Integrity Scan of
TUNISIA

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Part 2: INTEGRITY SCAN OF THE EDUCATION SECTOR

CleanGovBiz Initiative

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INTEGRITY SCAN OF TUNISIA

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INTEGRITY IN PRACTICE
This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Organisation or of the governments of its member countries.
Foreword

This Integrity Scan has been undertaken as part of the OECD CleanGovBiz Initiative. The purpose of this report is to support the Tunisian government in the preparation and implementation of priority reforms aimed at strengthening its national anti-corruption efforts and promoting a culture of integrity.

An Integrity Scan provides an overall diagnosis of the legal, economic and regulatory framework and of actual policies and practices aimed at fighting corruption and strengthening integrity. It enables the countries concerned to develop a multi-dimensional strategy for promoting a culture of integrity and combating corruption.

Integrity Scans involve diagnosis of 13 aspects decisive for the promotion of good governance and for the detection, prevention and criminal prosecution of corruption. They are based on the CleanGovBiz Toolkit developed jointly by the OECD, the United Nations, the World Bank, the Financial Action Group, Transparency International and the Extractive Industries Transparency Initiative in order to assist governments wishing to strengthen integrity and combat corruption in co-operation with the private sector and civil society.

This report is based on a self-evaluation carried out by the Tunisian government, an analysis by OECD specialists and a comparison of the various factors involved with international standards, covering the following 13 aspects:

- regulatory policy
- competition policy
- public financial management
- development co-operation
- public sector integrity
- public procurement
- tax transparency
- export credits
- lobbying
- business sector integrity
- tax administration
- whistleblower protection
- criminalising bribery

A scan of the education sector, conducted at the request of the Tunisian authorities, has been incorporated in the final report.

This report is the product of collective efforts. It is based on information and a self-evaluation provided by the Tunisian government, and on consultations conducted with representatives of the Tunisian business sector, Tunisian civil society, and international organisations. The OECD Secretariat conducted its own research in parallel and synthesised the results. It subsequently validated the conclusions and recommendations with its Tunisian partners and reinforced the content of its analysis of the various dimensions in the course of two series of meetings held in Tunis in November 2012 and April 2013. The work was co-ordinated on the part of the Tunisian government by the Ministry of Governance and Combatting Corruption. Representatives of the Ministry were received at OECD headquarters in April 2013 to discuss the draft of the final report with the OECD multidisciplinary team.
This Integrity Scan includes the analyses and programmes already established in this area by the Tunisian government in conjunction with the OECD, and by other international organisations and bilateral partners, in order to benefit from them and develop synergies. Finally, this report suggests priority areas of reform and action to be taken, and identifies future avenues for co-operation between the OECD and Tunisia to consolidate the integrity framework in that country. It embodies the OECD commitment to support the reform process set in train in Tunisia so as to ensure a successful transition.
Acknowledgements

This publication is the product of collective work by the OECD, the Tunisian government and other state institutions, and representatives of the Tunisian private sector, Tunisian civil society, and international organisations.

The CleanGovBiz team wishes to thank Dr Abderrahmane Ladgham, Minister in the Prime Minister’s Office responsible for Governance and Anti-corruption, Mr Hichem El Hammi, Chef de Cabinet, and the whole of the Ministry team. The staff of the Ministry of Governance and Combating Corruption coordinated the project on the Tunisian side and provided liaison with the various Tunisian institutions, an essential role in view of the magnitude and diversity of the topics covered.

The Integrity Scan involved a number of ministries and government institutions. The main ministries involved were the Prime Minister’s Office, the Ministry for Justice, the Ministry for Finance, the Ministry for Development and International Co-operation; and the Ministry for Commerce. The other Tunisian state institutions contributing to the Integrity Scan included the Supreme Audit Institution, the Competition Board, the Higher Procurement Commission, the Central Bank of Tunisia, the Centre for the Promotion of Exports and the Tunisian Foreign Trade Insurance Company. The Integrity Scan was also able to call on assistance and advice from the National Anti-corruption Unit.

Representatives of the business sector participating in the scan included the Arab Institute of Business Leaders, the Tunisian Union for Industry, Commerce and Handicrafts, the Confederation of Tunisian Citizen Enterprises and Junior Chamber International. We also wish to thank all the civil society organisations, professional groups and citizens who took part in the public consultation held in April 2013. Finally, our thanks go to the United Nations Development Programme for Tunisia.

The Integrity Scan was conducted by the CleanGovBiz team of the OECD Secretariat-General on the basis of the information received and the dialogue undertaken. The team benefited from the expertise of various OECD departments, in particular the Public Governance and Territorial Development Directorate (GOV), the Directorate for Financial and Enterprise Affairs (DAF), the Centre for Tax Policy and Administration (CTP), the Trade and Agriculture Directorate (TAD), the Development Co-operation Directorate (DCD) and the Directorate for Education and Skills (EDU), which conducted the preliminary scan of the education sector. We also wish to thank the OECD-MENA programme for its contribution to this publication.

This report was prepared under the supervision of Richard Boucher, Deputy Secretary-General of the OECD, and Mathilde Mesnard, Advisor to the Secretary-General of the OECD. It was written and coordinated by Selim Guedouar with the assistance of Helge Schroeder. The CleanGovBiz team wishes to thank all the experts who took part in drafting the 13 chapters of the Integrity Scan: Mario Marcel, Janos Bertok, Paloma Baena Olabe, Elodie Beth, Julio Bacio Terracino, Daniel Trnka, Miriam Allam, Amal Larhlid, Alessandra Fontana, Sana Al-Attar and Amira Tlili (GOV); Pierre Poret, Alexander Böhmer, Frederic Wehrle, Hilary Jennings, Olga Savran, Antonio Capobianco, Mary Crane Charef and Leah Ambler (DAF); Grace Perez-Navarro, and Martine Milliet-Einbinder (CTP); Julian Paisey and Yuki Matsumoto (TAD); Kjetil Hansen (DCD); Mihaylo Milovanovich and Simone Bloem (EDU). We also thank Said Kechida of the Global Relations Secretariat for his role in launching the project and his close co-operation with the Tunisian Government. Finally, we thank Isabelle Renaud for her invaluable assistance in the final stage of the project and Johannes Kannicht for his help in getting the project under way.
The preliminary study of integrity in the education sector was prepared in the OECD Directorate for Education and Skills by Mihaylo Milovanovitch, Early Childhood and Schools Division, and Simone Bloem, Innovation and Measuring Progress Division. It would have been impossible without the support and inputs of Michael Davidson, Head of Early Childhood and Schools Division (ECS), OECD Directorate for Education and Skills (EDU); Selim Guedouar, Policy Analyst, OECD CleanGovBiz Initiative; Julie Bélanger, Education Policy Analyst (ECS/EDU); Miyako Ikeda, Education Policy Analyst (ECS/EDU); Isabelle Moulherat, Innovation and Measuring Progress Division (EDU); Célia Braga-Schich (EDU); Lynda Hawe (EDU); and also Nawel Ayadi, Forum Universitaire Tunisien (Tunisia); Professor Serge Ebersold, Institut national supérieur pour l’éducation des jeunes handicapés et les enseignements adaptés (France); Kate Lapham, Open Society Foundations; and Ivana Ceneric, Education Policy Analyst, National Education Council of Serbia. The team also wishes to thank all the opposite numbers it met during the field visit to Tunisia in April 2013.

The preliminary study of integrity in the education sector was prepared with the financial support of the Education Support Program of the Open Society Foundations.
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Preface by Dr Abderrahmane Ladgham

Minister in the Prime Minister’s Office responsible for Governance and Combatting Corruption

The new Tunisia is unshakably committed to combating corruption and promoting integrity and good governance. The fight against corruption is a fundamental demand of the citizens of Tunisia. Since the government resulting from the free and transparent elections of 23 October 2011 took office, a barrage of legal and institutional measures have been put in place. The appointment of a Minister in the Prime Minister’s Office responsible for Governance and Anti-corruption and the creation of the National Anti-corruption Unit, as well as the recovery of misappropriated assets in Tunisia and holdings abroad, were the first steps.

The Tunisian government has established good governance units in all ministries, public enterprises and regions of the country. A national anti-corruption strategy was launched on 9 December 2012 following intensive consultation with the good governance units and representatives of civil society and the business sector.

Our co-operation with the OECD is a major asset in our drive for integrity and transparency. After signing the Declaration on Propriety, Integrity and Transparency in the Conduct of International Business and Finance, joining the Global Forum on Transparency and Exchange of Information for Tax Purposes, and signing and ratifying the Convention on Mutual Administrative Assistance in Tax Matters, Tunisia became the first country to launch an Integrity Scan under the OECD CleanGovBiz Initiative.

This report is the fruit of ten months of intensive self-evaluation and consultations conducted by a team from the Ministry of Governance and Combatting Corruption with the support of OECD specialists. It provides us with a diagnosis of the gaps that exist and the priority reforms that are essential in order to improve our national anti-corruption strategy, and will help us better target our efforts to combat corruption and improve integrity.

Tunisia aspires to play a pioneering role and become an example to be followed by its Arab and African peers in fighting corruption and promoting integrity with a participatory and sustainable approach that meets the wishes of our people. Tunisia will continue its transition to genuine democracy, pursuing a model of inclusive, fair and equitable development based on good governance, transparency and civic participation.
Since the revolution of 14 January 2011, the Tunisian people have embarked on a new path that of more inclusive and equitable political, economic and social development based on the rule of law, good governance and transparency. Establishment of a road map for political reform led to the election in October 2011 of a Constituent Assembly charged with drawing up a new constitution. The government that emerged from those elections made the reform of governance and the fight against corruption a national priority and a key lever in an overall approach aiming at the creation of a climate of confidence and the emergence of a genuine democratic culture.

The Organisation for Economic Co-operation and Development (OECD) stood by the Tunisian people from the first hours of the transition. We have put all our expertise and the experience of our member countries and partners at the disposal of the new Tunisia, especially with respect to the promotion of integrity and the fight against corruption. With that in view, Tunisia became the first country to conduct an Integrity Scan under OECD “CleanGovBiz” initiative. This initiative supports governments in their fight against corruption and their dialogue with civil society and the business sector, so as to promote a real shift to greater integrity.

The present report is the fruit of intensive co-operation between Tunisia’s Minister of Governance and Combatting Corruption and the Secretary-General of the OECD, and of consultation with civil society players. It is deliberately geared towards action and identification of the priority reforms involved in the national anti-corruption strategy. It recognises the progress made by Tunisia in the fight against corruption and identifies the vulnerable areas in order to establish healthier governance and combat corruption.

Conscious of the strategic importance of promoting integrity in the education system, the Tunisian government asked the OECD to conduct a scan of the education sector. The task is to initiate a long-term effort to strengthen institutions and change mentalities, which is the only way to ensure a better future for the coming generations.

The fight against corruption is a constant struggle that requires healthy governance and measures for prevention, detection and criminal prosecution. Tunisia is only at the beginning of its efforts to strengthen transparency and integrity. The legislative and institutional reforms it has carried out so far are encouraging. They need nevertheless to be consolidated and sustained over time by proportionate means and by specific measures designed to promote integrity and better prevent corruption.

Fighting corruption and encouraging integrity in Tunisia successfully and visibly will have a strong impact on the country’s social and economic development. The OECD is ready to support the reform process under way and to accompany Tunisia in its transition to a stronger, healthier and more equitable economy.
## List of Acronyms and Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>AfBD</td>
<td>African Development Bank</td>
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<tr>
<td>CDPF</td>
<td>Tax procedures code</td>
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<td>CONECT</td>
<td>Confederation of Tunisian Citizen Enterprises</td>
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<tr>
<td>COTUNACE</td>
<td>Tunisian Foreign Trade Insurance Company</td>
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<tr>
<td>ECA</td>
<td>Export Credit Agency</td>
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<td>ECG</td>
<td>Export Credit Guarantees</td>
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<td>EU</td>
<td>European Union</td>
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<td>IACE</td>
<td>Arab Institute of Business Leaders</td>
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<td>IBP</td>
<td>International Budget Partnership</td>
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<td>ICT</td>
<td>Information and communication technology</td>
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<td>IFI</td>
<td>International financial institution</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>JCI</td>
<td>Junior Chamber International</td>
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<td>JORT</td>
<td>Official Gazette of the Republic of Tunisia</td>
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<tr>
<td>MBO</td>
<td>(Budget) Management by Objectives</td>
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<tr>
<td>MENA</td>
<td>Middle East and North Africa</td>
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<tr>
<td>MTEF</td>
<td>Medium-term expenditure framework</td>
</tr>
<tr>
<td>N.A.</td>
<td>not available</td>
</tr>
<tr>
<td>OBL</td>
<td>Organic Budget Law</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>PDA</td>
<td>Public Development Aid</td>
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<td>TND</td>
<td>Tunisian dinar</td>
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<tr>
<td>UNCAC</td>
<td>United Nations Convention against Corruption</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<tr>
<td>UTICA</td>
<td>Tunisian Union for Industry, Commerce and Handicrafts</td>
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<td>WTO</td>
<td>World Trade Organization</td>
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SUMMARY

Rejection of the corruption that characterised the Ben Ali regime was one of the main causes of the popular revolution in Tunisia in January 2011. For that reason, combating corruption is now an absolute priority for post-revolutionary Tunisia. Resolute action in that respect must be directed at removing the obstacles to a fair and efficient distribution of resources and at promoting durable and inclusive economic development.

In response to the expectations of the Tunisian people, the Government has initiated a series of basic reforms to meet the many challenges facing it. At the institutional level, it began by appointing a Minister of Governance and Combatting Corruption and establishing the National Anti-corruption Unit, as well as a High Council for Anti-corruption and the Recovery of State Property and Assets. In addition, a series of urgent reforms were put through to limit corruption in identified vulnerable areas, strengthen public sector integrity and promote a climate of transparency and a participatory approach. The Government also intends to comply with the United Nations Convention against Corruption (UNCAC). It is supported in this endeavour by technical partners and international donors such as Germany, the European Union, the OECD, South Korea, the UNDP, the United Kingdom and the World Bank.

In the framework of its co-operation with the OECD, Tunisia became the first country to undertake an Integrity Scan operation in order to obtain an overall diagnosis of the corruption problem in the country and establish a road map for dealing with it. Presenting the results of that scan, this report evaluates thirteen aspects relating to the promotion of integrity and the fight against corruption. For each aspect, it details the reforms currently under way, identifies those which are priorities, and sets out examples of good practice as defined by international standards.

Regulatory policy

Regulatory policy is well institutionalised in Tunisia. The Government has initiated a series of reforms designed to strengthen and modernise the regulatory framework. The reforms aim at improving services to citizens, fostering an economic environment conducive to business, and promoting structures of open and transparent government. However, the reforms in question are somewhat slow to take effect in this transition period. The government could speed them up by: (i) increasing access to regulations, in particular through the use of ICT, and facilitating public consultations on new legislation under preparation; and (ii) simplifying existing regulations and establishing an impact assessment policy for future legislation. Finally, introduction of these reforms must respect the principle of the primacy of law and requires an overall inter-administrative approach.

Competition policy

Tunisia possesses a solid legal framework and provisions for promoting a culture of competition. The aim of establishing a culture of competition is to make the economy more dynamic and prevent citizens being injured by anti-competitive practices. Certain reforms have been undertaken to reinforce the role and independence of the Competition Board and limit anti-competitive practices. Tunisia would benefit from the following reforms: (i) review of the system of penalties for anti-competitive practices; (ii) reinforcement of the role of the Competition Board, particularly as regards its oversight of mergers and acquisitions; and (iii) allowing citizens injured by anti-competitive practices to take legal action. Finally, these reforms can be accompanied by an evaluation of competition in certain priority sectors. Such an evaluation could also be an opportunity to strengthen the capability of the Tunisian authorities through
an exchange of expertise with OECD specialists and peers, thereby enabling them to evaluate other sectors.

**Public finance management**

All in all, the public financial management system has not aged well and is no longer entirely suited to the demands of modern management. It does not permit precise detection of waste and corruption, and has been identified as one of the areas most vulnerable to corruption. The government has initiated a number of reforms in this area, notably in collaboration with the OECD. It has undertaken a fundamental reform based on budget management by objectives (MBO), which is being accompanied by revision of: (i) the organic budget law, (ii) public accounting, (iii) budgetary nomenclature, (iv) the legal framework governing financial controls and (v) improvement of transparency in the management of public finances. To complement these reforms, Tunisia could also simplify its control structures and adapt them to a programmatic approach. To that end, it should rely on ICT and integrate its financial and accounting systems so as to improve administrative and budgetary transparency.

**Development co-operation**

Tunisia has a solid strategy in place for combating corruption in the area of international co-operation. That strategy includes the government, donors and civil society, and an ambitious reform programme is under way. Additional efforts could however be useful, in terms of: (i) introducing an effective system for tracking corruption trends; (ii) improving co-operation between donors and governments; and (iii) strengthening international co-operation for the recovery of ill-gotten assets. The OECD can facilitate dialogue between Tunisia and donors so as to bring their aims and expectations into line and encourage them to use national public management systems. It can also assist Tunisia in the introduction of a system for tracking corruption trends.

**Public sector integrity**

Public sector integrity in Tunisia needs to be further strengthened because there are still many gaps in legislation, institutions and procedures. Of particular note among the gaps in the legislative framework are: (i) the weakness of the asset declaration system; (ii) the dispersal of the laws embodying values and standards for public sector integrity; (iii) the lack of participation in the formulation of legislation; and (iv) the limited control over the finances of political parties and associations. Tunisia has recognised the importance of strengthening public sector integrity and has initiated a number of reforms for that purpose in co-operation with the UNDP and the OECD. In particular, a code of conduct for the public service has been drawn up. It is important for the political transition to keep building a culture based on transparency and integrity in the public sector. In the course of implementing these reforms, Tunisia could familiarise public servants with public service values and the risks of conflict of interest, and strengthen the auditing and risk management systems.

**Public procurement**

The Tunisian government identified public procurement as one of the functions most exposed to corruption, in the light of the many abuses committed under the former regime. That diagnosis was confirmed in 2011 by the OECD, which called for more integrity and more transparency in public procurement awards and performance. The Government has committed to an ambitious reform programme to enhance transparency and integrity, including introduction of the “TUNEPS” electronic public procurement system. The reforms in question would be rendered more effective if they were accompanied by: (i) measures to make the procurement function more professional; (ii) the introduction of high standards of integrity for the function; (iii) the establishment of effective redress mechanisms;
and (iv) reinforcement of the role of the media and civil society in overseeing the processes. Finally, the OECD can assist Tunisia with the evaluation of its requirements for training staff in the award of public procurement contracts, and can organise seminars and training courses.

**Tax transparency**

Under Ben Ali, Tunisia suffered from tax opacity, which encouraged corruption and tax evasion. As a result, the current state of Tunisian legislation does not provide an adequate framework to support the principles of transparency and information exchange. The Government was aware of this need, and became a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes in 2012. It also ratified the Convention on Mutual Administrative Assistance in Tax Matters on 25 March 2013. However, the Tunisian Government still has to carry out an in-depth revision of its legislative framework in order to meet the international standards to which the country has signed up. There is also a need to amend Tunisian legislation so as to allow the tax authorities access to banking information on all bank accounts for the purpose of exchanging civil or criminal information. Finally, the Secretariat of the Global Forum believes it would be useful for Tunisia to agree to a preliminary assessment of its legal framework in order to identify the necessary reforms and to provide itself with the instruments needed for greater transparency.

**Export credits**

Export credit agencies (COTUNACE in Tunisia) can play an important part in the deterrence and detection of corruption in transactions benefiting from publicly supported export credit. At the present time COTUNACE plays a limited role in the fight against corruption, and its activity in this area is governed by the law on money laundering and the financing of terrorism. To promote an active role on the part of COTUNACE, the government could ensure that appropriate legal provisions are in place which enable COTUNACE to play an active role in preventing corruption in the export transactions it supports. Training for COTUNACE staff in the detection of corruption could also be organised. Finally, the OECD Working Party on Export Credits and Credit Guarantees is prepared to assist COTUNACE in framing policies and procedures that will enable the institution to assume its new role in full.

**Lobbying**

In Tunisia lobbying is neither recognised nor regulated. If properly organised, however, lobbying can help improve the discussion of public policies and decision making. The decision-making process in Tunisia used to be non-pluralist, opaque and discretionary. Not all stakeholders had equal access to information on the definition and formulation of public policies. In order to reform this sector and regulate the influence of the various players on policy decisions, it is important to make laws more accessible and regularly consult all stakeholders during their preparation. Tunisia could also define and establish a legal framework for the practice of lobbying and the function of lobbyists.

**Business sector integrity**

Business sector integrity appears to be a major issue for employers’ associations but has been neglected for too long by the public sector. It is generally felt that business integrity has deteriorated since the recent political changes in Tunisia, especially with the weakening of State controls. It is crucial for Tunisia to include private sector integrity in its national anti-corruption strategy. To that end, Tunisia could appoint an individual or team responsible for co-ordinating action with the private sector, strengthening the government’s capacity to support business integrity and establishing a structured dialogue. Finally, the OECD can assist Tunisia in introducing swift measures to create positive momentum for the promotion of business sector integrity.
Tax administration

Tunisia has no legislation making bribes non-deductible. Bribes can be disguised as legitimate expenses (consultancy fees, commissions, fictitious salaries, representation expenses, etc.) or they can be paid through “slush funds” held abroad. Moreover, the tax administration’s limited access to banking information is a major obstacle to the detection of bribes. It is important that Tunisia comply with the provisions of the United Nations Convention against Corruption and adopt legislation explicitly disallowing the tax deductibility of bribes. To that end, Tunisia could impose an obligation on the tax administration to report suspicions of corruption to the competent authorities, and rely on the work of its tax inspectors while strengthening their corruption detection skills. Finally, the OECD could assist Tunisia in setting up a multidisciplinary anti-fraud unit that would improve the government’s ability to combat financial crime.

