) and international experts to help map the way forward in developing the implementation strategy. A cross-department national committee was created to oversee and implement the Code. The Code was then embedded in the civil service policy, along with an incentive scheme for compliance and adherence to the Code, the Excellence in Service Award (King Abdullah II Excellence Award). The award, which is managed by the King Abdullah II Centre for Excellence (KACE), specifically recognizes transparency (recruitment, budget, etc.) within the public institution as a mark of success and achievement. In addition, the KACE is required to submit quarterly reports to the Prime Minister on institutions’ progress towards abolishing *wasta* or favouritism and on improving the quality of service delivery (based on a citizen survey).<sup>84</sup>

The efforts to create a transparent system of recruitment, promotion and retention in Jordan was expressly recognized and commended by the OECD in its 2010 Report on Progress in Public Management in the Middle East and North Africa, and Jordan was found to be a ‘pioneer country in governance reforms in the MENA region’.<sup>85</sup>

However, progress on eradicating *wasta* has been patchy and has not fully yielded the success that was expected – a not entirely unforeseeable position, given its deep historical and cultural roots. An added complexity lies in the perception of *wasta* by the wider public and society. *Wasta* is popularly not seen as being linked to, or akin to, corruption,<sup>86</sup> which creates its own difficulties. However, the need to raise awareness and change the mind-set across society is now being addressed through the National Integrity and Anti-Corruption Strategy.<sup>87</sup> A number of programmes to address *wasta* have been set up and work is taking place in conjunction with local and religious leaders, schools and the community.

The overall effort, since 1999, must be seen as substantive steps towards creating a system of recruitment, hiring and promotion that is open and transparent. A further push came with the publication of the Sixth Discussion Paper by King Abdullah II in 2016 in which he specifically addressed *wasta* and nepotism:

“We cannot address the issue of rule of law without recognising that *wasta* and nepotism jeopardise development efforts. *Wasta* does not only impede the country’s progression, it erodes achievements by undermining the values of justice, equal opportunity and good citizenship, which are the enablers of development in any society.

We cannot tolerate such practices that destroy the bases of public service. We cannot allow them to become a source of frustration for our qualified youth, by leaving our young generations victim to the conviction that their

<sup>83</sup> *ibid.*

<sup>84</sup> Page 129, OECD Report, ‘Progress in Public Management in the Middle East and North Africa: Case Studies on Policy Reform’, 2010.

<sup>85</sup> Executive Summary of the OECD Report, ‘Progress in Public Management in the Middle East and North Africa: Case Studies on Policy Reform’, 2010.

<sup>86</sup> Page 63 of GDI Study: “The perception of *wasta* by Jordanians is ambiguous. Many interviewees stated that the use of *wasta* creates unfairness and hampers economic development and should therefore be reduced. Still, many people said that the use of *wasta* has positive aspects. Ambiguity prevails as well with respect to whether the use of *wasta* is a form of corruption or not and how it is related to bribery.”

<sup>87</sup> <http://www.jiacc.gov.jo/documents/National-Strategy-for-Integrity-and-Anti-Corruption-2017-2025.pdf>

future, whether in college or in the job market, hinges on their ability to benefit from *wasta* and nepotism. How can a generation brainwashed with sub-loyalties assume the responsibilities of protecting rule of law or running national institutions?"<sup>88</sup>

More recently, the Civil Service Bureau introduced on-line job applications through its website as part of its drive towards fair and transparent recruitment. The President of the Civil Service Bureau accepted that it had taken time to address and remove *wasta* in the recruitment process, as it required a fundamental change in cultural attitudes.<sup>89</sup> The 2010 Code of Ethics for Ministers was amended in 2013 and expressly addresses ministerial conduct and performance; in 2017, a Code of Conduct for Royal Court Staff was adopted, thereby extending reform to intelligence and public security agencies, armed forces, senior officials, advisers, and directors of the Royal Court.

The initial success of the government-led incentives (including awards of excellence at the individual and institutional levels) has encouraged other institutions within Jordan that retain their own recruitment process, such as the Foreign Office or the Prime Minister's Office, to address *wasta*, with appropriate modification to the Code. However, transparency in recruitment processes for leadership posts (e.g., Secretary General or Director General) remains a challenge.

## WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

Prior to the initiative, every public service (including hospitals, schools and any civic amenity) relied on *wasta*, which skewed service delivery across the territory. This has been addressed by putting in place accountability standards for mayors, and the creation of broader community representation at City Hall, which would assist in improving the delivery of services and provide greater transparency. The improvement in corruption prevention also has been a result of the high-level political drive, commitment and support to address the embedded culture, by raising public awareness and introducing comprehensive reforms in Jordan, which have provided the necessary impetus for change. Equally, engagement with international organizations, especially the OECD and its Joint Learning Studies (JLS), in order to bring together national and international experts to help map the way forward in the implementation of the Code, has allowed for exchange of good practices from a range of other states.

## HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

The impetus for the change was driven by a number of players: King Abdullah II himself, other political leaders, members of the business community, the media, and civil society organizations. The government adopted a combination of good practices to prevent corruption such as identification and understanding of corruption risks, international engagement showing Jordan has been committed to public sector excellence and preventing corruption, raising public awareness and engagement, incentives and rewards system, established code of ethics, and digitalization. At the same time, ratification of UNCAC by Jordan required compliance with international obligations and reforms, which played an essential part. In turn, the initiative has contributed to corruption prevention in a number of ways:

<sup>88</sup> 6th Discussion Paper, Rule of Law and Civil State, by HM King Abdullah II ibn Al Hussein, 16 October 2016.

<sup>89</sup> "[I]t took the bureau years to change the mentality of people to make sure that they take seriously the principle that there is no place for *wasta* in the work of the CBS. The effort finally paid off, he said, noting that influential people do not even think now of interfering to help their relatives or friends." – Civil Service Bureau (CSB), President Khalaf Hmeisat, 17 October 2016, Jordan Times, <http://www.jordantimes.com/news/local/analysts-say-solution-wasta-easy-enforce-law>

- By far the most significant contribution in removing *wasta* from public sector recruitment is the creation of a fair and transparent open recruitment system that, in turn, builds national and international confidence in the state.
- In the long run, the initiative has replaced an 'obligation-based' relationship with one of equality (i.e., a person appointed through *wasta* would be subject to an obligation to act in accordance with the wishes of the person who made the appointment and could be constrained to ignore abuse in public office, or even pressured into conniving in it) and dismantles fiefdoms in which the most influential may do as they please.
- Open competition based on merit, rather than nepotism, is a key foundation of delivering public services that aspire to excellence and that are hostile to corruption.
- The introduction of an electronic system in sifting applications has removed the risk of bias through *wasta* and provides a better pool of candidates for public service.
- The recruitment process comprises a number of stages (tests following an initial sift, scoring of candidates based on results followed by an interviewing panel drawn from across the public sector along with observers from the Jordan Integrity and Anti-Corruption Commission (JIACC), internal and external oversight, and the publication of results by the Public Service Bureau) that help to maintain confidence in the process and provide transparency.
- The recruitment process for the entire public service (save for leadership posts, certain agencies and the guarantee of positions for surviving offspring of armed forces personnel killed in action) has been unified through the Public Service Bureau.
- Although *wasta* is still practised, it is much reduced. Such a reduction, although not a complete eradication, has helped significantly in building public confidence in the administration and delivery of services.
- The initiative has led to a positive change in the attitude and culture of those within the public service; there is a recognition that services and positions based on *wasta* are inappropriate and unnecessary in modern Jordanian society.
- Selection boards themselves now have a better understanding of what is required of them when selecting, interviewing and appointing candidates. This has created, overall, a more transparent and better recruitment system. Prior to the initiative, officials were appointed, promoted or removed from positions with no accountability within the process.
- The introduction of time limits for the appointment process has addressed the slack that existed previously.
- There is now more engagement with civil society groups. Representatives from various organizations are in the committee established for the delivery of SDG Goal 16 and representatives from civil society organizations also sit as observers on the interview panels, as part of JIACC. This is coupled with a wider appreciation by the public sector that civil society organizations bring a level of expertise perhaps not present in the public administration. This will, in turn, undoubtedly promote wider society engagement and accountability.

## LESSONS LEARNED

*Wasta*, or nepotism, is not unique to Jordan; it is much wider and pervades a number of states, although perhaps known by another name or in a different guise. Even though there is perception within the Arab region that there is no relationship between *wasta* and corruption, its impact is nonetheless detrimental to public administration. The Jordanian model may usefully be considered by other states (subject to particular context, of course) where nepotism in any guise is deep-seated in daily life. Thus, understanding the corruption risks and their consequences within the government and the public is an important starting point, as mutual understanding will bring the way forward. Inviting foreign experts and organizations is also a great way to initiate the change. Indeed, it has already been the basis of similar initiatives in Egypt, Kuwait, Palestine, United Arab Emirates (UAE) and Saudi Arabia.

Although *wasta* (or its equivalent) plays out differently in each system, there are nevertheless key features that fall to be considered:

1. Addressing a custom that is embedded within the national consciousness requires strong political leadership and a commitment to change. Equally, there is a need to demonstrate this commitment to transparency by senior officials.
2. There should be a clear recognition that measures to address nepotism are unlikely to be accepted immediately (for instance, it may be seen as reducing the influence of the public official within his clan) and a level of 'buy-in', consensus and awareness-raising must be undertaken.
3. Nepotism manifests in a number of ways, depending on the social, economic and political culture of a state, which, in turn, will influence the response model and its measures (e.g., a legal framework with mandatory obligations to introduce change, creation of independent recruitment panels, selection and interviewing processes, recording reasons for granting or refusing appointment).
4. A clear set of criteria for the positions and selection process should be created.
5. The introduction of electronic sifting systems at the initial stages helps to reduce the risk of bias through *wasta*.
6. Consider introducing pilot schemes in those public sectors where nepotism is particularly rife and/or has the most corrosive impact.
7. Monitoring mechanisms (internal and external) must be put in place to assess, enforce and measure compliance.
8. Test performance and results of candidates should be published and made publicly available.
9. All posts, without exception, should be subject to an open and transparent recruitment process. Although leadership posts in Jordan are still not included within the Public Service Bureau, causing some disquiet and unease.
10. Take positive steps to acknowledge the efforts of the public institutions through awards or certificates of 'excellence', as has been used in Jordan and elsewhere.

## Romania<sup>90</sup>

### BACKGROUND

The education sector, at every level up to and including universities, is particularly vulnerable to corruption, which comes in various guises: teacher absenteeism, 'ghost workers', distribution of budgets, exposure to malpractice at the local and central levels, abuse of office and position, fake certificates and university degrees, and a general lack of integrity within professional academic circles. It is perhaps trite to say that corruption in the education sector denies individuals a basic right and is a key barrier in the achievement of the SDGs. It is within this context that the 2007 initiative in Romania, led by the Romanian Academic Society (SAR),<sup>91</sup> an education think tank, is best understood, along with its achievements as in corruption prevention at universities.

For a considerable time, there were serious concerns as to the integrity of universities in Romania, both at an institutional and individual level. Some universities had long acted as diploma factories, plagiarism was widespread amongst students and professors alike, and bribery was prevalent during university exams (as documented in surveys), especially in pharmacy and medical schools. Furthermore, public universities did not consider themselves to be part of wider public institutions required to be accountable to the community at large and, therefore, felt that transparency in systems for recruitment or financial management were equally unnecessary. The chronic situation was accepted as a norm of educational life and of securing a degree.

The Romanian Academic Society formed a coalition with other stakeholders and partners (National Student Federation, Teachers' Union etc.), the Coalition for Clean Universities (CCU) in 2007/2008. The aim of the coalition, according to the president of SAR, was to address the integrity of universities across Romania and this was achieved through a methodology, developed by the president of SAR, to assess and rank universities through a 'naming and shaming' process, along with encouraging and disseminating good practice.

The methodology, which has been in use since its introduction 10 years ago and is now in its third edition, was to create a ranking system for all public universities and comprises five chapters: administrative transparency; university regulations on plagiarism, etc.; governance and integrity (whether there is open competition for senior positions at the university or whether through a single candidate nomination); financial management and public procurement; and academic performance of the university professors ('publish or perish').

At the outset of the project, a questionnaire addressing each of the 'chapters' was sent to the universities and, depending upon the response or the lack thereof, universities were graded and the results made public. The impact of the ranking system and publication of results had the desired outcome: an immediate response and improvement in university transparency across the board.

The evaluation and monitoring has continued periodically (2009, 2010 and 2016) and is conducted in two phases: phase 1 is desk research and review (questions are sent to each of the universities and they are graded based on their responses) followed by the second phase, which is a peer review carried out by a team comprising of a professor and student representative. An Ombudsman for Higher Education was created by SAR to address the problems that are identified in the assessments.

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91 For further information on the Romania Academic Society (SAR): <http://sar.org.ro/en>



Training sessions are also held for students to help them push for change in their universities and seek requests for information under ‘freedom of information’ to drive greater transparency. SAR also publishes guidelines<sup>92</sup> (available in print and online) for students to identify corruption and to seek to influence decisions at universities.

### WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

The practices were successful because of effective pressure and commitment by a think tank and the public – students – on transparency, effectiveness and accountability in education system. The practices have also introduced vital regulations and new legislative measures that were diligently followed and enforced. SAR crucially identified the corruption risks and the extent to which it has been embedded; hence, it concentrated on developing a robust methodology, raising public awareness and involvement of, primarily, students and staff, pushing for the public exposure and continuous scrutiny of universities.

Moreover, after the initial review reports, universities made genuine attempts to address recruitment and procurement; this, in turn, helped students to decide which university to attend and improved their confidence in the establishment. However, at the start of the initiative, The Coalition for Clean Universities met with real resistance from the larger universities (e.g., evaluators were not allowed to enter the premises, whistle-blowers were targeted), which was addressed by awarding each of them zero points, and led to a turnaround as the institutions began to be affected by low numbers of entrants. In 2016, only two public universities did not respond. At the same time, governmental support for the endeavour has been sporadic and often aligned with support for the university. It is, nevertheless, a start in addressing and preventing longstanding corruption in educational establishments. Additionally, engagement with civil society, media and donors played a paramount role in exposing the issue and promoting the change. The project has been widely supported by the media and civil society, which has helped to put education reform on the public agenda and change the education law in Romania; indeed, many of the recommendations made by SAR and the CCU were codified in law in 2011. The widespread support for the CCU and SAR helped to legitimize the project and give it credibility.

### HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

The focus of the initiative was on public, rather than private, universities and it is accepted that concerns in the private institutions remain. Nevertheless, the CCU succeeded in introducing measures for reform that have helped to promote transparency (in recruitment, procurement and financial management) in the public universities:

- The initiative helped to highlight an issue of real concern within the education sector; prior to it, the level of public distrust in universities had risen to unacceptable levels, along with a drop in public institutions as a whole.
- The project produced immediate success in the transparency and accountability of public universities, particularly through the creation of the ranking system.
- The impact of the ‘integrity rankings’, along with the publication of corrupt behaviour, led to a realization on the part of the universities that their conduct was under scrutiny and, in more serious instances, the DNA (the Romanian anti-corruption body) intervened, investigated and, in appropriate cases,<sup>93</sup> prosecuted the relevant universities and individual professors.
- The CCU project has led to sweeping changes within the universities, with the introduction of measures to remove plagiarism and bribery and with changes in management structures, internal regulations and personnel.

<sup>92</sup> <http://sar.org.ro/en/tag/educatie/>

<sup>93</sup> Over 1,000 individuals were investigated in western Romania in 2017.

