Chapter 1

The Anti-Corruption and Integrity Framework

In the aftermath of the Revolution of January 2011 and to respond to widespread public demands for transparency and for anti-corruption efforts, the Tunisian government has launched a programme to reform the public sector integrity framework with a view to reinforcing transparency, integrity, and the prevention of corruption. This chapter examines the existing legal and institutional arrangements, and proposes a roadmap of the main elements to be taken into account in the development of an integrity framework in order to guarantee its actual implementation.

The current state of corruption

Since the Jasmine Revolution of January 2011 the provisional Tunisian authorities have launched numerous investigations and analyses of the corruption attributed to the former regime through the creation of an independent commission in charge of working on these issues. These efforts have brought to light the abuses perpetrated by the former regime in certain areas that are particularly susceptible to corruption, and have revealed the numerous mechanisms used to divert public resources to a very small circle of individuals close to former President Ben Ali.

The National Commission for Investigating Cases of Corruption and Embezzlement (NCICM) has obtained most of the information needed in this area. The Commission, whose mission and work will be described in greater detail below, has focused on cases of political corruption, which often reveal legal loopholes, or, more simply, the absence of checks to counterbalance the executive power. This work has led to an analysis of the weaknesses in certain areas and processes, including public procurement, urban planning and land management, privatisation and concessions, as well as import authorisation regimes and customs. There is however limited information available on the general state of corruption in Tunisia. In particular, there is neither a systematic and comprehensive assessment of the corruption risks at the national level in the entire public sector, nor a global analysis of the risks affecting specific sectors, such as those related to social services delivery, which have the greatest impact on the lives of citizens.

In addition, it seems to be generally assumed that the administration was overall honest and worked well, and that corruption therefore only affected the top levels of power. There is, however, no evidence to support such an assertion.

Note: International experiences have shown that the fight against corruption requires, from the start, a comprehensive assessment of the situation, or in other words, an analysis of the problem. Otherwise, one might not assess the problem(s) correctly and might therefore implement the wrong solutions with no positive results. Even worse, public resources invested in such reform efforts would then be wasted, as would be the public confidence in the commitment of public authorities to the fight against corruption. General assumptions on the existence of corruption, or lack thereof, should thus be tested by conducting a more detailed analysis in order to identify the most frequent types of corruption and the most vulnerable activities and sectors.

Many tools are available for accomplishing this task, such as analytical assessments of corruption risks in specific areas, or surveys of public service user experiences. Considering Tunisia's recent history, it might be particularly important to prioritise a comprehensive understanding of the forms of corruption that affect the poorest segments of the population, such as social services (health, education, pensions, and other social benefits), administrative services for businesses (permits, inspections), and other government functions with which citizens are the most in contact (the police, for example).

The OECD welcomes the self-assessment exercise the Tunisian government launched in June of 2012 as part of the OECD clean.gov.biz initiative. This self-assessment exercise will make it possible to complete a detailed survey of the types of corruption and risk areas in both the public and the private sectors. It will also help define the appropriate measures for preventing corruption, in cooperation with the integrity cells that were recently created in public institutions. The Tunisian government can rely more specifically on the online toolbox that was developed on the basis of OECD recommendations reflecting international best practices.

The existing anti-corruption framework

In terms of fighting corruption, the relevant measures – laws, institutions, and processes – are generally divided into two major categories: preventive measures and repressive measures (law enforcement). This division, it should be noted, structures the United Nations Convention Against Corruption (UNCAC).

Tunisia adopted and ratified the UNCAC on 30 March 2004 and 23 September 2008, respectively. It also launched a self-assessment in June of 2012 as part of the Review Mechanism associated with the implementation of the UNCAC.

The first part of the review required by the UNCAC will focus on the repressive aspects of the national anti-corruption framework, among which the prosecutorial aspect will only be briefly mentioned in this report.

While a few prerequisites are in place, such as a basic legal regime for asset declarations and political financing, measures aimed at the prevention of corruption remain limited. Thus, legal provisions risk becoming merely academic due to the absence of a process in place to activate them (for instance, the lack of verification of asset declarations).

Box 1.1. **Assessment tools: The experiences of the Netherlands and Georgia**

The experience of the Netherlands

Netherlands Court of Audit in co-operation with the Ministry of the Interior and the Bureau of Integrity of the City of Amsterdam has developed the Self-Assessment Integrity (SAINT) tool. SAINT is a self-diagnosis tool that is presented and discussed in a one-day workshop. By using the SAINT tool, public organisations can assess their vulnerability to integrity violations and their resilience in response to those violations.

SAINT also issues recommendations on how to improve integrity management. The main characteristics of SAINT include:

- Self-assessment: The organisation itself must take the initiative to test its integrity. Thus, the assessment draws on the knowledge and opinions of the staff. The organisation reveals its own weaknesses and the staff make recommendations on how to strengthen resilience.
- An assessment targeted at prevention: The self-assessment tool is targeted at prevention. It is not designed to detect integrity violations or to punish (repress) unacceptable conduct but to identify the main integrity weaknesses and risks and to strengthen the organization's resilience in the face of those weaknesses and risks.
- Raising general integrity awareness: The SAINT workshop significantly increases awareness of integrity. The participants' collective discussions about the importance of integrity are of great value.
- Learning to think in terms of vulnerability and risk: The SAINT workshop teaches the organization how to think in terms of vulnerability and risk. During the workshop, the participants identify the main vulnerabilities and risks and then make recommendations on how to minimize them.
- Concrete management report/action plan: The end product of the SAINT workshop is a concrete management report/action plan. Under the expert leadership of a trained moderator, the participants formulate recommendations for their own organization. The report explains to management where urgent measures must be taken to strengthen the organization's resilience in response to integrity violations.

Box 1.1. **Assessment tools: The experiences of the Netherlands and Georgia (*cont.*)**

During the workshop the participants assess the maturity of all the measures that compose the organisation's integrity management system (see chart below).

The experience of Georgia

In 2009, the authorities in charge of fighting corruption in Georgia, with the assistance of international partners, had two research institutes at its disposition to conduct two public surveys of households and civil servants regarding the state of corruption and its impact on public services (most notably, in the areas of health, education, and the judicial system). Access to some public services, such as electricity, running water, and gas was also addressed. These surveys sought to help authorities rewrite anti-corruption policies.

Source : Benner, H. and I. de Haan (2008), "SAINT: A Tool to Assess the Integrity of Public Sector Organisations", *International Journal of Government Auditing*, April 2008, *www.intosaijournal.org/pdf/april2008.pdf*.

One year after the revolution, the reforms established after the Ben Ali era remain in their infancy. Among the anti-corruption measures adopted right after the Revolution is the creation of the National Commission for Investigating Cases of Corruption and Embezzlement (NCICM) and the National Committee for the Recovery of Misappropriated Assets Abroad.

In addition, the government is progressively creating a more permanent institutional structure to prevent corruption, composed of a Ministry of Governance and the Fight against Corruption, integrity cells in public institutions, and a national anti-corruption body.

The current state of the areas and sectors afflicted by corruption during the Ben Ali era, as determined by the National Commission for Investigating Cases of Corruption and Embezzlement (NCICM)

The National Commission for Investigating Cases of Corruption and Embezzlement (NCICM)

During the Jasmine Revolution, the provisional Tunisian government mostly focused its efforts on identifying and recovering illicit gains from the Ben Ali era. This work was conducted by the National Commission for Investigating Cases of Corruption and Embezzlement (CNICM), which, during its first year of activity, received over 10,000 claims or investigation requests.

Created by the Decree 2011-7 of 18 February 2011, this Commission is composed of a General Committee "in charge of examining the fundamental orientations related to the Commission's activities and of identifying future strategies to fight against corruption and embezzlement" (art. 2), and of a Technical Committee "in charge of bringing to light cases of corruption and embezzlement committed by or in the interest of any person or business, whether public or private, or a group of people, thanks to this person/business/group of people's position in the government or the administration, or thanks to one's kinship, alliance, or any other relation of any nature with a state official or a group of state officials, especially during the period from 7 November 1987 to 14 January 2011" (art. 3). The Commission is composed of experts in different areas, investigative officers working on specific cases of alleged corruption from the previous regime. It mainly operates through the examination of documents and field visits. It has the power of soliciting information from every state agency and of summoning state officials to appear before it, but it depends on existing law enforcement agencies to impose sanctions in cases of alleged criminal activities – in particular in cases of criminal prosecution.