Whistleblower protection

Tunisia does not currently have mechanisms or laws that protect whistleblowers. It is therefore important to establish a comprehensive system for increasing the detection of corruption and reinforcing integrity in Tunisia. That system must necessarily comprise: (i) clear and comprehensive legislation for the protection – against reprisals, discrimination or disciplinary action – of employees who report suspicions of wrongdoing or corruption to the competent authorities; and (ii) an efficient institutional framework and procedures, including clearly identified channels, so that public and private sector employees know to whom to report wrongdoing or corruption which come to their knowledge. Introduction of these reforms could be accompanied by measures to heighten awareness of the importance of whistleblowing, but without creating an unhealthy climate.

Criminalising bribery

Criminalising the bribery of public officials, whether national or foreign, and enforcing the law are essential components of a general anti-bribery framework. The introduction of an effective anti-bribery system first involves defining the broadest possible range of violations. It is also necessary to ensure that law enforcement agencies are independent and vigilant in applying penalties. An in-depth analysis was carried out of legal provisions dealing with the criminalisation of active corruption (bribery) in the light of international standards, especially the UNCAC, to which Tunisia is a signatory. It shows that many of the legal provisions, including those defining violations and the corresponding penalties, need to be revised, and that certain institutional arrangements, in particular ministerial independence vis-à-vis the Executive, need reinforcing.

Scan of the education sector

The Tunisian authorities asked the OECD to conduct a preliminary Integrity Scan of the education system. The aim of that analysis is to provide a preliminary overview of vulnerable areas in pre-university and higher education that require more detailed monitoring and evaluation, and to propose policy solutions. The analysis sets out the monitoring options for restoring confidence in the system and proposes a wide-ranging public debate on the measures to be taken in order to develop a pact for a stronger and more equitable Tunisian education system.

Strategic vision, speeding up reforms, communication and participatory governance

Finalisation of the Constitution should make it possible to speed up the reforms and build a judicial and institutional framework capable of strengthening integrity in Tunisia. In order to move forward, the
Integrity Scan proposes a series of specific recommendations to help Tunisia settle firmly into a process of sustainable development that will enable it to meet the aspirations of its citizens.

The introduction of these reforms has to be part of a shared strategic vision. To be effective, such a strategy requires active co-ordination among ministries and the involvement of civil society and the media. Better use of new technologies will intrinsically strengthen and increase transparency. Furthermore, Tunisia will be able to rely on the expertise of the OECD during this crucial phase.

Finally, the successful introduction of lasting reforms and a comprehensive system for combating corruption requires the establishment of an equitable, efficient and independent judicial system.
PART 1: INTEGRITY SCAN OF THE INTEGRITY FRAMEWORK
I. Regulatory Policy: Role in Promoting Integrity and Combating Corruption

An overly complex regulatory framework, lack of transparency in the preparation of new regulations, plus ineffective and inappropriate application of the rules – these are all factors which combine to favour corruption and dishonest behaviour.

Introduction of an effective regulatory policy makes it possible to foster a system of integrity, cut the risks of corruption, reduce the economic and social effects of corruption and clearly define the relationship between the State, the citizen and the business sector.

An effective regulatory policy can thus inform and improve the process of governmental decision making. To that end, a range of tools must be put in place, coherently and appropriately, to bring about real improvement in the quality of systems and serve the interests of stakeholders. These basic tools are: (i) integrated Regulatory Impact Analysis (RIA); (ii) public consultations; (iii) a review of regulation stocks; and (iv) administrative and judicial review.

Effective regulatory governance is based on the principles of democratic governance and involves a broad range of players, including the legislature, the judiciary, national, sub-national and supranational tiers of government, employer organisations and civil society. Effective regulatory governance optimises the role of regulatory policy, steering it towards the adoption of rules which will impact positively on the economy and society and sit well with the underlying objectives of government policy.

Lastly, effective regulatory policy makes for greater transparency and participation by the public in the introduction and functioning of regulatory bodies, through mechanisms of public consultation and open communication.

II. Regulatory Policy: Current Status and Critical Analysis

Overall, regulatory governance is well institutionalised in Tunisia: there is a system for preparing laws and regulations which stipulates the procedure to be followed and the institutions which take part. The Government has taken steps to improve and reform its regulatory framework. Tunisia has also signed the OECD 2009 “Regional Charter for Regulatory Quality”. It also chairs the OECD-MENA Working Group IV on Regulatory Reform which, in 2013, produced a report on regulatory reform in the MENA region and progress on implementing the Regional Charter. Tunisia was invited as an observer to the Regulatory Policy Committee meeting of the OECD in April 2013.

As of 14 January 2011, Tunisia introduced a number of statutory measures designed to strengthen the rule of law. One example, in the area of action against corruption, is the abolition of statutory rules incompatible with the United Nations Convention against Corruption (UNCAC), of which Tunisia has been a member since 2008, and by Decree Law No. 2011-120 of 14 November 2011 on the combating of corruption. But it is premature at this transitional stage to judge whether Tunisia’s legal and constitutional practices are consistent with the principle of the rule of law. Such an assessment must await completion of the drafting work on the new Constitution and the general review of the regulatory framework currently under way.


Stock of regulations

Tunisia is increasingly paying attention to the accessibility of laws and regulations. The availability of Tunisian laws on the Internet has been greatly improved. The website of the official publisher (www.iort.gov.tn) makes all primary and secondary legislation available free of charge, and all new items of legislation are posted on the site within three days of publication. Advanced searching of legislation is also possible from the website of the National University Centre for Scientific and Technical Documentation (www.cnudst.rnrt.tn). Many ministries have also revised their websites in the last two years. Some have also made legislation relevant to them more easily accessible. Tunisia would benefit from a comprehensive, updated database of legislation, with user-friendly access for the public and an advanced search capability (see box on the Estonian State Gazette).

The Tunisian Government is also taking steps to consolidate and codify legal texts. Like many other countries, it is seeking particularly to simplify the existing stock of regulations. Plans for a “regulatory guillotine” were announced in 2012. The “guillotine” (a clear, swift and decisive approach to examining the existing stock of regulations in order to eliminate those that are obsolete) will evaluate Tunisian legislation against a set of predefined criteria, and a pilot phase has begun at the Ministry of Finance with the co-operation of the World Bank.

The process of simplifying the existing stock of regulations is governed by Decree No. 2012-1682 of 14 August 2012, which seeks to introduce a process of participation, to draw up a list of administrative procedures, assess them, revise them and reduce them, all with a view to making the exercise of economic activity easier. The procedure of assessment provided for by the decree entails five successive steps:

- inventory of all administrative procedures relevant to the exercise of an economic activity;
- assessment of the administrative procedures in the inventory against the criteria set out in Decree No 2012-1682 of 14 August 2012, Article 5;
- forwarding of the assessment findings to the business-sector parties concerned for their opinion and suggestions;
- determination of which administrative procedures should be abolished, changed or retained;
- proposal of legal amendments deemed necessary.

This decree also stipulates that the findings of the administrative procedure assessments, once approved by the Government, should be published on a website set up for the purpose by the departments tasked with carrying out the administrative reforms.

Generally speaking, this process of administrative simplification is important to all countries wishing to modernise their administrative apparatus. The “regulatory guillotine” is especially useful in Tunisia, which is conducting a general overhaul of its regulatory environment and is keen to get rid of rules no longer relevant to its model of development. It seems, however, that this reform, initially piloted by the Ministry for Administrative Reform, is taking time to materialize. This is probably because the ministry which initiated it no longer exists and finalisation of the new Tunisian Constitution is still awaited.
New regulations

The Tunisian authorities are also performing a Regulatory Impact Analysis (RIA)\(^3\) to ensure that their legislative and regulatory work is effective. The Prime Ministerial circular of 27 May 2011 concerning the quality of legislation considers the effectiveness of legal texts and provides for impact assessment studies to be carried out as part of the drafting of laws on commercial, financial and social matters. These studies seek to determine: (i) the direct and indirect impact of the draft text on job creation and the categories targeted; (ii) the impact of the draft text on the environment; (iii) the financial impact of the draft in terms of its overall cost and financing; (iv) the impact of the text as regards simplifying administrative procedures and documents; and (v) the impact of the draft text on other legal texts in terms of provisions which will need to be repealed, replaced or amended. The Tunisian Government deserves credit for implementing an RIA system, something that is rare in the region. However, it is not clear that this system is being implemented in an effective and efficient manner. The process is complex, and more in-depth analysis is required to judge its efficacy.

The Tunisian Government has undertaken to be more transparent and more open in its drafting of new laws and regulations. The Office of the President has also set up a website (www.consultations-publiques.tn) to that end as a focus for the public consultations held by the various ministries. However, consultations are organised on an ad hoc basis and are left to the discretion of the ministries concerned, with no check on the quality of the consultation or assessment of the consultation process itself. Nor has the Government yet enacted any statutory rules to institutionalise the mechanisms for public consultation and ensure that the procedures are transparent, specifically with regard to the criteria for participation.

Inspection mechanisms

Finally, it is not clear that the regulatory enforcement and inspection mechanisms are really appropriate for combating corruption. More information will be needed to assess the impact of those mechanisms in this respect.

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\(^3\) For more information on the Regulatory Impact Analysis (RIA) see the Toolkit for Integrity: www.oecd.org/cleangovbiz/50562613.pdf.
III. REFORMS UNDER WAY

<table>
<thead>
<tr>
<th>Reform under way</th>
<th>Objective</th>
<th>Co-operation with international institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule of law</td>
<td>– Finalisation of the new Constitution, which will have to take into account the principles inherent in the rule of law.</td>
<td>N.A.</td>
</tr>
<tr>
<td></td>
<td>– Review of texts affecting the principle of the rule of law, to bring them into line with the provisions of the new Constitution once this has been finalised.</td>
<td></td>
</tr>
<tr>
<td>Accessibility of laws</td>
<td>– Grouping of legal texts concerning specific areas in order to facilitate identification of the applicable rules and allow simplification of the existing stock of regulations.</td>
<td>N.A.</td>
</tr>
<tr>
<td></td>
<td>– Review of legal texts in the areas most concerned by transparency. An example is public procurement, a necessary reform in view of the planned introduction of “e-procurement”.</td>
<td></td>
</tr>
<tr>
<td>Simplification of existing stock of regulations and procedures to facilitate economic activity</td>
<td>– Promulgation of Decree No. 2012-1682 of 14 August 2012, which seeks to introduce a process of participation with the business sector, to make the exercise of economic activity easier.</td>
<td>OECD, EU</td>
</tr>
<tr>
<td></td>
<td>– Introduction of a system for appraisal of administrative procedures, to be used by economic stakeholders.</td>
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<tr>
<td></td>
<td>– Pilot phase of the “regulatory guillotine” approach used by the Ministry of Finance.</td>
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</tbody>
</table>

IV. IDENTIFICATION OF PRIORITY REFORMS

Generally speaking, Tunisia seems to be on the right track in terms of reforming its regulatory policy. Many partial reforms have already been put in place, particularly in terms of administrative simplification and the institution of evaluation systems. The efficacy of these evaluation systems remains open to question, however. Tunisia should be encouraged to pursue these reforms in a more systematic and coordinated way. In due course, the effectiveness of these reforms should be assessed. Tunisia should also introduce a new policy concerning stakeholder participation in the preparation of laws.
Reform | Evaluation | Comments
---|---|---
**Institutionalising public consultations during the preparation of legislative regulations** | | – Repeal of the laws and rules that hamper the transparency of information (*sine qua non* of a participatory and inclusive approach in public consultations).

– Introduction of formal consultation mechanisms so that the various stakeholders have a voice in the drafting of new laws.

– Need to consult stakeholders far enough in advance so that they can make a positive contribution.

**Evaluation of the effectiveness of the Regulatory Impact Analysis (RIA) system** | | – Checks that all necessary stages for introducing a RIA process are followed properly. The effectiveness of the RIA system introduced by the Tunisian Government should be assessed (perhaps through an external review by the OECD).

**Strengthening of the global dimension of regulatory policy** | | – Development of an inter-departmental approach and introduction of a watchdog body which will scrutinise regulatory policy but also co-ordinate and oversee operations.

– Building the capacity and reinforcing the human and financial resources of entities responsible for regulatory policy, and increased use of ICT.

**Rule of law and law enforcement** | | – Strengthening the rule of law and law enforcement.

– Reinforcing the role of institutions responsible for applying rules that enshrine the principle of the rule of law.

– Need to review and verify that the legal texts are compliant with the rule of law after drafting is completed.

*Note: the reforms flagged in red are the most urgent*

**V. Examples of good practice in the introduction of priority reforms**

In 2012 the Council of the OECD issued recommendations (see box below) on regulatory policy and governance. This text provides governments with: (i) clear and timely guidance on the principles, mechanisms and institutions required to improve the design, enforcement and review of their regulatory framework to the highest standards; (ii) advice on the effective use of regulation to achieve better social, environmental and economic outcomes; and (iii) calls for a “whole-of-government” approach to regulatory reform, with emphasis on the importance of consultation, co-ordination, communication and co-operation to address the challenges posed by the interconnected nature of sectors and economies.
These recommendations, initially formulated for OECD member countries, are equally valid for a country in transition towards democracy which is seeking to strengthen trust in the actions of its government and to revitalise its economy.

Recommendation of the Council of the OECD on regulatory policy and governance

[The Council ... Recommends that Members:]

1. Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered and the net benefits are maximised.

2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.

3. Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.

4. Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach.

5. Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost-justified, cost-effective and consistent, and deliver the intended policy objectives.

6. Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations. Such reports should also include information on how regulatory tools such as Regulatory Impact Assessment (RIA), public consultation practices and reviews of existing regulations are functioning in practice.

7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.

8. Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.

9. As appropriate apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.

10. Where appropriate promote regulatory coherence through co-ordination mechanisms between
the supranational, the national and sub-national levels of government. Identify cross-cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.

11. Foster the development of regulatory management capacity and performance at sub-national levels of government.

12. In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.

For more information:

Source: OECD

Guide to good practice in public consultations in the United Kingdom

In 2008 the United Kingdom drew up a “Code of Practice on Consultation”. This detailed document was designed to help the public to be more involved in government policy development and to help improve the transparency, responsiveness and accessibility of consultations. It was replaced in 2012 by a more condensed version entitled “Consultation Principles”.

The Code of Practice is a good example of how a government can equip its officials with a powerful tool to improve the consultation process. The 16-page Code focuses on the practicalities of consultation. It comprises seven criteria which must be met in every consultation exercise.

**Criterion 1: When to consult**

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

**Criterion 2: Duration of consultation exercises**

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

**Criterion 3: Clarity of scope and impact**

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

**Criterion 4: Accessibility of consultation exercises**

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

**Criterion 5: The burden of consultation**

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees’ buy-in to the process is to be obtained.

**Criterion 6: Responsiveness of consultation exercises**
Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

**Criterion 7: Capacity to consult**

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.


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**Example of an on-line database of laws and regulations – Estonia**

Riigi Teataja, the Estonian State Gazette, provides free on-line access to the text of all primary and secondary legislation. The on-line texts are official and their publication renders the legislation applicable. The State Gazette was first made available on the Internet in 1997. The on-line version has had the status of an official publication since June 2002 and replaced the printed State Gazette altogether in June 2010.

The public can search the site ([www.riigiteataja.ee](http://www.riigiteataja.ee)) for original regulations and consolidated texts. Consolidated versions of a regulation are available for any point in time. Furthermore, it is possible to sign up for automatic notifications of legislative changes. Users can get help or make suggestions through a feedback form. A video in English gives a presentation of the site.


**Holding of public consultations**

The holding of public consultations may take a wide variety of forms, ranging from an informal consultation of groups most immediately concerned by a law or regulation to inclusive on-line consultations which allow all citizens to give their views.

For more information on public consultations and their use, see OECD (2006), “Background Document on Public Consultation”.

We describe below an Australian experiment which might be useful to the website created by the Tunisian Government: [www.consultations-publiques.tn](http://www.consultations-publiques.tn).

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**Initiative in Queensland (Australia) to improve public consultations and the dissemination of regulatory information**

The State of Queensland in Australia has introduced a system of regulatory communication called “Queensland Government: Have Your Say” (see [www.getinvolved.qld.gov.au/gi/](http://www.getinvolved.qld.gov.au/gi/)). This initiative serves as an early warning system about the regulatory work of the State Government. It was launched to help business and industry and the public to become involved in the consultation process at a very early stage. The public has to be given clear information on the State Government’s plans for legislation and regulation.

The system is interactive, based on an Internet platform which enables Government agencies to post
information about proposed legislation on the State Government’s website. It also allows interested parties to respond directly to the proposal of the agency concerned.

In addition, a “one-stop-shop” referral service is available which provides business users with access to detailed information and advice on Government laws and regulations, particularly with regard to compliance. Thus, business proprietors and operators who have complex queries about compliance with the rules can be put in touch directly with appropriate experts in the Government.

Source: OECD

VI – ACTION PLAN FOR THE IMPLEMENTATION OF PRIORITY REFORMS

To modernise its regulatory framework the Tunisian Government sought assistance from the OECD, through the Secretary-General’s Office and the MENA-OECD Governance Programme. The purpose of this framework is to improve services to citizens, foster an economic environment conducive to business development and promote structures of open and transparent government.

The OECD project uses a systemic approach designed to help the Tunisian Government prepare new laws, review the existing stock of laws and simplify administrative procedures – measures that are necessary to improve the investment climate and increase confidence in Government action:

• The OECD project could support Tunisia in shaping a quality regulatory framework based on impact assessments, public consultations and public demand. It would consist of the following parts: peer review, comparative studies (benchmarking), recommendations and capacity building aimed at reducing the regulatory burden (when laws and regulations are prepared and put into practice). The project could, in particular, lead to the creation of a regulatory body providing advice, quality control and training for ministries and other public-sector institutions. It would also encourage the establishment of a user-driven process of legal drafting and a vast programme of cuts in administrative costs and workload.

• Using a detailed evaluation, the OECD could help the Tunisian administration with its capacity building, with a view to setting up a regulatory system based on observed reality and focusing on ex-ante and ex-post evaluations of the effects of regulation. The OECD has devised a training module which has been tested successfully in several countries of the OECD and MENA region; this is dynamic and can be adapted to the Tunisian Government’s requirements.

• Moreover, drawing on the OECD experience in setting up “one-stop-shops” (physical and on line), notably in Mexico (tuempresa.gob.mx), Tunisia can work on creating a one-stop-shop to make life easier for the public and for business and industry. The OECD can contribute with technical and institutional measures designed to plan and operate one-stop-shop applications and systems that are sound, coherent, workable and consistent with international good practice.
COMPETITION POLICY
I. **Competition Policy: Role in Promoting Integrity and Combating Corruption**

Businesses are often tempted to gain the advantage over their competitors, for example by persuading the authorities to give them preferential treatment and protection against competition. The proper application and the permanent promotion of sound competition rules help to strengthen the integrity of businesses and officialdom. This enables businesses to be kept competitive, so that they become an engine for growth and development of the country’s economy.

To encourage competition on a sustainable basis, States must legislate in this area to prevent:

- businesses from banding together to restrict competition by setting prices or their respective market shares;
- businesses in a position of power in the market from abusing that power by squeezing out their competitors and restricting competition;
- mergers between competitors which are not justified by higher productivity to compensate for the reduced competition.

By preventing the undesirable concentration of market forces in the economy as a whole, competition laws and policy help to establish a more dynamic economic system. Therefore, it is important to ensure that the bodies overseeing competition are independent and have the necessary powers to enforce competition rules and uphold good competition policy at all levels of government.

II. **Competition Policy: Current Status and Critical Analysis**

Tunisia has a solid legal framework and provisions for promoting a culture of competition in the country. A number of reforms are also under way and intend to reinforce the legal framework and the competitive culture. However, the thrust and the depth of these reforms will be known only after finalisation of the new Tunisian Constitution.

The agency responsible for overseeing competition in Tunisia is the **Competition Board**. It was established by Law No. 91-64 of 29 July 1991 on Competition and Prices. This agency:

- is independent (in terms of its human and financial resources). Its president is appointed for a term of five years, renewable once, by the executive;
- has decision-making powers. Decisions of the Competition Board can be appealed before the administrative tribunal;
- has broad investigative powers in preparing cases for prosecution;
- has sufficient resources (technical, financial and human) to conduct investigations;
- can be invoked by any economic agent. The Competition Board can also act on its own initiative when it suspects a breach of the Competition and Prices Law. The general public can file complaints of anti-competitive practices through such associations as the Tunisian Organisation for the Defence of Consumers.

Tunisia has an anti-cartel law. Its legislation prohibits anti-competitive agreements. It has instituted a system of exemptions for anti-competitive practices that have the effect of ensuring economic progress and give users an equitable share of the resulting profit. It has also instituted a clemency system that allows the Competition Board to grant a total or partial waiver of financial penalties incurred by a
business or an agency which has been part of a cartel, if that entity provides relevant information not available to the administration and thereby brings the existence of the cartel to light.

Having an effective clemency system in place is essential in order to give businesses the incentive to disclose unlawful agreements in return for more indulgent treatment with respect to penalties. Case law has often been ahead of statute law here. So it is important that the rules should be constantly updated to provide an effective system of clemency.