## LESSONS LEARNED

The SAR initiative has been replicated in two states, Peru and Columbia, with markedly different results: success in the former, but not in the latter. The key to the success in Romania and Peru appears to be the commitment of students in pushing for change, as well as the commitment of those leading the project.

The project has also received widespread international recognition by various organizations, including the World Bank, UNDP, UN and AU. Globally, the effort to improve access to education has been led by civil society organizations and individuals with a strong commitment to change and remove corruption across all levels of educational institutions. Based on the Romanian experience, which has produced good results, the project could be adopted in other states. The following themes for success emerge:

1. There is a need to create widespread support for the initiative amongst the beneficiaries, in particular, students. Within the Romanian context, it was they who provided the real catalyst for change.
2. There is more than likely to be a high level of resistance from the institutions that are targeted for change, which can only be addressed over time and with sheer commitment.
3. At the outset, a focus group should be created that includes academics, journalists, students and education experts to identify the corruption issues affecting the state's education sector and the methodology required to address it (the methodology developed by SAR is a good start).
4. The methodology itself must be transparent and, where a ranking system is adopted, there must be transparency in the process and in the associated reporting.
5. The methodology for assessment must be clear and thought through; it should also include benchmarking performance against the legal obligations under existing national law.
6. Desk review is insufficient for 'naming and shaming' universities, as it only provides part of the picture and there is a risk that wrong assumptions may be made. The methodology must instead include face-to-face meetings that provide the university with an opportunity to explain its systems of recruitment, procurement and management as a whole.
7. The model must be adapted to meet the specific national context, as it will require a robust legislative framework and the enforcement of strong internal regulations from universities.
8. In states where corruption remains a serious issue, 'naming and shaming' often produces the desired results and a push for change across not just education, but the wider public sector.
9. It is perhaps best to start with simple measures – for instance, 'publish or perish' introduced by the UK.
10. Other legal frameworks, such as freedom of information, may be necessary to secure access to data held by institutions.
11. It is essential that whistle blowers be protected and that there be strong legislation to meet the risk of threat (Romania has experienced a number of challenges and there have been adverse consequences, in some instances, for whistle-blowers).
12. A code of conduct and guidance on managing conflicts of interest should be put in place.
13. Consideration should be given to engaging with universities that wish to be involved in the process, even if there is likely to be some resistance.

14. Consideration should be given to putting in place a scheme to recognize and reward universities that respond through reform. Such recognition might, for instance, be by increasing its financial subsidy or awarding certificates of excellence.
15. Real success will be secured only if there is government support for it.

## Theme 2: Political Party Financing

### Canada<sup>94</sup>

#### BACKGROUND

It is widely acknowledged and recognized that political party financing needs to be regulated, given its potential to skew elections in favour of parties that can raise large amounts of financing with equal spending power, along with the risk of undue influence once the party is in office. Yet effective implementation of regulations to control political party financing remains challenging across many jurisdictions and no discernible best practice has emerged, save for a general consensus amongst states, civil society, media and the wider public that there is a need to:

- Regulate public and private financing for political parties;
- Impose spending limits;
- Impose restrictions on donations and contributions;
- Promote transparency, accountability and scrutiny; and
- Put in place independent oversight.

Canada regulates political party financing, at the federal level, through the Canada Elections Act (CEA) 2000, with the Office of the Chief Electoral Officer (Elections Canada) providing independent oversight. It is an independent, non-partisan agency and reports directly to Parliament.<sup>95</sup> Its mission is “ensuring that Canadians can exercise their democratic rights to vote and be a candidate” and it seeks achieve this through a mandate that includes monitoring compliance with the legislation and overseeing the financial activities of the federal political parties; other bodies, meanwhile, deal with issues such as codes of conduct and conflicts of interest.

Since the early 1970s, Canada has had in place a comprehensive reporting mechanism for anyone seeking to run for office and imposes strict spending limits during elections for parties and individuals, including third parties. The legislative framework controls political party financing through a number of mechanisms, which include:

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#### 94 Sources

1. Telephone interview with Elections Canada (Trevor Knight, Senior Counsel).
2. Elections Canada Website, <http://www.elections.ca/home.aspx>
3. TI Anti-Corruption Helpdesk, Political Party Accountability: Intra-Party Democracy, Funding and Minimum Standards for Candidates (2013) by Maira Martini, Transparency International: [https://www.transparency.org/files/content/corruptionqas/Political\\_\\_party\\_\\_accountability.pdf](https://www.transparency.org/files/content/corruptionqas/Political__party__accountability.pdf)
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95 <http://www.elections.ca/content.aspx?section=abo&lang=e>

- Strict spending limits in place for political parties and candidates during the electoral period, and applicable to all expenses (paid, unpaid, and non-monetary contributions), with a requirement to submit receipts.
- Contribution limits, first introduced in 2003, prohibit contributions by anyone other than an individual (i.e., no corporation, union or association contributions). The current contribution cap to a single entity from a single individual is \$1,575.
- A total prohibition on foreign donations; only Canadian citizens and permanent residents can contribute.
- Disclosure and reporting requirements for all political parties in respect of donations to individual candidates and to the party as a whole.
- The control of third-party campaigning.
- Direct public financing, which is available through:
  - Reimbursement for parties (50%) and candidates (60%) for election expenses; it is limited to those who meet regulatory requirement and results.
  - Generous tax credit to encourage small individual donations.
- Limits on advertising expenses, although there is a regime of free broadcasting time that is available to all parties based on past success, managed by the Broadcasting Arbitrator.

## WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

Influential changes in the legislative framework have supported effective enforcement. The commitment of the government and independent bodies (Elections Canada), as well as the importance of collaboration with multiple stakeholders to enforce codes of conduct and conflicts of interest, have also been key to success in Canada's case. This way, it decreases the pressure on one particular body to monitor and ensure the compliance. Elections Canada and others have recommended that the government widen the disclosure requirements to ensure greater transparency and avoid the risk of disguised donations from third parties. Elections Canada publishes information and handbooks that are made available online through its website. Hence, public exposure, digitalization and clear-cut regulations help to produce successful outcomes. Most important, the Canada Elections Act provides exclusively for criminal sanctions rather than both administrative and criminal; this creates its own challenges, as most breaches tend to be regulatory rather than criminal and the absence of administrative sanctions curtails the actions that can be taken.

## HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

- Although some challenges remain, the imposition of spending limits has had a positive effect on the election process as a whole and has stopped billions of dollars going into elections; it is regarded as the 'cornerstone of Canadian democracy'.<sup>96</sup>

<sup>96</sup> Page 5, TI Anti-Corruption Helpdesk, Political Party Accountability: Intra-Party Democracy, Funding and Minimum Standards for Candidates (2013), by Maira Martini, Transparency International.

- The disclosure and reporting requirements provide transparency and accountability, although more work needs to be done in respect of third parties, such as corporations, unions and volunteer associations, as they are often not aware of their obligations to report certain expenses. The requirement for individual candidates to provide receipts and supporting documents in respect of expenses incurred during elections also helps to enhance transparency and accountability. Elections Canada is looking for ways to enhance transparency by recommending that the law be amended to require parties to make more supporting documents available to justify the expenses (the current regime is only applicable to individual candidates).
- The independent oversight provided by Elections Canada and its enforcement of the Act have built public confidence in the electoral process. Elections Canada now enjoys wide acceptance and the 'sympathy' of the public and the media.

## LESSONS LEARNED

1. A supervisory body is essential to provide oversight on political party financing and spending limits.
2. It must be independent, non-partisan and report directly to the legislature.
3. It must enjoy public confidence and support.
4. It must retain its independence and be seen as such by all stakeholders and beneficiaries.
5. There is a need for comprehensive disclosure and reporting requirements for candidates and political parties with strict enforcement.
6. It should be a requirement for political parties to engage internal professional auditors, along with oversight from the supervisory body.
7. Volunteer organizations play a key function during the elections and are often not aware of their reporting obligations; this must be recognized and addressed at the outset.
8. Introduce a code of conduct for political parties and their entities.
9. There is a need for administrative and criminal sanctions.

## Mexico<sup>97</sup>

### BACKGROUND

The 2015 elections in Mexico gave a clear indication of public distrust and loss of confidence in the politicians amid high-profile corruption allegations against each of the three main political parties; however, to a large extent, the pattern of distrust was not new. Attempts to build the trust between the electorate, on the one hand, and political parties and their candidates, on the other, have seen the adoption of a number of regulations and the establishment (in 1990) of an independent agency, the National Electorate Institute of Mexico (INE).

The INE is responsible for organizing federal elections (i.e., presidential and the upper and lower chambers); although based in the Federal District, it carries out its functions through decentralized bodies across the country. In addition, the INE is also responsible for setting spending limits on electoral campaigns and administering public funding (direct and indirect) to the political parties. Compared to most other states, Mexico provides substantial public funding to political parties, which takes precedence over any private financing. There are four main sources of private financing (which can be secured as a permanent stream of income as well as election expenses), including:

- Members fees and any contributions that candidates make voluntarily;
- Donations and contributions from Mexican supporters (individuals and corporates), which may include financial and non-financial support;
- Self-financing by the party through activities it promotes (it is for each party to decide on the limits);
- Any interest earned by political parties from their banks.

Transparency and accountability are achieved through the following measures:

#### *Reports of political parties*

The INE provides compliance oversight and performs an external auditing function over the financial reports lodged by the political parties. Political parties are required to submit four different reports<sup>98</sup> setting out the 'annual, pre-campaign and campaign reports'<sup>99</sup> and declaring the 'origin, amount, destination and use of the income received from any funding';<sup>100</sup>

- Annual report must be submitted within 60 days after 31 December (fiscal year);
- Quarterly reports (within 30 days) during non-electoral years;
- Pre-campaign reports (within 30 days after the end of the pre-campaign period);
- Campaign reports for each candidate every 30 days from the start of the campaign, and must be submitted within three days.

#### *Control and oversight*

To fulfil its mandate, INE created a specialized oversight body, the Oversight Unit for the Resources of the Political Parties (UTF). It scrutinizes all the reports submitted by the political parties, after which they are sent to the Audit

<sup>97</sup> Sources:

1. Sustainable Governance Indicators [http://www.sgi-network.org/2016/Democracy/Quality\\_of\\_Democracy/Electoral\\_Processes/Party\\_Financing](http://www.sgi-network.org/2016/Democracy/Quality_of_Democracy/Electoral_Processes/Party_Financing)
2. OECD Financing Democracy Funding of Political Parties and Election Campaigns and the Risk of Policy Capture: [http://www.keepeek.com/Digital-Asset-Management/oecd/governance/financing-democracy\\_9789264249455-en](http://www.keepeek.com/Digital-Asset-Management/oecd/governance/financing-democracy_9789264249455-en)

<sup>98</sup> A failure to provide the reports may lead to financial penalties.

<sup>99</sup> Page 163 - Mr Rafael Riva-Palacio, Director of International Co-operation and Liaison National Electorate Institute of Mexico (INE), OECD Financing Democracy Funding of Political Parties and Election Campaigns and the Risk of Policy Capture

<sup>100</sup> Ibid.



Commission of the General Council. As the only oversight body, the INE has developed an online accountability system. In addition, a National Registry of Providers has also been created for individuals and entities that supply goods and services to political parties, candidates and independent candidates.

#### *Publication of reports*

The reports are publicly available.

### **WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?**

It is evident that the public distrust and the loss of confidence pushed the government to reconsider public sector excellence and the significance of corruption prevention. The government acknowledged the need and demand for establishing and enforcing good practices through clear-cut regulations and penalties, if needed. The engagement with not only civil society, but also media was paramount and raised awareness and ensured public exposure of positive and negative events related to corruption. INE also started the digitalization of the tools, thereby increasing and improving transparency, accountability, effectiveness and credibility.

#### **HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?**

- Mexico, like a number of Latin American states, has experienced widespread and high-level corruption that has eroded the trust of the electorate. Measures that create, promote and enhance transparency and accountability in political party financing help to build a level of public confidence and trust. The reforms in Mexico (since 1963) have yielded some results by promoting transparency and creating a level playing field for political parties through public financing.
- The abuse and misuse of public money, when discovered, has been met with meaningful action. For instance, in 2013, the head of Mexico's Social Development department dismissed seven officials after it was discovered that they intended to use money from anti-poverty programmes for electioneering.
- Public funding (direct and indirect) for all political parties and independent candidates, administered through an independent body (INE), helps to reduce corruption risks.

### **LESSONS LEARNED**

Today, election campaigns across the world are lavish affairs and the need for transparency and accountability is correspondingly heightened, particularly in jurisdictions where high levels of corruption carry a risk of an endless cycle of corrupt behaviour when in office.

Therefore, the following are needed if any reforms are going to be likely to succeed:

1. A scoping exercise to identify the corruption risks in elections (vote buying, disguised donations, buying influence for later use, etc.) and the measures needed to respond to specific risks.
2. There must be demonstrable political will for reform of political parties financing as part of wider anti-corruption reforms.
3. The oversight body must be truly independent and not be manipulated by vested interests.
4. The oversight body must have enforcement powers with proportionate financial and administrative sanctions for compliance failure or regulatory breaches.

5. Consideration should be given to setting up a specialized court or tribunal to address disputes between the oversight body and political parties.
6. Public funding (direct and indirect) may assist in minimizing corruption risks, but it needs to be administered through an independent body that in itself meets the requirements of transparency and accountability through publication of allocation of funding to each political entity.
7. Political party financing will invariably link with the business community; therefore, efforts to promote wider engagement in reform programmes that involve the business community, civil society organizations and the wider public are likely to yield better results.

## Republic of Ireland<sup>101</sup>

### BACKGROUND

The reform of electoral funding, political ethics and lobbying in the Republic of Ireland was brought about by a combination of factors: political scandal in planning and development, the need to fulfil obligations as a State Party to UNCAC, and recommendations made by the Council of Europe's anti-corruption group, Group of States against Corruptions (GRECO) and by the OECD's Bribery Working Group.

Political party financing and expenditure for electoral purposes for the Dail and Seanad in the Republic of Ireland is overseen by the Standards in Public Office Commission (SIPO), an independent body, and is governed through the Ethics Acts (1995 and 2001) and the Electoral Acts (1997, 2014 and 2015). The framework, as a whole, is aimed at anti-corruption, transparency, openness, accountability and management of ethics.

The Electoral Acts comprises three Acts:

- The Elections Act 1997, as amended
- Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2014
- The Lobbying Act 2015

Together, the Electoral Acts provide the statutory framework for political party financing (direct, indirect and private funding), party activities, allowances and a reasonably detailed regulatory regime that addresses spending limits during elections, reimbursement of election expenses, disclosure, donations to candidates and political parties, donations made by corporate donors and registration of corporate donors, as well as registration of third parties that accept donations given for political purposes. The Electoral Acts also provide for state financing of qualified political parties that received at least 2 percent of the first preference votes at the last preceding Dáil general election.

The Lobbying Act 2015 is the most recent legislation and provides the Commission with another oversight tool. The law was passed to regulate lobbying of designated public officials and puts the onus on the lobbyist to register

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#### 101 Sources:

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and submit regular returns of lobbying activities. Designated public officials have no obligations under the law, but should be named in the returns. Early in 2017, new enforcement powers were introduced with a range of penalties, for instance, a late return from a registered lobbyist will attract a financial penalty of €200; however a failure to pay is likely to lead to prosecution. At the other end of the spectrum, anybody lobbying without registration is liable to investigation and prosecution, with the penalties ranging from a fine (€2,500) to imprisonment of up to two years.