The Commission, which was created as a transitory measure to investigate cases of corruption and embezzlement during the Ben Ali era, mostly made retrospective efforts, centred on past embezzlement cases. Yet, the results of the investigations take stock of the areas and sectors that were most afflicted by corruption during the Ben Ali era.

The final report, which was submitted by the Commission to the President of the Republic, lists several of the areas most susceptible to corruption:

- real estate;
- farm lands;
- public domains;
- public procurement and concessions;
- public works;
- privatisation;
- telecommunications;
- the audiovisual sector;
- the finance and banking sector;
- administrative authorisations;
- customs and taxation;
- administration, hiring, scientific research, and university program selection;
- the judicial system and the bar.

It thus appears that political interference has diverted public interests to the benefit of private interests:

- Real estate: the pattern of land use was changed to make these lands open to development, and in some cases, land use regulations were changed from one category of construction use to another so that the beneficiary would make a profit.
- The illegal attribution of parcels of land in areas of economic and geographical importance, such as the northern suburb of Tunis, Hammamet and Sousse, to those close to the ex-President. These land grants, which were attributed by land agencies, as rewards to

relatives and close friends of Ben Ali, did not abide by any of the objective criteria that should guide public service delivery.

- The illegal management of state domains, including, for example, the practice of changing the legal status of the public domain and downgrading it to include it in the private domain, in order to sell it, at a later date, at very low prices, or, sometimes even, for a symbolic dinar.
- Public procurements: the granting of public contracts and concessions did not always abide by the rules. Indeed, the role of the High Commission of Public Procurements is limited to examining bidding applications and to making proposals to the President of the Republic. Yet, contrary to public procurement law, the latter sometimes awarded the contract to another person than the one who had legally won the bid; or else the specification was tailored in such a way so as to grant the contract to the bidder favoured by the ex-President.
- Privatisations: in several cases, public companies have not respected the interest of the State Treasury. The privatisation process was diverted so as to allow the ex-President's relatives and some specially privileged businessmen to acquire these companies at prices beneath market value. Indeed, bidders were sometimes pressured to withdraw financial bids whose amounts were higher than the sale price that was definitively agreed upon for privatisation.
- The award of administrative authorisations for the exercise of certain economic activities. For example, in the case of the automobile sector, administrative authorisations were essentially granted to relatives of the ex-President, who gained control over the majority of car importation and marketing licenses. Similarly, after the passage of the 2003 Law, the creation of each hypermarket is subject to administrative authorisation. This led friends and relatives of the ex-President to claim this privilege, as well as similar ones for other industries, such as the cement industry, the sugar industry, fuel transportation, quarrying, as well as tuna breeding quotas.
- Customs and taxation: the Commission's work has shown that the former President's family had gradually managed to take over the importation sector through the creation of import-export businesses, which often served only as fronts for importing all sorts of goods with low customs duties in return for payment. Such practices have

caused several Tunisian businesses to go bankrupt, resulting in losses to the national economy.

- Tax audits have on some occasions been used to harass people. In addition, the former President sometimes granted full waivers on enormous tax claims and ordered the Ministry of Finance to justify these waivers. Instructions from the former President were also given to the fiscal administration and the justice system to file the claim and take no further action, as was the case for one of his relatives.
- Banking sector: the Commission's work has revealed the misuse of financial institutions by the Tunisian authorities. Public financial institutions, as well as the Central bank, were indeed used to safeguard the economic interests of the former President's relatives and close friends. The waiver of claims and the granting of insufficiently-backed credits constitute the most glaring abuses committed to the detriment of public finances.

Legal framework to prevent corruption

While there are some legal provisions in the Penal Code and in the General Civil Service Regulations established by the Law of 12 December 1983 pertaining to the prevention of corruption, there is no coherent legal framework to prevent and combat corruption in Tunisia.

It should be noted that the government has recently made efforts to:

- introduce new legal provisions on access to information;
- revise the existing law on assets declarations to broaden its scope;
- revise the existing provisions on political party and campaign financing with the Decree 2011-87 adopted on 24 September 2011.

Yet, these provisions do not constitute a coherent anti-corruption framework and some risk areas remain, such as those involving the prosecution of illicit enrichment or of businesses (in order to fight private sector corruption). In addition, these legal provisions are not always accompanied by the necessary means for effective enforcement.

Box 1.2. **Existing legal provisions for prosecuting corruption**

- The Penal Code, Chapter III, Section II on corruption characterises and criminalises acts of corruption, nepotism, the reception of gifts or other advantages, and conflicts of interest perpetrated by public officials or committed for their benefit (art. 83-84-85-87-91). In addition, Articles 88, 89 and 90 criminalise acts of corruption committed by and for judges. Yet, authors of acts of corruption and embezzlement can only be prosecuted after a complaint has been filed with the Public Prosecutor, who then ascertains the opportunity to prosecute and decides on further course of action on the matter. Once granted the approval of the Prosecutor's Office, a formal investigation is initiated to establish the facts, and, following confirmation of these facts by the Indictments Division, the case is lodged with a criminal judge.
- Article 56 of the Civil Service Law number 83-112 of 12 December which establishes the General Statute of officials of the State, local authorities, and administrative establishments, defines corruption as "serious misconduct" for which the author "is immediately suspended from his/her duty." This article also stipulates that "the case must be lodged with the Disciplinary Board within one month, and that the administrative situation of the suspended official must be settled within three months after the date when the suspension went into effect."
- Decree 87-552 of 10 April 1987 establishes that Cabinet members and some categories of public officials should make sworn statements, and determines the template and content for such sworn statements. Yet, the decree does not define the penalties to be imposed in the case of non-compliance.
- A number of legal provisions are also in place to incriminate money laundering.
- Provisions on transparency exist for the concession system (1 April 2008 Law 2008-23 on the concession system) and for public procurement (see Chapter 2).

The penal code

A quick overview of the Penal Code reveals a number of aspects that fall short of international standards, including its very definition of corruption.

In the Tunisian legal framework, the word "corruption" seems to apply to bribery. At the international level, another understanding of the word is generally accepted. In itself, the word "corruption" is a more general term

designating a range of sketchy and/or illegal practices, each of which defined by a specific term, such as bribery, embezzlement, abuses of authority, nepotism, etc.

With the launching of the UNCAC self-assessment process, the Tunisian authorities will have to define and prosecute the various corruption practices, including bribery, the embezzlement of public funds, and influence-peddling. The UNCAC also requires that Tunisian law cover a broader range of entities that are criminally liable for such practices, including businesses, which are currently exempt from prosecution under the current penal code.

Note: The first cycle of the UNCAC implementation review will illuminate the aforementioned gaps, and probably some additional loopholes in both the Penal Code and the Criminal Procedures Code. One should also note that norms for promoting integrity, regulating conflicts of interest, and preventing corruption are currently lacking. Global definitions of incompatibilities, of the restrictions imposed on the reception of gifts, and of conflicts of interest may also be included. The experiences of OECD member countries suggest that, in addition to legal changes geared towards bringing Tunisian laws into conformity with international standards and requirements, effective enforcement of these laws requires that civil servants in every institution responsible for law enforcement, such as the police and the courts, familiarise themselves with these new concepts.

Public access to information

The right of citizens to access administrative information has been declared by the 26 May 2011 Decree-Law No. 2011-41 on access to administrative documents in public institutions, and amended by Decree-Law No. 2011-54 of 11 June 2011.

The framework established by this Decree seems to conform to the core standards on this matter. Data is thus publicly accessible, except in cases where the reason for restricted access is well substantiated, and public institutions are required to proactively publish key data on their structures, functions, and results. This latter requirement implies that the Prime Minister be informed of the implementation of these provisions, as well as of the possible appeals for non-conformity made before the administrative court.

Box 1.3. Criminalisation as required by the UNCAC

The Convention requires participating countries to establish criminal and other offences to cover a wide range of corruption practices that are not already defined as crimes under domestic law. In some cases, States are legally obliged to establish offences; in other cases, in order to take into account inconsistencies between respective national penal codes, they are required to consider doing so. The Convention moves beyond previous instruments of this kind in that it criminalises not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and laundering of the proceeds of corruption.