Tunisia has laws to prevent **anti-competitive behaviour**. Article 5 of Law No. 64-91 prohibits abuse of a dominant position on the domestic market or on a substantial portion of that market. In addition, Article 5 of that law (see box below) contains a non-exhaustive list of practices that may constitute abuse. It should be noted that case law includes other examples of unfair practices set-up by firms in a dominant market position.

### Article 5 of Law No. 64-91 on competition and prices

Concerted actions and express or tacit agreements which seek to prevent, restrict or distort market competition shall be prohibited, where these are designed:

1. To hamper the setting of prices by the free play of supply and demand;
2. To restrict other firms’ access to the market or the free play of competition;
3. To restrict or control production, market outlets, investment, or technical progress;
4. To fragment markets or supply sources.

Other than in exceptional cases authorised by the Minister of Commerce acting on an opinion delivered by the Competition Board, sole concession agreements and exclusive sales representation agreements shall be prohibited.

Likewise prohibited shall be the abuse of a dominant position on the domestic market or on a substantial portion of that market, or abuse of the state of economic dependence of a client or supplier business which has no alternative means of marketing, supplying or providing a product or service.

Abuse of a dominant position or state of economic dependence may be a refusal to buy or sell, conditional sales or purchases, minimum prices set with a view to re-sale, discriminatory terms of sale, or the termination of a business relationship for no good reason or solely because the partner refuses to accept unfair terms of trade.

Any undertaking, agreement or contractual clause relating to a practice prohibited under this Article shall **ipso jure** be null and void.

In the view of some members of civil society, however, this law is too vague in its definition of anti-competitive behaviour, and it was this that made abuses and manipulation by the old regime possible. So it is essential to revise this law and clarify its content.

**When it comes to mergers and acquisitions**, the Competition and Prices Law provides that any project or operation of a concentration that would significantly lessen competition or create a dominant position on the domestic market or a substantial portion thereof must have the approval of the Minister of Commerce and be subject to oversight by the Competition Board.
An analysis of the powers of the Competition Board in the area of mergers and acquisitions reveals two main elements:

• The first is the respective decision-making powers of the Competition Board and the Ministry of Commerce in the approval of mergers. In OECD member countries, the power to authorise a merger lies with the competition authority, and the government has no power to override the decision of the competition authority, except in clearly defined and limited cases. In Tunisia, the Ministry seems to enjoy broad decision-making powers based on a simple process of prior consultation with the authority. The criteria applied by the Ministry when taking its decisions are not clear.

• A second aspect concerns the distribution of responsibilities in the case of intra-sector mergers. In particular, mergers in the financial sector require the approval of the Ministry of Finance, a fact that raises questions about the nature and uniformity of the criteria applied by different ministries.

Tunisian competition law provides for a deterrent system of penalties, which includes:

• Fines: Article 34 of the Competition and Prices Law makes anti-competitive practices liable to a fine of up to 5% of turnover in Tunisia;

• Injunctions: these are corrective measures of a behavioural or structural nature ordering the perpetrator of such practices to desist from or change the alleged anti-competitive practices;

• Order to publish the decision: the purpose of this is to give adequate publicity to the decision of the Competition Board;

• Conservation measures: these are orders to suspend a practice or to restore the status quo ante in cases of obvious prejudice to the general interest;

• Cancellation of certain clauses: the nullification of agreements is left to the civil courts, which may rule on any clause or agreement relating to practices prohibited by paragraphs 1 and 2 of Article 5 of the Competition and Prices Law;

• Clemency procedure: this arrangement allows for total or partial immunity from the fine in return for collaboration;

• Imprisonment: a prison sentence of up to one year may be imposed by the criminal courts on any individual involved in violating the prohibitions of Article 5 of the Competition and Prices Law.

This area is of particular importance for the enforcement of competition rules. It is essential to have in place a range of varied penalties severe enough to deter potential anti-competitive behaviour. The ceiling on the penalties applied in Tunisia is relatively low for anti-competitive practices (a point noted by the authorities, and addressed in the reforms now under way). In general, the ceiling for fines in OECD member countries is 10% of total turnover.

Tunisian law allows appeals against decisions of the Competition Board before an administrative tribunal. It also allows businesses that are the victims of anti-competitive practices to claim compensation. However, it is up to the civil courts to award damages.

In order to guarantee transparency and fairness in competition law enforcement, Tunisian law imposes very strict rules of procedure on the competition authority at the investigation and prosecution stages. During an investigation, the parties to the conflict are entitled to consult the evidence held by the competition authority, except in cases involving secrecy and if the chair of the Board refuses permission. At the conclusion of the investigation, the rapporteur for each case must prepare a report setting out his observations. The chair of the Board is required to send this report by registered mail to the defendants, who have one month to present any defence they deem appropriate, directly or through a lawyer.
Decisions of the Competition Board and its opinions are published as an annex to the institution’s annual report.

The Competition Board has an important role in instilling a competition culture in Tunisia. The Competition and Prices Law empowers the Board to issue opinions on draft legislation submitted by the Minister of Commerce. The second aspect on which the Board is consulted relates to draft regulations that would impose specific conditions for the exercise of an economic activity or profession or would impose restrictions on market access. Such consultation is mandatory.

Lastly, civil society has stressed the importance of strengthening the capacity and role of the Tunisian Consumer Protection Organisation. This body plays a vital role in inculcating a culture of competition: it upholds the collective and individual interest of consumers, informs them, provides them with legal advice and has a voice in decision-making in a number of institutions.
### III. Reforms under way

<table>
<thead>
<tr>
<th>Reform under way</th>
<th>Objective</th>
<th>Co-operation with international institutions</th>
</tr>
</thead>
</table>
| **Revision of the Competition and Prices Law**                                    | *Independence of the oversight agencies*  
  – Revision of the Competition and Prices Law to strengthen the independence and the powers of the Competition Board as a body with specialised economic jurisdiction.  
  *Anti-cartel law*  
  – Development of clemency rules.  
  – Reinforcement of transparency rules.  
  – Substantiation and publication of exemption cases.  
  *Prevention of anti-competitive practices in the context of mergers and acquisitions*  
  – Reduction of the response time in cases notified.  
  – Publication of substantiated decisions on operations notified as well as publication of the Competition Board’s opinion concerning them.  
  *Deterrence aspect*  
  – Strengthening of financial penalties (the plan is to raise the maximum penalty to 10% of turnover in Tunisia).  
  – Clarification of clemency measures.  
  *Judicial review of decisions of the competition authority*  
  – Creation of appeals tribunals under the Competition Board.  
  *Transparency of measures taken by the competition authority*  
  – Regular publication of decisions, in addition to the existing annual report.  
  – Giving more reasonable time limits for parties to comment on the investigation report (two months).  
  – Mandatory consultation of the Competition Board for draft laws of an economic nature that could have an impact on competition law. | N.A.                                                                                         |
IV. IDENTIFICATION OF PRIORITY REFORMS

<table>
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<tr>
<th>Reform</th>
<th>Evaluation</th>
<th>Comments</th>
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<tbody>
<tr>
<td>Reform of the system of penalties and fines</td>
<td>⬤</td>
<td>Review of the penalties systems relating to anti-competitive practices. The ceiling on fines for breach of competition rules should be raised to 10% of the total revenue of the firm in question, rather than just its domestic revenue.</td>
</tr>
<tr>
<td>Review of the systems for controlling mergers and acquisitions</td>
<td>⬤</td>
<td>Review the relationship between the Competition Board and the Ministry of Commerce with respect to the approval of mergers and distribution of powers concerning intra-sector mergers (especially mergers in the financial sector).</td>
</tr>
<tr>
<td>Assessment of competition in Tunisia</td>
<td>⬤</td>
<td>The OECD Competition Committee could work with the Tunisian Government to strengthen the competition culture. The Committee has solid experience in identifying and eliminating barriers and obstacles to competition in OECD member countries.</td>
</tr>
<tr>
<td>Reform to permit private legal action</td>
<td>⬤</td>
<td>Introduction of a reform allowing legal action to be brought by private parties injured by anti-competitive practices.</td>
</tr>
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</table>

V. EXAMPLES OF GOOD PRACTICE IN THE INTRODUCTION OF PRIORITY REFORMS

The OECD has devised a method for helping governments to eliminate barriers to the development of a culture of competition and identify unnecessary restraints on market activities. It also allows the development of alternative, less restrictive measures that still achieve government policy objectives.

For the OECD Competition Assessment Toolkit (also available in Arabic), see www.oecd.org/competition/assessment-toolkit.htm.
Assessment of competition in Greece

The Greek economy is in a prolonged downturn. Following a sovereign debt crisis, GDP has fallen for six years in a row and the rate of unemployment rose to 26% in late 2012. At the root of the economic crisis lie severe structural problems, including poor competitiveness. Prices in many sectors are not falling, suggesting competition problems that will add to the hardship of poorer consumers as their incomes fall. Uncompetitive markets harm growth over the longer term. The product market regulation indicators of the OECD suggest that in Greece many of the constraints on competition arise from existing laws and regulations.

Against this background, the Greek Government asked the OECD to conduct an assessment of regulatory constraints on competition in four sectors: tourism, retail trade, food processing industry and construction materials. The assessment project started in January 2013 and is expected to be completed by November of the same year.

The process

Using the methodology in the Competition Assessment Toolkit, a project team composed of competition experts, economists and lawyers from the OECD and the Hellenic Competition Commission will complete an assessment of the costs and benefits of regulations restricting competition in the designated sectors and propose specific recommendations for change.

Stakeholder involvement is central to the work of the OECD and the project team will be working closely with the Ministries of Development, Competitiveness, Infrastructure, Transport and Networks, and all other key stakeholders. A High-level Committee of seven secretaries-general from the relevant ministries has been appointed to oversee and support the work of the project team. These High-level Committee members will also play an important role following completion of the project, as they will be in charge of implementing the proposed policy recommendations.

Capacity building

Working alongside the project team in Athens will also build the capacity of officials from the Government and the Hellenic Competition Commission. The in-depth knowledge they gain from this assessment can then be applied to similar exercises in other sectors or to new laws and regulations.

Source: OECD

VI. Action plan for the implementation of priority reforms

The reform process to be launched by Tunisia to improve its competition policy should include a review of government policies and regulations which favour monopolies. Before embarking on reforms to foster competition, the Government might look at the World Bank’s sectoral reports (under preparation) which seek to assess the competitive environment in Tunisia. The findings of these reports may provide the Government with specific facts and figures to bear out the importance of the reform process.

The OECD could support Tunisia in its efforts to reform the system of penalties and revise its systems of oversight for mergers and acquisitions. It could work on an appropriate report which would review the statutory provisions on penalties and those on the jurisdiction and institutions for the oversight of mergers and acquisitions. This report would provide the Tunisian Government with specific recommendations for improvements to the law consistent with international best practice.
The competition department of OECD Directorate for Financial and Enterprise Affairs could provide senior
government officials with help and training (liaising with the Tunisian competition authority) in the use of
the OECD Competition Assessment Toolkit.

These projects can be pursued in tandem with ongoing projects of the World Bank. Discussions are
already under way between the World Bank, the OECD and the Tunisian Government to identify suitable
projects and decide on the scope of this co-operation.

The Tunisian Government might benefit from OECD peer review of its competition policy. That exercise
will also analyse the reforms undertaken since the overview by the United Nations Conference on Trade
and Development (UNCTAD 2006) and compare them with the reforms recommended in the UNCTAD
report.
PUBLIC FINANCIAL MANAGEMENT
I. PUBLIC FINANCIAL MANAGEMENT: ROLE IN PROMOTING INTEGRITY AND COMBATING CORRUPTION

The government’s budget is its most important policy document, combining policy objectives and concrete commitments. Public budgets should therefore be as comprehensive, informative and timely as possible.

Improving transparency of the budget process and documents is crucial for several reasons. A transparent public finance system helps illuminate the relationship between desired public objectives and the availability, affordability or limitations of public resources to pursue policies that support those objectives. In that regard, it is equally important to be transparent with regard to budget indicators and underlying assumptions, such as fiscal projections and macroeconomic outlooks over the medium and long term. The transparency and accountability of financial information in budget reports is supported by specific disclosures of methodologies and assumptions, as well as classifications that allow the user to see the bigger picture. Transparent and comparable methodologies and both internal and external accountability are required in order to ensure the quality and integrity of budget reports.

A credible and open budget process based on realistic projections and clear policy choices helps increase the trust of the business community and citizens at large in government institutions and decisions; and publishing information in an accessible, timely and comprehensible manner helps to support public engagement in and understanding of budgetary decision making and choices. Dialogue on policy choices and their financial viability is also facilitated.

II. PUBLIC FINANCIAL MANAGEMENT: CURRENT STATUS AND CRITICAL ANALYSIS

In Tunisia, the budgetary culture is based essentially on the “command and control” model of fiscal discipline. To a large extent, the systems reflect the imperatives of preserving the State’s financial security and containing the risks of fiscal slippage.

The approach adopted in budgetary matters has had the merit of preserving the essentials in terms of monitoring and controlling national spending. However, it must be recognised that the approach followed to date has not stood the test of time. The current context calls for radical changes to bring that approach into line with a results-based management system.

The legal and administrative framework for the budgetary process in Tunisia is recognised as sufficiently clear. It is governed by the following laws: (i) the Organic Budget Law (LOB), which contains comprehensive rules on the definition of State expenditures and resources, on the preparation, examination and adoption of the budget, and on its execution and regulation; (ii) the Public Accounting Code, which contains precise rules for conducting, controlling and recording financial transactions resulting from budget execution; and (iii) the laws concerning the mission of the Supreme Audit Institution to oversee the public finances.

The Ministry of Finance has the lead in preparing the draft budget, which follows a precise calendar. Departmental heads prepare annual expenditure forecasts for their units and send these to the Ministry of Finance, before the end of May. The Minister of Finance reviews these proposals, adds the revenue forecasts, and prepares the draft budget law. This draft is discussed by the Council of Ministers and approved in its final form by the Head of Government. It is then submitted to Parliament (at the latest by 25 October of the previous budget year). Parliament adopts the draft budget no later than 31 December.
The distribution of responsibilities among the various players in this area is clearly defined by law. Legal amendments affecting the budgetary process (between 1996 and 2004) served to make the budget submitted for annual parliamentary approval more comprehensive.

The main obstacles to comprehensive budgeting remain, however: (i) the existence of earmarked taxes that go into special funds known as "fonds de concours" and special treasury funds; (ii) the build-up of arrears; (iii) the system of advances; and (iv) the exclusion of Social Security, municipalities and governorates from the budget. The budgets of “public establishments”, which should normally be part of the State budget, or should where appropriate have their operating results included in the consolidated government financial statements, are not mentioned in the budget either.

The State budget has “titles”: (i) Title I covers operating expenses and interest on the public debt; (ii) Title II includes development spending and repayment of the principal of the public debt. The purpose of this breakdown is to control the growth of operating expenses. To some extent, it also allows the government to account for its investment efforts and the progress of the projects defined by the development plan in the various sectors.

Budgetary classification in Tunisia combines an administrative approach with an economic classification, but the administrative classification remains dominant. The budget is prepared against the backdrop of objectives in the development plan and takes into account the economic and financial balance. However, it is still not presented according to a “programmatic classification”, i.e. an approach that would strengthen the budget’s role as a tool that reflects the relationship between the resources placed at the disposal of departmental heads and the objectives they are supposed to achieve with those resources. To remedy this situation, Tunisia is now engaged in moving its management framework towards a performance-based budgeting approach, known as budget management by objectives (MBO). As part of that reform, the budget documentation submitted to Parliament will be supplemented by financial analyses, annual performance reports, etc. Similarly, the draft law approving budgetary execution presented to Parliament after the end of the fiscal year will be accompanied by performance reports. Nevertheless, there has been some delay in implementing this reform.

The public accounting rules used are consistent: they apply a single-entry system, amounting to simple cash accounting. The budget still fails to provide adequate comparative information on government revenues and expenditures for the immediate past and (short-term) future. Efforts have been made to remedy this, and the documents accompanying the budget may contain some relevant data. Some ministries have recently started to produce medium-term expenditure frameworks (MTEFs). However, more substantial improvements are awaited as part of the budget management by objectives (MBO) reform.

The economic assumptions and the valuations of financial assets used for establishing the budget are based on the five-year development plan. The absence of a five-year plan may indicate a lack of sound medium-term economic hypotheses for budget requirements. Since the last five-year plan comes to an end in 2013 with no new plan envisaged providing continuity, this raises the question of how the budget will be prepared as of 2014. It also raises the question of the relationship between planning, the economic budget and the budgeting exercise. In the absence of a sound plan, it will be very difficult to

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4 Fonds de concours are monies paid by Tunisian or foreign individuals or corporate entities towards the financing of certain public-interest investments. They thus enable resources to be allocated to certain specific operations, with no time limit, which constitutes a departure from the principle that specific receipts may not be allocated to specific expenditures, and to the principle of budget annuality (no carryover of unused appropriations). Fonds de concours are drawn primarily from public or foreign donations. Their formation is thus dependent on donor goodwill.
implement the MTEF. Nor does the Tunisian Government perform any sensitivity analysis of the impact of changes in key economic assumptions or assumptions concerning interest rates and foreign exchange rates.

**Budgetary integrity** ("sincerity") consists in presenting truthfully all the resources and expenses of government and is assessed in light of available information and reasonable forecasts. There are several institutions with oversight functions, but the departments are not required to produce financial reports in accordance with a standardised approach, and the government accounts are not consolidated, thus violating the principle of budgetary integrity.

Because its financial reports are not accessible, Tunisia earned a score of 11/100 in the survey conducted by the International Budget Partnership (IBP), placing it 85th out of 100 countries in 2013. Of the eight reports required by the IBP, three are not produced at all (the pre-budget report, the “citizens’ budget”\(^\text{5}\) and the mid-year review). The report on the Executive’s budget proposal is produced internally but is not published.

The budget review law covers only budgetary operations (details of treasury operations and the general statement of accounts are not passed to Parliament), but it does cover all budgetary transactions (except for some grants and other advances and loans that exceed the annual framework and are described only in the treasury operations). Accountability is constrained by the delay in publication of the budget review law.

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\(^{5}\) Citizens’ budgets are designed to be easy to understand by everyone. They use clear language and graphs and diagrams presented in a variety of formats, such as radio programmes, newspaper inserts, leaflets, or text messages. If they are well designed and widely distributed, citizens’ budgets can be an unbelievably effective way of getting across information on government policy and the state of a country’s economy.
### III. Reforms under way

<table>
<thead>
<tr>
<th>Reform under way</th>
<th>Objective</th>
<th>Co-operation with international institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reform of the Organic Budget Law</td>
<td>– Making all the changes needed to apply the budget management by objectives (MBO) reform.</td>
<td>European twinning/OECD</td>
</tr>
<tr>
<td><strong>Improvement of budgetary nomenclature</strong></td>
<td>– Pro forma presentation of programmes and subprogrammes for information using a bridging table for moving between the current nomenclature and a programmatic nomenclature.</td>
<td>European twinning</td>
</tr>
<tr>
<td></td>
<td>– Use of the ADEB information system(^6), including a portion of the programmatic nomenclature within the limits prescribed by the Organic Budget Law.</td>
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<tr>
<td></td>
<td>– Introduction of a new nomenclature that is fully programmatic and allows for management in MBO mode.</td>
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<tr>
<td>Reform of public accounting</td>
<td>– Design and introduction of a general chart of accounts.</td>
<td>European twinning/OECD</td>
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<td></td>
<td>– Introduction of double-entry accounting.</td>
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<td></td>
<td>– Definition of accounting standards and first application of these to the financial and physical assets of the State.</td>
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<tr>
<td><strong>Improvement of information systems</strong></td>
<td>– Creation of a steering committee for strategic governance of the financial information systems.</td>
<td>European twinning/OECD</td>
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<td></td>
<td>– Establishment of a master plan for computerisation.</td>
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<td></td>
<td>– Integration into the ADEB system of a change of nomenclature at the “article” and “paragraph” levels, summarising appropriations by type.</td>
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<tr>
<td><strong>Revision of the legal framework governing financial controls</strong></td>
<td>– Making the system of forecast commitments and modulated expenditure control more flexible (set thresholds for approving commitments depending on the sums involved and the risks in each of the ministries).</td>
<td>European twinning/OECD</td>
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<td></td>
<td>– Institution of internal budgetary control in the line ministries.</td>
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<td></td>
<td>– Preparation of a procedural manual based on international practice.</td>
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<td></td>
<td>– Preparation of training courses in the new control methods.</td>
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<tr>
<td><strong>Improved transparency in public financial management</strong></td>
<td>– Public consultation on transparency in public finances.</td>
<td>OECD</td>
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</table>

\(^6\) Information system which tracks spending by the State and numerous public-sector bodies.
IV. IDENTIFICATION OF PRIORITY REFORMS

<table>
<thead>
<tr>
<th>Reform</th>
<th>Evaluation</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reform of financial control</td>
<td>–</td>
<td>– Simplification of control structures, adapting them to the “budgetary management by objectives” (MBO) reform.</td>
</tr>
<tr>
<td>Reform of the Organic Budget Law</td>
<td>–</td>
<td>– Careful consideration of how to adapt the Organic Budget Law to the MBO performance framework.</td>
</tr>
<tr>
<td>Integration of financial and accounting information systems</td>
<td>–</td>
<td>– Integration of information systems with the aim of directly helping to improve transparency and combat corruption more effectively, through cross-checking and systematic consolidation of financial data. – Choice between two models for integrating financial and accounting data systems: – a new information system for the entire administration (cumbersome solution) or – integration of the various systems currently used in the Tunisian administration (complex solution).</td>
</tr>
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</table>

V. EXAMPLES OF GOOD PRACTICE IN THE INTRODUCTION OF PRIORITY REFORMS

GOOD PRACTICE IN RESPECT OF BUDGET LEGISLATION

- **Purposes of budget system laws**
  - Provide clear operational rules for the budget system to all interested players
  - Ensure that budget rules have sufficient authority
  - Incorporate budget principles into legal text
  - Elaborate on constitutional requirements for the budget system
  - Reform the budget system – either radically or on a piecemeal basis
  - Specify the financial powers of the legislature and the executive
  - Contribute to macroeconomic stability
  - Enhance the transparency of the budget system
RESPONSIBILITIES OF PUBLIC FINANCE MANAGERS

Example of legislation defining the responsibilities of public finance managers: New Zealand, 1988

PROVISIONS OR OBLIGATIONS SET OUT:

- Budget authority to heads of department, who become “chief executives” responsible for managing their inputs, including staff and remuneration. As managers, they must determine the most efficient ways of producing the government services for which they are responsible.