The Act has shown a promising start, with 1,400 registrants and over 14,000 returns; however, a number of individuals and organizations are not aware of the law and its implications and SIPO is working towards raising awareness and has issued guidelines.<sup>102</sup>

The main functions of SIPO<sup>103</sup> are:

- The acceptance and disclosure of donations received by political parties, Members of both Houses and of the European Parliament and candidates at Dáil, Seanad, European Parliament and presidential elections;
- The opening and maintenance of political donations accounts;
- The limitation, disclosure and reimbursement of election expenses;
- State financing of qualified political parties;
- The registration of 'third parties' (i.e., campaign/lobby groups or individuals that accept a donation for political purposes that exceeds €100 in value) and other persons.

It has powers to conduct any enquiry necessary in its oversight function and to facilitate inspection and copying, by any person, of donation statements, election expenses statements, etc., furnished to it under the legislation.

## WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

Public dissatisfaction and outrage pushed the government to commit to more robust and responsive measures towards the prevention of corruption. The compliance was also enforced to ensure the understanding of definite consequences and regulations. The initiatives have also acquired a multi-faceted approach engaging a diverse number of stakeholders such as civil society and media. Moreover, Ireland has been working towards raising public awareness through education and outreach programmes. The establishment of an independent body, followed by legislative changes, ensured that the body is well-functioning and result-oriented to prevent corruption and increase effectiveness, transparency and accountability.

### HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

- Supported by the legislation, SIPO adopted a 'compliance approach' that set in place and enforced clear and readily understood parameters.
- From the outset, there was an attempt to create an environment intolerant of abuse and corrupt practice by heavily emphasizing education and outreach (including media campaigns and significant interaction with NGOs).
- From inception, the initiative has engaged with all stakeholders, thereby increasing understanding, reducing opposition and better ensuring 'buy-in'. In respect of lobbying, SIPO established an Advisory Group, membership of which includes PR professionals (the very group liable to be affected).

<sup>102</sup> SIPO has issued a number of guidelines on political party financing and can be accessed at: <http://www.sipo.ie/en/Guidelines/>

<sup>103</sup> <http://www.sipo.ie/en/About-Us/Our-Functions/>

- SIPO has consistently emphasized and put much of its effort into prevention, but has reinforced this with its investigative and enforcement powers.
- Objectives have been subject to review and revision and have therefore been able to evolve organically. This has meant that more problematic areas (gifts, recusal and disguised/large political donations) have been brought into focus and acted upon.
- SIPO continues to identify gaps and vulnerabilities and takes steps to address them. For instance, in 2017, it identified so-called 'accounting units' (accounts linked to political parties) as needing to be subject to greater transparency and made public calls for the same.
- For SIPO, the creation of three units (ethics, electoral and lobbying) within one overarching body has allowed best use of resources and a joined-up approach that recognizes the inter-relationship and sometimes complex dynamic between the three topic areas.
- SIPO helped maintain its own credibility and ensured ongoing cooperation with others by avoiding the so-called 'chill effect' (i.e., individuals being inhibited or discouraged from legitimate activity by a perceived 'threat' from oversight and legislation).

## LESSONS LEARNED

1. The oversight body must be truly independent and be able to operate without fear (whether as to organizational well-being or the tenure of individual staff) and not be manipulated by vested interests.
2. Independence should be reinforced and validated by having a reporting line directly to parliament.
3. There must be demonstrable political will for the reform of political parties financing, ideally as part of wider anti-corruption reforms. This will often require coalition-building and having a 'driver' in authority.
4. The oversight body should be given a mandate broad enough for it to operate effectively and efficiently within its particular national context.
5. States should not simply transpose a model from another state; rather, identifying the appropriate structure for the state in question is a key consideration.
6. In the case of a relatively small state, consideration should be given to housing a range of competences (such as ethics, electoral and lobbying) within one body.
7. At establishment and thereafter, the body should be as inclusive as possible in its consultation and liaison. But, at the same time, it should be made clear that enforcement powers will be used when called for.
8. An emphasis on prevention, with targeted education and outreach, will yield positive and sustainable results and will reduce resistance.
9. The oversight body must have enforcement powers with proportionate financial and administrative sanctions for compliance failure or regulatory breaches.

## Theme 3: Conflict of Interest

### United Kingdom<sup>104</sup>

#### BACKGROUND

The Health and Social Care Act 2012, which came into force in April 2013, has introduced fundamental changes to the National Health Service (NHS), including the creation of Clinical Commissioning Groups (CCGs). Since the 2012 Act, concerns have been raised by the National Audit Office and in the media regarding CCGs and hospitals taking bribes/'backhanders' from service providers. There have also been Parliamentary and public concerns over the risk of conflicts of interest influencing local NHS commissioners' decisions, whereby personal gain overrides patients' interests.

Under the new arrangement, a number of bodies have been created, and two, in particular, NHS England and Clinical Commissioning Groups (CCGs), are responsible for contracting with NHS service providers, which include the private sector, general practitioners (GPs), the voluntary sector, foundation trusts and NHS trusts.

NHS England is responsible for health care in England (it does not cover Scotland, Wales & Northern Ireland) and for contracting for services directly (it currently administers 35,000 contracts worth £27.2billion). In addition, it oversees and supervises the CCGs to ensure accountability, given their financial and budgetary role.

The 211 CCGs in England are responsible for a large proportion of the NHS Commissioning budget (£65bn of the £95bn) for delivery of hospital care and community and mental health services. Each CCG has a Board and includes representatives from the hospitals (a hospital doctor and nurse) and a layperson. In order to provide a service to the CCGs, all GP practices have to be members of a CCG.

The Act recognizes the central and influential role that is being performed by CCGs and places a requirement on them to abide by Conflicts of Interest (COI) guidelines as CCGs, amongst all other NHS bodies, pose the highest risk and are likely to be most vulnerable to undue influence and conflicts of interest.

The National Audit Report had identified gaps in the CCG guidelines, in particular, in respect of managing conflicts of interest and had recommended that detailed guidance be developed and issued to CCGs. Since the coming into force of the Act, NHS England has conducted an in-depth audit of the CCG sites and has worked with them to identify any breaches that may have occurred, as well as looking at existing guidance and practice on COI in order to distil best practices and to use such practices as the starting point rather than 're-inventing the wheel'.

One of the first challenges in respect of the guidance was to determine whether to adopt a principles-based approach or a prescriptive approach, as in the case of the USA. A task and finish group was set up, which brought the clinical representation groups and stakeholders together to work through the issues and develop a cross-system guidance, which was published in February 2017 and contains common principles applicable to CCGs and providers.

In 2016, detailed internal guidance for CCGs on managing COI was issued, 'Managing Conflicts of Interest in NHS

#### 104 Sources

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Clinical Commissioning Groups', which also contains templates, e.g., good minute taking. The guidance was, however, superseded by the cross-system guidance; consequently, a new draft incorporating the principles was issued in June 2017. This helped to bring the CCG guidance in line with NHS COI and create standardization across the NHS.

To assist users, NHS England also published a two-page guidance, which includes case studies illustrating the types of COI that could arise and how individuals should handle and manage the conflict of interest. A requirement was placed on all CCGs to train their teams on COI, and a COI guardian post was created. The guardian is a layperson (equivalent to non-executive directors) who will assist in bringing a level of scrutiny to decision-making within the CCG.

At the start of the initiative, there was an intention to standardize the guidance across all providers of NHS funded health care; however, this was not possible and led to two separate COI guidance documents: the cross-system guidance, which applies to NHS providers and CCGs, and a second guidance, the CCG COI guidance.

Once the guidance was issued, NHS England conducted training programmes for CCG laymembers to help them understand the guidance (some 300 CCG staff has been trained). The next stage is to roll out online training on COI for all CCG staff and GPs with a connection to CCG. The training is conducted in three parts and reflects the level of exposure to COI and decision-making for the relevant member of staff. NHS England also produced a model policy for organizations that will be supplemented by specific guides for staff.

The guidance remains under review and is updated to reflect new COI situations; however, it is not feasible to amend the guidance at regular intervals. In the event a novel COI instance arises, NHS England and CCGs apply the Nolan Principles (seven principles of public life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership).

## WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

The initiatives established entry points for improvement and pushed for a multifaceted engagement among and a buy-in of stakeholders to communicate and address paramount issues related to corruption. The other significant aspect was enforced coordination and cooperation on the clear-cut guidelines, which resulted in the effective implementation and compliance. Meanwhile, raising awareness through communication and engagement helped to understand the core of the issue and its importance.

### HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

The cross-system guidance came into force in June 2017 and the existing CCG guidance was updated to align with it. Although it is difficult, at this stage, to assess the full extent of its impact on the prevention of corruption, key themes have emerged:

- The consultation process and the development of the guidelines helped to raise the profile of the importance of managing conflicts of interest. There was general perception that conflicts of interest only relate to financial interests in procurement, but the exercise has helped to raise wider awareness of direct and indirect COI.
- There is a requirement on CCGs to conduct annual reviews of COI, which should be reflected in their governance reports; this will help to identify any shortcomings and how they ought to be addressed.

- The high level of ‘buy-in’ to the initiative by all the stakeholders and the representatives of the task group from across the health service indicates a strong commitment. An analogous example is the positive response received by Disclosure UK<sup>105</sup> that resulted in an increased number of disclosures made.

## LESSONS LEARNED

NHS is a large and complex organization and governance responses have been built, at various times, to address risks and vulnerabilities. Based on that experience, the following guiding principles may assist:

1. The key is to get the narrative right in relation to COI and the reasons for doing it. It is important to recognize that COIs are inevitable and cannot be eliminated altogether; consequently, they need to be managed. Guidance must also include actions that must arise if an unforeseen situation arises (e.g., reliance on Nolan Principles, in the case of NHS England).
2. There is a need to assess the scope of the guidance; it is helpful to cast the net wide so that the guidance is standardized across the service and truly universal. Where an organization is large and different methods of contracting exist across the service, it may be worth restricting guidelines to the most vulnerable group. Equally consider including the guidance through a contract clause for the provider. In England, the guidance also applies to NHS providers through the National Standard Contract.
3. The guidance must be subject to regular review and update along with a review of emerging COI risks.
4. Resources (human and financial) remain a challenge in most states and there is a level of resistance when introducing new systems and requirements; in such instances, it greatly assists to create templates and tools that are simple and easy to use and help reduce the burden on existing staff. Moreover, templates help to give consistency of information across the departments.
5. A decision needs to be made at the outset on whether to adopt a principles-based approach, a prescriptive approach or a balance between the two systems. Whichever method is adopted, it must be sensible and proportionate.
6. The consultation process itself must be managed properly, including the tools of analysis.
7. A reporting mechanism should be put in place along with whistle-blowing provisions.

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<sup>105</sup> The pharma industry-led initiative that created a searchable database to show payments and benefits in kind made by the pharmaceutical industry to doctors, nurses and other health professionals and organisations in the UK: <http://www.abpi.org.uk/ethics/ethical-responsibility/disclosure-uk/>



## Australia<sup>106</sup>

### BACKGROUND

In 1978, the then Prime Minister, Mr. Malcolm Fraser, commissioned a report into the public sector and, in particular, into balancing public duty and private interest. An earlier inquiry by the Parliamentary Committee was set aside and a second inquiry initiated, led by a senior judge, alongside a representative from the business sector and the accountancy profession. The then Chief Judge of the Federal Court of Australia, the Hon. Sir Nigel Bowen, K.B.E., led the inquiry and the report ('Bowen report')<sup>107</sup> was submitted.

The inquiry arose from the difficulties that the then Prime Minister faced "when he is called upon to pass judgment on colleagues with whom he has worked closely, particularly as the Prime Minister must act as a judge and jury when allegations of impropriety are raised"<sup>108</sup>, and the need to find a "satisfactory procedure [...] to resolve these situations which can have such an impact on an individual's career and on the life of his family."<sup>109</sup>

The Bowen Report recommended procedures to identify a breach and flagged the need for registration of interests under judicial supervision. The report identified four categories of public officeholders who hold positions of trust in relation to the Commonwealth and have a public duty to balance their private interests (pecuniary and non-pecuniary) and manage conflicts of interest.

The inquiry recognized that the then existing rules and guidelines on managing conflicts of interest were inadequate and that, consequently, there was general uncertainty as to what was expected of public officeholders; this gave rise to 'misunderstandings and misinterpretation'.<sup>110</sup> It went on to recommend a Code of Conduct that addressed conflicts of interest (pecuniary and non-pecuniary) and laid out 10 key 'conflict of interest' principles in the Code that should be observed by, and govern, the conduct of officials. The Committee rejected the need for compulsory registration of interests and opted instead for disclosure in line with the Code of Conduct; however, it recommended that the practice be kept under review.

For the wider public administration, the Committee recognized the differing roles, positions, risks and vulnerabilities across the public sector and their position as employees, as opposed to elected public officeholders. It recommended that the Public Service Board (now Public Service Commission) issue a Code of Conduct as "a General Order or such other form of instruction as the Board sees fit"<sup>111</sup> and that the Board amend its guidelines to address gifts and hospitality and their link with conflicts of interest.

The Committee recommended enforcement of the Code and resolution of conflicts of interest through existing disciplinary channels within each of the public bodies, save for exceptional circumstances that are of serious public concern, when legislative, administrative and parliamentary procedures are available. It recommended the establishment of a statutory body, the Public Integrity Commission, with investigatory powers and also set out recommendations on appropriate sanctions.

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4. Australian Public Service Commissioner's guidance on the Code of Conduct: <https://www.apsc.gov.au/aps-values-and-code-conduct-practice> and <http://www.apsc.gov.au/working-in-the-aps/your-rights-and-responsibilities-as-an-aps-employee/code-of-conduct>
5. Australian Public Service Commission publication, PSC, 'In Whose Interest?'
6. Public Duty and Private Interest, Report of the Committee of Inquiry (The Bowen Report): <http://apo.org.au/system/files/33757/apo-nid33757-34941.pdf>

107 The Bowen Report - <http://apo.org.au/system/files/33757/apo-nid33757-34941.pdf>

108 Website of Analysis and Policy Observatory (APO)

109 Bowen Report, p. 1

110 Ibid., p. 18

111 Ibid., p. 76

The recommendations of the 'Bowen Report' have formed the bedrock of Australia's Code of Conduct and its principles in relation to conflicts of interests. The Australian Public Service Commission (APSC) is today responsible for the integrity and governance of public officials and the avoidance and management of conflicts of interest is a fundamental requirement across the Australian Public Service (APS).

### WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

The engagement of multiple stakeholders and commitment to creating an appropriate set of guidelines were among the key factors for the success. The coordination and compliance were set up and well put in place to result in effective measures. Australia's initiative also stands out as a package of good practices because of clear, concise and consistent messages from senior management through a 'top-down' approach, the staff-inclusion roll-out, an ongoing induction/education programme and the ready advice available to public servants through the Ethics Advisory Service.

#### HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

- The Codes of Conduct and the principles on conflict of interest contained therein (addressing pecuniary and non-pecuniary interests) have provided a clear framework for public servants and have created readily understood parameters.
- A 'top-down' tone has been adopted from the outset and has been maintained. This has created a positive culture in which conflicts are not tolerated, but, equally, a public servant who has a concern about a possible conflict situation generally feels no hesitation in seeking advice.
- The establishment of an Ethics Advisory Service has provided an immediate point of reference for a person who has become aware of an issue that 'does not feel right'.
- Practical education on conflict of interest is provided to officials through their own public body on an ongoing basis and at recruitment and transfer/promotion to potentially vulnerable positions.
- The high level of public awareness about Code of Conduct and its rules on conflict has helped to build public confidence and trust in the public service. Consequently, the public feels confident in reporting wrongdoing.