Source : www.unodc.org/unodc/fr/treaties/CAC/index.html.

Note: The efficacy of these new provisions is still in need of verification. The experiences of other countries demonstrate the importance of an independent monitoring mechanism – whether it is a State agency or a civil society initiative – to ensure that the new regulatory regimes function properly. While the existing scheme provides for the Cabinet of the Prime Minister to receive progress reports on the implementation of these new provisions, an additional verification step is needed to guarantee the report's accuracy. Administrative Court decisions on existing shortcomings should also be opened up to further scrutiny.

Asset declarations to detect illicit enrichment

Since the enactment of the 17 April 1987 Law 87-17, Tunisia has possessed a system providing for the sworn property statements of Cabinet members and certain categories of public officials. This law requires Cabinet members, magistrates, ambassadors, regional governors and the chairmen of State or semi-State enterprises to declare their assets, as well as those of their spouses and their dependents.

Many civil servants are also required to submit asset declarations (but only for themselves and not for their relatives). This is the case for ministerial cabinet members, ministerial secretaries-general, the directors-general and directors of central administrations, the consuls-general, the consuls, the first delegates, the delegates, the secretaries-general of the governorates and of the communes, officials of the tax authorities, as well as any official of the State, local authorities and administrative establishments exercising the duties of authorising officer or of public accountant. Other categories of public officials can also be subjected to this asset declaration requirement, as will be defined by decree at the behest of the Prime

Minister. It was however mentioned during the field mission that the Law on asset declarations was being modified to broaden its scope.

Box 1.4. Access to information in Mexico

Mexico has developed one of the most robust frameworks for guaranteeing access to information, notably through the adoption of its 2002 Law on transparency and access to information. This law recognises information as a public good and determines very specific conditions for disclosing information. But the real innovation ushered in by this law is the creation of the Federal Institute for Access to Public Information (IFAI) to monitor the enforcement of the law and to provide citizens with an appeal mechanism when institutions refuse access to non-classified information. This Institute was granted the necessary political, financial, and human resources to fulfil its mission. In 2007, in an effort to further improve and strengthen its 2002 law, Mexico introduced constitutional amendments meant to inscribe the transparency principle within the Mexican legal framework, and set uniform freedom of information standards to be applied within all 31 Mexican states, as well as at the federal level. These new legal requirements were ratified by all the states, and have been in effect since 2008. The adoption of constitutional amendments constitutes an important step towards the protection of freedom of information.

Furthermore, Mexico has promoted the use of information and communication technologies to facilitate access to information. To this end, the electronic portal Infomex was set up in 2008 to enable citizens to freely access some public data, as well as to request access to information by directly contacting public institutions at both the national and local level.

Source: Website of the Federal Institute for Access to Public Information: *www.ifai.gob.mx/English*.

Declarations must be submitted within one month after an official's nomination, and must be renewed every five years if the official remains in the same post. Also, a declaration must be made one month after the termination of duties.

Declarations are required to specify the sources and circumstances of property acquired during the duration of official functions. However, there is no specific maximum limit imposed on the total value of these assets.

The declarations of government members are to be addressed to the First President of the Court of Financial Auditors, and a copy sent to the President of the Republic. The declarations of all other officials are to be sent only to the First President of the Court of Auditors, and a nominal roll of all officials submitting such declarations will be sent to their respective ministries. Ministers are de facto responsible for assuring the compliance of their staff members with this requirement.

The data contained in these declarations is confidential but can be revealed to supervisors (ministers) upon request from the First President of the Court of Auditors. Violation of confidentiality is punishable by one year in prison (a sanction defined by Article 109 of the Penal Code,: "will be punished by one year in prison, the civil servant or affiliated official who unduly communicates to third parties or publishes, to the prejudice of the State or individuals, any document with which he/she was entrusted or otherwise acquired knowledge of because of his/her function. The attempt to violate confidentiality also constitutes a punishable offense"), except when such a violation is requested by a criminal court judge as part of a procedure against the civil servant.

If a civil servant neglects to make the required declarations, he is entitled to a 15-day extension to do so; after that time, he is to be dismissed. Upon termination of duties, he becomes the object of an audit. The law however does not detail the implementation methods for these sanctions.

Note: Several apparent loopholes characterise the existing legal framework. First, the list of concerned officials omits one key category: members of Parliament. It should also include high-level officials who have been appointed (for example, various advisors and consultants) and who play active roles in public policy decisions related to public finance. Second, nothing is said regarding the accuracy of declarations; sanctions are not in place, and no institution is made explicitly responsible for verifying accuracy. Since these declarations are not made public, journalists or involved citizens are unable to offer any form of civilian oversight or publicly question false declarations. In addition, there is no sanction for submitting false declarations. In the present situation, rules may appear to lack force, which renders the entire system of asset declarations ineffective.

Political parties and campaign financing

This is one of the areas most susceptible to attempts by private interests to unduly influence political decisions and public policies. This is indeed the source of the biggest corruption scandals in well-established democracies. The UNCAC therefore recommends heightened transparency in the financing of candidacies for public mandates and in the financing of political parties (Article 7, paragraph 3).

Tunisian legal provisions on this issue were initially established by the 21 July 1997 Law 97-48, and then amended by later documents, including the 23 January 2001 Law 2001-2 and 24 September 2011 Decree-Law No. 2011-87.

Political parties are allowed to collect funds in the following ways:

- Member dues, up to a maximum amount of TND 1,200 a year.
- All payments exceeding TND 240 must be made by cheque or money order.
- Revenues from property or commercial activities.
- Loans from credit institutions for a maximum amount of TND 60 000 per donor. Donations made from abroad, by anonymous donors, by companies, and perhaps most importantly, by State enterprises (except for the legal public financing of political parties) are prohibited.
- The public financing of political parties benefits any party of which one member or more hold a mandate; such financing is composed of one fixed sum, identical for all the parties, and a variable amount corresponding to the number of elected officials.
- The fixed amount is TND 90 000 a year, payable in two instalments, and the variable amount is TND 7 500 per elected official.
- If the party possesses a newspaper, it can claim an additional funding of TND 240 000 for a daily or a weekly, and TND 60,000 for a monthly.

Law No. 88-33 of 3 May 1988, also provides political parties with tax benefits, including an exemption from change-of-ownership duties for purchases, donations, and exchanges, as well as for other administrative procedures.

Note: The major weakness of the Tunisian legal regime on political financing is its incapacity to effectively enforce the aforementioned rules. Political parties have a clear obligation to present annual financial reports to the Court of Auditors, with the necessary supporting documents. But the Court of Auditors is not authorised to check the accuracy of any declaration and cannot impose any sanction in case of non-compliance (the only sanction provided by the law is a fine when a report is filed late). In view of this situation, an adequate monitoring mechanism with the power to impose dissuasive sanctions in cases of non-compliance would be the crucial element for improving the efficacy of this law. An additional analysis, adapted to the Tunisian situation, would be useful to determine which restrictions should be imposed on gifts and political party expenses so as to avoid risks of pressure and of corruption.

An effort at strengthening the institutional arsenal for preventing corruption

Prospective measures for strengthening the integrity framework

In a prospective effort to better prevent corruption, the government is progressively establishing a more permanent institutional structure by putting in place, in particular:

- a Ministry of Governance and the Fight against Corruption, along with liaison cells in public institutions;
- a national anti-corruption authority that has taken on the mission of the National Commission for Investigating Cases of Corruption and Embezzlement (CNICM);
- governance and anti-corruption cells in public institutions as liaisons with the Ministry of Governance and the Fight against Corruption for better coordination of corruption prevention policies.

A ministry of governance and the fight against corruption

After the first legislative elections of October 2011, a new ministry in charge of Governance and the Fight against Corruption was created in February of 2012, demonstrating the government's commitment to combating corruption. The competencies of this Ministry had not yet been defined at the time the field mission for this report had taken place (February 2012). Yet, the minister and his advisors informed the OECD team that the ministry would be in charge of defining and coordinating national anti-corruption policies.

During the field mission, the ministry in charge of Governance and the Fight against Corruption indicated that several governance and anti-corruption cells had been established within the directorates and State enterprises in the country's various regions. These cells will make it possible to more precisely identify risk areas in specific institutions and sectors, and to thereby guide the development of appropriate counter-measures.