- Personal accountability of chief executives for producing high-quality outputs – the provision of goods and services for the government and other users.

- Contracts between individual budget managers (suppliers of services) and ministers (purchasers of services) that stipulate the quality, quantity, timing and price of agreed services. Each chief executive has a personal “performance agreement” with the appropriate minister, accompanied by a “purchase agreement” which specifies the outputs to be supplied by the department to the minister.

Government of New Zealand

ACCOUNTABILITY OF THE POLITICAL EXECUTIVE TO THE LEGISLATURE

General principles regarding the accountability of the political executive to the legislature

The accountability of the executive to parliament on management of the budget should be enshrined in law. Whether it rests with an individual (the minister of finance, for example) or the cabinet will depend on whether the constitution, explicitly or implicitly, declares the responsibility to be an individual or collective one. It might be necessary to legislate in order to add accountability for the budget to any constitutional provisions, notably to impose the following rules:

- The government or minister of finance (or equivalent of the latter) submits a draft budget to parliament on a specific date, and at least three months before the start of the next fiscal year. Ideally it should perhaps be stated that the executive alone is empowered to prepare the first budget draft.

- The budget must be laid before parliament on a date set by the constitution. That date must be early enough (for example at least three months before the start of the fiscal year) for members of parliament to have sufficient time to study the draft. In the interests of sound budgetary management, the requirement that the budget law be adopted before the start of the new fiscal year is seen as very important, as are the statutory rules applied if this deadline is missed. So the constitution should at least include general rules on the date for adoption of the annual budget law, while the details can be set out in primary legislation.

- Reports must be submitted at the same time as the draft budget.

- The government or minister of finance lays before parliament the results, properly audited, of the execution of the budget at a specified date which must be earlier than the date on which the draft budget for the following fiscal year is presented.

- Parliament may require any member of the government, any holder of a political office and any public servant to substantiate budget forecasts and/or results to it in person or in writing.

VI. ACTION PLAN FOR THE IMPLEMENTATION OF PRIORITY REFORMS

Tunisia shows a genuine wish to reform its public finances. This readiness is apparent both in the Ministry of Finance and in the ministries managing the funds. Trials by certain ministries (with pilot phases) mean that the reform process is moving steadily forward. The OECD might provide assistance as follows:

- helping to establish the principles of budgetary management by objectives more widely through measures to strengthen the capacity of civil servants tasked with carrying out the reforms in the various departments;

- broadening the scope of the reforms, currently focused on the central level, so that they also cover the local level, narrowing the gap in management capacity between central and local level; and

- intensifying co-ordination and strategy planning to strengthen the link between planning and budgeting, especially once the practice of five-year plans is abandoned. These must be replaced by serious forward planning for the medium and long term. To that end, it is vital that MTEFs are in place and operational.
Development Co-operation
I. DEVELOPMENT CO-OPERATION: ROLE IN PROMOTING INTEGRITY AND COMBATING CORRUPTION

Development co-operation can play a major role in the global fight against corruption. Donors can help the governments of developing countries and other stakeholders (civil society, the business sector, etc.) to combat corruption by strengthening national systems and encouraging greater transparency and accountability. They can also ensure that they apply high standards of integrity and transparency in their own programmes and projects.

It is important for donors to strive to promote a culture of integrity, as the quality of governance has a major impact on the development of countries. Corruption makes developing countries less able to provide basic services such as education and health, weakens democratic institutions and stands in the way of inclusive economic growth; in donor countries, it undermines public support for the official development aid that beneficiary countries need. The corrosive effect that corruption has on society overall may ultimately play a part in making a country unstable and precarious.

II. DEVELOPMENT CO-OPERATION: CURRENT STATUS AND CRITICAL ANALYSIS

There is in Tunisia a solid framework for co-operation and exchange between the Tunisian Government and donors for purposes of combating corruption, and an ambitious reform programme has been launched. However, some additional questions must be put to donors in Tunis in order to have a more complete picture concerning the fight against corruption as it relates to international development co-operation in the country.

The national Government and donors to Tunisia have a shared vision concerning implementation of an anti-corruption system, based on the United Nations Convention against Corruption (UNCAC). An UNCAC review is currently under way in Tunisia. It remains to be seen whether the conclusions from that review will be made public and taken into account in preparing an anti-corruption strategy.

The donor community is making some effort to co-ordinate its action to aid Tunisia’s development. It is in particular organising a monthly co-ordination meeting. Although this effort has been stepped up since the fall of Ben Ali’s regime, it is still not enough, bearing in mind the greater challenges facing the country. This lack of co-ordination is weakening the Government’s capacity to act and fragmenting its efforts, especially in the anti-corruption field.

The donors use their own management systems to deliver aid, except when they are not sufficiently detailed and when national rules are more explicit. Under the 2005 Paris Declaration, donors are to use national systems for development aid delivery. It is thus important for donors to make more use of Tunisian public finance management systems in order to improve them and increase their capacity.

The government relies almost exclusively on perception indicators for assessing trends in corruption. It is important for donors to encourage the collection of information that can be used to track, measure and record corruption trends in Tunisia. Experience shows that donors often have differing opinions about the extent of corruption in countries. It is then important to co-ordinate their efforts in order to gain a real picture and help the government to combat corruption.

The government can also make an effort to measure trends in corruption. Since the fall of Ben Ali’s regime, Tunisia has put in place institutions and laws to investigate and prosecute corrupt agents,
especially in public procurement. In this context, it would be useful to have an annual report reviewing all cases of corruption and their handling, especially those concerning international co-operation.

The donors have set up various programmes to support participation by the actors of civil society and to improve their capacity. Some donors (especially Germany, the US and the UK) are giving priority to good governance and integrity in their co-operation with Tunisia. The United Nations Development Programme (UNDP) is also playing an important part in establishing a culture of dialogue between the Government and citizens and is very active in building the capacity of civil society actors, especially in the anti-corruption field.

In terms of international co-operation against corruption, the Tunisian Government complains that international support for the recovery of illegally acquired assets is not what it should be. Tunisia is faced by different legal systems, and the highly technical and complex nature of cases raises major problems. The United Nations has, for instance, provided Tunisia with a lawyer dealing solely with the recovery of assets illegally placed in Lebanon by Ben Ali’s family. This has helped to speed up matters and, in April 2013 (more than two years after the fall of Ben Ali’s regime), to recover an initial tranche of the assets placed abroad. With a view to further support for Tunisia, legal co-operation by donors could be stepped up and thus help Tunisia in a particularly sensitive area that Tunisians consider to be very important.

Finally, the Government indicates that donors are providing periodic (quarterly or half-yearly) reports on their financial commitments to Tunisia. These reports, however, are not sufficient because they do not allow for the real-time updating of the information that is needed to take decisions on aid flows.

III. Reforms under way

<table>
<thead>
<tr>
<th>Reform under way</th>
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<th>Co-operation with international institutions</th>
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</thead>
</table>
| Drawing up by the European Union and the Tunisian Government of an action programme to combat corruption | The 2013-2017 action plan, which is part of the special Tunisia-EU partnership, seeks to consolidate co-operation between the two parties for combating corruption, in the following ways:  
− Exchanging information on European and Tunisian legislation and strategies and on the application of international instruments, sharing best practices in combating corruption, and developing co-operation in this field.  
− Examining the possibility of support for implementing Decree Law No. 120 of 14 November 2011 on the anti-corruption unit.  
− Continuing support for Tunisia’s efforts through mutual assistance in criminal matters with a view to repatriating assets and property fraudulently acquired by the former president and members of his family, which are currently frozen under the jurisdiction of EU Member States. | EU |
| Donor use of country systems | − Programming of the World Bank expert missions to familiarise Tunisian authorities with World Bank procedures and to bring country procedures into line with international ones. | World Bank |
IV. IDENTIFICATION OF PRIORITY REFORMS

Tunisia has in place a solid strategy for combating corruption in the area of international co-operation. That strategy includes the Government, donors and civil society, and an ambitious reform programme is now under way. Additional efforts could however be useful, in terms of: (i) introducing an effective system for tracking corruption trends; (ii) improving co-operation between donors and the Government; and (iii) strengthening international co-operation for the recovery of ill-gotten assets.

<table>
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<tr>
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<tr>
<td>Strengthening international co-operation for the recovery of ill-gotten assets</td>
<td>🟢</td>
<td>- Strengthening of international co-operation for the recovery of ill-gotten assets in particular through StAR (initiative developed by the World Bank and the United Nations Office on Drugs and Crime).</td>
</tr>
</tbody>
</table>
| Measuring corruption trends in general and in international co-operation in particular | 🟢 | - Introduction of an effective system for tracking corruption trends in Tunisia. The Tunisian Government can for that purpose draw on good examples provided by a number of countries which are combining several sources of data to gain a more complete picture of corruption trends in their countries.  
- Improving exchanges of information between the donors in Tunisia about their work to combat corruption so that any synergies can be exploited and concerted positions reached on this issue. |
| Donor use of national public management systems | 🟢 | - Increased use by donors of national management systems for the delivery of their development aid, in line with the 2005 Paris Declaration. Helping donors to use national systems is important for the Tunisian State as it offers an opportunity to find out about their reactions and criticisms. |
| Enhanced communication between donors and the Government | 🟢 | - Enhanced communication between donors and the Government in particular through full information on their annual commitments so that Tunisia can: (i) prepare its budget forecasts; (ii) include these flows in its accounting system; and (iii) control them more effectively and limit their misappropriation.  
- Appointment of a single intermediary between donors and the Government for matters concerning good governance and the fight against corruption. |

V. EXAMPLES OF GOOD PRACTICE IN THE INTRODUCTION OF PRIORITY REFORMS

This example reports on a co-ordinated donor action to support Uganda in its fight against corruption. In 2009, the international donors developed a joint response to widespread corruption in Uganda. The
British Department for International Development (DFID) drew on the ideas of the OECD DAC Anti-corruption Task Team, tailoring them to the local context.

### Donor co-ordination to combat corruption in Uganda

A pilot project to apply the Policies and Principles of the Development Co-operation Directorate (OECD DAC) on combating corruption has been run in Uganda by the bilateral partners.

Under this project, the donors agreed on the joint response to be given and drew up a “Rolling Core Script” setting out a series of clear messages to the Ugandan Government. It encouraged the Government to take steps in respect of a number of corruption cases. The main components of this initiative included the development of an innovative mechanism to follow up data on the country’s specific governance indicators, financed by the World Bank’s Governance Partnership Facility, and administered by Makerere University’s Economic Policy Research Centre (EPRC).

This mechanism makes it possible to follow up over 70 indicators in fields such as political governance, civil society and the media. It includes functional indicators linked to the budgetary process, audits, public procurement and budget scrutiny by Parliament, and specific sectoral indicators in high-risk areas such as health and education. Information is also gathered on indicators linked to compliance with legislation, for instance the number of cases of corruption uncovered by the Inspector General, the number of cases brought before the courts, sentences and penalties. The sources used include a range of existing indicators from the Public Expenditure and Financial Accountability Programme, the Open Budget Initiative and the Afrobarometer survey, as well as a number of original indicators constructed from data from the national police and the Auditor General’s Office.

One and a half years on, this approach has had promising results in terms of a creating a joint platform for dialogue, improving the design of safeguards against corruption in other donor programmes, and encouraging anti-corruption allies in Uganda. The record is more mixed on the impact of sanctions, and the sustainability of the donor effort remains a challenge. Lastly, this initiative has made it possible to simplify, repeal or replace over 6 000 administrative procedures since 2009.

**For more information**

The first two annual reports on corruption in Uganda by Makerere University’s Economic Policy Research Centre (2010) are published on the EPRC website at [www.eprc.or.ug/](http://www.eprc.or.ug/).

The Ugandan experiment is also discussed in a joint publication by the U4 Anti-corruption Resource Centre and the OECD.


This experiment shows that joint action that effectively combats corruption requires, among other things: i) an investment in the initiative’s leadership; (ii) the development of a strong base of evidence of corruption and analysis; and (iii) a flexible approach in order to make the most of opportunities to progress the anti-corruption agenda in the country concerned.
VI. Action Plan for the Implementation of Priority Reforms

The Development Co-operation Directorate (DCD-DAC) at the OECD has a great deal of experience in building development partnerships and improving development policies. Through its work the DAC has forged close relations with donors and can therefore help Tunisia to introduce reforms and promote constructive dialogue with donors. The DAC could set up the following actions in particular:

- Organising a meeting with donors to align points of view on and efforts to combat corruption in Tunisia. This meeting could also offer an opportunity to invite donors to use Tunisian public management systems.

- Facilitating dialogue between the Government and donors on the recovery of ill-gotten assets from abroad (especially the StAR initiative). A meeting between the DAC and the Tunisian Government could help to provide a better understanding of the Tunisian Government’s technical legal assistance needs, which could then be translated into specific needs to be met by donors.

- Organising a conference to make the Government and donors more aware of the importance of measuring and tracking corruption trends in Tunisia. This conference might also be an opportunity to present the different instruments for measuring corruption and to organise technical workshops.

- Lastly, the DAC has sound experience in measuring performance in co-operation aid. It is thus able to follow up the implementation of these reforms and to measure how effective they are.
Public Sector Integrity
I. PUBLIC SECTOR INTEGRITY: ROLE IN PROMOTING INTEGRITY AND COMBATING CORRUPTION

It is essential to reinforce the trust between citizens and their governments in order to build inclusive and sustainable growth. In this context, it is vital to strengthen public institutions comprehensively and multi-dimensionally and to establish a culture of transparency and integrity in the public sector.

The promotion of a culture of integrity requires consistent and continuous efforts: (i) to define the expected standards of conduct; (ii) to provide guidelines and incentives to introduce them; and (iii) to monitor their application on a regular basis. This also requires precautionary efforts on governments’ part to anticipate risks to integrity, identify sources of corruption, and take appropriate counter-measures. Lastly, and above all, transparency serves to encourage accountability and control in the operation of government procedures, with a view to reinforcing citizens’ trust.

The OECD has prepared a number of recommendations which are intended to help governments to ensure that transparency and integrity bring about specific improvements in government’s principal activities. The main instruments that are useful in this connection include, in particular:

- principles designed to encourage ethical conduct in the public service;
- guidelines for the management of conflicts of interest in the public service, and principles governing employment after the official’s term of office;
- guiding principles for transparency and participation in the preparation of public policies.

II. PUBLIC SECTOR INTEGRITY: CURRENT STATUS AND CRITICAL ANALYSIS

Public sector integrity in Tunisia needs to be strengthened because there are still many gaps in the country’s laws, institutions and procedures. Of particular note among the gaps in the legislative framework are the weakness of the system in respect of the declaration of assets, the diversity of the laws embodying public sector values, the lack of participation in the formulation of legislation, and the limited control over political party and political association finances. The lack of a clear and coherent legal framework is an obstacle to implementing and enforcing integrity standards. Tunisia has realised the importance of strengthening public sector integrity and has initiated a number of reforms to that end, in co-operation with the UNDP and the OECD. Lastly, it is important for the political transition that it should continue to establish a culture based on transparency and integrity in the public sector.

It is important, when reviewing the legislative framework, to bear in mind that Tunisia has a more general problem concerning the spirit of the law and the definition of corruption. In effect, that definition is often limited to the taking of bribes, while conflicts of interest are not directly criminalised.

Generally speaking, the Tunisian administrative hierarchy is well-defined and organisation charts are fairly clear. However, there is currently some confusion resulting from the recent political transition. There is also a clear distinction in the public administration between the official who authorises expenditure and the person who makes payment, in order to reduce the risk of fraud. Lastly, the delegation of powers within the Tunisian administration is regulated by law: it is personal or individual, and must be published in the Official Gazette of the Tunisian Republic (JORT).

PUBLIC SECTOR INTEGRITY STANDARDS

Integrity standards and the laws governing the conduct of officials and politicians are diverse and are not always clearly defined. Moreover, apart from the regulations, the Tunisian public service has no code
of conduct or ethics applicable to the whole of the service. The principal provisions relating to the behaviour of public officials in Tunisia are listed below:

- The general employment framework applicable to public service embody, directly or indirectly, the principles of integrity for public servants in Tunisia.
- Article 5 of the general employment framework regulations prohibits plurality of positions and the acquisition of illegal interests. Violation of this prohibition may constitute a criminal offence.
- Article 71 of the general employment framework specifies the conditions of eligibility for public servants and the conditions under which they may return to the public service.
- The general employment framework and the penal code (in particular Article 97) place limits on the transfer of public officials to the private sector.
- Article 97bis of the penal code spells out the obligations of public officials after they cease their functions and the conditions under which they may transfer to the private sector.
- Law No. 87-17 of 10 April 1987 (currently under review), on the sworn declaration of assets of members of the government and certain categories of public officials, is intended to promote integrity in the public sector and to punish illicit enrichment.
- Law No. 83-112 on the status of personnel of the State and local governments and of public administrative institutions defines some of the values of the public service.

Moreover, there are no awareness campaigns concerning ethics, rules of conduct or integrity within the public administration, nor are there any guidelines for officials. The Tunisian administration lacks a legal framework that would integrate the values and standards of conduct to be respected in the day-to-day activities of public officials. Even more importantly, there is no specific training concerning the integrity of public officials, particularly those in positions most susceptible to corruption.

With OECD support, the Tunisian Government is now preparing a code of conduct for the public service, and a national consultation is currently under way.

VULNERABLE AREAS

During the transition period, the National Commission of Investigation in Cases of Corruption and Embezzlement conducted an initial, non-exhaustive assessment of the principal areas of government activity that are most vulnerable to corruption. That assessment identified four sectors that require immediate government attention: a) tax administration, b) customs, c) public procurement and d) management of State property. Some steps have already been taken to remedy these risks. In particular, the government has launched important reforms concerning tax administration and public procurement. Other areas, such as public-private partnership and subscriptions, are also risk-prone (risks connected with the wide discretionary powers associated with these funds and the lack of controls).

The government could also conduct a more complete and in-depth assessment of risks throughout the public service. It could then also take into account the risks of a conflict of interests in connection with the financial risk. More generally, the government should review the internal control systems in the ministries in order to develop a culture of management accountability and to prevent the risks of waste and corruption more effectively.

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7 The consultation is taking place on the Tunisian government website: www.consultations-publiques.tn/. The results should be presented on 20 June 2013.
Control systems

In addition to the external control exercised by the Supreme Audit Institution, the Tunisian Government has an internal audit system based essentially on the following three general control bodies:

- General control over public services, by the President of the Government;
- General control of finances, by the Ministry of Finance; and
- General control over State property and land, by the Ministry of State Property and Land Affairs.

There are also other control bodies within the Tunisian administration:

- a departmental inspection office within each ministry; and
- internal audit units within State Owned Enterprises.

The controls conducted by these bodies focus essentially on the observance of regulations. Ex post controls and performance/outcomes-based controls are not yet used. The roles and functions of the control bodies overlap, and the recent transition phase has led to greater confusion over their respective roles. Moreover, the controls are not transparent, as their results are not systematically disclosed to other control bodies or to the general public. The 2011 and 2012 OECD public sector integrity reviews of Tunisia recognised the need to provide greater clarity as to the role and the scope of action of the control bodies. It also suggests exploring the possibility of reorganising them in order to promote better co-ordination and monitoring of the control bodies' recommendations.

A new institution has recently been established: the General Public Programme Monitoring Department, established by Decree No. 2013-1333 of 12 March 2013. This department “contributes to planning, preparing and monitoring the execution of public programmes”. It is responsible, among other things, for setting the performance indicators and the mechanisms for monitoring execution.

Citizen involvement

Experience in OECD member countries shows that open government and citizen involvement in policy decisions are essential conditions for winning the trust of the general public and for implementing sustainable reforms. Under the former regime, there was little effort to encourage a culture of transparency and accountability in public administration. Following the revolution, the Tunisian Government took a first step in this direction by adopting a law designed to make administrative documents available to the general public (Decree Law No. 41 of 26 May 2011, on access to the administrative documents of public bodies). Some ministries also publish various items of information on their websites and organise public consultations when new laws are being prepared. These efforts could be consolidated and harmonised in the next stage (see section on regulatory policy for further details).

Under the OECD-MENA Open Government Project, the OECD has launched an assessment of the government’s openness and the transparency policy it is pursuing with a view to meeting the admissibility criteria of the Open Government Partnership.

Political party funding

Politicians are often involved in influence peddling that is not covered by the law. At the present time, Tunisia does not have the legal and institutional provisions needed to promote transparency and integrity in the funding of political parties and/or candidates. This lack of regulation could threaten the transition to democracy in Tunisia, as it raises a number of questions about the sources of funding for political parties and the potential risk of conflicts of interest, influence peddling or fraud. Regulation of
political funding would reinforce the integrity of the public sector in that it would ensure transparency in the use of public funds in electoral processes and limit the risk of misuse of State resources.