### LESSONS LEARNED

1. Each public body should undertake a proper risk assessment taking into account its own vulnerabilities and risks of conflicts of interest, and provide clear definitions and guidance to staff (including training in identifying and managing real and apparent conflicts of interest).
2. States should ensure that there is a consistent approach on managing conflicts of interest across the public service. The Australian National Audit Office, in 2014, conducted an audit of the APS to assess the implementation of policies and processes to identify and manage conflicts of interest. It concluded, "Whilst many public sector agencies were actively promoting conflict of interest obligations (through policies and manuals), there was considerable variation in the quality, scope and usefulness of high level policy documents across the 25 audited agencies, particularly in relation to approaches for promoting, implementing and monitoring key aspects of conflict of interest provisions",<sup>112</sup> which can undermine perception and confidence that conflicts of interest are being managed effectively.

<sup>112</sup> The Auditor-General Audit Report (No.47 2013–14) Performance Audit, 'Managing Conflicts of Interest in FMA Agencies Across Agencies', p. 14

3. There should be put in place a proper record of instances of conflicts of interest, including their resolution, as this will assist in developing future codes as well as sharing of lessons across the public service.
4. In securing the services of external consultants, experts or advisers, there is a particular requirement for careful handling and proper mechanisms to address conflicts of interest; the larger an organization, the greater the need for ensuring proper disclosure and management. The Australian National Audit Office report concluded, "Larger agencies and those with well-established grant programs exhibited substantially more developed management arrangements, providing a higher level of confidence in the probity and integrity of decisions and advice."<sup>113</sup>
5. States should maintain 'user-friendly' records for declarations of interest, but ensure that there is effective implementation.
6. Where periodic declarations of interest are required, a dip sampling of the returns should be undertaken.
7. A 'top-down' approach should be adopted in order to create a culture that is not accepting of conflict situations, but is one in which public servants feel confident in seeking advice when a potential or apparent conflict arises.
8. There is no single formula to preventing and managing conflicts. But regard should always be had to social context when educating/awareness-raising.
9. Steps should be taken to identify and reward good behaviour in order to enhance behavioural attitudes generally.

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<sup>113</sup> Ibid., p. 16

## Hong Kong SAR<sup>114</sup>

### BACKGROUND

The Independent Commission Against Corruption (ICAC) of Hong Kong was set up in 1974 to address the chronic levels of corruption across the public sector, in particular, the police force. The scale of corruption was unsustainable and could no longer be tolerated. Following the notorious 1975 Godber case,<sup>115</sup> a Commission of Inquiry was set up and to inquire into the circumstances that had allowed his corrupt activity and ultimate escape from Hong Kong. The Commission recommended the establishment of a wholly independent body to address corruption in Hong Kong and this led to the setting up of the ICAC.

Since its inception, the ICAC has adopted a three-pronged approach to corruption:

1. Investigations and prosecution function;
2. Developing and implementing corruption prevention measures; and
3. Community engagement and education.

As part of its prevention work, the ICAC set up the Corruption Prevention Department and has a statutory obligation to:

- Examine the practices and procedures of government departments and public bodies and secure revision of any that may be conducive to corruption.
- Advise upon request of private organizations or individuals on how to prevent corruption.<sup>116</sup>

The Corruption Prevention Department is, therefore, responsible for conducting reviews and developing regulations/guidelines across the Hong Kong public sector, which comprises the civil service, legislative and district councils, as well as quasi-governmental bodies, such as statutory, regulatory or advisory bodies and publicly funded institutions. Its aim is to prevent corruption and strengthen the ethical culture of the public service.

The COI framework in Hong Kong is underpinned by the common law and the Prevention of Bribery Ordinance, and Codes of Conduct. In respect of politically appointed officials, COI is governed by Code for Officials under the Political Appointment System. The Corruption Prevention Department has developed a number of tools to manage conflicts of interest, including:

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<sup>114</sup> Sources:

1. The Hong Kong ICAC website: <http://www.icac.org.hk/en/home/index.html>
2. Hong Kong ICAC (Corruption Prevention Advisory Service): <http://cpas.icac.hk/>
3. Report of the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests, May 2012: <https://www.irc.gov.hk/eng/report/report.htm>
4. ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, Managing Conflicts of Interest: Frameworks, Tools and Instruments for Preventing, Detecting and Managing Conflicts of Interest, 2007: <https://www.oecd.org/site/adboecdanti-corruptioninitiative/40838870.pdf>

<sup>115</sup> In 1971, an internal police unit discovered an unusual remittance from Hong Kong to Canada; C\$12,000 had been transferred to a Canadian bank account under the name "P. F. Gedber". Police launched an internal investigation, but with limited powers, the anti-corruption unit made little progress. Godber applied for early retirement, asking to quit his post in July, 1973. But three months shy of his departure, the police commissioner received a tip. Police contacted 480 banks and found millions of dollars in overseas and local bank accounts - all controlled by Godber.

<https://www.scmp.com/news/hong-kong/article/1428093/fifty-years-its-creation-how-icac-cleaned-corruption-hongkong>

<sup>116</sup> HK ICAC website: <http://www.icac.org.hk/en/cpd/duty/index.html>

- Web Learning Portal on Integrity Management for Civil Servants;
- Pamphlets for Civil Servants;
- Reference Package on Conflict of Interest for Managers in the Civil Service (this includes reference material, guidance and a training video); and
- Ethical Leadership in Action - Handbook for Senior Managers in the Civil Service.

Following recent concerns and controversy in relation to the actions of the Chief Executive, the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests was set up to review the adequacy of the current COI framework regulatory for the following public officeholders: the Chief Executive, Members of the Executive Council and politically appointed officials. The Commission reviewed:

- The existing system for the prevention and handling of potential conflicts of interests, arrangements for declaration of interests and investments;
- The acceptance of advantage and entertainment; and
- The taking up of positions after leaving office.

It made a number of recommendations (36 in total), including the need for the Chief Executive, as the head of the Hong Kong Special Administrative Region (HKSAR), to lead by example and adhere to the rules applied to other “politically appointed officials and the civil service in order to maintain public trust in the integrity of the Government”,<sup>117</sup> and for extension of the Prevention of Bribery Ordinance to include the position of Chief Executive. In so doing, it emphasized:

- a) Leaders should lead by example. The system applicable to the highest public officials should be at least as stringent as that applicable to those they lead.
- b) The system must command public confidence.
- c) The system must have an appropriate degree of transparency.
- d) The system must take into account legitimate privacy concerns of individuals.
- e) The system must not be unduly burdensome for the efficient conduct of government business.

Following the publication of its report in May 2012, the Code was amended to reflect the recommendations and draft guidelines were submitted for consideration.

## WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

First, the government identified the corruption risks and showed commitment by creating the robust legal framework to restructure and reinforce anti-corruption initiatives. It also adopted a multifaceted approach by concentrating not only on enforcement and compliance measures, but also on raising public awareness through education and outreach in the media. The engagement also was a systematically continuous process involving different stakeholders and enforced a number of new and reviewed recommendations to reinforce measurements and to build confidence and trust in the government and people.

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117 Press Release by HKSAR, July 2017: <http://www.info.gov.hk/gia/general/201707/05/P2017070500680.htm?fontSize=1>

### HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

- The legal framework and Code has provided a sound groundwork for managing COI within the Hong Kong public administration; however, the complexity of COI is also well recognized.
- Hong Kong has kept abreast of new and emerging challenges, along with contextual changes. The recent review has highlighted a number of shortcomings in respect of high-level officials and, in particular, the unique position of the Chief Executive of HKSAR, who is accountable to the Central People's Government and the HKSAR. A number of those recommendations have been implemented; however, the extension of criminal provisions under the Prevention of Bribery Ordinance to the Chief Executive has raised fundamental constitutional issues, such as, whether the standards of bribery prevention applicable to "prescribed officers" under the Prevention of Bribery Ordinance ("POBO") should apply to the Chief Executive of the Hong Kong SAR).
- From the outset, Hong Kong's efforts to address and counter conflict situations has kept cultural context very much in mind and has recognized that education needs to take place in immediately and inter-generationally.
- Hong Kong has communicated its efforts to the public and has thereby increased the public's understanding of what it should expect from the public service. The result has been greater public confidence in challenging and contesting misconduct by public officials.
- Efforts have included liaison with business and private sector interests, which has helped counter the public/private conflict interface.

### LESSONS LEARNED

1. Public perception on conflicts of interests changes over time as well as the manner in which they are handled and managed by public officials. It is, therefore, important to understand emerging trends, to review the codes, practice and procedures in the light of those trends and, thereafter, to amend them accordingly.
2. A risk assessment and analysis should be conducted across the public service to identify positions and departments that are more vulnerable to conflict of interest and to develop the guidance that is best suited for it. A generic COI guidance is unlikely to achieve the desired results.
3. Given the complexity in managing COI, public officials should be trained and have access to advice within the department on managing conflicts of interest.
4. It must be impressed upon public officials that the ultimate responsibility for declaring and managing COI rests with them and that they must be alive to real, potential and apparent conflicts of interest.
5. Any COI declaration system must ensure that it addresses financial and non-financial interests, including COI that might arise through family, associates or business links. High-level civil servants are more than likely to fall to be considered as 'politically exposed persons' and should, therefore, be more sensitive to potential COI.
6. Public access to declarations is now part of access to information and publishing the declaration is by far the easiest way; of course, individual states will need to decide the categories of officials whose declarations are to be published.
7. Public confidence in the integrity of senior public officials and the wider administration underpins an administration, which must be recognized and managed.

## Theme 4: Code of Conduct for Public Officials

### South Africa<sup>118</sup>

#### BACKGROUND

An integral part of any 'bribery prevention' activity is the introduction and implementation of an effective reporting or whistle-blower policy. Such a policy, if properly enforced, will signal the organization's commitment to conduct itself ethically and to deal with any unethical behaviour in a robust manner. Protection for those wishing to report misconduct is, therefore, an essential component in preventing corruption.

A 'whistle-blower' is an individual who, in good faith, reports corruption or other wrongdoing (which, usually, has come to his/her notice in the course of employment or engagement) to an appropriate authority. Depending on a state's domestic law, that appropriate authority might be the employer, a regulatory or oversight body, a law enforcement agency or even, in cases of last resort, the media.

Regardless of whether such a policy exists, organizations often believe that a member of staff will report incidents of malpractice or misconduct. Unfortunately, the evidence shows that this is very often not the case. The following are just some of the reasons why individuals do not report such behaviour:

- Misplaced loyalty;
- It is easier simply to look the other way;
- 'As long as we get the contract, does it really matter what has been done to secure the contract?';
- No confidence that managers will respond appropriately;
- They feel intimidated;
- Lack of support for the individual who has demonstrated the moral courage to report misconduct.

In South Africa, a number of initiatives to address corruption in the public sector and promote accountability were introduced, one of which was the protection of whistle-blowers.

Work began on the whistle-blowing legislation in 1999/2000, largely driven by the government with engagement from other stakeholders, including civil society organizations and NGOs (such as Open Democracy Advice Centre (ODAC), Corruption Watch). In 2001, the Protected Disclosures Act no. 26 of 2000 came into force. The Act established a robust framework to protect employees in the public and private sectors from occupational detriment, should they blow the whistle. The law was hailed as the most far-reaching 'state-of-the-art' whistle-blowing legislation in the world and an effective tool to "prevent impropriety and corruption within the public sector".<sup>119</sup>

Following the implementation of the law, South Africa put in place departments that would be responsible for the execution of the law and policy. Its overall implementation is overseen by the Public Service Commission with a mandate to "to promote measures that would ensure effective and efficient performance within the Public

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<sup>118</sup> Sources:

1. Telephone interview with Salomon Dr SCJ Hoogenraad-Vermaak, Director, Ethics and Code of Conduct Management, Department of Public Service and Administration
2. Public Sector Commission: Whistleblowing: A guide for Public Sector Managers Promoting Public Sector Accountability & Implementing the Protected Disclosure Act: [http://www.psc.gov.za/anti\\_corruption/-Whistleblowing%20booklet.pdf](http://www.psc.gov.za/anti_corruption/-Whistleblowing%20booklet.pdf)
3. Code of Conduct for Public Servants, Public Sector Commission: <http://www.psc.gov.za/documents/code.asp>
4. Public Service Commission website: <http://www.psc.gov.za/home.asp>

<sup>119</sup> Public Sector Commission: Whistleblowing: A guide for Public Sector Managers Promoting Public Sector Accountability & Implementing the Protected Disclosure Act



Service and to promote values and principles of public administration as set out in the Constitution, throughout the Public Service.”<sup>120</sup> Anti-corruption groups were set up that continued to review the implementation progress, conduct research and identify any gaps in the law; this culminated in a new Act being passed in July 2017 to address the shortcomings.

The law was supported by a Code of Conduct, which obligated employees to report wrongdoing. In 2016 the Code was amended and provides that an employee (public sector) “immediately report to the relevant authorities fraud, corruption, nepotism, mal-administration and any other act which constitutes a contravention of any law (including, but not limited to, a criminal offence) or which is prejudicial to the interest of the public, which comes to his or her attention during the course of his or her employment in the public sector”<sup>121</sup> and “shall immediately report any non-compliance of the Act to the head of department”.<sup>122</sup>

In 2016 the Code was amended to extend the avenues for protected disclosure from four to five ‘doors’:

- Door 1: the legal advice route where disclosure can be made to the lawyer or shop steward;
- Door 2: internal disclosure;
- Door 3: external disclosure to a Member of Cabinet or Executive Council of the Province, if a person fears occupational threat;
- Door 4: regulatory disclosure, where a disclosure can be made to various commissions such as the Public Service Commission, the Human Rights Commission, the Auditor General; and
- Door 5: wider disclosure, such as media or law enforcement, if no internal disclosure is feasible.

## WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

Whilst the legislation and Code are fairly robust, South Africa, like most other states, has had to overcome social obstacles to reporting, such as misplaced loyalty, and whistle-blowing is still seen as negative behaviour. The Department of Public Service and Administration and the Public Service Commission are setting up more awareness-raising exercises. The Public Sector Regulations created the post of an Ethics Officer who will, in effect, act as the conscience of the organization and be responsible for conflicts of interest. Presently, the role of the Ethics Officer is being extended to include protected disclosures by whistle-blowers; however, there is an obligation on Ethics Officers to “identify and report unethical behaviour and corrupt activities to the head of department”.<sup>123</sup> Additionally, developing a robust legal framework and establishing cooperation and coordination of multiple stakeholders and effective measures engraved in the national strategy have also resulted in better corruption management.

### HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

- The initiative has introduced better governance, according to studies conducted by the Public Service Commission (in respect of the whistle-blowing framework), which show that there is an increasing willingness to come forward.

<sup>120</sup> Website of the Public Service Commission.

<sup>121</sup> Paragraph 13(e) of the Code of Conduct, Chapter 2 Conduct, Financial Disclosure, Anti-Corruption and Ethics Management.

<sup>122</sup> Ibid., paragraph 14(q).

<sup>123</sup> Ibid., paragraph 23(c).

- The whistle-blowing framework was developed as part of South Africa's broader anti-corruption strategy and continues to be reflected in the National Anti-Corruption Plan for 2050. By integrating it within the wider strategy, it helped to embed it at an early stage. This, of course, meant change in management (and employee) behaviour, but, in the long run, it has proven to be a change for the better.
- The proposed inclusion of Ethics Officers has been seen as a positive step forward and consideration is being given to the engagement of the Ethics Officers, not just as an official to whom a protected disclosure can be made, but also wider reporting.