A national anti-corruption authority

Another proposal related to the creation of a national authority was under examination during the field mission conducted by the OECD team working on this report. The project, which was formulated in November of 2011 on the basis of a framework-decree issued by the National Commission for Investigating Cases of Corruption and Embezzlement, provided for the creation of an independent agency that would be

responsible, on the one hand, for investigating cases of corruption (concretely extending the activities of the National Commission) and, on the other hand, of developing anti-corruption policies. At the time of the field mission, government officials had expressed reservations about this proposal, and more specifically, about the mismatch between the scope of the competencies (powers) granted to this agency and its prospective role. The president of this agency was nonetheless appointed on 27 March 2012, but it seems like the agency's mission will be limited to investigating cases of corruption.

The creation of a specialised anti-corruption agency is a complex project that requires a considerable investment. The section in this report entitled "Suggested Course of Action for Tunisia: Implementing Specific Measures to Promote Integrity in Public Procurement" synthesises the main lessons learned from the experiences of other countries with various institutional arrangements.

The governance and anti-corruption cells were established during the writing phase of this report and it was therefore hard to analyse their structure and role and to evaluate their impact. Nonetheless, these cells will enable the development within each public institution of specialised capacities geared towards the development of anti-corruption measures.

Note: The primary challenge moving forward will be to clearly define the respective responsibilities of these various institutions, and to provide them with the sufficient human and financial means to strengthen the public sector integrity framework, in cooperation with all concerned stakeholders.

Supervisory agencies

Supervisory agencies help to verify the proper management of public funds, even though their primary function is not to detect corruption.

In addition to the internal inspection units within each public institution in Tunisia, there are three supervisory agencies in charge of horizontal monitoring:

- The General Audit Office of Public Services (created by Decree No. 71-133 of 10 April 1971);
- The Finance General Controller (created by Decree No. 91-556 of 23 April 1991, Article 7); and
- The General Controller of State Domains and Land Affairs (created by Decree No. 90-1070 of 18 January 1990, Article 6).

These three agencies were placed under the responsibility of the Cabinet of the Prime Minister, of the Ministry of Finance, and of the Ministry of State Domains and Land Affairs, respectively.

Each of these institutions has undertaken what are, in effect, audits of all other institutions financed by the State budget. Although incorporated into the executive power and subject to the authority of supervisory ministers, their authority was essentially external to the administrative bodies they audited; they thus fulfilled the duties of external audit agencies that exist in many other countries.

Since the distinction between the mandates of these three entities is not very clear, and their missions seem to overlap, another institution called the High Committee of Administrative and Financial Control has been created to coordinate their work (Law No. 93-50 of 3 May 1993). But in practice, these institutional mechanisms have not been able to rationalise the oversight system. During the field mission conducted in Tunisia, it appeared that the fusion of the three monitoring agencies and the suppression of the High Committee could constitute the most reasonable way to proceed. This solution, however, may not be practical from an administrative and legislative point of view.

Note: These various institutions have their strengths and weaknesses. One of the major dilemmas has to do with the apparent mix of institutional models and the functional duplication of competencies. In fact, the number of audit operations that each institution can perform each year is quite modest. The multiplicity of agencies may thus appear as allowing for better coverage and better oversight. Besides, some observers consider it prudent, in countries undergoing transition, to diversify the monitoring centres and to maintain national monitoring capacities, even if this implies some redundancy or an unexpected weakening of institutional capacities. Such a view is legitimised by concerns about the ability of monitoring institutions to remain independent enough to carry out their duties without becoming the objects of political influence plays. One should nevertheless take into account the inefficiencies resulting from the maintaining of separate institutions, especially when no similar model exists elsewhere to support such an arrangement. One solution to this dilemma would be: i) to guarantee a more systematic exchange of information between these supervisory bodies; and ii) to closely examine the options best suited for the current Tunisian situation, by ensuring sufficient autonomy and efficiency, as well as an adequate follow-up of conclusions and recommendations made.

External control

Tunisia also has a Court of Auditors, which is the official external audit institution. It was established by the Tunisian Constitution (Article 69 of the 1 June 1959 Constitution), and its organisation was defined by Law No 68-8 of 8 March 1968 (as amended on 29 January 2008).

The Court of Auditors exercises ex-post judicial oversight to ensure the conformity of publicly funded institutions with the laws and regulations governing their activities. It verifies the accounts of public accountants, analyses all supporting documents, and checks current account balances. The Court also verifies the proper use of public funds in the course of its audits of government accounts, but it can also directly examine the management of authorizing officers whenever deemed necessary.

In addition to this external audit function, the Court is also responsible for collecting the asset declarations of high-ranking officials (Law No. 87-17 of 10 April 1987), and for verifying the financial statements of political parties (Organic Law No. 90-82 of 29 October 1990). A more detailed analysis of these two legal regimes is presented below.

The Court's independence is based on the fact that its members have the legal status of magistrates who, as such, cannot be dismissed. The expertise of the Court of Auditors magistrates seems far-reaching: for instance, the institution can carry out performance audits. It has the leeway to organise its schedule, choose the institutions it will monitor, and determine the conditions under which to undertake its investigations. The First President of the Court is appointed and dismissed by the President.1 In order to guarantee the transparency of this appointment, in some OECD countries, such as France, the President of the Republic selects the First President of the Court from a pool of reputable politicians belonging to opposition parties.

A list of businesses and public services to be audited is published by presidential decree; until recently, the reports were published at the President of the Republic's discretion. Such circumstances reveal the great importance of freeing the Court of Auditors from the influence of the President of the Republic in view of guaranteeing its functional independence. The Tunisian Court of Auditors nonetheless retains some degree of independence in that its members cannot be dismissed.

Note: Other measures could be implemented in order to ensure increased transparency and independence for the Court. For instance, the Court's relationship vis-à-vis the executive and legislative powers could be redefined, its administrative authority could be strengthened, and the publication of its reports could be made mandatory.

Finance disciplinary court

Furthermore, in cases of obvious irregularities in an authorising officer's management of an audited institution, the Court can seize the Finance Disciplinary Court, which is empowered to punish the most serious mismanagement cases with fines. Organised by Law No. 85-74 of 20 July 1985, this Court is composed of the members of the Court of Auditors and of the administrative court. The latter are appointed on the recommendation of the Prime Minister. While such legal specialisation can prove useful in effectively trying complex financial crimes, the Finance Disciplinary Court is under the administrative supervision of the Court of Auditors.

Yet, the most senior members of the public service (the President of Parliament, the Prime Minister, the Ministers, the State Secretaries and the President of Municipal Councils) fall outside its jurisdiction.

The national committee for the recovery of misappropriated assets abroad

A National Committee was created within Tunisia's Central Bank for the purpose of recovering illicit gains. This committee is composed of the Governor of the Central Bank, the Minister of Finance or his representative, representatives of the Ministers of Justice and Foreign Affairs, as well as the Chief of the State Civil Litigation Unit, all of whom are appointed for 4-year terms.

The mission of this committee is to coordinate and initiate legal action for recovering misappropriated assets acquired by the former President, his relatives, and his close friends. When necessary, the committee can require other institutions to furnish the information and documents it needs to fulfil its mission. It must regularly report on its activities to the President of the Republic and publish an annual report summarizing its activities and the results it has achieved.

Possible approaches to strengthening the public sector integrity framework

A general survey of anti-corruption policies gives an indication of the complexity and the size of the challenge the Tunisian government faces. Not only is it necessary to respond to a great variety of fundamental issues, but also to guarantee that the rules adopted will be effectively enforced and that they will be consistent with declared policy goals.

Identifying the risks of corruption in each public sector institution and adopting additional measures to more efficiently minimise and regulate these risks are vital first steps for a successful anti-corruption campaign.

Box 1.5. The experiences of the French Court of Auditors: The established principle of equidistance from the executive and the legislative branches and managerial autonomy

While many countries have thought it logical to bring their administrative institution in charge of external control under the Parliamentary supervision (for instance, the National Audit Office in Britain), the French tradition is very different: the Court of Auditors remains equidistant from both the government and Parliament. However, the 2001 Organic Law on Laws of Finance (LOLF) and the 2005 Social Security Financing Act created a partnership between Parliament and the Court of Auditors – an arrangement that was confirmed by the 2008 Constitutional revision.