III. Reforms under way

<table>
<thead>
<tr>
<th>Reform under way</th>
<th>Objective</th>
<th>Co-operation with international institutions</th>
</tr>
</thead>
</table>
| Strengthening the ethical framework for the public service | – Reform of Law No. 87-17 of 10 April 1987 concerning the declaration of assets.  
– Finalisation of the public consultation concerning the code of ethics for the public service. | OECD                                           |
| Reform of the tax administration                      | – Simplification of tax legislation, strengthening controls and reducing red tape. | OECD                                           |
| Reform of public procurement                          | – Finalise of a report identifying the strengths and weaknesses of the control framework. An action plan has been prepared.  
– Introduction of an e-procurement system.            | World Bank                                     |
| Reform of internal control                            | – Preparation of a draft amendment to the law organising the functions of the Higher Administrative and Financial Control Committee. |                                                |
| Customs reform                                        | – Carrying out a detailed review and assessment of integrity in the customs sector.  
– Possible review of the customs code and simplification of procedures. |                                                |
| Reform of State asset management                      | – Identification of problems in connection with the management of State property, with a focus on the following aspects:  
– the registration and definition of real property;  
– the observance of contractual and legal obligations by recipients benefiting from transfers of State lands; and  
– the procedures for the valuation of assets. |                                                |
## IV. Identification of Priority Reforms

<table>
<thead>
<tr>
<th>Reform</th>
<th>Evaluation</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Identification and criminalisation of unethical conduct in the public service</strong></td>
<td></td>
<td>– Introduce a system for the declaration of assets by senior officials and politicians.</td>
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<tr>
<td></td>
<td></td>
<td>– Introduce legal texts criminalising illicit enrichment by officials.</td>
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<td></td>
<td>– Introduce a regulation on interactions between officials and private persons.</td>
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<td></td>
<td>– Ensure that officials are aware of public service values and conflicts of interest.</td>
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<td></td>
<td></td>
<td>– The OECD has an international instrument for the management of conflicts of interest that could be useful in introducing the necessary reforms.</td>
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<tr>
<td><strong>Promotion of risk management in the public service</strong></td>
<td></td>
<td>– Introduce a risk management system within the public administration to prevent risk of waste and corruption.</td>
</tr>
<tr>
<td><strong>Promotion of transparency and integrity in the funding of political parties and associations</strong></td>
<td></td>
<td>– Introduce a regulation to limit the risks of misuse of public funds in electoral processes.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>– Promote a culture of transparency in political life in general, in parties and in associations.</td>
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</table>

## V. Examples of Good Practice in the Introduction of Priority Reforms

### Introduction of a System for the Declaration of Assets by Senior Officials and Politicians

The declaration of assets is a particularly sensitive subject, touching on the private lives of the persons making the declaration and of their families. For this reason, it is still under discussion in many OECD member countries (including France in particular). It is up to each country to find a balance that will enable it to reduce the risks of corruption and illicit enrichment and also to protect privacy.
The first system for the declaration of assets by Argentinean officials was introduced in 1953. The system was revised after Argentina acceded to the 1996 Inter-American Convention against Corruption. However, experience between 1997 and 1999 showed that the system was not effective in preventing corruption in the public sector. The system for the declaration of income encountered the following problems:

- Filling in the forms for the declaration of assets by officials was a complicated task. Some officials had to return their forms five times because the forms were so complex.

- Every official who was required to declare his assets had to make the declaration on paper. Checking was also a manual process, which meant that a substantial number of declarations could not be checked. A sum total of 30,000 officials were required to make a declaration in Argentina in 1999.

- The authorities receiving the declarations had quickly found themselves overwhelmed by the quantity of declarations and had literally not had the necessary space to store all the declarations. They had been obliged to find alternative places to put them.

- It was difficult to identify the person in each ministry or public body who was responsible for drawing up the list of officials who were required to submit declarations.

- It was also very difficult to provide a quick answer to citizens’ requests for information about declarations of assets.

As a result of the situation in 1999, the system broke down and had to be restructured. An electronic database was created, containing all the data concerning officials who were required to declare their assets. This database includes, in particular, the date on which the official started work and, where applicable, the date on which he resigned, the extent of the official’s compliance with the obligation to declare his assets, etc. The department of human resources (HR) in every public institution was responsible for determining which posts were subject to the obligation to submit a declaration of assets and for keeping the Anti-corruption Office informed of these posts.

The HR department receives a copy of the declarations made by its employees and is responsible for keeping the declarations of officials who are not required to send their declarations to the Anti-corruption Office (certain officials in lower ranks). The greatest innovation is the electronic declaration system, which helps officials to complete their declarations. For example, if an official forgets to enter his or her credit card number in the right box, he or she will not be allowed to continue completing the procedure. At the same time, this application generates secure encrypted files which are sent to the Anti-corruption Office. Lastly, an automated control system analyses and sorts the electronic information received by the Anti-corruption Office. It extracts the information that could require closer examination, on the basis of a number of criteria that can be determined by the Anti-corruption Office.
VI. Action Plan for the Implementation of Priority Reforms

The OECD is working with the UK Arab Partnership Fund to increase and develop its current support for Tunisia in a number of the areas mentioned in Section III – Reforms under way. A future phase of this project, in 2014, could focus on:

- Rolling out a training programme on ethics and integrity in the public sector, in order to familiarise public servants with the new code of conduct, to ensure that the code provides useful guidance for officials in their day-to-day activities, and to promote continued discussion of these questions within the public sector. This training could be extended to other institutions through a trainer-training programme.

- Strengthening capacity in the area of internal controls for specific institutions, based on the diagnosis and recommendations made in the area of audit and risk management systems. The proposed training programme could be adapted for use at various levels. It could be developed and adapted to meet the various needs of the Tunisian government.

The OECD would also like to work with Tunisia with a view to improving the framework of political party and association funding, with particular attention to the following aspects:

- Facilitating national dialogue on the key strategic points of a regulatory and institutional framework for the funding of electoral campaigns and political parties. With a view to preparing an electoral code and a law on political party funding, the OECD could mobilise pairs of OECD member countries to share their experiences and the lessons learned in the course of preparing similar regulations in the
past ten years. A seminar could be organised, in order to bring all the stakeholders and international experts together to define the key strategic points of a regulatory and institutional framework for the funding of electoral campaigns and political parties in accordance with international standards such as the United Nations Convention against Corruption (UNCAC) and the Council of Europe Committee of Ministers Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns.

- **Support in drafting a law on the funding of political parties**
  Through a comparative analysis of the experiences of OECD member countries and existing provisions and mechanisms on the subject in Tunisia, the OECD would support the committee drafting the law on political party funding, assisting in the drafting of a new regulation to be submitted to the Constituent Assembly in preparation for the next elections. All the international partners concerned would also be involved in the process.

- **Public consultation on the draft law on the funding of political parties**
  In order to encourage the effective implementation of a new regulation on political party funding, all the stakeholders, and civil society in particular, would be consulted on the draft law. The principal aim of this consultation would be to define transparency mechanisms that could be introduced to enable civil society to monitor the political parties’ compliance with the regulation more effectively. The consultation would also aim to define tools that would encourage greater transparency in the funding of political parties, through the use of new information and communication technologies in particular.
PUBLIC PROCUREMENT
I. PUBLIC PROCUREMENT: ROLE IN PROMOTING INTEGRITY AND COMBATING CORRUPTION

Efforts to improve governance and integrity in public procurement are essential if public resources are to be managed efficiently and effectively. In this context, the OECD has issued a number of recommendations to improve integrity in public procurement. The principles that they set out cover four elements of good governance: transparency, efficient use of resources, resistance to fraud and corruption, and accountability and control.

- Transparency: corruption thrives on secrecy. The paramount task facing most countries is one of ensuring transparency throughout the public procurement process, at whatever stage or whatever the purchasing method used.

- Efficient use of resources: administrations are increasingly aware that public procurement is a strategic instrument of public action. The problem facing many countries is one of optimising the use of resources while trying to achieve allied goals such as protection of the environment. Poor assessment of needs, unworkable budgets or officials inadequately trained to manage increasingly complex procurement procedures are frequent shortcomings in the planning and management of public procurement.

- Resistance to fraud and corruption: the authorities are aware that specific measures are needed in the public and private sectors to detect and combat any risk of fraud, collusion or corruption in public procurement.

- Accountability and control: effective accountability and control mechanisms are prerequisites for the integrity of public procurement.

These principles address integrity risks at all stages of the public procurement cycle, from the assessment of needs to tendering, management of contracts and payments. They can act as a guide for administrations looking to prevent corruption in public procurement.

II. PUBLIC PROCUREMENT: CURRENT STATUS AND CRITICAL ANALYSIS

The Tunisian Government sees public procurement as one of the functions exposed to the greatest risk of corruption, in the light of the many abuses committed under the former regime. The 2011 OECD public sector integrity review of Tunisia\(^8\) bears this out and calls for more integrity and more transparency in public procurement awards and performance. Since the change of regime, the Government has committed to an ambitious programme of public procurement reforms. One of the main reforms has been the introduction of an electronic public procurement system, “TUNEPS”, which is intended to step up transparency and integrity in public procurement.

When it comes to the transparency of public procurement rules and procedures, Tunisia has an arsenal of laws based on equality, free competition, non-discrimination and the independence of the supplier vis-à-vis the public buyer. In reality, however, transparency in public procurement falls short of what is needed. The 2011 OECD public sector integrity review and the self-evaluation using World Bank/OECD methods\(^9\) highlight serious shortcomings in the transparency rules governing public procurement.

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\(^9\) The results of the self-evaluation are not available to the public.
The choice of procurement methods is not always transparent, and non-competitive tendering is a frequent occurrence, reflecting both systematic political interference and the appropriation of State resources by influential groups. In this context, it is important for the Government to respect the following rules: (i) procedures must be transparent at all stages of tendering as well as in the choice of procurement method; (ii) the rules must be available to all officials responsible for public procurement; and (iii) efficient control mechanisms for public procurement must be set in place, especially when there are exceptions to competitive tendering. The management and performance of contracts and payments must also be subject to transparency rules. A thorough review of transparency rules in the procurement process is therefore essential, and practical guidelines on this matter should be developed for procurement officials.

Current Tunisian legislation stresses the importance of ensuring that needs are adequately estimated well before tenders are called, and that public funds are used in accordance with the objectives that have been set. In practice, however, clearer instructions and training are required if officials responsible for estimating needs are to perform their task properly. Specific rules are also needed for the proper management of public funds, with a focus on the correct estimation of needs and better programming and planning of purchases, for instance by introducing forward purchasing programmes.

To remedy this problem, the public procurement function needs to become more professional. Tunisia currently has no formal measures for strengthening and regularly updating the skills of procurement officials so that they can comply with high professional standards of knowledge. The National Procurement Observatory is the agency responsible for training procurement officials. The training that it currently offers is not enough to make the function more professional.

There are few specific rules to protect procurement officials from undue influence and to foster a culture of integrity in public procurement. There are, for instance, no rules on conflicts of interest. The declaration of integrity that it is mandatory for public procurement officials to sign and in which they undertake to carry out their work transparently, impartially and fairly, does not protect them from undue influence.

Some public procurement rules specify the standards of integrity that procurement officials should respect in their dealings with the private sector. In practice, however, procurement officials receive no training or practical guidance on procurement to help them to standardise operations and to ensure their effectiveness and integrity. The Government is currently planning to remedy this situation by introducing specific guides and procedural manuals for the public procurement function. As this sector is so vulnerable to the risks of corruption and fraud, the Tunisian Government, which is currently drawing up a code of conduct for all civil servants, could supplement this code with specific provisions applicable to procurement officials. These rules could also guide public buyers on the practices that they should respect when dealing with the private sector.

There are many players responsible for public procurement in Tunisia: committees for purchasing, for opening bids, for analysing offers and for awarding contracts, as well as approval authorities and boards of directors. The lack of human and financial resources leads, however, to a high level of absenteeism from committee meetings. Some committee members also find it difficult to interpret the rules and identify risks, reflecting the lack of a professional procurement function and the presence within committees of officials who have little knowledge of procurement. In addition to the problems raised by the public procurement function’s lack of professional skills, the OECD 2011 review also notes that the independence of these committees and in particular the Higher Procurement Committee had been eroded under the former regime. Some contracts were awarded to suppliers other than those decided by the Higher Committee. The Government needs to undertake further analyses to ensure that the Committee’s decisions are binding and cannot be disregarded by a political authority.
There are control mechanisms and bodies for ensuring that public procurement complies with the rules. These control bodies lack the human and financial resources and the independence needed properly to exercise these control operations, however. The OECD 2011 review stressed, moreover, that the rules governing external oversight arrangements and procedures in the public administration needed to be revised to deal with various problems (overlapping responsibilities, lack of ex post control). Lastly, the extent of procurement controls should also be set in line with the potential risks (for instance, the amount of the contract, the use of exceptions, etc.).

Under Tunisian law, public procurement procedures can be cancelled if collusion is suspected when tendering. In cases in which the prices bid are particularly low, the public buyer must advise the Ministry of Commerce, which may then hand the matter to the Competition Board to investigate suppliers’ bids. New rules introduced by recent reforms even make it possible for the Competition Board to investigate cases at its own initiative. In practice, however, officials do not have enough training to enable them to design calls for tender which are less susceptible to collusion and are not trained in techniques for detecting cases of collusion (risk indicators, for example).

Any complaints from suppliers have to be sent to the Procurement Monitoring and Investigation Committee. This Committee gives non-binding opinions; only the administrative court has the authority to judge the legality of procurement procedures. It should be noted that the Chair of the Higher Procurement Committee also heads the Monitoring and Investigation Committee. This dual function could raise doubts about the neutrality of the Monitoring and Investigation Committee when a decision by the Higher Procurement Committee is challenged. Appeals to the administrative court are often very slow and cumbersome. A specific and efficient appeals mechanism is a precondition for guaranteeing the transparency and integrity of public procurement procedures.

Civil society organisations, the media and the general public are able to monitor only a portion of procurement transactions. Competitive calls for tender must be published in particular on the website of the National Procurement Observatory. This requirement does not extend to other types of tendering, however. There is, moreover, no evidence that this mandatory publication is being implemented. Lastly, there is no mention of specific measures to encourage the oversight of procurement by civil society such as: (i) the publication of contract awards by the procurement committees; (ii) the management and performance of the contracts awarded; (iii) the involvement of citizens in the decision-making process. When recent public procurement reforms are implemented, it will be important for the Tunisian Government to pay particular attention to means of involving civil society and the private sector not just in the design of reforms, but also in control of the implementation of these reforms.

III. REFORMS UNDER WAY

The Tunisian government has identified public procurement as one of the four public sector areas most exposed to corruption. The Tunisian government is currently engaged in a thorough review of this area.
In the course of the comprehensive overhaul of public procurement in Tunisia, particular attention should be paid to the following aspects:

<table>
<thead>
<tr>
<th>Reform under way</th>
<th>Objective</th>
<th>Co-operation with international institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review of regulations governing procurement</td>
<td>– The Head of Government has announced a thorough overhaul of procurement rules for 2013.</td>
<td>World Bank and African Development Bank</td>
</tr>
<tr>
<td>Introduction of an e-procurement system</td>
<td>– Introduction of the first e-procurement platform, “Tuneps”(^\text{10}). Use of the Internet is needed to reduce red tape and make public procurement more efficient.</td>
<td>Korean Co-operation Agency/ the Korean firm Samsung</td>
</tr>
</tbody>
</table>

IV. IDENTIFICATION OF PRIORITY REFORMS

In the course of the comprehensive overhaul of public procurement in Tunisia, particular attention should be paid to the following aspects:

<table>
<thead>
<tr>
<th>Reform</th>
<th>Evaluation</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Make the public procurement function more professional</td>
<td>–</td>
<td>– Making public service procurement more professional (building capacity, training and certification programmes, etc.).</td>
</tr>
<tr>
<td>Establish high standards of integrity</td>
<td>–</td>
<td>– Need to clarify the procedures involved in procurement. This could take the form of a specific procedural manual. – Make buyers more aware of the risks entailed in procedures, for example by means of a code of ethics or special training for buyers.</td>
</tr>
<tr>
<td>Strengthen the e-procurement platform</td>
<td>–</td>
<td>– Introduction of a suppliers’ database which could provide information on their prices and their performance on the “Tuneps” electronic platform. This process needs to be launched fairly soon with information being supplied automatically to the databases.</td>
</tr>
<tr>
<td>Independence and effectiveness of appeal mechanisms</td>
<td>–</td>
<td>– Introduction of an effective and independent appeals mechanism. This mechanism should be introduced in a participatory and inclusive way.</td>
</tr>
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</table>

\(^{10}\)The introduction of the TUNEPS platform is currently being piloted. Four ministries and five public enterprises have been using it since early 2013.
Role of civil society and the media in overseeing procurement contracts

- Increasing the involvement of all the stakeholders in the procurement process, through the implementation of formal mechanisms for verifying the validity of procurement processes.

V. EXAMPLES OF GOOD PRACTICE IN THE INTRODUCTION OF PRIORITY REFORMS

CANADIAN PROFESSIONAL DEVELOPMENT AND CERTIFICATION PROGRAMME

This programme has been developed by the public procurement community so that equipment and real property management becomes more professional and is recognised as a knowledge-based profession. Responsibility for managing the life cycle of assets – from needs evaluation and planning, through acquisition to disposal – is a pillar that brings the community together. This shared responsibility has enabled the community to develop core competences, learning objectives and required knowledge. A unique feature of professional development and certification is the explicit recognition of this community and the creation of a competency profile and learning solutions targeting them.

THE PROGRAMME HAS TWO STRANDS:

- Professional development: this includes the core competency profile and the web-based assessment tool, which incorporates a study programme of courses and other learning activities for the acquisition and enhancement of specific competences. The competency profile describes the 4 competency clusters and the 22 competences and the behavioural indicators linked to them, at 3 increasing levels of competence.

- Certification: this includes the competency standard, the certification programme manual, and the certification application and maintenance handbook. A number of organisations within the federal government play a key role in managing and providing the certification programme:

  o The Treasury Board is responsible for overseeing and for the overall management of professional development and certification.

  o The Canadian General Standards Board plays three roles: it helps candidates to enrol and follows their progress through the certification programme; it organises knowledge assessment to determine whether candidates are eligible for the knowledge exam; it is responsible for organising and programming the exam. It is also the body that awards certification with the help of an independent panel.

  o The Canada School of Public Service offers a number of courses required for certification.

  o Lastly, Public Works and Government Services Canada offers specific courses in procurement which are recognised for certification.

**E-procurement for small and medium-sized enterprises in Italy**

Italy has taken a step towards enhancing its co-operation with suppliers by setting up the Suppliers’ Training Offices (STO) (“Sportelli in Rete” in Italian) hosted by suppliers’ associations. The STOs train and help local enterprises, especially SMEs, to use electronic tools in procurement. The project involves a network of dedicated training offices in which experts from Consip (a government company run by the Ministry of the Economy and Finance and responsible in particular for on-line public procurement) train the members of associations, who in turn train local SMEs in the use of the Italian e-procurement system.

The project takes up point 5 of the Small Business Act for Europe (SBA): “Adapt public policy tools to SME needs: facilitate SMEs’ participation in public procurement and better use State Aid possibilities for SMEs”. It is considered to be an example of good practice, at national level, in the “European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts”.

Source: OECD

**VI. Action plan for the implementation of priority reforms**

In the context of the activities of the OECD with the UK-Arab Partnership Fund, OECD work with Tunisia in the procurement field could focus on:

- evaluating training needs in the public procurement field in Tunisia in order to tailor and enhance the training material initially proposed;
- organising seminars to train officials and tenderers from the Higher Procurement Committee and major buyers such as the Ministries of Education, Health, Infrastructure and Finance; and
- organising and running training involving and drawing on the experience of OECD experts.
TAX TRANSPARENCY
I. TAX TRANSPARENCY: ROLE IN PROMOTING INTEGRITY AND COMBATING CORRUPTION

For tax transparency, the tax authorities must have at their disposal the information necessary to apply national tax laws. In particular, transparency requires the availability of information on (i) title deeds, (ii) accounts and (iii) bank information regarding undertakings and other entities (natural persons, foundations, etc.).

Transparency is entirely at odds with the interests of people who contravene the tax laws and are corrupt, who need to conceal their criminal acts behind front companies, falsified accounts and strict banking secrecy. It is therefore of vital importance to ensure that details of ownership, accounting and banking are made available, not only in order to assess and recover tax but also to combat corruption.

Transparency for tax purposes is currently evaluated by means of peer review in the 120 member authorities of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum). The Global Forum also seeks to ensure that the national jurisdictions have at their disposal suitable mechanisms to enable their tax authorities to gain access to such information. This also makes it possible for the information to be exchanged with other jurisdictions who need it in order to be able to calculate and collect their own taxes correctly.

II. TAX TRANSPARENCY: CURRENT STATUS AND CRITICAL ANALYSIS

Under Ben Ali, Tunisia suffered from tax opacity, which encouraged corruption and tax evasion. As a result, the current state of Tunisian legislation does not provide an adequate framework to support the principles of transparency and information exchange. The Government was aware of this need, and became a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum). It also ratified the Convention on Mutual Administrative Assistance in Tax Matters on 25 March 2013. However, the Tunisian Government still has to carry out an in-depth revision of its legislative framework in order to meet the international standards to which the country has signed up.