## LESSONS LEARNED

1. Whistle-blowing should not be seen in isolation, but rather as part of a broader anti-corruption strategy and national plan. This helps it to be integrated as a key tool in addressing, and preventing, institutional corruption. The legislative framework should seek to cover the more subtle 'occupational detriment', as well as overt actions, such as dismissal, demotion and victimization.
2. At the outset, states should set out in clear terms the reasons for the introduction of whistle-blowing frameworks, the underlying rationale and the protections that will be put in place; this helps to address and allay fears and concerns.
3. Wide engagement and consultation with as many stakeholders (across the public sector, civil society organizations and parties with an interest in the issue, such as the private sector) help to create one vision for the state.
4. Consideration should be given to having one reporting body, as this helps to create one single database and also helps to provide an overview of trends and identify areas that need to be addressed. In South Africa, one of the challenges that is being sought to be overcome is the difficulty in getting all the departments to share their information, so that there is a sharing of experience and an identification of lessons to be learned.
5. Regular and continuous reviews of the whistle-blowing strategy, law, policy and Code will help to identify gaps and find a means of addressing those through amendments in good time. The experience in South Africa in creating a national anti-corruption forum and using universities to conduct research has paid real dividends in identifying gaps and measuring perception.
6. To overcome concerns of protected disclosure (such as misplaced loyalty, which is often seen as treacherous behaviour, etc.), there is a need to create awareness and build the confidence for employees to come forward. It is equally important that the available protections also be highlighted.
7. Training of public officials on the Code of Conduct is a pre-requisite; they must understand the Code and how this affects them in their official capacity. In South Africa, the training programme is a two-tier process: the Ethics Officers are trained and they, in turn, cascade the learning within their departments. Online training should be put in place that is free for users and this may be supplemented by the publication of newsletters if and when new trends or patterns are identified.
8. There are inevitably unintended consequences for some whistle-blowers, which often includes financial hardship and loss of social connections; this must be addressed at the outset.

## Mauritius<sup>124</sup>

### BACKGROUND

The Independent Commission Against Corruption (ICAC) of Mauritius was set up under Prevention of Corruption Act 2002 (as amended by Act 24 of 2005) and its functions include putting in place corruption prevention measures across the public sector. Although a small island jurisdiction, it has a large public service that comprises of over 25 ministries, a number of governmental departments and some 150 statutory or parastatal bodies.

In 2009, as part of its mandate and preventive function, ICAC was required to conduct a review across the public sector (which included the ministries, governmental departments and parastatal bodies), assess corruption risks and put in place measures to address the risks, including a Code of Conduct. An initial assessment highlighted at least 21 areas that required attention as part of the initiative.

Given the number of public bodies and of areas requiring attention, the ICAC team concluded that a detailed risk assessment for each such body was challenging and somewhat onerous for ICAC to conduct on its own; an alternative approach was, therefore, needed. The team carried out a desk review, based on an open search, and found the 'decentralized' approach in New South Wales (NSW), Australia offered a way forward. The ICAC team then adapted the NSW model to its own national requirements, which were reflected in the Public Sector Anti-Corruption Framework (PSACF). The framework included the setting up of an Anti-Corruption Committee (ACC) within each agency, adoption of an Anti-Corruption Policy, the conduct of Corruption Risk Assessments and the formulation of anti-corruption measures for proactively dealing with risks of corruption and malpractices. The key aim of the framework is to enhance the corruption prevention capabilities of public bodies by giving each agency ownership and control of assessing its own risk and developing corruption prevention measures accordingly, with guidance and steer from ICAC.

The approach adopted was as follows:

- Early engagement and collaboration with each of the public bodies to get early 'buy-in' and cooperation;
- A guide was developed (based on research), taking into account the specific Mauritian context, which set out, in some detail, the actions to be taken and how those should be addressed. To that end, four themes were identified:
  - Development and adoption of anti-corruption policy
  - Risk assessment
  - Implementation measures to address the risk
  - Monitoring and evaluation
- The ICAC recommended the establishment of an anti-corruption committee within each body, which should be headed by senior members of staff to ensure delivery. The final composition of the team was a matter for each agency; however, it was required to notify ICAC of its members.
- Draft terms of reference were drawn up for the each agency.

#### 124 Sources

1. Written submissions and Skype interview with ICAC Corruption Prevention Team: Mr. I Jheengut, Director, Corruption Prevention and Education Division; Mr. Yajkarran Seewooruttun, Assistant Director, System Enhancement; Ms. Nandita Suneechur, Assistant Director, Community Relations; and Mr. Kailash Koonjal, Chief Corruption Prevention Officer.
2. Written submissions by ICAC Prevention Team.
3. Tristan Dreisbach, February 2017, Tackling Corruption from the bottom up: Decentralized Graft Prevention in Mauritius, 2009–2016, Innovations for Successful Societies, Princeton University: <https://successfulsocieties.princeton.edu/publications/tackling-corruption-bottom-decentralized-graft-prevention-mauritius>

- Each of the Anti-Corruption Committees had an ex officio ICAC member to offer guidance.

In order to ensure a level of consistency across the public sector, ICAC developed an anti-corruption policy model that included a requirement for each of the departmental policies to reflect a 'zero tolerance' to corruption. The public bodies conducted their own risk assessments, taking into account particular risks it faced and identifying areas and positions within the body that were more vulnerable to corruption, and operational risks. Upon completion of the public sector-wide assessment, ICAC developed anti-corruption tools to assist with implementation, which were made available on line. The tools were drawn up to empower each of the public bodies to address the preventive measures contained within Chapter 2 of UNCAC, in particular, recruitment, time management and procurement. There was a recurring problem with time management in a number of bodies where members of staff were prone to abuse overtime benefits ('ghost workers') and with favouritism, whereby department heads permitted overtime only for certain members of staff. More recently, ICAC has issued gift guidelines that have been adapted by the various government departments and agencies.

When the initiative to 'decentralize' was introduced, it was well received across the public sector, as ownership created with it a sense of responsibility and pride within each agency, in direct contrast to systems where a blanket code of conduct (irrespective of nature and type of risk) was simply handed down from the national anti-corruption agency.

### WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

The key to successful reforms was government commitment, risk assessments done at an early stage, robust legislative changes and emphasis on communication and cooperation between the people and the government. The other aspect was that the engagement of different parties helped public officials across the ministries to become aware of the national anti-corruption policy, its aims and objectives. Although initiatives take time, despite the lengthy process, Mauritius has proved that continuous comprehensive and detailed research to determine the measures that work best for its country-specific context is paramount.

#### HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

- The high level of early engagement led to a commitment to address corruption and put in place 'fit-for-purpose' preventive measures.
- Mauritius has been internationally recognized by the UN for Public Sector Excellence in Combating Corruption in Africa, and the approach has also been the subject of favourable comment by UNODC evaluators during the recent UNCAC review.
- Although the process is lengthy (for example, the gift guidelines have taken some five years to be finalized and were adopted in 2016), it has created 'buy-in' and ownership from the outset.
- Each agency becomes more conversant with, and fully aware of, the corruption risks and vulnerabilities within its own organization and targeted prevention measures are put in place.
- As there is early engagement across the sector, it provides an opportunity to discuss common problems (and work through each of those), capture lessons learned and develop good practices.
- Once the policy is developed, it is disseminated within the department and training is arranged for the staff. Presently, ICAC leads on the training workshops, although it is expected that this will shortly be handed to the relevant body through 'Integrity Officers'.
- The success of the project has led to the development of new initiatives to take forward the work done by the departmental anti-corruption committee, in particular, the creation of Integrity

Officers who will take lead responsibility for ethics, oversee implementation of preventive measures and conduct training. The key aim is to empower each of the agencies with ICAC performing a monitoring function.

- The framework is being implemented in some 80 ministries/government departments and parastatal bodies. Forty-nine public bodies have developed their Anti-Corruption Policies while forty-three have embarked on the CRM exercise. Appropriate anti-corruption measures are being implemented by public bodies to address the potential corruption risks identified during the corruption risk assessment exercises.
- The Public Sector Anti-Corruption Framework has already established the required mechanism in public sector organizations that may be used as a basis for ISO 37001 Anti-Bribery Management Systems.

## LESSONS LEARNED

The Mauritian practice has been the subject of favourable review and comment by international organizations and a number of African countries have been on study visits to Mauritius to see how it can be adapted to their contexts. These include Botswana, Zambia, Somalia and Mali, as well as the African Union (AU).

ICAC has also recently introduced an anti-corruption platform to develop research on corruption issues that affect small states in particular. Since the launch of the platform, ICAC has been asked by UNODC to take the lead for sharing best practices on corruption prevention for Small Island Developing States (SIDS).

By way of guidance to other states, the following practices should be considered:

1. Any initiative takes time and effort on the part of the stakeholders; however, this should be seen as a natural and obvious step in building a common understanding and setting out clear aims and objectives.
2. It is vital that the various public sector bodies be empowered to address their corruption risks and develop preventive measures; early engagement is, therefore, a prerequisite and helps to achieve the aims of the prevention strategy.
3. Follow-up, monitoring and evaluation are absolutely necessary to prevent the efforts from dissipating or being abandoned by the relevant agency.
4. Stakeholders will need to be assured that ICAC (or similar body) is fully engaged in the process and mirrors the same level of commitment that is expected of them.
5. There is a need for organizational structures and effective systems within the agency to control and monitor integrity as well as help with prevention efforts.
6. Any department or agency is made of two key components: systems and people. For a successful outcome, it is important that both be addressed in tandem. In Mauritius, this was achieved through the creation of Community Engagement Officers.
7. It is important to put in place a capacity to capture lessons learned and good practices.
8. Consideration should be given to public-private partnerships when working through corruption prevention initiatives. Based on the experience in Mauritius, this proved to be particularly helpful when developing corruption prevention frameworks in areas such as procurement and the granting of licences, where a number of the recommendations from the discussions helped to inform the legislative framework.

## Theme 5: Public Procurement and Public Finance Management

### Brazil<sup>125</sup>

#### BACKGROUND

In 2011, Brazil along with Indonesia, Mexico, Norway, Philippines, South Africa, the United Kingdom and the United States, made a commitment to promote transparency and citizen participation, which led to the founding of the Open Government Partnership (OGP). The OGP provides a platform “for domestic reformers committed to making their governments more open, accountable, and responsive to citizens”.<sup>126</sup>

Brazil’s efforts on promoting transparency commenced in 2000 when Congress passed the Fiscal Accountability Act, which created an obligation for the public sector, as a whole, to report on their income and expenditure. Prior to the 2000 Act, public bodies submitted formal return reports (not electronic) setting out the activities of the department had undertaken during the fiscal year and where the money had been spent; however, there was requirement to spend a minimum amount on health, education and other civic amenities.

In 2004, the former Minister of the Office of the Comptroller General (CGU) proposed an electronic transparency portal as a ‘good practice’ to enhance transparency and accountability by providing access to the information to members of the public as well as promoting public engagement and participation. This led to the creation of the Open Budget Transparency Portal (a technology-based portal) with an accompanying legislative framework.

The Executive made it mandatory for payments to every public agency to be routed through one unified system to control budget and expenditure; the CGU then brought the data together and made it available on the portal’s website, which could then be accessed by all users. The Transparency Portal also allowed members of the public to make inquiries about public expenses and income.

However, there were initial practical difficulties as members of the public found it difficult to understand the system; the complex language and technology put it beyond the reach of the average citizen. Equally, it was difficult to trace the payments to the end-user. For example, Brazil had introduced a policy to steer children in poorer areas toward education by making a payment to their families in an effort to remove such children from the child labour market; however, the unified system meant that only one transaction was registered: the payment to the bank. The bank would then disperse the money to the families, but there were no checks in place to ensure that the money actually reached the families. This created the risk of corruption. So the system was simplified to reflect the entire payment chain, making the information available to the public.

The CGU was also responsible for auditing money movements and achieved this through a wider outreach and citizen engagement programme and through training workshops (including online) for civil society organizations on how they could help trace whether payments were reaching the correct recipients; this helped CGU to trace the payments and improve its data.

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#### 125 Sources

1. Telephone interviews with representatives of the Open Budget Transparency Portal, Camila Colares Bezerra and Cibelle Cesar Brasil.
2. Open Data’s Impact (January 2016) Brazil’s Open Budget Transparency Portal: Making Public How Public Money Is Spent (by Auralice Graft, Stefaan Verhulst and Andrew Young, January 2016).  
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3. Transparency International, Anti-Corruption Helpdesk, Successful Anti-Corruption Reforms  
[https://www.transparency.org/files/content/corruptionqas/Successful\\_anti-corruption\\_reforms.pdf](https://www.transparency.org/files/content/corruptionqas/Successful_anti-corruption_reforms.pdf)
4. OECD Integrity Review of Brazil: Managing Risks for a Cleaner Public Service, OECD 2011:  
<http://www.oecd.org/gov/ethics/48947397.pdf>;  
<http://www.oecd.org/publications/brazil-oecd-integrity-review-9789264119321-en.htm>

126 <https://www.opengovpartnership.org/>

Today, the Transparency Portal provides information about all public expenditures, wages and salaries of all public servants and about companies subject to administrative sanctions for federal and local contracts; this allows a government official at the federal and local levels to check the trustworthiness of a supplier. At present, the Transparency Portal does not include a public register for beneficial owners, although more and better data are being published.

In addition to the Transparency Portal, Brazil has passed a number of laws and other initiatives to enhance transparency, including:

1. In 2009-2010, the access to information project (supported by UNESCO) was launched and Brazil reviewed the freedom of information laws of other countries to consider how the initiative would work in Brazil and the resources, including legislation and technology/systems, that may be necessary for successful implementation. Cross-governmental consultation, along with the participation of civil society, led to the Access to Information Law, which was published in 2011 and came into force in May 2012. The law enhanced the information that was publicly available, including public access to federal, state, provincial and municipal public documents, daily online updates (including about which agency has or has not provided information). The CGU works with the Open Government Partnership in delivering the open data, and quarterly reviews are carried out to assess progress with Open Data.
2. A nationwide conference on transparency (CONSOCIAL) was organized in 2012, involving more than 100,000 Brazilians and providing for a national platform to debate issues relating to transparency, meaningful citizen participation within the public administration, and the fight against corruption.<sup>127</sup>

## WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

At the very first stage, Brazil identified corruption risks to adequately evaluate the situation. The compliance monitoring and digitalization within public service have drastically improved the situation. Additionally, public outreach and engagement programmes showed the government's commitment to make the difference. The government also highlighted the importance of public participation and education. Other important aspects that drove success were political will to promote transparency and build upon it; support at the presidential level; collaboration and coordination across ministries and public bodies; and support from stakeholders in collating and providing information. Moreover, Transparency International has been promoting transparency and bringing governmental as well as departmental action into public focus. It created one unified system across Brazil and replaced previous systems. This is particularly significant, given the size of Brazil, which has over 100 agencies at the federal level; dealing with multiple systems would have been impossible and have inevitably led to failure.

### HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

In promoting the Transparency Portal, corruption prevention and the improvement of management were foremost in the concept. This has been largely achieved.

The Transparency Portal is considered one of the most important e-government initiatives for promoting transparency in public spending and increased citizen participation. It is also regarded as one of the country's primary anti-corruption tools, registering an average of 900,000 visitors each month.<sup>128</sup> The OECD also acknowledged the role of the Transparency Portal in providing access to information prior to the law's passage in 2011.