The independence of the Court of Auditors was upheld in 2001 by the Constitutional Council, which ruled that the Court's obligation, as imposed upon it by the Organic Law, to communicate its auditing agenda to the presidents and the general rapporteurs of the Finance Commissions of the National Assembly and the Senate, so as to allow these officials the opportunity of giving their opinion on this agenda, was likely to infringe upon its independence.

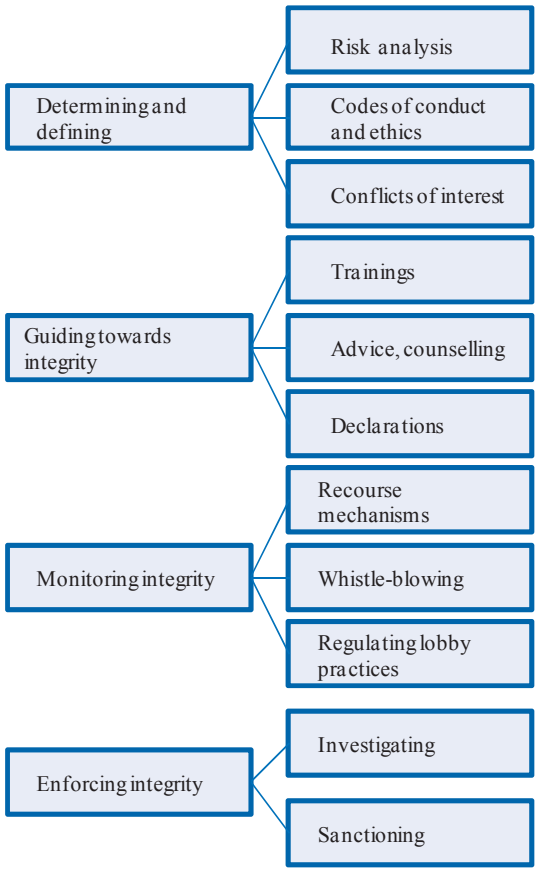
The 2008 Constitutional Revision has confirmed the principle of the equidistance of the Court of Auditors from the government and from Parliament. The Court thus assists the Parliament and the government in monitoring the execution of finance bills and in evaluating public policies.

In addition, since the 2001 Organic Law on the Laws of Finance has entered into effect, the Court has acquired increased management autonomy. Before this Organic Law, the appropriations of financial institutions were included in the budget of the Ministry of the Economy and Finance. Paradoxically, the management of the Court's budget rested with a ministry with authority over the very public accountants the Court of Auditors was specifically responsible for monitoring. Today, the Court's entire budget figures into a "mission" under the authority of the Prime Minister: the so-called "Counselling and State Control" mission, which is exempted from normal budgetary regulations. Its budget is managed within a specific programme headed by the First President of the Court. Consequently, since 2006, the Court now has its own administration.

Source : Hochedez, Daniel (2012), "Les institutions législatives assurant une surveillance *ex post* du budget : éléments d'information sur le système français", France's intervention at the meeting of OECD Parliamentary Budget Officials and Independent Fiscal Institutions, Paris, 23-24 February 2012, *www.oecd.org/dataoecd/17/53/49792003.pdf.*

The experience of OECD countries shows that an overarching corruption prevention framework should seek to define: i) the public administration's key principles and values; ii) the training and counselling mechanisms to help public officials adopt integrity principles in the management of public funds; iii) the mechanisms to follow-up and assess corruption prevention policies; iv) law and policy enforcement mechanisms, as well as sanctions to be imposed in case of abuse or irregularity so as to guarantee effective implementation of legal texts.

Figure 1.1. **Elements of the OECD Integrity Framework**



Source: OECD (2009a), "Towards a Sound Integrity Framework: Instruments, Processes, Structures, and Conditions for Implementation," internal working document, OECD.

Institutional mechanisms: towards the development of specialised capacities for preventing corruption

Selecting an institutional structure able to prevent corruption raises issues regarding the reorganization of existing functions.

A National Anti-Corruption Authority was established to investigate cases of corruption and prosecute them before the relevant judicial authorities. Furthermore, the ministry of Governance and the Fight against Corruption was entrusted with the task of developing measures aimed at preventing corruption. It is crucial to highlight the great breadth of the range of prevention policies that need to be developed and implemented.

Specialisation

Carrying out most preventive functions, if not all of them, requires some specialised staff, or rather staff that will specialise in the various aspects of corruption prevention for which they will be responsible. It is important to develop the anti-corruption capacities within institutions, but only as long as the necessary resources are made available.

Furthermore, the public's expectations should be very carefully taken into consideration. Education and public awareness campaigns have long been recognised as crucial components of the struggle against corruption. Familiarity with the mandates and the powers of the various anti-corruption agencies and a sound understanding of what can and cannot be accomplished are necessary to avoid disappointing citizens with reforms that never materialise.

Conducting a detailed evaluation of the different types of corruption and defining adequate counter-measures in collaboration with all stakeholders

Tunisia has yet to produce the kind of detailed analysis of the current state of corruption within its borders that could lay the foundations for the development of adequate public policies. Indeed, even if certain investigations have shed light on the scope of the problem, they were not detailed enough to identify the most frequent types of corruption and the most vulnerable activities and sectors.

Revealing the loopholes in the anti-corruption legal framework constitutes the primary objective of a detailed assessment launched in June of 2012 in accordance with the Review Mechanism of the implementation of the United Nations Convention Against Corruption.

Considering the great amount of work still to be done in this area, Tunisian authorities should acquire the tools to help them to structure the steps to be put into place. An overarching national anti-corruption strategy is one of the tools that can be adopted by countries facing such an immense task.

Tunisian authorities have indicated that they envision developing this kind of comprehensive policy document, but they have not yet set to work on it. It is therefore timely to draw some lessons from the experiences of various developing countries and countries undergoing transition in dealing with such objectives.

The objective of a national anti-corruption strategy

The fight against corruption constitutes an ongoing effort, even in countries with longstanding democratic traditions where the rule of law is guaranteed. A National Anti-Corruption Strategy (SNLC) can help raise awareness about the fact that the fight against corruption is a long-term effort, as well as about the government's commitment to this fight.

Lacking any substantive assessment of the issues related to corruption, Tunisian authorities do not yet have a specific idea of the scope of the challenge ahead. Corruption can affect a number of government sectors as well as the private sector. A SNLC can help authorities to obtain an overview of the entire range of issues, to prioritise them, and to implement coordination efforts.

A SNLC can also serve as a tool for requesting technical and material support for reform implementation from different partners, particularly organisations representing national civil society, that can facilitate public participation, provide expertise, and provide donors for financing larger reform projects.

Elements of a SNLC

What is generally lacking from reform initiatives, especially in the area of anti-corruption policy, is an analysis of the situation that concludes with an assessment of needs. The challenge is to avoid directly grafting international standards onto the situation.

A SNLC should thus focus on making the necessary assessments, so as to be able to identify the appropriate reform measures. Reports from monitoring agencies could be particularly valuable for analysing the weaknesses of national institutions in the face of corruption, as could be the inquiries of the National Commission for Investigating Cases of Corruption and Embezzlement.

As for the sectors for which reliable evaluations do exist, the strategy should put forward specific reform measures by explaining the reasons for their selection. The assessments should therefore be very detailed: definition of problems, objectives, argument for proposed reforms, and description of reform measures. These measures should be defined by taking into account international standards and best practices, but the application of any measure inspired by a foreign experience should be thoroughly examined in view of the relative singularity of the Tunisian context.

While the strategy documents should be detailed, they should not be excessively long, in which case civil society and the general public would be discouraged from consulting them. From a practical standpoint, shorter documents are more likely to be used and publicly mentioned by all the parties involved, be they politicians, civil society actors, the media, or international partners.

Implementation plans

Strategies should also include an adequate implementation plan ("action plan") that specifies the operational details regarding the implementation of reforms: specific activities, timetables, persons in charge, cost estimates, as well as follow-up and assessment criteria and indicators.

Identifying the right follow-up and assessment indicators is always a challenge. Many countries have bypassed this problem by identifying only "process indicators," which simply ascertain whether or not planned activities are conducted in accordance with the predetermined schedule (for example, if a law was drafted or adopted within a certain timeframe, if civil servant training programmes were organised, and if so, how many, etc.) It is much more ambitious to identify "impact indicators" that show whether or not a reform measure has attained its assigned objective.