In 2012, Tunisia became a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes, thereby undertaking to implement the relevant international standard and to submit itself to peer review. The OECD analysis does not prejudge the in-depth evaluation which will be carried out by the Global Forum. However, according to the information provided by Tunisia, its current legal framework would not allow it to pass the Phase 1 assessment, which is scheduled for spring 2014, or to qualify for the evaluation of its administrative practices regarding the exchange of information (Phase 2). Moreover, the current state of Tunisia’s legislation means that it is not in a position to exchange information in accordance with the Global Forum standard or to fulfil its obligations under the Convention on Mutual Administrative Assistance in Tax Matters.

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11The Global Forum was created in the early 2000s as part of the work by the OECD in tackling the tax compliance risks posed by tax havens. Its purpose is to ensure the application of standards agreed at international level for transparency and information exchange in tax matters. By means of an in-depth process of peer review, the Global Forum monitors the full application, by its members, of the transparency and information exchange standard which they have undertaken to implement. It is also involved in ensuring a level playing field, including between those countries which have not signed up to the Global Forum. For more information: www.oecd.org/tax/transparency/

Tunisia has signed 54 double taxation agreements following its accession to the Global Forum

Key:
Membres du Forum Mondial = Global Forum members
Accords pas encore examinés = Agreements not yet examined

Source: Exchange of Tax Information Portal: www.eoi-tax.org/jurisdictions/TN

Tunisia explains that it does not have any provisions of national law which would allow it to implement agreements allowing exchange of information for tax purposes, since it has never signed any exchange agreements before. Then again, the Tunisian tax authorities have very limited access to banking information for internal tax purposes or for the purpose of exchanging information. There appears to be an exception in the case of government-owned banks, based on 2011 legislation, but this has not yet been tested.

Tunisia has ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. This OECD convention, which is open to all countries, is in line with the international standard on transparency and the exchange of information – indeed it goes beyond it. Moreover, this Convention (Article 22.4) allows the information received for tax purposes to be used to combat financial crime (money laundering and corruption). Tunisia has also begun to adopt the 2005 version of Article 26 of the OECD Model Tax Convention (including the international standard) in its negotiations with Germany to revise the 1975 double taxation agreement.

Tunisian law makes provision for the competent authorities to keep and access information on ownership and identity (subject to the legislation protecting personal data), especially for corporations,

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14 The new agreement, signed on 4 June 2010, contains the provisions of Article 26 concerning the exchange of information based on the OECD model in its new version (2005).
partnerships, all trusts and all private foundations. The business corporations’ code provides mechanisms for identifying the owners of bearer shares.

Tunisian accounting legislation requires the availability of accounting and financial documents held in accordance with generally accepted principles (Law No. 96-112 of 30 December 1996 on business accounting systems, and Decree No. 96-2459 of 30 December 1996 approving the conceptual framework for accounting, as well as an order by the Minister of Finance of 11 March 2011 on the simplified accounting standard).

When it comes to ownership information, the business corporations’ code requires, under penalty of sanctions, that companies be registered and that they deposit and publish their deeds of incorporation, thus ensuring the availability of information on the ownership of entities (Articles 3, 4, 7, 11bis, 14, 15, 16 and 320 of the business corporations’ code). Again under penalty of sanctions, the code of real property rights requires the keeping of land ownership records (the deeds relating to registered buildings), the establishment of ownership title, the registration of the relevant rights and charges, the updating of land ownership titles and the drafting of deeds involving registered properties (Articles 316, 358, 359, 375, 377, 380, 381, 383 and 384 of the code of real property rights).

Access to bank information for tax purposes (Articles 17 and 100 of the tax procedures code, CDPF) is limited:

- The tax authorities have access to this information only for certain unspecified periods of time and only for taxpayers who are undergoing an in-depth audit of their tax situation in Tunisia;
- The access relates only to information on account numbers and dates of opening and closing as well as the identity of the account holders. Access to bank statements is not provided;
- Failure to report this information when requested is punishable by a fine of TND 50 (EUR 25) to TND 500, in addition to a fine of TND 5 for each item not reported or reported inaccurately or incompletely;
- However, in the case of the government-owned banks and the National Post Office, access to information is governed by legislation on access to public documents, which grants access under certain conditions including, in particular, the protection of personal details of natural persons and the commercial and financial interests of institutions;
- Finally, in matters relating to succession, banks which are depositaries, holders or debtors of securities, monies or valuables under a succession that they have opened must provide the tax authorities with a list of these securities, monies or valuables within 15 days following any payment, remittance or transfer concerning them.

The Tunisian tax authorities have real powers of enforcement for obtaining information of all kinds, including bank information, from natural or legal persons other than banks. The relevant legal provisions lay down the following:

- On-site consultation:
  a. The tax authorities have the right to demand, in writing and for on-site consultation, under penalty of a fine, the production of records, accounts, invoices and any documents held by central and local government agencies, by public institutions and enterprises, by corporations and agencies controlled by the State or by local governments, and by legal persons of the business sector and natural persons.
b. Duly authorised tax agents have the right to demand the on-site consultation, or copies, of deeds, documents, records and files held by public officials and by the depositories of public archives and securities, again under penalty of a fine.

• Notification of information:

a. Under penalty of a fine, central and local government units, public institutions and enterprises, central or local government-controlled corporations and agencies, as well as institutions, enterprises and other legal persons of the business sector and natural persons, are required to provide the tax authorities, upon written request, with lists naming their customers and suppliers, within 30 days following notification of the request. These lists must include the amounts of purchases and sales of merchandise, services and property conducted with each party.

b. The Public Prosecutor’s Office provides the tax authorities with all information and documents involving cases of suspected tax fraud or any other action intended to evade tax or avoid its payment, whether such action is brought before a civil, commercial or criminal court, even if it has been dismissed.

Natural or legal persons may not claim professional secrecy in order to withhold information demanded by duly authorised tax authority agents, in the absence of legal provisions to the contrary. There are exceptions for stockbrokers, providers of financial services to non-residents, physicians and lawyers.
III. REFORMS UNDER WAY

<table>
<thead>
<tr>
<th>Reform under way</th>
<th>Objective</th>
<th>Co-operation with international institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reform of the legislation concerning banking information</td>
<td>Consideration of the framework of the structural reform of the tax system and the introduction of legislative provisions that would guarantee the availability of bank information and the ability to communicate it.</td>
<td>N.A.</td>
</tr>
</tbody>
</table>

IV. IDENTIFICATION OF PRIORITY REFORMS

<table>
<thead>
<tr>
<th>Reform</th>
<th>Evaluation</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adopt the provisions necessary to enable the effective exchange of information for tax purposes</td>
<td>![Green Check]</td>
<td>There is a need to amend Tunisian legislation so as to enable the exchange of information for tax purposes, so as to allow Tunisia to meet its obligations under bilateral agreements and the Multilateral Convention which it has now ratified, and to comply with the international standard on transparency, as laid down in the terms of reference developed by the Global Forum.</td>
</tr>
<tr>
<td>Ensure that tax authorities have access to bank information</td>
<td>![Red Stop]</td>
<td>There is also a need to amend the legislation so as to allow the tax authorities to access all information on all bank accounts for the purposes of exchanging information on civil or criminal matters.</td>
</tr>
</tbody>
</table>

V. EXAMPLES OF GOOD PRACTICE IN THE INTRODUCTION OF PRIORITY REFORMS

The OECD Committee on Fiscal Affairs has issued a number of recommendations to its member countries, with a view to improving the accessibility of bank information for the purpose of exchanging tax information. These recommendations are summarised in the box below.

**Recommendations by the OECD Committee on Fiscal Affairs on improving access to bank information for tax purposes**

The OECD Committee on Fiscal Affairs encourages member countries to:

1. undertake the necessary measures to prevent financial institutions from maintaining anonymous accounts and to require the identification of their usual or occasional customers, as well as those persons to whose benefit a bank account is opened or a transaction is carried out;

2. re-examine any domestic tax interest requirement that prevents their tax authorities from obtaining and providing to a treaty partner, in the context of a specific request, information they are otherwise able to obtain for domestic tax purposes with a view to ensuring that such information can be
exchanged by making changes, if necessary, to their laws, regulations and administrative practices;

3. re-examine policies and practices which do not permit tax authorities to have access to bank information, directly or indirectly, for purposes of exchanging such information in tax cases involving international conduct which is subject to criminal tax prosecution, with a view to making changes, if necessary, to their laws, regulations and administrative practices.

The Committee also recommends that, when implementing these measures, governments should:

• take care to ensure that procedures which allow ‘indirect access’ (e.g. judicial process) are not so burdensome and time-consuming as to act as impediments to access to bank information;

• examine how to develop a voluntary compliance strategy regarding tax obligations, to enable non-compliant taxpayers to declare income and wealth that they have in the past concealed by taking advantage of the strict bank secrecy rules applied in certain countries.

• examine their laws, regulations and practices and make modifications if necessary to ensure that taxpayer information obtained from banks is adequately protected from wrongful disclosure or inappropriate use.

VI. ACTION PLAN FOR THE IMPLEMENTATION OF PRIORITY REFORMS

At this stage, the Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes is not in a position to say precisely what action could be taken by Tunisia in order to improve tax transparency and comply with both its treaty obligations and the international standard on transparency as laid down by the terms of reference developed by the Global Forum. It believes that it would be useful for Tunisia to agree to a preliminary assessment of its legal framework in order to identify the reforms to be undertaken, and to provide itself with the instruments needed for greater transparency, thus enabling it to fulfil the international obligations undertaken by Tunisia on its accession to the Global Forum. This preliminary assessment would have a direct impact on the peer review that is to take place in the spring of 2014.
EXPORT CREDITS
I. EXPORT CREDITS: ROLE IN PROMOTING INTEGRITY AND COMBATING CORRUPTION

A number of governments provide export-credit services to help their domestic exporters secure contracts to sell goods or service abroad. An export credit is an insurance policy, guarantee or funding mechanism that allows foreign buyers or borrowers of exported goods and/or services to defer their payments over a period of time.

Within the OECD, governments have negotiated a set of rules on financial discipline, known as the Arrangement on Officially Supported Export Credits\(^{15}\), which lays down the procedures for granting this type of credit. It specifies the most favourable financial terms and conditions that governments may apply when providing support. The Arrangement was designed to be compatible with the World Trade Organization (WTO) rules for the elimination of export subsidies in order to ensure that export credits were not used to camouflage subsidies for national exporters. Moreover, the governments agreed on a set of governance rules designed to ensure that exports covered by an officially supported credit were compatible with broader policy objectives in the realms of the environment, social protection and development.

Under these good-governance rules and in accordance with the provisions of the OECD Anti-Bribery Convention, the governments of OECD member countries agreed not to support export transactions that were tainted by corruption. To this end, they adopted a Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, which lists appropriate measures for deterring and detecting corruption in export transactions.

These recommendations are addressed to governments, even though officially supported export credits are granted in practice by export credit agencies (ECAs) operating on behalf of governments. These official ECAs can take various forms; they may, for example, be ministerial departments, public institutions or commercial institutions administering an account for or on behalf of the public authorities alongside their own commercial activities.

ECAs offer a range of diverse products and services including guaranteeing the repayment of a loan made by a financial institution to a foreign purchaser, as in the case of buyer credit, providing insurance cover against default on a credit granted by an exporter to a foreign purchaser, as in the case of supplier credit, or grant direct credit or loans to foreign buyers. Whatever the form of the ECA and the products and services it provides, the authorities must ensure that it complies with sound rules governing financial management and practises good governance. Accordingly, ECAs must establish the policies and procedures, in accordance with their country’s legal system and anti-bribery legislation, that are needed to deter and detect instances of corruption at the time when applications for officially supported export credits are being processed.

II. EXPORT CREDITS: CURRENT STATUS AND CRITICAL ANALYSIS

Tunisia’s export credit agency is the Tunisian Foreign Trade Insurance Company, COTUNACE. COTUNACE shows little awareness of the problems relating to corruption, and there are few legal provisions governing its activity in this field. There is no law requiring COTUNACE to advise exporters or applicants for officially supported export credit of the legal consequences of bribery under domestic legislation. According to

\(^{15}\) [www.oecd.org/tad/xcred/arrangement.htm](http://www.oecd.org/tad/xcred/arrangement.htm)
Decree Law No. 2011-120 of 14 November 2011, COTUNACE is required to take steps to reduce practices that could involve bribery or embezzlement and to subject economic activities and commercial exchanges between private-sector enterprises to the principles of fair competition and transparency. However, COTUNACE considers that the legislation governing its anti-corruption activity is the law on money laundering and the financing of terrorism.

Consequently, it appears that COTUNACE cannot yet play an active role in combating bribery in the absence of an appropriate legal framework. COTUNACE does not advise its clients of the legal consequences of bribery. It does not encourage them to supply appropriate documentation and to institute adequate systems of internal control. It does not require its customers to issue an undertaking or declaration that neither they nor any party acting on their behalf will engage in bribery. It does not verify whether potential customers are on the publicly available debarment lists of international financial institutions. It does not require its customers to reveal whether they or anyone acting on their behalf are currently facing charges in a national court or have been convicted or subjected to equivalent national administrative measures for violation of anti-bribery laws in the previous five years, nor does it undertake enhanced due diligence when necessary or when there are suspicions of bribery in export transactions. It does not ensure that the competent authorities are informed if there are sufficient suspicions of bribery in credit transactions. It does not suspend approval of the application if there is credible evidence that a bribe has been involved in the award or execution of the export contract. It does not refuse approval of credit, cover or other support if the enhanced due diligence concludes that the export transaction is tainted by bribery. Lastly, it does not take appropriate action such as denial of payment, indemnification or refund of sums provided if bribery is proven after credit, cover or other support has been approved.

III. Reforms under way

No reforms were identified as under way.

IV. Identification of priority reforms

<table>
<thead>
<tr>
<th>Reform</th>
<th>Evaluation</th>
<th>Comments</th>
</tr>
</thead>
</table>
| Develop rules and procedures for detecting, preventing and combating bribery in transactions supported by COTUNACE | ![Red Circle] | – Introduce a legal framework that allows COTUNACE to play an active role in combating bribery.  
– Institute training for COTUNACE agents to detect bribery.  
– Possibility of co-operation with the OECD Working Party on Export Credits and Credit Guarantees (ECG) |

V. Examples of good practice in the introduction of priority reforms

Most of the ECAs in OECD member countries began to play a role in combating bribery in export transactions in the late 1990s. Tunisia and COTUNACE could benefit from the experience of those ECAs.
EXAMPLE: ROLE OF THE FRENCH EXPORT CREDIT AGENCY COFACE IN COMBATING BRIBERY

On 17 December 1997, thirty-four countries, including France, signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Under the terms of that convention, France took the necessary measures to criminalise bribery of foreign public officials by adopting the Act of 30 June 2000 transposing the provisions of the OECD Convention into French law. On 18 December 2006, the OECD member countries adopted a recommendation (OECD Recommendation) designed to reinforce measures for the prevention of bribery of foreign public officials in the context of international business transactions. Following the adoption of this Recommendation, COFACE drew up a charter of ethical practice that applies to the public procedures it administers on behalf of the French Government. In addition, the anti-bribery mechanism established in January 2001 for transactions administered by the COFACE Public Guarantees Directorate (DGP), which was last amended in June 2006 (circular of June 2006), has been updated (circular of January 2007).

The amendments relate primarily to the obligation of insured parties to inform COFACE about:

- their presence on one of the publicly available debarment lists of the international financial institutions, such as the World Bank, the African Development Bank, the Asian Development Bank and the European Bank for Reconstruction and Development;
- any proceedings instituted against them or against any person acting on their behalf in respect of the contract before a national court and any conviction in the past five years for violating the legal provisions relating to bribery of foreign public officials.

In addition, COFACE reserves the right to seek any information from the insured party at any time in the framework of the guaranteed transaction regarding the identity of persons acting on behalf of the insured party, the amount and purpose of any commission and/or remuneration and the sums that the insured party has paid or agreed to pay such persons.

Source: COFACE

Most of the ECAs in the OECD member countries require their exporters and/or credit applicants to sign and submit an attestation or declaration relating to bribery. This document must be formulated in such a way as to take account of each country’s legislative framework and should ideally cover the points listed below.
**Example: Exporters’ and/or Credit Applicants’ Anti-Bribery Commitment or Declaration**

**Certification**

Exporters and/or credit applicants may be asked to certify that:

- the information that they have submitted or will submit regarding the export transaction is complete and accurate;
- they are aware of the legal consequences of bribery in national and international law, and particularly of national anti-bribery legislation and the OECD Anti-Bribery Convention;
- they have drawn up, applied and documented appropriate management control systems designed to combat bribery;
- neither they nor any person acting on their behalf in the export transaction has been involved or will be involved in any act of bribery;
- they are not featured on a debarment list of any international financial institution, such as the lists maintained by the World Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development and the Inter-American Development Bank;
- neither they nor any person acting on their behalf in the context of the export transaction are currently facing charges before a national court or have, at any time in the past five years, been found guilty by such a court or been subject to equivalent national administrative measures for violation of anti-bribery legislation;
- they undertake to disclose to the ECA, on request, the identity of the persons acting on their behalf in the export transaction and the amount and purpose of commission and fees paid or payable to the persons concerned;
- they agree to the OECD transmitting to the competent law-enforcement authorities any evidence of bribery in connection with export transactions;
- they undertake to notify the OECD of any changes in the information communicated as part of the certification process.

**Indemnification**

Exporters and/or credit applicants might also be asked to certify that, in the event that they themselves or any party acting on their behalf in the context of the export transaction are convicted by a national court or are subject to any equivalent national administrative measures for violation of anti-bribery legislation relating to the export transaction:

- they undertake to indemnify the ECA and exonerate it from any responsibility for costs and expenses arising from any officially supported export credits that have been granted;
- they understand that, depending on the stage of the process and the nature of the official support that has been granted, the ECA may decide to refuse to provide cover, to withdraw any offer of cover, to cancel the cover it has granted, to suspend repayment of the loan, to claim reimbursement of all sums hitherto disbursed, to refuse to pay out any indemnification and/or to try to recover indemnification that has already been paid out.
VI. ACTION PLAN FOR THE IMPLEMENTATION OF PRIORITY REFORMS

1. Tunisia needs to ensure that the appropriate legal provisions are in place to enable COTUNACE to play an active role in the prevention of bribery in the export transactions that it supports.

2. At the same time, COTUNACE should adopt an overarching anti-bribery policy that serves both to prevent and detect bribery in officially supported export-credit transactions. In this context, COTUNACE could:

   • inform its clients of the legal implications of bribery and encourage them to establish appropriate management control systems;

   • require its clients to make a declaration to the effect that neither they nor any person acting on their behalf have been involved or will be involved in any act of bribery, are currently facing charges in a national court or have been found guilty of violating anti-bribery laws;

   • check, in its exercise of due diligence, whether its clients are on any of the debarment lists of the international financial institutions and, where appropriate, require its clients to provide additional information on their use of agents; and

   • establish procedures for informing the law-enforcement authorities if there is credible evidence of bribery and, if bribery has occurred, take appropriate action, such as refusing to provide cover.

3. COTUNACE will also have to ensure that its staff are adequately trained to conduct due-diligence processes. They must be able to take appropriate action if clients have already committed acts of bribery and to initiate enhanced due diligence if there are reasons to believe that an export transaction is tainted by bribery.

4. The OECD Working Party on Export Credits and Credit Guarantees is ready to assist COTUNACE in framing the required policies and procedures. It can, for example, provide wording which may be used in credit application forms and declarations to be submitted by clients and which indicates the legal implications of bribery. The ECAs of the OECD member countries may also be able to assist in staff training, for example on the exercise of due diligence and the identification of potentially suspect transactions.
LOBBYING
I. LOBBYING: ROLE IN PROMOTING INTEGRITY AND COMBATING CORRUPTION

In modern democracies, the attempts by specific interests to influence government decisions, legislation or the award of contracts form part of the decision-making process. Lobbyists¹⁶ can improve the quality of government decisions by participating in debates and providing valuable insights and data.

Yet lobbying can also lead to unfair advantages for vested interests if the process is not transparent and standards are not sufficiently stringent. Citizens’ interests are put at risk when negotiations are carried out behind closed doors. The recent economic crises were partly caused by the influence of specific interests on government decision making. An International Monetary Fund report¹⁷ (2009) links intensive lobbying by the financial, insurance and real estate industries in the United States with high-risk lending practices. The report concludes that the prevention of future crises might require weakening political influence of the financial industry, or closer monitoring of lobbying activities to understand better the incentives behind it.

Furthermore, more and more data shows that there is an increase in the number of lobbyists and in the amount of money spent on lobbying every year. There are close to 5 000 registered lobbyists at the European Commission and European Parliament and there are an estimated 15 000 lobbyists in Brussels. In the United States, lobbying spending more than doubled between 1998 and 2011, increasing from USD 1.44 billion to USD 3.30 billion. In view of the risks of lobbying and the impressive mobilisation of private resources, public pressure is rising worldwide for the public authorities to put lobbying regulations on the political agenda. Transparency, integrity and fairness in the decision-making process are crucial to safeguard the public interest and promote a level playing field for businesses.

In order to respond more fully to these concerns, the OECD member countries adopted a Recommendation¹⁸ on Principles for Transparency and Integrity in Lobbying, which provides decision makers with guidance on how to promote the principles of good governance in lobbying. Public officials and lobbyists share responsibility to apply the principles of good governance, in particular transparency and integrity, in order to maintain confidence in public decisions.

II. LOBBYING: CURRENT STATUS AND CRITICAL ANALYSIS

It seems that lobbying is neither recognised nor regulated in Tunisia, as shown by the short responses received from employers’ organisations and the Tunisian government.