<sup>127</sup> Open Data's Impact Brazil's Open Budget Transparency Portal: Making Public How Public Money Is Spent (by Auralice Graft, Stefaan Verhulst and Andrew Young, January 2016).

<sup>128</sup> According to Open Data's Impact (January 2016) Brazil's Open Budget Transparency Portal: Making Public How Public Money Is Spent.



The publication of the information had a direct impact on any improper behaviour, as the information was publicly available and members of the public were able to raise queries and alert wrongdoing; the Transparency Portal acted as self-correcting tool as improper behaviour decreased; it forced individuals and management to behave ethically and to be accountable for their conduct. For example, in 2008, the CGU published the expenses that public officials had incurred through prepaid cards provided to those officials. This practice, along with the manner in which the money was spent by public officials, was criticized by the public, media and civil society organizations and helped to reduce misuse by 40 percent; this would not have been achieved without the use of the Transparency Portal.

The success of the Transparency Portal has led to more improvements and more information being publicized. In 2016, Brazil adopted an open data policy for all government data, which required all agencies to analyse the information they held and to publish the data that could be made public. The exercise is monitored by the CGU and, in instances of non-compliance, the CGU works along with the relevant agency's internal auditors and recommendations for compliance are made. In the event of non-compliance with the recommendations, the CGU reports the matter to an appropriate agency, including law enforcement; this gives the CGU additional leverage in promoting the publication of information and data.

## LESSONS LEARNED

Given the size of Brazil, which has more than 5,000 municipalities, it was almost impossible to check how public money was being spent, until the introduction of the unified system and the Transparency Portal. Local governments across Brazil as well as a number of civil society organizations (where they have access to technology) have adopted this.

The Transparency Portal has also been used as a model in Mexico, Chile, El Salvador and Paraguay. Brazil provided assistance through training workshops and country visits and has shared its experience with other countries and regions through the OECD and Inter-American Bank.

Brazil's Transparency Portal has been widely hailed as a successful example of using open data to reduce corruption and to control public spending. Over the years, it has received numerous awards and much recognition, including the 2007 Brazilian IT and Government award (e-Democracy category). In addition, it was presented as a best practice case study at the 2008 Meeting of the UN Convention against Corruption in Bali, at the 2009 Transparency Initiative Conference on International Aid in The Netherlands and at the 2009 Third European Meeting on Anti-Corruption in Brussels.<sup>129</sup>

Based on the experience in Brazil, a number of factors must be considered if a state wishes to adopt a Transparency Portal. These include:

1. Political will, leadership and commitment.
2. Collective commitment across ministries and departments.
3. Clarity on the strategy and its aims (why it exists, how it will be achieved, the implications (including resources and time) for the various agencies and their personnel, and the consequences of non-compliance/failure for the agency and country as a whole).

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<sup>129</sup> Ibid., p. 10.

4. Requiring (through legislation) agencies to provide the information to the relevant body. Brazil had started with a weak legal framework, but legislation addressed this.
5. Transparency Portal depends entirely on the data available within a state, so it may be necessary, especially in larger countries, to set up data centres to collect information.
6. The creation, maintenance and effective working of a Transparency Portal require a number of specialists: IT expertise, skilled personnel to assess the information (e.g., business analysts) and administrative support.
7. Personnel of appropriate seniority who can negotiate with the other agencies to obtain the data.
8. Regular consultation with the agency responsible for the portal on ways to enhance transparency, policy considerations and legislation that may be required to achieve the goal.
9. Attention should be paid to the frequency of data updates (in Brazil, the data are updated daily); however, this will largely depend on the resources available in a state and the accuracy of the data. Where daily updates pose a challenge, a state may choose to make monthly updates. The key is to make the information readily available to the wider society.
10. Mechanism or platform to exchange good practices across the public sector.
11. Public awareness-raising and guidance on how to use the system, provide feedback and submit queries.
12. Simplicity in the system so that it is user-friendly and easily navigable.
13. Data must be entered in a structured, easy-to-read format.

## Chile<sup>130</sup>

### BACKGROUND

In Chile, public procurement represents 4.2 percent of GDP and is worth tens of millions of US dollars. Until the introduction of ChileCompra in 2003, the procurement system was entirely paper-based and each public body had its own systems, processes and rules; this created the perfect ground for corrupt behaviour as there was no transparency at any stage of the procurement process. The scale of corruption in Chile rose to such extent that it became necessary to put in place measures to address the problem as well as prevent opportunities for corruption. The need to move away from a paper-based process to an electronic system became all too obvious.

The Ministry of Finance wanted to improve public management and to open up the market of procurement to meet standards of integrity and increase transparency; the Procurement Law 19.886 (the accompanying regulations came into force in 2004) was passed in 2003 and led to a fundamental shift from internal department rules to one national law that governed all bodies.

The law also established the Public Procurement and Contracting Department ('ChileCompra' – 'DCCP') to develop and manage the Information System and required all public bodies<sup>131</sup> to conduct their contracting processes through the ChileCompra electronic system. ChileCompra is, therefore, a Central Procurement Bureau (CPB), which manages the procurement system and public procurement for goods and services for over 650 public bodies (national and local); it is not a regulatory or oversight body.

One its main functions is to monitor public procurement, which is conducted through two main monitoring tools:

- Mercadopublico API (Application Programming Interface) was created in 2014 to enable the development of new applications for public procurement data management.
- ChileCompra Observatory was developed in 2013 to monitor the process, identify breaches and make recommendations to the relevant public body. The main aim of the ChileCompra Observatory is to contribute to increased transparency and integrity of the procurement and contracting system.

### WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

As an initial step identifying corruption risks, adopting effective, but short and to-the-point legislative framework and creating an enforced monitoring and compliance through additional laws and regulations were a key. In fact, the Chilean Procurement Law was deliberately short and clear, which allowed it to be applied across the public sector. The legislation is supplemented by regulations, which are updated regularly to try to keep up with new challenges or problems. Regarding the legislative framework, if the primary legislation had

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<sup>130</sup> Sources

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2. Dirección Chile Compra: Methodology for Assessing Procurement Systems, the MAPS Test Assessment, Final Report (June 2017) provided by ChileCompra.
3. OECD Public Governance Reviews: Public Procurement in Chile, Policy Options for Efficient and Inclusive Framework Agreements: [https://read.oecd-ilibrary.org/governance/public-procurement-in-chile\\_9789264275188-en#page1](https://read.oecd-ilibrary.org/governance/public-procurement-in-chile_9789264275188-en#page1)
4. Powerpoint presentations on ChileCompra Observatory by Dora Ruiz, Head of the Framework Agreement Division of ChileCompra (provided by ChileCompra).
5. Powerpoint presentations on ChileCompra (2015): Implementation of an e-public procurement system by Trinidad Inostroza, Director of ChileCompra (provided by ChileCompra)
6. Six Strategies to Fight Corruption (2014), World Bank (Augusto Lopez-Claros): <http://blogs.worldbank.org/futuredevelopment/six-strategies-fight-corruption>

<sup>131</sup> This does not include private entities receiving public funds.

been more prescriptive, any subsequent amendments would have been an onerous process, as it would have needed to go through the entire parliamentary system. Regulations, on the other hand, are easier to update. More important, the engagement of different stakeholders of new ways of conduct and clearly explaining why the changes are essential were another step in ensuring that the compliance was clear-cut and evident. The Chilean case also put emphasis on digitalization and the benefits it brings to the buyers and sellers by creating a transparent, accountable, credible and effective, yet easy-to-use system.

### HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

The introduction of ChileCompra created transparency in a system that was initially entirely paper-based and relied entirely on individual integrity. It has helped to reduce the risk of unscrupulous behaviour, as the information is in plain view of the public and other competitors who can raise a complaint. It is not uncommon to find queries and challenges being made by members of the public. It is recognized that a risk still remains, in particular, at the outset of the procurement procedure or at delivery stage; however, this is addressed through additional laws and regulations, such as codes of conduct and of conflicts of interest. In addition, the Comptroller General's Office conducts audits and is the oversight body for public procurement with powers to examine the entire procurement process; this creates an additional layer of scrutiny and breaches or improper conduct are likely to be identified. The multifaceted approach provides a sound framework for corruption prevention.

The introduction of e-procurement and state-wide internet portals has had a significant impact in reducing corruption opportunities and enhanced transparency in public finance management; this is the real success of ChileCompra.

The information is available to the business community, public organizations and ordinary citizens. The usage of ChileCompra has grown over the years and currently more than 18,500 public officers are authorized to use the system, with 120,000 providers, and it conducts purchases worth US\$12 billion per year (approximately).

In 2014, ChileCompra established 'Citizen Consultations' to promote citizen participation and receive feedback for improving the system; this engagement has been well received by the wider public. It also created the Civil Society Council (COSOC), which allows representatives of civil society organisations to participate.

There are inherent weaknesses and challenges for ChileCompra: it is not a regulatory body and, therefore, cannot steer or influence public policy issues. For example, if a department wants to buy computers, then ChileCompra cannot define or require that the department or agency confine it to, say, three types; it remains a matter for the individual department and this does create some risk of corruption. ChileCompra simply provides the platform for procurement.

### LESSONS LEARNED

The role of ChileCompra is considered fundamental in the promotion of competitiveness, efficiency and efficacy in procurement processes, and its establishment has been well recognized and received by international organizations such as the World Bank and the OECD. According to the World Bank, it has helped to "create one of the world's most transparent public procurement systems".<sup>132</sup>

<sup>132</sup> Six Strategies to Fight Corruption (2014), World Bank (Augusto Lopez-Claros): <http://blogs.worldbank.org/futuredevelopment/six-strategies-fight-corruption>

Based on the experience of ChileCompra, the following need to be considered when creating a similar electronic procurement system:

1. The starting point in a system such as ChileCompra is to analyse the existing purchasing processes, identify trends and then draw up a simple matrix; this helps to identify inappropriate behaviour patterns and vulnerabilities at the outset. The second step is to review claims from suppliers against buyers (in ChileCompra, over 10,000 claims were reviewed and analysed). The combined data help any agency to understand the real relationship between suppliers and buyers, which, in turn, helps to define the scope and extent of action that is necessary. The data also help to create red flags or alerts.
2. The database acts as a depository of information and it is vital that it be created, and held, in a structured way.
3. The introduction of such a system fundamentally changes the culture of a workplace and it must be managed at the start. It will also require changes in management structures to embed a culture of accountability and requires effort and commitment.
4. The system itself must be fully transparent and any attachments easily readable. Equally, the number of attachments must be kept to a minimum, as it can act as a deterrent.
5. The platform/website/portal must be user-friendly and free of complexity and not frustrate the user. It must be remembered that, for buyer, it is not a choice, but suppliers are quite sensitive to frustration and may abandon it! Often, digitization is not the norm in certain sectors, such as small and medium-sized enterprises, and it is, therefore, essential that they be not alienated. A consequence of frustrating users is that, if they move away as suppliers, it creates a vacuum in the market (geographical or sector). Therefore, the need for a simple interface is essential.
6. The system must be in compliance with the law but also empower the e-market and make it more transparent.
7. The legal framework must be clear for all the stakeholders: CPB, buyers, suppliers, etc. The primary legislation must be simple, clear and short, setting out the key intent. The operational aspects can be addressed through regulations, which are easier to update when the need arises.
8. The electronic platform must be able to withstand the demand and capacity; it is, therefore, critical that sufficient resources (financial and personnel) be put in place to allow it to succeed. There is also a need to maintain the system and provide continuous training to personnel.
9. Capacity-building – the need to professionalize: as a CPB investment is critical, it must be ethical and with high integrity.
10. It is an important monitoring system and must, therefore, be robust in delivering the service expected of it. This includes the need to professionalize its own staff to act ethically.
11. The incorporation of the public entities into the system is likely to be slow and gradual. In Chile, there were 350 users in 2003 and, by 2016, the number of users had gone up to 650. At the same time, it may not be possible to include all potential users across society; this is something that needs to be built over the years.

## Cambodia<sup>133</sup>

### BACKGROUND

Years of conflict left Cambodia a fragile and weakened state with a non-functioning public sector and poor public financial management structures: reform was critical to its existence. Initial domestic efforts produced poor results and engagement with development partners became a key part of its efforts.

With the assistance of 10 development partners, Cambodia began major reform programmes. Four main reform programmes (the 'Rectangular Strategy') were identified, with a strong focus on public financial management (PFM) systems. The PFM Reform Programme (PFMRP) programme was proposed by the Ministry of Economy and Finance, supported by the Prime Minister and development partners, and launched in 2004. The rationale for the focus was simple: once the finance systems were in good order, all other reforms would follow and would also help Cambodia achieve economic growth to help the development of the state and poverty reduction.

The reform programme is currently in its Third Phase (2016 – 2020) and comprises five parts:<sup>134</sup>

1. Further strengthening budget credibility
2. Further strengthening financial accountability: System, mechanism and legal frameworks are implemented efficiently and effectively by 2018. Accounting, recording and financial reporting systems are implemented efficiently, effectively, transparently, accurately and timely.
3. Budget-policy linkage
4. Readiness for next stage
5. Support the successful and sustainable PFM

Part 2 address financial accountability and "refers to the accountability for systematic preparation and procedure of budget and financial management in accordance with rules and principle of public financial management. To ensure financial accountability, monitoring system, recording and reporting preparation more efficient and timely which is an important target of stage 2."<sup>135</sup>

### WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

Cambodia's success primarily rests on the strategy and key elements of PFMRP. Those are: 1) strong political and government support and commitment to the reforms; 2) sequencing of reforms, meaning that there was continuous engagement; and 3) staged planning of each phase, which, despite being slowly and carefully implemented, was effective in its execution because of its clear-cut approach combining strategic, operational and tactical strategy. At

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<sup>133</sup> Sources

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2. Website of the Ministry of Economy & Finance: <http://www.mef.gov.kh/pfmrp.html>
3. Ministry of Economy and Finance, 2016 Annual Performance Report on Public Financial Management Reform Program-Stage 3
4. "Rectangular Strategy" for Growth, Employment, Equity and Efficiency Phase III, Of the Royal Government of Cambodia of the Fifth Legislature of the National Assembly, September 2013 Report: <http://extwprlegs1.fao.org/docs/pdf/cam145560.pdf>
5. FM Solutions – Building the foundations for public financial management reforms – Cambodia (by Sok Saravuth, Peter Murphy and Robert Taliercio, 2008): [www.worldbank.org](http://www.worldbank.org)

<sup>134</sup> Pages 3 and 4 of the Ministry of Economy and Finance, 2016 Annual Performance Report on Public Financial Management Reform Program-Stage 3.

<sup>135</sup> Ibid., p. 28.

the strategic level ('top-down' approach), the overarching activities were identified, which were then developed by operational teams and delivered by those on the ground ('bottom-up' approach). A 'Rectangular Strategy' was also developed to reflect the four main areas of reform and PFMRP was an essential part of that strategy. Additionally, the active public awareness-raising, strong engagement of multiple stakeholders, robust legislative reforms, coordination and collaboration have been highly prevalent in Cambodia's case.

#### HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

- The core of the strategy and reforms is good governance and addressing corruption through linked reform programmes across other sectors such as the judiciary, the armed forces and the wider public administration. Corruption prevention measures include educational and awareness-raising programmes, strengthening institutional accountability, improving citizen engagement, engagement with the private sector and improving law enforcement.<sup>136</sup>
- At the institutional level, corruption prevention measures are to include legislative and regulatory frameworks to address conflicts of interest and the general integrity of the public sector, which will be reflected with internal departmental rules. An equal effort is to be undertaken to strengthen oversight bodies to enhance transparency and accountability. Although there is still a way to go for Cambodia to achieve the level of transparency and accountability that would fully address corruption prevention, the public financial management reforms have been strengthened during each phase of the reform programme with better levels of accountability – particularly in phase 2, which focused on improving financial accountability.
- The reforms have helped Cambodia make real strides toward meeting the SDG goals. The country ranked fifth among developing countries in achieving the MDGs and first in the Asia-Pacific region.<sup>137</sup>
- The recruitment of staff on merit, particularly those in key positions, helped in its success.
- External agencies and organizations recognize the efforts of the reform programme. "Indeed, last year provides a good example of how PFM reforms and fiscal policy work hand in hand for macroeconomic stability [...] and] development partners remain firmly of the view that PFM is an important priority for both strengthening governance and improving service delivery. We are encouraged by the progress that has been made over the last year, and by the ownership of the program."<sup>138</sup>

136 Page 13 of the "Rectangular Strategy" for Growth, Employment, Equity and Efficiency Phase III, Of the Royal Government of Cambodia of the Fifth Legislature of the National Assembly, September 2013 Report.

137 Ibid., pp. 2-4.

138 Remarks by Mr. John Nemes, IMF Resident Representative in Cambodia, on behalf of Development Partners, May 28, 2008 (end of Phase 1) - Cambodia: Public Financial Management Reform Program, Annual Review 2008.



## LESSONS LEARNED

1. Strong leadership and political commitment (at every level) along with wider public support are essential requirements; this alone will dictate the success – or failure – of a reform programme.
2. Based on the experience in Cambodia, reform programmes may take decades before they yield results; long-term commitment from a country is thus necessary. Therefore, it helps to start with a clear vision and purpose that are communicated to the wider society.
3. At the outset, coordination and consultation between all stakeholders and government is necessary, along with clear lines of responsibility to ensure that tasks are carried through. This must be supported by recruiting individuals on the basis of merit, especially for key positions.
4. Identify the sectors that need reform and prioritize them accordingly.
5. Development partners should be fully apprised of developments, progress and challenges if their support is to be maintained. This helps in their support efforts (resources and advisory).
6. Build a reform programme in phases with realistic goals and targets; the achievements during each phase will help to dictate the next step and also help to address challenges.
7. The lead-time on some activities is likely to be long and it may be worth considering pilot projects. The pilot projects will need to be monitored to identify gaps and lessons before replicating across the public sector.
8. A continuous review of the reform programme as a whole, with regular reporting to development partners. This assures them that genuine reform efforts are underway and allows them to align their financial and technical assistance commitments with the project's phases.

## Albania<sup>139</sup>

### BACKGROUND

The efforts to promote greater transparency and reduce corruption in public procurement in Albania have been a combined effort of the government, civil society organizations, such as Partners Albania, an independent NGO, and international donors, particularly USAID. The high rate of corruption, insider information and collusion (including amongst bidders) in public procurement could no longer be tolerated; the government and donors made it a priority.

At the national level, the electronic procurement system was set up in 2008 in Albania under the two-year Agreement (2006-2008) of the Millennium Challenge Threshold for Albania (MCATA) between the Albanian Government and the Corporate of the Millennium Challenge, administered by USAID. The initiative included putting in place a legislative framework and providing general support for the Public Procurement Agency by creating a centralized electronic procurement system.

At the local level, Partners Albania, an independent NGO, together with other civil society organizations, pushed for wider participation and public reporting. Between 2012 and 2015, Partners Albania monitored public procurement across six municipalities (local government) through an online review and interviews with local economic operators to assess the impact and implementation of the 2008 procurement law at the local level. The study revealed that the success of the initiative was limited; however, based on past procurement history, it was certainly a step in the right direction. The concerns voiced by the users related to the conduct of the management committee in granting contracts to the same providers and, in their view, the terms of reference are pre-determined and agreed upon prior to the tender being advertised through the electronic system.

### WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

The practices have shown only limited success, yet have been in the right direction. The governmental and political will and commitment are present, but the changes require time and continuous efforts from the public and institutions. So far, digitalization and raising public awareness have been the key initiatives to pave a way forward. Equally important was continuous donor engagement that assisted reform implementation and careful execution. Legislative frameworks and technical and human capacity have worked in tandem, building confidence and understanding in the system.

#### HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

- The initiative is seen as reducing corruption and helping to remove the risk of corruption in procurement; there has been a noticeable drop in corruption. Since 2012, there has been a drastic reduction in the number of corruption allegations against public officials.

<sup>139</sup> Sources

1. Skype interview with Ariola Agolli, Partners Albania (NGO) and publications provided by Partners Albania
2. Use of Electronic Procurement System at local level Monitoring Report by Partners Albania ([https://www.researchgate.net/publication/283326945\\_Use\\_of\\_e-procurement\\_system\\_at\\_local\\_level](https://www.researchgate.net/publication/283326945_Use_of_e-procurement_system_at_local_level))
3. Use of on-line procurement system at local level, Partners Albania
4. [http://partnersalbania.org/wp-content/uploads/2015/12/e\\_procurement\\_study.pdf](http://partnersalbania.org/wp-content/uploads/2015/12/e_procurement_study.pdf); E-procurement system in Albania, Impact and Lessons Learned (Reida Kashta, Public Procurement Agency (PPA), Director of Legal, Monitoring and Publication' Directory, in Albania): <http://www.ippa.org/IPPC5/Proceedings/Part2/PAPER2-5.pdf>

- At the national and local levels, the system has helped to promote and enhance transparency, which, in turn, has helped to increase trust in the government and the system as a whole.
- Although corruption prevention is far from realized in Albania, it is an encouraging step forward.
- Prior to the introduction of e-procurement, there was limited information available on tender bids and contracts, thereby allowing a cosy relationship to be built between the parties; this, as in other countries, helped to create and foster corrupt conduct and abuse of public office.
- The electronic system allows all registered users to view tenders, submit bids and monitor the process up to and including the final stage of awarding of the contract. This has created an opportunity for public scrutiny and more transparency.
- It has widened the number of potential suppliers, which helps to reduce the opportunity of engaging the same contractors through collusion; however, concerns still remain about the integrity of the officials.

## LESSONS LEARNED

1. Political will to change is a key factor; in Albania, candidacy for EU membership and push from donors also provided additional leverage.
2. In line with the experience of other countries, it is important that the legislative framework, the technical capability of the system and training of personnel take place in a methodical and concerted manner to ensure its success on launch; in other words, it should be 100 percent effective to avoid loss of confidence.
3. Regular maintenance and monitoring are just as important. Creating a system is not sufficient in itself – it must be supported by trained personnel.
4. Consider a pilot initiative first to assess its operational capability before moving to statewide implementation.
5. Outlying areas also need to be considered, as they function differently from central administration and different considerations apply.
6. The electronic system needs to be 'fit for purpose' for the relevant agency, as different practices and considerations will apply, depending on the nature and work of the public agency, its size and its internal structures.
7. Engagement with the business community and their support for the initiative are also a key factor in success, without which there is a risk that, as 'suppliers', they may disengage from the provision of services to the public sector. This would be an undesirable consequence.
8. The procurement law may need to be supplemented and supported by other legislation, such as freedom of information, codes of conduct and guidance on managing conflicts of interest, to overcome any residual concerns of improper behaviour at the start.

## Theme 6: Public Reporting and Transparency in Public Administration

### Georgia<sup>140</sup>

#### BACKGROUND

Anti-corruption reforms of the public sector in Georgia were introduced between 2000 and 2001, following a series of turbulent events: war of independence, armed conflicts and virtual economic collapse. However, the lack of real political will and concerns of high-level corruption marred real progress, which led to the Rose Revolution of 2003 and the formation of a new administration in 2004.

The incoming administration of President Saakashvili placed anti-corruption as one of its top priorities and introduced a number of reforms across those sectors and agencies that were considered to be most corrupt: police (in particular traffic police), customs, tax administration, the power supply sector and the wider public sector (both national and local government). The widespread corruption had virtually paralyzed the country to the extent that the "[t]reasury was empty, and pension and salary arrears totalled (sic) more than GEL 400 million (almost US\$180 million)".<sup>141</sup>

The Saakashvili administration adopted a two-pronged approach to its anti-corruption efforts: investigation and prosecution of prominent public officials, alongside a zero-tolerance policy for corruption, particularly within the most vulnerable departments, especially the tax administration. The aim was to raise and collect taxes and provide an injection of public finance into the Treasury. At the same time, a long-term public sector reform strategy was adopted to address the embedded corrupt culture across the public sector.

Given the scale and extent of corruption, the anti-corruption efforts focused on eight areas: policing, tax collection, customs, the energy power sector, deregulating business, public and civil registries, education (with particular emphasis on university admissions) and decentralization of public/municipal services. Although Georgia's anti-corruption efforts were targeted and implemented to address embedded corruption rather than preventive measures; the introduction of some of the measures, however, laid the foundation for future preventive measures. The reform measures paved the way for corruption prevention.

Prior to the reforms, most Georgians had to pay bribes to a public official for routine services. A significant development took place in the public and civil registries and led to:

- Creation of a national registry agency: the National Agency of Public Registry (NAPR), which replaced the previous decentralized agency that had been particularly prone to corruption and influence from local government and councils;

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141 Page 6, 'Fighting Corruption in Public Services: Chronicling Georgia's Reforms', The World Bank (2012).

- Computerization throughout the registry service and removal of unnecessary forms;
- Introduction of photo identification cards;
- Restructuring of roles and responsibilities of the staff to avoid conflicts of interest, in particular, for land registration;
- Procurement, accounting and payroll functions were removed from local to central control;
- Clarity of fees payable;
- Recruitment of staff and changing the internal culture on the role and function of a registrar;
- Increase in salaries and improved incentives;
- Introduction of 'public service halls' that allow members of the public to access services across a number of agencies from a single portal through either self-service or assisted service;
- Increasing public awareness.

The anti-corruption strategies, and their effective implementation, saw Georgia making real progress with the success being reflected in the Transparency International (TI) Global Corruption Barometer in 2010 and the World Bank Report of 2012. The trend has continued and in 2015 the TI Corruption Perception Index ranked Georgia 48 out of 168 countries;<sup>142</sup> in 2016, the TI Global Corruption Barometer 2016 placed Georgia as the 'regional leader for a low rate of corruption'.<sup>143</sup>

### WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

First and foremost, with strong leadership and commitment to the change, the government developed a robust national strategy that was well developed, taking into consideration and identifying every weak aspect of corruption and its risks. The World Bank, in its 2012 Report, identified 10 factors that have led and contributed to Georgia's success and all of which, in its view, are capable of being replicated in other states:

1. Exercise strong political will;
2. Establish credibility early;
3. Launch a frontal assault;
4. Attract new staff;
5. Limit the role of the state;
6. Adopt unconventional methods;
7. Develop a unity of purpose and coordinate closely;
8. Tailor international experience to local conditions;

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142 According to TI Georgia, "Georgia ranks highest among the 19 countries of Eastern Europe and Central Asia. Georgia also scored higher than a number of EU member states: Hungary, Slovakia, Croatia, Bulgaria, Greece, Italy and Romania."

<http://www.transparency.ge/en/post/corruption-perception-index-cpi/georgia-ranks-48th-among-168-countries-2015-corruption-perception-index>

143 TI Georgia.

9. Harness technology;
10. Use communications strategically.

Moreover, the U4 Anti-Corruption Research Centre, in its publication,<sup>144</sup> includes external pressures, such as the prospect of joining the EU in the future, as a key contributor to national anti-corruption success.

#### HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

- The introduction of technology helped to remove unnecessary steps in the registration process, thereby reducing the risk of a corrupt official.
- It promoted transparency and accountability in public registries and across a number of public bodies. It also addressed public support for the reforms.
- The introduction of codes of conduct helped the staff to manage conflicts of interest, which were a key concern.

#### LESSONS LEARNED

1. Obtain a strong mandate from the population and wide public support for reform, particularly in states emerging from long-term armed conflicts and/or entrenched corruption.
2. A countrywide shared vision for change should be built and nurtured.
3. There should be removal of opaque and unnecessary bureaucratic procedures and replacement with technology to help remove petty corruption by bureaucrats.
4. The use of technology has been successful in promoting transparency and accountability.

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<sup>144</sup> U4 Expert Answer: Anti-corruption progress in Georgia, Liberia, Rwanda: <https://www.u4.no/publications/anti-corruption-progress-in-georgia-liberia-and-rwanda/>

## South Korea<sup>145</sup>

### INTRODUCTION

Since 1993, South Korea has made the eradication of corruption its highest priority. To that end, it introduced a number of legislative reforms and set up institutions to address corruption. A key focus of the reforms was an emphasis on preventive measures and, in 2008, the Anti-Corruption and Civil Rights Commission (ACRC) was established to take this forward in a more concerted way. According to the ACRC website, it has four main functions, which include, “Build a clean society by preventing and deterring corruption in the public sector”.<sup>146</sup>

ACRC and the former anti-corruption bodies (Korea Independent Commission against Corruption (KICAC), Office of the Ombudsman, and the Administrative Appeals Commission) introduced a number of preventive measures, including:

- Mandatory asset declarations for high-level officials;
- Widening the range of public officials required to register assets;
- Imposition of post-employment restriction;
- Freedom of Information Act, which came into force in 1998;
- Code of Conduct for Public Officials in 2003;
- A nationwide e-system (‘one-stop shop’);
- Education and training (promoted at schools, the wider public and within the public sector);
- Integrity assessments (IAs).

The preventive measures, outlined above, largely follow international good practice and are the obligations of UNCAC; however, two initiatives deserve particular mention within this study: the introduction of integrity assessments and the creation of a unique online portal, ‘e-People’.

## Integrity Assessments

### BACKGROUND

In 1999, the Presidential Special Committee on Anti-Corruption was established to provide advice to the President on anti-corruption and how public institutions – in particular, those that had raised concerns – could be improved. The existing diagnostic tools were somewhat limited in their impact, as the surveys tended to focus on a general perception of corruption rather than on specific instances of corrupt acts experienced by the individual. A new tool was required in order to strengthen the feedback function of anti-corruption policies; IAs were proposed by the Committee, loosely based on the TI model, to measure the perception of corruption and those aspects

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<sup>145</sup> Sources:

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4. A Review of the Effectiveness of the Anti-corruption and Civil Rights Commission of the Republic of Korea, Arsema Tamyalew, World Bank: <https://www.acauthorities.org/sites/aca/files/casestudy/Case%20study%20ACRC.pdf>

<sup>146</sup> <http://www.acrc.go.kr/en/board.do?command=searchDetail&method=searchList&menuId=020111>



of public service that posed heightened corruption risks. IAs would be deployed in tandem with existing tools to provide a comprehensive picture of corruption risks as well as act as a deterrent, as the results of the surveys would be published and be publicly available.

Once the IA had been approved as a tool, a team of anti-corruption experts and social researchers were brought together by the Committee; their task was to develop the components of IA with the benefit of expert opinions and academic research to assess the strengths and weaknesses of existing corruption diagnosis tools. The IA tool was developed in 1999 and three pilot tests were conducted between 2000 and 2001; it was finalized and deployed in 2002.

The key aims of the IA were to enhance integrity and encourage voluntary improvement within public institutions, improve the transparency of administrative services for the wider public and provide the users of administrative services with fair and transparent treatment.

The core method of the IA is survey-based and the data is gathered through an internal assessment (public sector employees or 'internal customers of public organizations') and external assessment (members of the public). Unlike the TI model, the IA model includes those who have had personal experience of corruption.