Initial analyses are often decisive for identifying the most relevant indicators for a specific process or sector. For example, if one wishes to measure corruption in the health sector, and, even more specifically, to determine the frequency of public officials extorting patients in exchange for proper medical care, one should carry out surveys of citizens in order to calculate the rate of those forced to pay bribes. If adequate measures are taken to correct this problem, it is to be expected that similar surveys conducted one or two years later would indicate a significant drop in the number of bribes paid.

Follow-up and assessment efforts, however, require well-adapted means; the necessary material and human resources should be allocated from the start of the initiative.

Strategy development process

International experiences offer other important lessons related to the development process of a National Anti-Corruption Strategy (SNLC).

Firstly, the most important point is that strategies should be developed in a participatory manner. This obviously concerns the actors of civil society organisations: their contribution is precious, especially in countries where civil society has acquired vast experience in dealing with issues associated with the battle against corruption. But the private sector and concerned state institutions should also be solicited. Too often overlooked, State institutions, in particular, need to regain their importance. State officials understand better than anyone else the kinds of problems that affect their institutions and their sector, and they will be the ones implementing the proposed reforms. They should therefore feel involved in the decisions that are made.

Secondly, the length of time required to develop an adequate strategy should not be underestimated. The goal is to find the right tension: enough time to conduct the work, but not so much that one would be unable to see the end of the process.

Thirdly, the process should be entirely transparent, which implies clear and regular communication on the initiatives taken. Clear communication is, in any case, always necessary for effectively managing the contributions of the aforementioned actors. Agendas detailing their contributions should be reasonable and publicly announced. Every contribution made should be recognised. Also, participation should be encouraged through consultative events or similar mechanisms whenever possible.

Finally, support should be sought out from all potential partners, whether academics or development partners, likely to offer both material and technical assistance.

Coordination, implementation follow-up, and assessment

A sound implementation plan contains all the information necessary to follow-up on the progress made, and to assess implementation (especially if the indicators are correctly delineated). But an institution remains necessary to make sure the follow-up work is indeed completed.

Two main considerations should weigh in the decision to establish one or several institutions exercising these functions.

On the one hand, it is necessary to determine if the follow-up function should be purely informational (i.e. reporting the situation and determining whether or not obligations under the SNLC are met), or binding, with power to force the institutions concerned to fulfil their responsibilities. These two

institutional roles entail very different forms of power, and truly different kinds of personnel. Moreover, an institution merely responsible for coordinating requires yet another kind of staff.

On the other hand, independence is critical to an institution's assessment function, for it enables the gathering of relevant information on which to base its assessments.

It is important to point out that there are a number of institutional models that would enable to the fulfilment of these functions.

Establish efficient systems for senior officers to be able to identify and manage conflicts of interest

Among some of the most prominent anti-corruption policies are preventive measures aimed at promoting the integrity of senior officials and high-level civil servants.

In the case of Tunisia, where the worst cases of corruption have involved these kinds of officials, it is critical that risks be adequately addressed.

Senior officials are essential for setting examples of integrity for the entire government. The Tunisian government should consider defining integrity standards that reflect public expectations and help to prevent conflicts of interest. To aid governments in implementing these reforms, the OECD has developed guidelines on these issues.

Conflict of interest

The OECD provides the following definition:

> 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 their official duties and responsibilities.[1]

Today, relations between the public sector and the business and nonprofit sectors are increasingly close. Citizens expect individual public officials to perform their duties with integrity, in a fair and unbiased way. While a conflict of interest is not ipso facto corruption, there is increasing recognition that conflicts between the private interests and public duties of public officials, if inadequately managed, can result in corruption, which can weaken citizen's trust in government.

The proper objective of an effective Conflict of Interest policy is not the simple prohibition of all private-capacity interests on the part of public officials, even if such an approach were conceivable. The immediate

objective should be to maintain the integrity of official policy and administrative decisions and of public management generally, recognising that an unresolved conflict of interest may result in abuse of public office.

The OECD Guidelines for Managing Conflict of Interest in the Public Service aim at:

1. Help government institutions and agencies to develop an effective Conflict of Interest policy that fosters public confidence in their integrity, and the integrity of public officials and public decision-making.
2. Create a practical framework of reference for reviewing existing solutions and modernising mechanisms in line with good practices in OECD countries.
3. Promote a public service culture where conflicts of interest are properly identified and resolved or managed, in an appropriately transparent and timely way, without unduly inhibiting the effectiveness and efficiency of the public organisations concerned.
4. Support partnerships between the public sector and the business and non-profit sectors, in accordance with clear public standards defining the parties' responsibilities for integrity.

Box 1.6. **OECD Guidelines for Managing Conflict of Interest in the Public Service**

Review 'at-risk' areas for potential conflict of interest situations

Additional employment –Define the circumstances, including the required authorisation procedures, under which public officials may engage in ancillary ("outside") employment while retaining their official position.

"**Inside" information** – Make sure that information collected or held by public organisations which is not in the public domain, or information obtained in confidence in the course of official functions, is understood to be privileged, and is effectively protected from improper use or disclosure.

Contracts – Consider the circumstances in which the preparation, negotiation, management, or enforcement of a contract involving the public organisation could be compromised by a conflict of interest on the part of a public official within the public organisation.

Gifts and other forms of benefit – Consider whether the organisation's current policy is adequate in recognising conflicts of interest arising from traditional and new forms of gifts or benefits.

Family and community expectations – Consider whether the organisation's current policy is adequate in recognising conflicts of interest arising from expectations placed on public officials by their family and community, especially in a multicultural context.

Box 1.6. **OECD Guidelines for Managing Conflict of Interest in the Public Service** (*cont.*)

'Outside' appointments – Define the circumstances, including the required authorisation procedures, under which a public official may undertake an appointment on the board or controlling body of, for example, a community group, an NGO, a professional or political organisation, another government entity, a government-owned corporation, or a commercial organisation which is involved in a contractual, regulatory, partnership, or sponsorship arrangement with their employing organisation.

Activity after leaving public office – Define the circumstances, including the required authorisation procedures, under which a public official who is about to leave public office may negotiate an appointment or employment or other activity, where there is potential for a conflict of interest involving the organisation.

Provide a clear and realistic description of what circumstances and relationships can lead to a conflict of interest situation

The general description of conflict of interest situations should be consistent with the fundamental idea that there are situations in which the private interests and affiliations of a public official create, or have the potential to create, conflict with the proper performance of his/her official duties. The description should emphasise the overall aim of the policy -- fostering public trust in government institutions.

The description should also recognise that, while some conflict of interest situations may be unavoidable in practice, public organisations have the responsibility to define those particular situations and activities that are incompatible with their role or public function because public confidence in the integrity, impartiality, and personal disinterestedness of public officials who perform public functions could be damaged if a conflict remains unresolved.

The policy should give a range of examples of private interests which could constitute conflict of interest situations: financial and economic interests, debts and assets, affiliations with for-profit and non-profit organisations, affiliations with political, trade union or professional organisations, and other personal-capacity interests, undertakings and relationships (such as obligations to professional, community, ethnic, family, or religious groups in a personal or professional capacity, or relationships to people living in the same household).

Ensure that the Conflict of Interest policy is supported by organisational strategies and practices to help with identifying the variety of conflict of interest situations

Laws and codes, as primary sources, should state the necessary definitions, principles and essential requirements of the Conflict of Interest policy.

Box 1.6. **OECD Guidelines for Managing Conflict of Interest in the Public Service** (*cont.*)

In addition, guidelines and training materials, as well as advice and counselling, should provide practical examples of concrete steps to be taken for resolving conflict of interest situations, especially in rapidly-changing or "grey" areas such as private-sector sponsorships, privatisation and deregulation programmes, NGO relations, political activity, public-private partnerships and the interchange of personnel between sectors.

Ensure that public officials know what is required of them in relation to identifying and declaring conflict of interest situations

Initial disclosure – on appointment or taking up a new position: Develop procedures that enable public officials, when they take up office, to identify and disclose relevant private interests that potentially conflict with their official duties. Such disclosure is usually formal, (by means of registration of information identifying the interest), and is required to be provided periodically, (generally on commencement in office and thereafter at regular intervals, usually annually), and in writing. Disclosure is not necessarily required to be a public process: internal or limited-access disclosure within the public organisation, together with appropriate resolution or management of any conflicts, may be sufficient to achieve the policy objective of the process -- encouraging public confidence in the integrity of the public official and their organisation. In general, the more senior the public official, the more likely it is that public disclosure will be appropriate; the more junior, the more likely it is that internal disclosure to the management of the official's organisation will be sufficient.