The decision-making system in Tunisia used to be non-pluralist, opaque and discretionary. The current government is taking steps to consult the various stakeholders. Yet not all stakeholders have equal access to information on the definition and formulation of public policies. Some influential groups (businessmen, corporations, etc.) have privileged access to this information, a factor that detracts from the effort to establish a general framework of transparency and openness in the development of public policies.

¹⁶ www.oecd.org/fr/corruption/ethique/lobbying.htm
III. REFORMS UNDER WAY

No reforms were identified as under way.

IV. IDENTIFICATION OF PRIORITY REFORMS

OECD experience shows that it is essential for all stakeholders to have equitable chances of participating in policy development in order to ensure the integrity of decisions and to protect public interests vis-à-vis private ones. To this end, the government should: (i) regulate lobbying practices to ensure that they are conducted in an honourable and transparent manner; and (ii) perhaps adopt a proactive approach with a formal mechanism for ensuring that the opinions of other stakeholders, including civil society, are taken into account (for further information on public consultations please refer to Chapter 1: Regulatory policy).

<table>
<thead>
<tr>
<th>Reform</th>
<th>Evaluation</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accessibility of legislation and participation in the decision-making process</td>
<td></td>
<td>- Ensure greater accessibility to legislation (especially online) and a culture of transparency in the public administration.</td>
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<tr>
<td></td>
<td></td>
<td>- Hold regular consultation with all stakeholders during preparation of new laws. These consultations should be held sufficiently in advance so that they can make a positive contribution.</td>
</tr>
<tr>
<td>Reporting on lobbying activities</td>
<td></td>
<td>- Conduct information and awareness campaigns on the role (positive and negative) and practices of lobbyists. These campaigns should be targeted at those officials in the executive and legislative branches who are most exposed to lobbying.</td>
</tr>
<tr>
<td>A legal framework to govern lobbying</td>
<td></td>
<td>- Introduce regulations (adapted to the Tunisian context) to define and govern the activities of persons who may be in a position to influence the preparation of legislation.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Include in the new public service code of ethics rules that officials must observe when engaging with lobbyists.</td>
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</tbody>
</table>
V. EXAMPLES OF GOOD PRACTICE IN THE INTRODUCTION OF PRIORITY REFORMS

ACCESSIBILITY TO LEGISLATION AND PARTICIPATION IN THE DECISION-MAKING PROCESS

CONSULTATION AND PARTICIPATION OF CITIZENS THE AUSTRALIAN EXAMPLE: CITIZENS’ SUMMITS HELP FORMULATE LONG-TERM STRATEGIES

The Australian State hosted the Australia 2020 summit on the weekend of 18-19 April 2008. This event gave the Australian authorities an opportunity to work together with 1 000 Australians to mobilise ideas, try to formulate a long-term strategy for the nation’s future and address the long-term challenges facing Australia from a new angle. The summit was accompanied by over 500 local summits held throughout Australia, a national youth summit, and nearly 8 800 public statements. The Australia 2020 summit identified the need to provide public services more geared to citizens as a priority.

For more information, see www.australia2020.gov.au

A clear definition of lobbyists and lobbying

In the United States, the 1995 Lobbying Disclosure Act gives the following definition of “lobbyist”:

- any individual who is employed or retained by a client
- for financial or other compensation for services that include more than one lobbying contact,
- other than an individual whose lobbying activities constitute less than 20% of the time engaged in the services provided to that client.

“Lobbying activities” are defined as “lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and co-ordination with the lobbying activities of others.”

The Australian Lobbying Code of Conduct also gives a clear definition of lobbyists together with a detailed description of those not regarded as such:

A “lobbyist” is “a person, company or organisation who conducts lobbying activities on behalf of a client or whose employees conduct lobbying activities on behalf of a client.” The Code does not apply to:

- charitable, religious or other organisations or funds that are endorsed as deductible gift recipients;
- non-profit associations or organisations constituted to represent the interests of their members that are not endorsed as deductible gift recipients;
- individuals making representations on behalf of family members or friends about their personal affairs;
- members of trade delegations visiting Australia;
- persons who are registered under an Australian Government scheme regulating the activities of members of that profession, such as registered tax agents, customs brokers, company auditors and liquidators, provided that their dealings with government representatives are part of the normal day-to-day work of people in that profession, and
- members of professions, such as doctors, lawyers or accountants, and other service providers, who make occasional representations to government on behalf of others in a way that is incidental to the provision to them of their professional or other services. However, if a significant or regular part of the services offered by a person employed or engaged by a firm of lawyers, doctors, accountants or other service providers involves lobbying activities on behalf of clients of that firm, the firm and the person offering those services must register and identify the clients for whom they carry out lobbying activities.

For the avoidance of doubt, this Code does not apply to any person, company or organisation, or the employees of such company or organisation, engaging in lobbying activities on their own behalf rather than for a client, and does not require any such person, company or organisation to be recorded in the Register of Lobbyists unless that person, company or organisation or its employees also engage in lobbying activities on behalf of a client or clients.

AUSTRALIA: SEPARATE CODES OF CONDUCT FOR MINISTERS AND PUBLIC SERVICE OFFICIALS

In Australia, the post-mandate employment of public service officials is governed by the Australian Public Service Values and Code of Conduct in practice. They include a chapter dealing specifically with this subject, to help Australian civil servants to understand how the Values and Code of Conduct applies in practice to post-mandate employment.

In regard to ministers, in December 2007 the Prime Minister published the Standards of Ministerial Ethics to replace the relevant section of the Prime Minister’s Guide on Key Elements of Ministerial Responsibility, the last edition of which dates from December 1998. This Guide does not impose any legal restrictions on ministers’ activities once they have ceased their official duties. But it does stipulate that “Ministers should not exercise the influence obtained from their public office, or use official information, to gain any improper benefit for themselves or another.” The Standards of Ministerial Ethics do, however, include a specific heading on “Post-ministerial employment”, which stipulates that:

“Ministers are required to undertake that, for an eighteen month period after ceasing to be a Minister, they will not lobby, advocate or have business meetings with members of the government, parliament, public service or defence force on any matters on which they have had official dealings as Minister in their last eighteen months in office. Ministers are also required to undertake that, on leaving office, they will not take personal advantage of information to which they have had access as a Minister, where that information is not generally available to the public.

Ministers shall ensure that their personal conduct is consistent with the dignity, reputation and integrity of the Parliament.” (Australian Government, 2007).

The Lobbying Code of Conduct published on 13 May 2008 also covers former high-level Australian public service officials who “shall not, for a period of 12 months after they cease their employment, engage in lobbying activities relating to any matter that they had official dealings with in their last 12 months of employment.”

SELF-REGULATION OF THE LOBBYIST PROFESSION IN THE UNITED KINGDOM

The Chartered Institute of Public Relations (CIPR), founded in London in 1948, is the largest public relations and lobbying association in Europe, with over 9,000 individual members.

The CIPR has a highly developed and formal ethics system for lobbyists and has drawn up a Code of Professional Conduct to which all members must adhere. The code of conduct includes principles to guide CIPR members in their activities, for example observing the highest standards of professional integrity and honesty and fairness in their working relations with employers, employees and clients. The code of conduct also lays down fundamental principles of good practice, i.e. integrity, competence, transparency and preventing conflicts of interests, confidentiality and respect for professional standards.

CIPR executive officers can initiate investigations into potential violations of the code and formal complaints can be lodged against a member for breaching the code.

Source: Australian Public Service Values and Code of Conduct in practice, Standards of Ministerial Ethics, Lobbying Code of Conduct

**Lobbying Information to be disclosed in Canada**

Under the Canadian Lobbyists Registration Act, all lobbyists must disclose certain information within prescribed time limits. Among others, that information includes:

- name of their client or employer, whether a firm or an organisation;
- name of the parent corporation and those subsidiaries that directly benefit from the lobbying;
- name of the firms and organisations that make up a coalition;
- specific subject matter of the lobbying;
- name of each department or other governmental institution contacted;
- source and amount of any government funding provided; and
- communication techniques used, such as meetings, lobbying;
- name or description of specific legislative proposals, bills, regulations, policies, programmes, grants, contributions or contracts sought;
- name of each department or other governmental institution on which pressure has been exerted;
- source and amount of any government funding; and
- communication techniques used, including grass-roots lobbying.


**VI. Action Plan for the Implementation of Priority Reforms**

First of all, it is crucial for the Tunisian government to ensure that all stakeholders have fair and equal access to the preparation and implementation of public policy. That could circumscribe the risk of specific private interests taking control of the public decision-making process. The use of information and communication technologies can promote fluid and rapid interaction with a large number of stakeholders. The OECD encourages the process of citizen consultation and participation in the preparation of public policy through various ongoing projects in Tunisia. For example, an on-line consultation system has been set up in the context of the project to draft a code of conduct for the public service (see chapter on Public Sector Integrity). Similar steps could be taken across the entire process of drafting and implementing new regulations.

With a view to regulating lobbying practices, the Tunisian government could initially consider conducting information and awareness-raising activities on the following questions: (a) identifying individuals who can be regarded as lobbyists in the local context; (b) the role of lobbying in providing more information for debate during public decision making; (c) the risk of lobbyists interfering and exerting pressure; and (d) the legislative and executive officials who could be the lobbyists’ main target. The OECD could support the government of Tunisia in preparing information campaigns that take into account the Tunisian socio-political and administrative context. These campaigns will help identify the opinions and grievances of civil society and the private sector in regard to lobbying and the use of “influence”, leading to a law or other regulatory document being drafted that meets the challenges that arise in Tunisia.

When drawing up an adequate regulatory framework governing lobbying, the terms “lobbying” and “lobbyist” need to be carefully defined, as the concept does not exist under Tunisian legislation. The OECD could support the preparation of this kind of regulatory framework based on the good practices and lessons learned from OECD member countries. Once the regulatory framework is established, mechanisms should be put in place to help stakeholders to monitor lobbying activities. Such measures
include, in some countries, creating a lobbyists’ register, which makes it possible to identify the clients, subject-matter and methods brought into play by lobbyists. Standards of professionalism and transparency could also be developed by and for lobbyists. In some OECD member countries, lobbyists themselves would like to have a statute and official standards to abide by, so as to remove any suspicions about their activities (see box on self-regulation of the profession of lobbyist in the UK). Finally, mechanisms should be set up to monitor and evaluate the implementation of the rules and guidelines on lobbying. Then the rules could be reviewed on a regular basis to check compliance with the provisions adopted.
BUSINESS SECTOR INTEGRITY
I. BUSINESS SECTOR INTEGRITY: ROLE IN PROMOTING INTEGRITY AND COMBATING CORRUPTION

The public authorities must not underestimate the importance of enhancing business sector integrity in their global strategy to combat corruption. This is particularly vital in the aftermath of the recent crises that have shaken confidence in governments.

Honest companies are more efficient and more competitive, and more efficient and more competitive companies help improve market health and stimulate investor confidence. Honest companies that work alongside the public authorities create an effective barrier to corruption in both the private and the public sector. That is why measures to enhance business sector integrity benefit businesses, public authorities and ordinary citizens, who all have something to gain from a stronger, healthier and fairer economy.

The public authorities can help promote business sector integrity by encouraging companies (i) to adopt very strict internal controls, ethics codes and measures to ensure compliance with anti-corruption standards; (ii) to set up robust enterprise governance systems; (iii) to conduct their trade relations with multinational companies in a responsible and transparent manner; and (iv) to observe open and fair competition conditions in their business relations with national and non-national public authorities.

II. BUSINESS SECTOR INTEGRITY: CURRENT STATUS AND CRITICAL ANALYSIS

Business sector integrity appears to be a major issue for employers’ organisations, but it is one that has been neglected for far too long by the public sector. It is generally felt that business integrity has deteriorated since the recent political changes in Tunisia, which have resulted in the weakening of controls by the State.

Tunisian businesses are taking steps to enhance their integrity on a voluntary basis. The only businesses that are required to have an internal control system are those that make public calls on savings. Businesses that export to the European Union and those that solicit foreign investments and partnerships have also instituted internal controls and other measures to enhance their integrity. However, the great majority of Tunisian firms (of which 95% are SMEs) have no obligation or incentive to institute control measures (such as audit committees, operating rules for boards of directors, shareholders’ rights and management privileges, etc.) that might improve their integrity.

Tunisian employers’ associations have also developed codes and charters to promote integrity and good governance in private companies. The Arab Institute of Business Managers (IACE) offers a “guide to good governance practices for Tunisian businesses” (prepared in 2012 with OECD co-operation), and CONNECT has included good governance and corporate citizenship in its membership charter.

Tunisian employers’ associations have also indicated their desire to work more actively to promote integrity in the business sector and to co-operate more closely with the government in this matter. CONNECT and the IACE have already hosted meetings and awareness-raising seminars on the importance of corporate governance and greater integrity in the business sector.

The employers’ associations also agree that government efforts to promote business sector integrity are limited. There is no Tunisian government body dedicated to promoting business sector integrity. These

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efforts amount merely to requiring businesses to have financial and accounting controls. Some associations have suggested that tax incentives could be instituted by the government to encourage the adoption of internal control systems. However, similar measures have produced mediocre results in OECD member countries. Lastly, the government has taken no steps to help businesses evaluate the risks of corruption such as the bribery of foreigners.

III. REFORMS UNDER WAY

No reforms were identified as under way.
## IV. Identification of Priority Reforms

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| Include business sector integrity in the national anti-corruption strategy |            | - Work with employers’ associations to develop a business-sector integrity component that could be included in the national anti-corruption strategy. This component could include risk assessments, a list of priority actions and development of an action plan specifying concrete measures and the agencies responsible for implementing them, as well as a calendar and a budget.  
  - Identify a person or entity within government to co-ordinate government action concerning business sector integrity and to monitor the business sector integrity component once the national anti-corruption strategy is in place. |
| Strengthen the government’s capacity to support business sector integrity |            | - Develop and implement training and programmes to help officials promote business sector integrity.  
  - The Tunisian government could work with the international community in general and the MENA-OECD Investment Programme in particular to develop such training and to disseminate good international practices in this area. |
| Establish a structured dialogue between the private and public sectors  |            | - Develop a structured that includes business representatives and officials (including the managers of public enterprises).                                                                                                                                                                                                                                                                                                                                                       |
| Institute an action programme to create positive momentum for promoting business sector integrity |            | - Develop and implement a series of pilot projects targeting areas of vulnerability with respect to business sector integrity, where swift and tangible results can be expected; for example the integrity of State enterprises, mechanisms for reporting solicitations of bribes and specific assistance to SMEs in dealing with bribery problems. These actions would demonstrate the government’s willingness and ability to combat corruption and create a positive momentum in the private sector. |

## V. Examples of Good Practice in the Introduction of Priority Reforms

Governments, businesses and employers’ organisations can adopt various measures to prevent corruption and promote integrity in business transactions. Business sector integrity is a relatively new aspect of public policy making; however, international standards do already exist, together with a growing number of aspects of good practice introduced by both public and private actors. Some governments have applied a variety of measures to promote business sector integrity, for instance by...
passing laws to combat active and passive corruption, and on company liability in cases of corruption. Several examples of good practice in relation to business sector integrity are set out below.

**Criminalising acts of corruption by legal entities**

Most countries throughout the world, including in the MENA region, regard bribery as a crime, yet some of them concentrate only on bribes given by one individual to another. International anti-corruption standards, such as those in the UN Convention against Corruption and the OECD Anti-Bribery Convention stipulate that enterprises are responsible for corruption in the same way as individuals if the bribes were given on behalf of the legal entities and to their benefit. Experience in OECD member countries shows that holding legal entities liable in cases of corruption is a powerful means of dissuading companies from engaging in acts of corruption. The UK Bribery Act 2010 is a good example of the criminalisation of legal entities for acts of corruption.

**Example: Criminalisation of legal entities for acts of corruption in the United Kingdom (UK Bribery Act)**

Pursuant to Article 1 of the UK Bribery Act, a person is guilty of an offence of bribing another person, including a foreign public official, where that person intends the advantage “to induce a person to perform improperly a relevant function or activity”. Pursuant to Article 7, a company can also be guilty of bribery if it bribes “intending to obtain or retain business or other commercial advantages”. This includes companies established in the United Kingdom and those carrying on a business there.

Moreover, under Article 11, a person or legal entity may be liable to imprisonment, to a fine, or to both. Article 7 stipulates that it is a defence for the organisation to prove that “it had in place adequate procedures designed to prevent persons associated with [it] from undertaking such conduct.”

The government has also published detailed explanations of the act and the procedures that organisations can put in place to prevent bribery, together with a number of case studies.

For more information on the text of the act and the procedures to be put in place to prevent bribery, see the following websites:

- [www.justice.gov.uk/guidance/bribery.htm](http://www.justice.gov.uk/guidance/bribery.htm)

Together with the OECD Phase 3 Report on the United Kingdom:


**Simplification of administrative procedures**

Governments can evaluate the risks to business sector integrity and develop specific measures to limit corruption in high-risk sectors or areas. Those efforts can also be accompanied by a process of administrative simplification to reduce corruption opportunities.
**EXAMPLE: SIMPLIFICATION OF REGULATORY PROCEDURES IN GEORGIA AND IN EGYPT**

**Simplification of regulatory procedures in Georgia**

Georgia was regarded as one of the most corrupt countries in Eastern Europe and Central Asia before it launched a number of reforms to combat corruption. In 2003, its corruption perception index (an index set up by Transparency International) was estimated at 1.8. In 2011 the index reached 4.1, making Georgia one of the highest-ranking countries in the region.

The key factors of its success here lay in simplifying its tax regulations and combating corruption in the tax administration. In 2003, Georgia’s tax basis included 80,000 taxpayers and tax collection brought in 12% of GDP. By 2010, that base had increased to 252,000 taxpayers and their contribution represented 25% of GDP. These results were achieved through: (i) simplification of the tax code; (ii) slashing of the number of taxes from 22 to 5; (iii) the reduction in tax rates; and (iv) the rapid growth of e-filing of taxes, which accounted for almost 80% of all returns by 2011. The reform was also underpinned by the firing of corrupt officials and competitive hiring of new staff.

Lastly, these reforms also included other major components, including the simplification of company registration procedures and anti-corruption measures taken within the police and customs services.

For more information, see the World Bank report (2012), “Fighting Corruption in Public Services, Chronicling Georgia’s Reforms”:

www.wds.worldbank.org/external/default/WDSContentServer/WDSP/LB/2012/01/20/000356161_20120120010932/Rendered/PDF/664490PUB0EPI006577480978821394755.pdf and the OECD/ Anti-corruption Network monitoring report on Georgia:

www.oecd.org/corruption/acn/istanbulactionplan/44997416.pdf

**Simplification of regulatory procedures and establishing a one-stop shop for investors in Egypt**

Egypt has made serious efforts to simplify regulatory procedures for companies. Many studies have underlined the fact that more and more bodies were in charge of regulating investment. In fact, the procedures involved 22 ministries and 78 government entities, involving 349 procedures, approvals, permits or licences. The level of complexity of these procedures and the overlapping of roles has created opportunities for the growth of corruption. To deal with these challenges, the government has decided to set up a General Authority for Free-zones and Investment (GAFI), a government agency responsible for dealing with the rest of the administration on behalf of investors. In 2005, GAFI introduced a major innovation: the creation of a one-stop shop – OSS – for investors. GAFI has taken the appropriate measures to keep the business world informed of the services it provides; the OSS investment guide is regularly updated and disseminated among investors.

The Egyptian Government was faced with a variety of challenges when it set up this one-stop shop, especially on the part of government agencies that were responsible for regulation, but this reform has greatly contributed to administrative simplification and improving the business environment in the country.

For more information, see the MENA-OECD training workshop “One Stop Shops: an overview of best practices related to three key issues”, 10-12 March 2010:


HELPING THE BUSINESS SECTOR SET UP PROCEDURES TO COMBAT CORRUPTION

Governments can help companies that want to prevent corruption. They can offer advice and training, especially to firms operating in high-risk sectors. They can also establish communication channels for firms to enable them to report solicitations for bribes and introduce rules to protect whistleblowers in both the public and the private sector.

Reports of cases of corruption provide law-enforcers with important sources of information. The possibility of reporting cases of corruption without fear of reprisals or adverse consequences can encourage businesses to resist solicitations for bribes. Many governments in OECD member countries are putting mechanisms in place to report cases of corruption, such as special telephone numbers, e-mail addresses and dedicated Internet sites. Indeed, in countries with high levels of corruption and limited confidence in the authorities, businesses may not be prepared to report cases of corruption to the police or the law. To meet this challenge, governments must put special reporting channels in place for companies.

EXAMPLE: MECHANISMS FOR REPORTING CASES OF CORRUPTION IN BUSINESS IN MOROCCO AND COLOMBIA

MECHANISMS FOR REPORTING CASES OF CORRUPTION IN MOROCCO

The Moroccan Central Authority for the Prevention of Corruption (ICPC), in co-operation with donors and employers’ organisations, has set up the Internet site www.stopcorruption.ma, so that companies can report cases of corruption in a secure environment and in a confidential manner. The site focuses on SME reports of corruption in relation to public procurement. The creation of this Internet site encountered a number of challenges, relating mainly to the government’s capacity to handle and follow up the reported cases and its response to the companies concerned. Nonetheless, it has proved very useful in combating corruption and promoting business sector integrity.

MECHANISMS FOR REPORTING CASES OF CORRUPTION IN COLOMBIA

The Colombian government, in co-operation with the Basel Institute on Governance, is currently developing a high-level reporting mechanism. This mechanism consists of a channel for denouncing and reporting instances of corruption above the level of the public agency or ministries concerned. This facilitates a speedy response to the report and reduces the risk to companies of collusion or retaliation. The reporting mechanism is confidential and focuses mainly on public procurement. Complaints are handled by the Secretary for Transparency of the office of the President of the Republic, in co-operation with ad hoc committees made up of experts, academics and representatives of civil society and government agencies. The Secretary for Transparency and the ad hoc committees can not only handle specific complaints but also investigate whether the official who has solicited the bribe is involved in other acts of corruption, in order to detect systemic problems and propose lasting solutions. The Secretary for Transparency will also issue a number of recommendations on the public procurement process to the director of the responsible establishment.