The IA is conducted on an annual basis. The ACRC sends the outline of the IA to the public institutions in March, followed by information on specific business plans and the manner in which surveys are to be sent to respondents (in June). The survey is conducted between August and November, with the results being published in December. The ACRC requests target public institutions to submit the list of names of those who took part in the survey.

Once the surveys are completed, the information, including the list of names of participants and the contact number of the people who have used administrative services within past year, is submitted to the ACRC. The results are then integrated and a final assessment report is drawn up.

Since its introduction in 2002, IA has been conducted on a yearly basis. The popularity and the use of the tool have grown since its first launch, when 30,639 individuals took part and 71 public institutions were the subject of the survey; in 2016, 251,985 individuals participated in the survey to assess 733 public institutions.

## WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

Based on South Korea's experience at the start of the project in 2002, there was a need for trained personnel who could conduct the survey, along with statistical experts, telephone interviewers (as well as staff members of target public institutions) in order to reach out to a wide audience. In the case of South Korea, 30,639 individuals took part in 2002. Trust and confidence were also crucially addressed through meetings with the public sector, which worked through the initiative and its aims and objectives, as well as seeking their opinions, allowing them to discuss their concerns and encouraging feedback. It was important that all those affected have a 'buy-in' into the system, even if there was a level of criticism. After 15 years of being used in South Korea, there are still critics of the tool within the public institutions; nevertheless, all institutions now cooperate.

When IA was first introduced, there was resistance from the public institutions that had been selected as 'target institutions' for the first survey in 2002. Those within the various institutions resented the disclosure of the levels of corruption within their institutions, rejected the methodology and, by and large, refused to cooperate with the survey or implement any changes based on the results of the survey. The heart of the initiative was the encouragement of public institutions to voluntarily introduce changes to address and prevent corruption based on the survey results. Trust in the IA, the surveys and assessment results has been built slowly over the years, and its success is demonstrated by the voluntary programmes that have been introduced, and implemented, to enhance integrity by each of the 733 public institutions that had been the subject of the 2016. The survey also relies on the perception and actual experience of users of public institutions to gauge corruption (within the institution as a whole and within particular 'high-risk' areas) and integrity. Experience over the past 15 years, since the IA was introduced, has also shown an increase in the level of 'buy-in' by all public institutions, as well as a real drive to push for better results in IA surveys.

## HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

The success of the deployment of IA as a tool of measuring and preventing corruption across public institutions in South Korea can be illustrated by the following:

- ACRC gathers objective (rather than rely on internal self-assessments) feedback that provides a more accurate picture of corruption levels across the public sector, areas where corruption risks are higher and frequency of corrupt behaviour. Based on the results of IA, a targeted response can be put in place at the strategic and operational levels.
- The results of the survey, along with the comparative assessment that is undertaken under IA, have led the institutions to voluntarily introduce change and promote active anti-corruption measures that, in turn, have significantly improved the levels of general integrity.
- The survey results push upwards towards excellence and good governance, rather than pull downward to meet minimum legislative requirements on corruption prevention.
- The results of IA undoubtedly have an impact on the reputation (well received or otherwise) of the public institutions, which has led them to make continuous efforts, including developing corruption prevention initiatives (for instance, internal audits, strengthening whistle-blower protection measures, and training in ethics and integrity) in order to receive recognition.
- Based on the sub-indices of IAs over the past 15 years, the country has seen an improvement in integrity across the in the public sector, improved public perception and experience, an increase of voluntary anti-corruption efforts by each institution, and a steady drop in the rate of corruption experienced by the wider society.
- The monitoring of public institutions and their officials has been strengthened through IA, given that the survey includes actual incidents of corruption (thus making it more difficult for rank and file public officials to ask for improper payments or commit a corrupt act). This eventually contributes to the enhancement of integrity levels across the public sector.

## LESSONS LEARNED

The IA model has been replicated across a number of countries in the region, subject to necessary modifications: Bhutan (2008), Indonesia (2007), Mongolia (2009), Malaysia (2011), Viet Nam and Thailand (2013).

In general, the following factors must be considered when introducing or implementing IAs:

1. Political will and commitment. The IA initiative in South Korea was promoted by the Presidential Special Committee on Anti-Corruption and had presidential support.
2. As IAs are survey-based, a state will need to decide how simple or complex it wishes to make them. This will require a state to undertake an assessment of the scale, level and extent of corruption across its public sector and to model the tool accordingly.
3. Human and technical resources to implement the initiatives and conduct reliable surveys. A large-scale training venture needs to be planned and managed in order to build public confidence; a failure at this stage is liable to jeopardize the project.

4. Financial resources: A state will need the financial resources to build a statistical analysis system, to have proper facilities to conduct the telephone interviews and to pay for personnel and infrastructure costs.
5. Building the IA model might take a number of years (three years in the case of South Korea), which will have direct impact on resources (human, financial and institutional) and must be factored. A state will also need to be satisfied that the tool is fit for purpose and that, when it is launched, it does so without failure.
6. Building trust: It is vital that all the public institutions and their senior personnel understand what is being done and why; there is a real need to build trust and confidence at the very start of the project.
7. Voluntary improvement measures, based on the assessments, have been shown to produce much better results in public institutions that are introducing and implementing corruption prevention measures. Equally, the surveys help to identify those areas within the institution where the risk is high, thereby allowing for targeted measures. Depending on the level and scale of corruption within a state's public sector, it will need to decide whether voluntary or mandatory measures should be in place to respond to the survey results.
8. There needs to be continuous assessment of the IA model to ensure that it is capturing the right information, with modification accordingly. In 2002, when South Korea began the IA project, it limited the survey to those individuals who had experienced corruption within the 'target' institution. In 2012, that group was extended to include the wider public, employees of the target institutions and relevant experts, in order that an assessment could also be made of perception of internal integrity, irregularities during policy decision-making and integrity levels at the point of providing the service – all of which would have been difficult, if not impossible, for ordinary members of public who are not familiar with the inner workings of the relevant institution. For those states seeking to introduce IA, it may perhaps be worth including all three groups at the outset.

## 'e-People'

### BACKGROUND

In July 2005, South Korea introduced a project, 'e-People', to simplify citizens' access to the public administration, to streamline channels of communication to promote protection of their rights, and to encourage open communication. The complex public sector structures had acted as a barrier to access for members of the public, and the then President of South Korea introduced 'e-People'. Since its introduction 12 years ago, the platform is now shared by more than 910 public institutions.

The system was designed as an online portal that would enhance wider public participation by integrating the various online systems that were in existence, namely, the Public Participation Corner, e-People of the Presidential Office, and Complaints & Participation Corners of the Ombudsman of Korea. As the system needed to be designed and established, the initial budget for the portal was approximately 10.97 billion KRW (US\$9.29 million), with an annual maintenance expense of some 1.5 billion KRW (US\$1.27 million). The personnel include 14 public officials, 23 external (i.e., not internal) IT experts comprising six counsellors (help desk), 14 system operators and three system controllers.

The key aim of e-People was to create a system that would allow members of the public to lodge a complaint online and participate in policy decision-making without the inconvenience of attending the relevant administrative agency in person. This has shortened the time to address complaints and improved administrative service and general efficiency. Consequently, there is greater satisfaction with the level of public service, an increase in the number of e-People users and a simultaneous reduction of physical channels of communication. As the number of users increases, there is a need to introduce conflict checks within the system to address repetitive or collective complaints; this will be part of the 2018 next-generation e-People. It is anticipated that the next-generation e-People will also enhance the function of analysing big data and publicizing policy issues in advance to enhance public participation.

## WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

The purpose of establishing an online pan-governmental communication channel was to improve complaint-handling administrative service and its efficiency. The commitment and interest of top management, including the President, play the utmost important role for its successful creation and implementation. The ACRC also introduced awards for 'best-performing institutions' and the ACRC provides training and consulting programmes for those that had poor performance (based on e-People).

### HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

e-People is a public-oriented system and was extended in 2011 to handle 'budget waste' reports and in 2012 to publish public interest violation reports and civil complaints. The tool has come to play a key monitoring role and enhancing transparency of public administration countrywide.

## LESSONS LEARNED

The e-People system has been introduced in Tunisia. In 2018, the system opening ceremony of the "Tunisian e-People" system was held, marking the first case of actual operation of "e-People" in a country other than South Korea.<sup>147</sup> Indonesia has also expressed interest in introducing the e-People system. The Ombudsman's Office has met with representatives of e-People, which led to an on-site visit by Korean IT consultants to the Ombudsman's Office in 2016.

In implementing a system such as e-People, states should have the following in mind:

1. Political will of the senior leadership.
2. There is likely to be a level of resistance by those staff working at the various public institutions who are familiar with their own operating systems; in South Korea, there was objection, at the inception of the project, to system integration. This requires engagement with the institutions, but commitment at the presidential level pushed the initiative forward.
3. At the institutional level, in formulating the strategy for e-People, states will need to have early engagement with key members of staff across public administration, accompanied by a strong message that the system is to be introduced in any event.
4. Significant resource implications (human, financial and institutional) must likely be considered and budgeted.

<sup>147</sup> <http://www.acrc.go.kr/en/board.do?command=searchDetail&method=searchDetailViewInc&menuId=020501&confId=62&conConfId=62&conTabId=0&currPageNo=1&boardNum=69406>

## India<sup>148</sup>

### BACKGROUND

As part of the UNCAC prevention armoury, Article 10 of UNCAC requires states to put in place measures to enhance transparency in its public administration, its functions and its decision-making processes. To this end, Article 10 sets out three mechanisms:

- a) Adoption of freedom of information (sometimes referred to as access to information or right to information) measures;
- b) Simplifying administrative processes;
- c) Proactively publishing access.

The underlying rationale for each of these measures is to enhance transparency and accountability, to promote citizen engagement and participation and to provide an opportunity to exercise citizens' human right to know.<sup>149</sup> All of these will, in turn, minimize the opportunity for corruption and act as a preventive tool.

Today, a large number of countries have freedom of information legislation, which owes much to the efforts of activists and civil society organizations. Government responses to such inroads, on the other hand, vary: some governments embrace it, some reject it and some are riddled by apathy and inertia. It is with this backdrop that the road to India's Right to Information Act, and its success, must be appreciated.

The 1990s saw a major impetus to promote a national right to information law, after allegations of corruption and mismanagement emerged in the handling of programme funding following the droughts in Rajasthan and Maharashtra. The local state laws (*'panchayat laws'*), at the time in force, provided for access to informations and requests were submitted for information; however, none was forthcoming. The lack of response by the public authorities was a norm and, as there was no enforcement mechanism under the *'panchayat laws'*, such requests were routinely ignored.

The inaction created a spur for action among leading social activists, journalists, lawyers, professionals, retired civil servants and academics, with overwhelming grassroots support in rural areas. At the same time, the demand for transparency had also been campaigned for by other groups, such as consumer rights groups, who had succeeded in securing the right of information from the private sector; they now demanded the same from the

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- 149 "[F]reedom of information is a right in and of itself, and not just a manifestation of the right of freedom of expression of which it is a part." Article 13-1 of the American Convention provides in this respect that "[e]veryone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice." - Office of the Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States (OAS) Report 2009: [http://www.oas.org/dil/access\\_to\\_information\\_IACHR\\_guidelines.pdf](http://www.oas.org/dil/access_to_information_IACHR_guidelines.pdf)

government in respect of all public bodies. Therefore, multi-issue campaigns (e.g., the Anna Hazari anti-corruption movement, corruption in the handling of ration cards, unlawful collection of road tolls, etc.) aligned to create a broad base of supporters and pushed for the initiative at the national level. A large proportion of the Indian population is in rural areas and villages, with most of them below the poverty line and illiterate. The campaigners used story-telling techniques, role play, satires, imagery and drama to illustrate the need for transparency to address corruption (petty and high-level) and the dissipation of public funds.

There was initially some resistance by the government for a host of reasons: from inertia and apathy on the part of public officials to respond to requests for information to a level of 'hostility'. Members of civil society organizations drafted a law in 1996 with subsequent iterations between 1996 and 2004. The Commonwealth Human Rights Initiative examined the freedom of information laws in Commonwealth (UK and Canada) and non-Commonwealth countries (Mexico).

In 2004, there was a change in the government and the National Advisory Council was established, which saw the Right to Information law as an urgent and key priority. The Bill then progressed, with evidence being given before the Parliamentary Committee, and consultations took place. The Bill was finally passed into law in 2005, becoming the Right to Information Act (RTI) 2005; it provides for "access to information held by the government and all bodies owned, controlled or substantially financed directly/indirectly by government".<sup>150</sup> The Act is national law and applies to central, state and local governments.

### WHY WERE THESE PRACTICES SUCCESSFUL IN THE NATIONAL CONTEXT?

The public outrage, engagement and participation in demanding transparent and accountable practices provided the major pushes forward. Thus, in India, the initiative relied on activists, volunteers and individual members of the public to push ahead; no financial support was given to the campaign by the government or international donors – the effort was entirely sponsored by the individuals leading the campaign and the communities. A political will and a clear-cut strategy were also highly crucial in moving forward with the change.

#### HOW DID THE INITIATIVE CONTRIBUTE TO CORRUPTION PREVENTION?

Prevention within the Indian context is mainly understood as a deterrent (and by extension, prevention) through law enforcement measures (investigation and prosecution); this is illustrated by the title of the anti-corruption law in India, 'Prevention of Corruption', which address offences and law enforcement. Prevention, as intended by Chapter 2 of UNCAC, is not widely appreciated.

Although the success of RTI as a corruption prevention tool is based mainly on perception of wider society, there have been some strong indicators of its success:

- The preamble to the RTI Act is the containment of corruption; it has, therefore, the prevention of corruption as its key aim.
- Since the law was passed, it has been used reasonably widely nationwide (conservative estimates are that some six million requests have been submitted in the past three years), and has increased the level of citizen engagement.
- Most of the requests relate to issues that directly affect the daily life of the population: ration cards, water, sanitation, etc., and this, in turn, has helped to curb petty corruption.

<sup>150</sup> Brief history of the RTI Act in India: <http://righttoinformation.info/right-to-information/>

- RTI has helped to promote transparency and expose malpractice.
- Public officials are now more conscious of their obligations and aware of the need to record decisions correctly.
- Requests for information are made in the first instance to the State Public Information Officer (SPIO), who must deal with the request within 30 days. A failure to respond within those time limits raises it to the first appellate authority (the senior manager within the public body) and thereafter to the State Chief Information Commissioner. Overall, there has been an improvement in responding to such requests, as there is a recognition that members of the public are entitled to know: a major organizational cultural shift has occurred.

## LESSONS LEARNED

The Indian RTI framework has been adapted and adopted by other states in the region (Bangladesh, Maldives, Sri Lanka) and by other Commonwealth States (including Kenya). Based on the Indian experience, the following guidance can be drawn out:

1. Political will, support and commitment of the government leadership are essential.
2. Where the initiative is led by civil society organizations, they must aim to broaden their base and reach out to wider sections of the community. In the Indian experience, the various causes came together to achieve a common goal.
3. Access to information must be linked to human rights and focused on achieving SDG rights; this needs to be communicated and understood by the public, some of whom may be illiterate; in such instances, alternative ways of raising awareness should be considered, such as creative works.
4. Public officials usually resist change and this needs to be addressed in a sensible and methodical way through training and capacity-building.
5. The language and process must be kept simple to allow access to all members of the society.
6. National campaigns of such magnitude need to be coordinated and concerted with a deep level of commitment.
7. There is a risk that access to information can be subject to abuse, particularly during elections and that its use can lead to threats, intimidation and, in more serious cases, the killing of those who seek information. Protective measures need to be considered along with law enforcement.



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