In-service disclosure in office – Make public officials aware that they must promptly disclose all relevant information about a conflict when circumstances change after their initial disclosure has been made, or when new situations arise, resulting in an emergent conflict of interest. As with formal registration, ad hoc disclosure itself is not necessarily required to be a public process: internal declaration may be sufficient to encourage public confidence that integrity is being managed appropriately.

Completeness of disclosure – Determine whether disclosures of interests contain sufficient detail on the conflicting interest to enable an adequately-informed decision to be made about the appropriate resolution. The responsibility for the adequacy of a disclosure rests with the individual public official.

Effective disclosure process – Ensure that the organisation's administrative process assists full disclosure, and that the information disclosed is properly assessed, and maintained in up-to-date form. It is appropriate that the responsibility for providing adequate disclosure of relevant information should rest with individual officials. Ensure that the responsibility for providing relevant information rests with individual officials and this requirement is explicitly communicated and reinforced in employment and appointment arrangements and contracts.

Source: www.oecd.org/gov/ethics/conflictofinterest.

Tunisian law does not currently offer a definition of conflict of interest. Meanwhile, a large proportion of the excesses of the Ben Ali era fall under the category of conflicts of interest: private interests were in conflict with the public missions of civil servants. Conflict of interest management leads to the implementation of several tools. Asset declarations are just one among others. Other tools are discussed below.

Declarations of interest

According to international best practices, in addition to their assets, civil servants should also declare their interests, especially when they possess discretionary authority. Some of these interests are "structural": for example, belonging to certain associations (such as political parties) or holding certain jobs or functions (such as the manager of a private business) that are likely to come into conflict with public service obligations. Others are linked to a particular situation: being involved in making a specific decision (such as hiring someone) when, for example, one of the competing actors is a close friend or a relative. In such cases, potentially conflicting interests should at the least be disclosed.

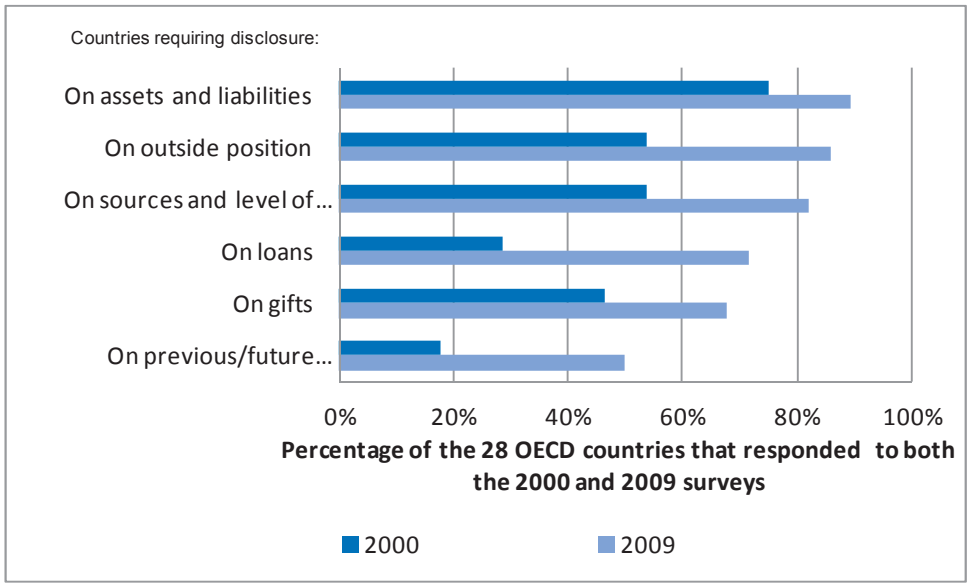
Considering the fact that the nature of conflict of interest has changed over time, the types of private interests to be disclosed in OECD countries have evolved too. Traditionally, declarations mostly focus on information related to assets and liabilities. But in view of the growing interface between the public and the private sectors (for instance, public service privatisation, public-private partnerships, revolving doors), the number of countries requiring information on past and future employment has more than doubled between 2000 and 2009. Countries also pay more attention to secondary occupation arrangements. Over the last ten years, the number of countries requiring information on loans has almost tripled.

Incompatibilities

The resolution of what are referred to above as "structural" conflicts requires a specific strategy. One common approach involves preventing civil servants in every branch of government from exercising certain private functions. In some cases, restrictions could be maintained several years after the civil servant has left his post (in order to avoid the problem of "revolving doors.")

In Tunisia, restrictions of this type exist for the legislature. According to the Global Integrity Assessment, certain restrictions limit the involvement of members of Parliament in financial institutions and publicly subsidized businesses.

Figure 1.2. Percentage of countries that require decision makers in the central government to disclose conflict of interest (2000 and 2009)



Source: OECD (2009), Government at a Glance 2009, OECD Publishing. doi: *10.1787/724123642681*

Members of Parliament are prohibited from serving on advisory boards or otherwise acting as officers or advisers for financial institutions during their entire tenure in legislative office:

> Electoral Code, Law No. 69-25 of 8 April 1969, art. 83.2 and 84, Law 48/2004 of 14 June 2004, Law on the relations between the Chamber of Deputies and the Chamber of advisors, amending the 1989 bulletin on elections, art. 38, 40, 41 and 43: members of Parliament are prohibited from serving in the stated capacities in all financial and credit institutions, as well as in publicly subsidized businesses. These restrictions cease to apply after a member of Parliament's term has ended. [2]

Policies on gifts

Gifts can refer to all means used to unduly influence public officials in their decision-making process; best practices thus require strict conditions governing the reception of gifts by public officials. There seems to be no rule in Tunisia requiring declarations of gifts received.

Instruments employed

Countries have used various instruments to codify these rules. Some countries have chosen to bring together these rules into codes of conduct, while others have chosen to legislate in ways that have, in some cases, made violations of these laws crimes under penal law, rather than administrative law.

The selection of an instrument is less important than the mechanism used to implement it. The experience of countries undergoing transition has shown that to ensure the conformity of senior officials with the new rules, it is necessary to put into place an independent implementation mechanism that has credibility, possesses sufficient authority and powers, and is backed by a convincing (i.e. dissuasive) sanctioning system.

For lower-ranking civil servants, internal codes of conduct and a surveillance mechanism embedded in existing oversight structures have generally proved sufficient to guarantee a satisfactory level of respect for the rules.

Note: it is crucial for Tunisia to efficiently regulate these practices. While certain general provisions exist in the 12 December 1983 Law No. 83-112 on the General Statute of State Officials, the question should be raised more widely to ensure that all levels of government are taken into account and that that laws are firmly applied. Considering the number of abuses committed under the previous regime, the new democratic authorities will certainly want to assure that such crimes are not repeated in the future. The training of civil servants on the rules of ethics and, more particularly, on conflict of interest risks plays an essential part in the overall task of strengthening public sector integrity that Tunisia must confront.

Developing standards of conduct for public officials

Public sector officials

While preventing corruption among top-ranking public officials is a priority in post-Ben Ali Tunisia, other requirements should be considered to prevent corruption among lower-level public officials as well. The promotion of integrity among public service officials is the cornerstone of the broader policy of strengthening integrity throughout the entire public sector, especially because it bolsters public confidence in the government.

Box 1.7. **Conflict of interest supervisory bodies: The experiences of Spain, Albania, and Croatia**

Some OECD countries have put into place specific bodies responsible for managing conflicts of interest. In Spain, for instance, a conflict of interest management office was established when the Law on Conflict of Interest was adopted.

Some countries undergoing transition have chosen to have independent supervisory bodies enforce asset or conflict of interest declarations and decide whether a particular situation – for example, serving in two civil services – constitutes a conflict of interest, and if so, what reparations are necessary.

In Albania, for instance, the task of enforcing conflict of interest rules (which mostly involve asset and interest declarations) has been given to the High Inspectorate of Declaration and Audit of Assets (HIDAA). The HIDAA is an independent institution; however, it reports annually to the Parliament, which is responsible for appointing its director. This institutional arrangement is relatively frequent in countries undergoing democratic transitions because it works to: i) limit direct executive power influence, ii) reduce the risks of exploitation by political interest groups; iii) facilitate closer scrutiny of the HIDAA's performance by members of Parliament and the general public.

In Croatia, however, the institution in charge is a semi-special Parliamentary body called the Commission for Conflicts of Interest in Public Service. Its independence is guaranteed by the presence within it of civil society representatives who act as experts and are not politically affiliated.

Source: Website of the High Inspectorate of Declaration and Audit of Assets, *www.hidaa.gov.al/root/misioni-yne/?lang=en*; website of the Commission on Conflicts of Interest in the Civil Service, *www.sabor.hr/Default.aspx?sec=2724*.

In addition, the UNCAC obligates this approach, at least in regard to the following practices:

- merit-based recruitment and public service management;
- specific training and, whenever possible, staff rotation in the posts that are the most vulnerable to corruption;
- adequate pay;
- a training programme on corruption risks and standards of conduct (which could, while this is yet to be determined, include information

on conflicts of interest and gift regulation policies at these levels as well); and

- protection for whistle-blowers, including internal whistle-blowing mechanisms that offer protection from the negative consequences of such actions.

Note: The aforementioned Law No. 83-112 of 12 December 1983 on the General Statute for State officials, already sets standards of conduct, among which is the prohibition on taking any interests conflicting with public duties. More far-reaching rules and mechanisms geared towards facilitating a merit-based system of recruitment, evaluation, and promotion for civil servants, as well as insulating public officials from undue political influence are required, along with measures to manage conflicts of interest and protect whistleblowers. Adopting a code of conduct can create consensus around the goal of establishing standards of conduct for public officials, as long as it is established with the cooperation of all the parties involved (See, for example, the experience of Canada as described in Box 1.8).

The judges

Judicial officers – judges and prosecutors – constitute a very sensitive category of public officers whose integrity is decisive for the fight against corruption. Integrity must be promoted in the judicial system to address both the problem of individual judges abusing their power as well as that of political influence being deployed to sway their decisions.

As in the case of senior officials, instruments such as asset declarations, the specification of incompatibilities (for example, the interdiction on being a political party member), codes of conduct clearly defining appropriate judicial behaviour, and mechanisms to respond to potential conflicts of interest, all contribute to this first objective: defeating possible individual abuses of power. The second objective of protecting judicial officers from undue influence (in particular political influence) is more easily attained if the independence of judges and prosecutors is preserved at every step of their professional trajectories: at the time of their recruitment, promotion, and dismissal. They should also enjoy functional immunity.

Box 1.8. **An ethics code for the public sector: the experience of Canada**

The Values and Ethics Code for the Public Sector is divided into four chapters: i) The Statement of Public Service Values and Ethics; ii) Conflict of Interest Measures; iii) Post-Employment Measures; and iv) Avenues of Resolution. It lists all the regulations and policies that civil servants are required to observe (Access to Information Act; Financial Administration Act; Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace, etc.). Each chapter has been divided into sections and is composed of a few key ideas in order to facilitate the interpretation of the code and to avoid detailed provisions. The code has thus managed to define clear and concise standards of conduct.

As for standards of conduct for dealing with both citizens and fellow public servants, the Canadian code has defined values to guide such conduct: the "People Values." These "People Values" require civil servants to "demonstrate respect, fairness and courtesy in their dealings with both citizens and fellow public servants." This general statement was further explained through a list of concrete principles:

- Respect for human dignity and the value of every person should always inspire the exercise of authority and responsibility;
- People values should reinforce the wider range of Public Service values. Those who are treated with fairness and civility will be motivated to display these values in their own conduct;
- Public Service organisations should be led through participation, openness and communication and with respect for diversity and for the official languages of Canada;
- Appointment decisions in the Public Service shall be based on merit;
- Public Service values should play a key role in recruitment, evaluation and promotion.

Finally, concerning the application of the code, a specific section determines the responsibilities and powers of civil servants, deputy heads, high-level executives, the Treasury Board (which developed the code and provides the governing documents on its implementation), and the integrity officers (in charge of collecting, registering, and examining disclosures of wrongdoing). Additional rules and advice have been developed to guarantee actual implementation of the norms of conduct and to adapt them to specific situations.

Source: Website of the Treasury Board of Canada Secretariat, *www.tbs-sct.gc.ca/pubs_pol/hrpubs/tb_851/vec-cve-eng.asp.*

Similarly, it is necessary to guarantee the independence of judges. According to the repealed Tunisian constitution, judicial power is formally independent, but the High Judicial Council (in charge of appointments, promotions, transfers, and dismissals of judges) is chaired by the President of the Republic. In such an arrangement, the executive power exercises indirect control, which is compounded by other factors, such as the lack of objective criteria for promoting judges.[3] The work of the National Constituent Assembly on this issue has led to considerable debates.

In terms of fighting corruption, judicial power is the final link in the law enforcement chain, along with the institutions in charge of law enforcement. It is, in effect, collectively responsible for penalizing corruption, or, in other words, for prosecuting and sanctioning acts of corruption. Consequently, judicial authorities should be supported not only in their efforts to promote integrity and prevent political influence plays, but also by reinforcing their capacities to efficiently prosecute and rule in cases of corruption. This involves, in particular, consolidating the knowledge and competencies of judges and prosecutors, and providing them with the best technical conditions for the efficient performance of their duties.

Note: Judicial integrity constitutes one of the main preoccupations in the fight against corruption, as recognised by article 11 of the UNCAC. A more thorough analysis of the current situation, as well as of the needs and challenges of the judicial branch in Tunisia is therefore desirable. The Tunisian government could also consider the possibility of developing integrity standards for judges based on the Bangalore Principles of Judicial Conduct.[4]

Promoting open and inclusive public policy-making processes

Transparency

The recently adopted measures to promote free access to administrative documents that were mentioned earlier in this report hold great promise. The only element that has been visibly omitted is a follow-up mechanism guaranteeing the effective enforcement of the rules. While this function has been performed by civil society organisations in many countries in transition, there is no comparable mobilization in today's Tunisia.

Note: It may be useful to envision creating a government institution to carry out this task. The specific format and mandate of such an institution will be determined based on the overall institutional prevention framework, which was described in the section entitled "An Effort at Strengthening the Institutional Arsenal for Preventing Corruption."

Box 1.9. **Commissioner for information in Serbia**

In Serbia, the Commissioner for Information of Public Importance and Personal Data Protection is an autonomous public authority that guarantees the enforcement of the Law on Free Access to Information of Public Importance. In addition, it receives and examines the complaints against public authorities that do not provide the requested data.

The autonomy of the Commissioner is guaranteed by its nomination by Parliament.

Source: Website of the Commissioner for information in Serbia, *www.poverenik.rs*.

Civil society participation

Considering Tunisia's recent regime change – the Jasmine revolution – authorities should be particularly sensitive to citizens' needs and try to involve them as widely as possible in the process of developing public policies. Certain ministries (such as the Ministry of Public Lands and Land Affairs) appear very keen on establishing mechanisms for public participation, but no policy has been initiated and the mechanisms still have to be defined. This should be considered as a priority for the entire public sector.

Box 1.10. **Citizens as Partners: Information, Consultation, and Participation in Public Policy-Making**

A useful resource for the definition of participatory policies is the OECD report *Citizens as Partners: Information, Consultation, and Participation in Public Policy Making* (OECD, 2002). This book is a unique source of comparative information on this challenging subject. It examines a wide range of country experiences, offers examples of good practice, highlights innovative approaches and identifies promising tools (including new information technologies). A set of ten guiding principles for engaging citizens in policy-making is proposed.

Source : www.oecd.org/gov/publicengagement.

Notes

1. OECD (2004), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD Publishing. doi: *10.1787/9789264104938-en*.

2 *http://report.globalintegrity.org/Tunisia/2008/scorecard/39*, based on a World Bank Group study, available on the Harvard University Economics Department website: *www.people.fas.harvard.edu/%7 Eshleifer/Country_Annexes.zip*.

3. Global Integrity Report (2008).

4. *www.deontologie-judiciaire.umontreal.ca/fr/textes%20int/documents/bangalore_FR.pdf.*

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