INTRODUCTION OF ANTI-CORRUPTION CLAUSES IN GOVERNMENT-FUNDED CONTRACTS

Governments can also introduce anti-corruption clauses in government-funded contracts and draw up exclusion lists to penalise corrupt behaviour in such contracts. A number of countries, including Brazil, are also considering drawing up white lists to encourage integrity; however, this has not yet been put into practice.
Drawing up black lists, or exclusion lists, for companies taking part in public procurement processes is a dissuasive measure to prevent bribery in business transactions. Many OECD member countries have introduced legislative provisions on exclusion. Generally, this means that individuals or companies that have been convicted of corruption are not eligible to take part in public calls for tenders for a certain period of time. Alongside these provisions, OECD governments are drawing up black lists that include the name of the excluded companies. The list is usually published and accessible to the public.

**Example: Exclusion of Corrupt Companies from Public Procurement Processes, Black Lists and White Lists**

In 2010, the African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank and World Bank Group concluded an agreement that guarantees a mutual respect for the debarment decisions of each of these institutions regarding corruption, fraud, coercion and collusion acts.

For more information on exclusion lists, see the following documents:


The threat of debarment has had a strong impact on company behaviour. Companies have not only introduced internal control programmes to prevent corruption but have also voluntarily reported instances of corruption in which their employees were implicated. In these cases, the sanctions imposed on the companies may not involve their being convicted or placed on the exclusion list. For further information, see the Phase 3 Report on implementing the OECD Anti-Bribery Convention in the United States.


**Strengthening Anti-Corruption Measures in Corporate Governance**

Governments can also consolidate anti-corruption mechanisms in the context of corporate governance. These mechanisms give management greater responsibility in relation to corruption and improve transparency, accounting and auditing obligations, promoting the detection and disclosure of instances of corruption. The mechanism can be extended to public enterprises to encourage them to introduce similar measures.
EXAMPLE: ANTI-CORRUPTION PROGRAMMES IN STATE-OWNED ENTERPRISES IN CROATIA

State-owned companies operating in strategic sectors in Croatia, such as water, forestry, energy, transport, finance, shipbuilding, science, defence, airports and others account for a significant amount of assets and employ a large number of employees. However, uneconomic use of assets is common in these companies; recently they were marked by serious corruption scandals. To address these problems, the government started an anti-corruption programme for state-owned enterprises; currently 84 companies are implementing this programme.

The objective of the programme is to improve the delivery of public services by strengthening the responsibility of management for company performance, and for promoting integrity and transparency. To ensure proper implementation of the programme, its co-ordination was entrusted to the competent ministries and co-ordinators in every state-owned company. To monitor progress, companies were asked to fill out detailed questionnaires about implementation measures, and to provide evidence, such as copies of company decisions, documents and published information.

By September 2011, the following results were achieved: 92% of companies appointed ethics commissioners, 79% of companies prepared and published lists of employees in posts with a high risk of corruption which were determined based on risk analysis, 74% of companies developed lists of information for disclosure, for instance information about the management of the company (its organisation, work and decisions, costs and sources of financing, reports by independent auditors about company financial operations); information about public procurement procedures (notices, tenders and documentation, meeting minutes on the opening of tenders, decision on selection, etc.) and recruitment procedures (announcements and calls for testing, interview times, information on the status of the recruitment procedure and decisions made by recruitment commissioners).

A number of companies appointed an information officer to ensure disclosure and access to information and developed and published anti-corruption goals for the forthcoming three-year period on their websites. They also prepared and published organisational values and principles of relations with third parties, including service users, suppliers, the state and other partners. Lastly, they appointed irregularities officers, who are responsible for the system of reporting of irregularities within companies.

Programme monitoring and publication of monitoring results provided effective pressure on the management of the companies to deliver results. It also allowed identifying priorities for further programme implementation, including training of management and internal auditors on ethics and anti-corruption issues.


Governments can also take specific measures to promote the introduction of compliance programmes in the business sector. The OECD guide “Good Practice Guidance on Internal Control, Ethics and Compliance” makes a number of useful recommendations on compliance programmes. The guide is an offshoot of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. It is available on the following site:


The OECD, UNODC (United Nations Office on Drugs and Crime), the World Bank, and business sector representatives published in November 2013 an anti-corruption guide as requested by the G20 Anti-corruption Working Group with the support of the B20.


That guide will set out examples of practical implementation of anti-corruption programmes in the business sector.
ANTI-CORRUPTION STANDARDS ADOPTED BY BUSINESS ORGANISATIONS

Representative business sector organisations have also voluntarily developed anti-corruption standards to promote business sector integrity. For example, the International Chamber of Commerce has developed its own anti-corruption rules and the United Nations Global Compact has underlined the importance of fighting corruption for the sustainable development of businesses. Its Principle 10 reads: “Businesses should work against corruption in all its forms, including extortion and bribery.” The business sector and international organisations have developed practical tools for applying those standards. The Global Compact, in cooperation with the United Nations Office on Drugs and Crime, has put in place an e-learning tool that offers an on-line interactive learning platform on Principle 10 of the Global Compact; the tool is accessible under the following link: thefightagainstcorruption.org/certificate/. The International Chamber of Commerce has also developed an on-line learning tool, RESIST (Resisting Extortion and Solicitation in International Sales and Transactions), that can be used to train employees to resist bribery. It is accessible under the following link: extranet.elearning-hosting.net/animedia/ICC/Send_130422/International/fr/index.html.

Companies and business organisations can develop anti-corruption programmes on a voluntary basis and put them in place in co-operation with governments. A range of programmes can be developed, from ad hoc consultations on certain regulatory provisions to integrity pacts that can be concluded between the government, the business sector and civil society.

EXAMPLE: INITIATIVES TO PROMOTE BUSINESS SECTOR TRANSPARENCY IN LITHUANIA

The main objective of the “Clear Wave” initiative in Lithuania is to encourage transparent business operations. Companies involved assume responsibility for responsible and transparent business operations, and encourage their business partners to:

- ensure transparent and fair participation in tenders (public procurement) without offering bribes to their organisers and members of the jury, without resorting to illegal financial and non-financial measures to gain advantage against other participants;
- comply with the Lithuanian laws and honestly pay the applicable fees and taxes;
- maintain transparent accounts and records of payments to their employees.

During this project, the business transparency label “Clear Wave” was presented to the public and to businesses. This label was to become a symbolic reference of transparency for citizens and businessmen. Businesses with this transparency label should earn higher customer trust, an improved reputation in the city, and encourage other customers to act responsibly. This is the first label indicating responsible and transparent business dealings in Lithuania.

This responsible and transparent business-labelling initiative started in 2007. By 2011, the initiative had already attracted more than 40 members. Customers use the “Clear Wave” label for their products, services and marketing material. Labelling examples are presented at: www.baltojibanga.lt/baltieji-produktai.html.

The President of the Republic of Lithuania H.E. Dalia Grybauskaitė is the patroness of the initiative. The project has attracted the attention of other authorities as well – the Ministry of Finance of the Republic of Lithuania, Tax Inspection of the Republic of Lithuania and others.

The project “Clear Wave” was initiated by: the “Investors Forum” association, the Civil Society Institute, the United Nations Development Programme and “Transparency International” in Lithuania, the association “Dalios sąskaita” and the Lithuanian Business Support Agency. The right to use the label for business is awarded by a board, formed especially for this purpose, which operates on a voluntary basis.

**Example: Integrity Pacts in Germany and in Mexico**

Integrity Pacts (IP) are a tool developed by Transparency International (TI) to help governments, business and civil society fight corruption in public procurement. The pacts take the form of an agreement between the government and all tenderers for public contracts not to pay, offer, solicit or accept bribes, not to collude with competitors in order to obtain a contract and not to corrupt the representatives of the authority during the execution of the contract. An independent observer is responsible for supervising the implementation of the IP and ensuring that all parties meet their commitments.

**Example of an Integrity Pact in Germany**

In the early 1990s, soon after the re-unification of Germany, it was decided to build a new international airport near Berlin. In late 1995, TI-Germany (TI-D) offered an Integrity Pact (IP) to the relevant authorities, but they declined summarily, arguing that applying the IP would be to admit publicly that there was a risk of corruption. Only weeks later, the first corruption allegations surfaced in the media and haunted practically every step of the process, forcing on the authorities several modifications of the project, and finally, in 2001, the cancellation of all project agreements reached thus far. Although formal charges were never filed, several interested investors and contractors were suspected of having employed corrupt means to make headway in the competition. In view of this experience, and under instructions from the Mayor of Berlin, the airport project management approached TI-D in 2004 seeking advice. TI-D offered a number of suggestions and proposed applying an IP. Given the likelihood that contractors who had been involved in the previous process would again submit bids, TI-D emphasised the importance of appointing an independent external monitor, so as to shield the management against potential efforts to undermine or circumvent correct procedures. Over the following weeks, TI-D and the project managers worked together to develop a model IP that contained all the essential elements of an IP, adapted to Germany’s legal context. Both parties concurrently searched for a suitable person to act as the IP monitor. Several candidates surfaced, and in January 2005, two experts were appointed by the management. The team leader was a retired procurement official from the City State of Berlin, with a spotless record and a strong commitment to integrity in procurement, who became a member of TI-D before accepting the monitoring assignment. The Berlin airport project is still under way.

**Example of an Integrity Pact in Mexico**

In 2002, the Federal Electricity Commission of Mexico (Comisión Federal de Electricidad, CFE) began preparations for the construction work of El Cajón hydroelectric project. At the time, Transparency Mexico (TM) had begun to implement Integrity Pacts (IP) that included social witness (SW) programmes. Under these programmes, an independent expert, the SW, working in co-operation with TM experts, monitors the transparency and integrity of the public procurement process. The Mexican government, seeking to reduce the risk of corruption in the El Cajón project, instructed the CFE to put in place an IP in co-operation with TM. TM joined the project at the preparatory stage and contributed to the development of the IP. The bidders and the government officials signed declarations of integrity. TM monitored compliance with these declarations with the help of the SW. The contract was awarded to the winning bidder and construction work on the project began as scheduled. El Cajón began to operate in March 2007.

EXAMPLE: INITIATIVES TO PROMOTE BUSINESS SECTOR TRANSPARENCY IN THE GULF STATES

The private sector in the MENA region is also interested in initiatives to improve its integrity. In 2010, the Pearl Initiative was launched to improve transparency and accountability within the Arabian Gulf region, to have a positive impact on the business environment and to foster competitive economic growth and sustainable social development. It is a private-sector-led initiative developed in the American University of Sharjah in the United Arab Emirates in co-operation with the United Nations Office for Partnerships. It has a growing regional membership network of business leaders committed to driving joint action and sharing knowledge and experience. The initiative can also provide a useful framework for disseminating good practice in relation to business sector integrity and transparency in the conduct of business in the Gulf States.

For further information, please visit the following website: www.pearlinitiative.org

VI. ACTION PLAN FOR THE IMPLEMENTATION OF PRIORITY REFORMS

Business sector integrity is a new thematic area for the Tunisian government and to a lesser extent for its employers’ organisations. In order to develop and implement effective measures in this area, it is important to make them more aware of the various practical tools they could use to promote business integrity. The MENA-OECD Investment Programme is currently preparing a review of business sector integrity. This will offer the governments of the region a useful framework for reflection and policy development. The Tunisian government and experts from business organisations could use the programme to evaluate their own efforts to promote business sector integrity and to learn about international standards and good practices. It could also offer a means for the Tunisian government to exchange views on the approaches taken in other MENA-region and OECD member countries. The MENA-OECD business sector integrity review will also provide a regional training framework for practitioners on some of the main business sector integrity issues and serve as a reference point for evaluating the work and progress achieved.
I. Tax Administration: Role in Promoting Integrity and Combating Corruption

Tax policy is often used to encourage or discourage certain conduct and can be an effective anti-corruption tool. Tax administrations play an increasingly active role, not only in applying tax measures but also in detecting possible criminal offences, particularly in the area of finance. Tax inspectors are usually highly qualified financial investigators, several thousand of whom examine the financial operations and transactions of millions of individuals, enterprises, companies, trusts, foundations and other taxpayers in the course of their day-to-day work in tax investigations or other tax administration activities. They are therefore ideally placed to detect and report suspicions of criminal activity – including the payment of bribes – to the competent authorities.

Many countries have adopted a broad range of tax measures to reinforce the legal and administrative framework for combating corruption. Where possible, an inter-administration approach in combating tax offences, corruption and related offences is an effective option. The combined effect of tax policy and administrative measures enhances the deterrence, detection, reporting and prosecution of corruption offences.

II. Tax Administration: Current Status and Critical Analysis

The Tunisian tax code, in its current version, does not explicitly disallow the deduction of bribes paid to public officials. In practice, such deduction is not authorised, as the only expenses deductible for tax purposes are those necessary to earn income, and these must be justified and their beneficiaries disclosed to the tax administration (which is not the case when it comes to bribes).

Tunisia has been a signatory to the United Nations Convention against Corruption since 23 September 2008. Article 12.4 of the Convention stipulates that “each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with Articles 15 and 16 of this convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.” This concerns bribes paid to national public officials (Article 15) as well as to foreign public officials and officials of public international organisations. Circulars 52 and 57/2012 (in Arabic) issued by the Presidency of the Government have established a mechanism for examining the application of this Convention. UNCAC representatives conducted a review in 2012, the results of which are to be reported in the second half of 2013.

To reduce the risks of corruption, Tunisia should adopt a specific legislation disallowing the deductibility of bribes. A law expressly disallowing tax deductions for bribes paid to national and foreign public officials and to officials of public international organisations would allow Tunisia to respect its obligations under the United Nations Convention against Corruption (Article 12.4). It would send a strong message and would reinforce awareness in the business world of the illegal nature of bribery. It would also send a clear message to the tax administration as to the need to detect and disallow tax deductions for bribes. Lastly, it would make it easier to detect suspicious payments and report them to law enforcement authorities.

As there is no legislation disallowing the deductibility of bribes, taxpayers and tax inspectors alike are not alert to the detection of suspicious payments. Nor does the tax administration include bribery in its assessment of risks for tax control purposes. The tax administration does not provide tax inspectors with any guidance or training concerning the types of payment that might constitute bribes, or the measures to take when such payments are suspected. It is apparent that no reform is under way in this area.
There is no obligation to report suspicions, but in practice the tax administration does report suspicions of financial crimes to the law enforcement authorities. This practice may be reinforced with the creation of the National Anti-corruption Unit by Decree Law No. 2011-120 of 14 November 2011, and a national anti-corruption portal (www.anticor.tn) which, among other things, encourages the tax authority to signal its suspicions of financial crimes either to the commission or via the website, notwithstanding provisions relating to professional secrecy.

Tunisia could adopt legislation introducing an obligation for the tax administration to report suspicions of corruption to the competent national law enforcement authorities, as part of its campaign against corruption. It is worth noting that the sharing of information by the tax authorities with other enforcement authorities could be a useful detection tool during criminal investigations.

Article 29 of the Code of Criminal Procedure requires the tax administration and its agents to report to the public prosecution office any violations of which they become aware in the course of their duties, and to transmit all related information, reports and notes. Tax administration officials may also be requested to assist the Tunisian Financial Analysis Commission in carrying out its mission (collecting and processing declarations of suspicious or unusual operations and transactions and providing notice of follow-up) to combat money-laundering rings. They are therefore required to forward to the Commission any information necessary for analysing the operations and transactions reported in the collected declarations, within the legal deadlines.

Article 22.4 of the OECD Convention on Mutual Administrative Assistance in Tax Matters authorises the use of information provided by a partner under the Convention, for tax purposes and for non-tax purposes, specifically to combat serious criminal offences such as bribery. Two conditions must be met: the legislation of the State providing the information must authorise the use and the competent authority of that State must consent to its use. Tunisia ratified this instrument in March 2013.

III. REFORMS UNDER WAY

No reforms were identified as under way.

IV. IDENTIFICATION OF PRIORITy REFORMs

Tunisia has no legislation making bribes non-deductible. Bribes can be disguised as legitimate expenses (consulting fees, commissions, fictitious salaries, representation expenses, etc.) or they can be paid through “slush funds” held abroad. Moreover, the tax administration’s lack of access to banking information is an additional obstacle to the detection of bribes.
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<th>Reform</th>
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<tr>
<td>Adopt specific legislation disallowing the tax deductibility of bribes</td>
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<td>‒ A law expressly disallowing the deductibility of bribes would permit Tunisia to respect its obligations under the United Nations Convention against Corruption (Article 12.4).</td>
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<td>Introduce an obligation for the tax administration to report suspicions of corruption to the competent authorities</td>
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<td>‒ Introduction of an obligation for the tax administration to report suspicions of corruption to the competent authorities.</td>
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<td>‒ Reinforcement of the sharing of information between the tax administration and the law enforcement authorities.</td>
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<td>Raise awareness among tax administration officials</td>
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<td>‒ Provide training for tax administration officials as to the types of payments that constitute bribes.</td>
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<td>‒ Co-operation with the OECD for the application of the OECD Convention on Mutual Administrative Assistance in Tax Matters.</td>
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V. EXAMPLES OF GOOD PRACTICE IN THE INTRODUCTION OF PRIORITy REFORMS

**Legislation disallowing bribes**

EXAMPLES OF LEGISLATION DISALLOWING THE DEDUCTION OF Bribes

JAPAN

Corporation Tax Law, Paragraph 5 of Article 55

“The amount of bribes (as specified in the Criminal Law and Unfair Competition Prevention Law) paid by a company to a domestic or foreign public official shall not be treated as deductible expenses when calculating that company’s taxable income.”

Income Tax Law: Paragraph 2 of Article 45

“The amount of bribes (as specified in the Criminal Law and Unfair Competition Prevention Law) paid by an individual to a domestic or foreign public official shall not be treated as deductible expenses when calculating that individual’s taxable income.”

SOUTH AFRICA

Article 23(o) of the Income Tax Act provides that:

“No deduction shall be made in respect of any expenditure incurred: (i) where the payment of that expenditure or the agreement or offer to make that payment constitutes an activity contemplated in Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004); or (ii) which constitutes a fine charged or penalty imposed as a result of an unlawful activity carried out in the Republic.”

Source: OECD

RAISING TAXPayers’ AWARENESS OF THE NON-DEDUCTIBILITY OF Bribes

The OECD has drawn up a Bribery Awareness Handbook for Tax Examiners to raise their awareness of the various bribery techniques used and the tools to detect and identify bribes to foreign public officials and to public officials in the domestic context. The Handbook provides useful legal background information as well as practical tips: indicators of bribery, interviewing techniques and examples of bribes identified in tax audits. The Handbook also includes a standard form for feedback by the tax examiner to their headquarters to facilitate the assessment of risks.

The OECD Bribery Awareness Handbook for Tax Examiners is available in 17 languages at www.oecd.org/ctp/nobribes.
EXAMPLES OF PUBLICATIONS SEEKING TO RAISE TAXPAYERS’ AWARENESS OF THE NON-DEDUCTIBILITY OF BRIBES IN THE UNITED STATES

The United States Internal Revenue Service publishes advice for business circles on business expenditure and specifies the meaning of provisions in the law on bribes and kickbacks. This document presents the notions of bribes and kickbacks in particular:

The payment of bribes or kickbacks is a serious criminal offence that could result in prosecution. Any payments that appear to have been made, either directly or indirectly, to an official or employee of any government or an agency or entity of any government are not deductible for tax purposes and are in violation of the law. Payments paid directly or indirectly to a person in violation of any federal or state law (but only if that state law is generally enforced, defined below) that provides for a criminal penalty or for the loss of a licence or privilege to engage in a trade or business are also not allowed as a deduction for tax purposes.

Meaning of “generally enforced”. A state law is considered generally enforced unless it is never enforced or enforced only for infamous persons or persons whose violations are extraordinarily flagrant. For example, a state law is generally enforced unless proper reporting of a violation of the law results in enforcement only under unusual circumstances.

A kickback is a payment for referring a client, patient, or customer. The common kickback situation occurs when money or property is given to someone as payment for influencing a third party to purchase from, use the services of, or otherwise deal with the person who pays the kickback. In many cases, the person whose business is being sought or enjoyed by the person who pays the kickback is not aware of the payment.

For example, the Yard Corporation is in the business of repairing ships. It returns 10% of the repair bills as kickbacks to the captains and chief officers of the vessels it repairs. Although this practice is considered an ordinary and necessary expense of getting business, it is clearly a violation of a state law that is generally enforced. These expenditures are not deductible for tax purposes, whether or not the owners of the shipyard are subsequently prosecuted.

Source: IRS publication 35: Business Expenses

A new Bribery Awareness Handbook for Tax Examiners including additional recent experience is currently being drafted and will be sent to Tunisia after its general release.

Finally, the OECD Oslo Dialogue, which develops a whole government approach to fighting financial crimes, launched a training programme for investigating tax frauds in which Tunisia is a participant.

VI. ACTION PLAN FOR THE IMPLEMENTATION OF PRIORITY REFORMS

The OECD could help the Government of Tunisia (Ministry of Governance and combatting corruption and the Ministry of Finance) in setting up a multidisciplinary anti-fraud unit to boost the government’s capacity to combat financial crime.

This initiative would include the following stages:

- Identification of the principal government bodies involved in combating financial crimes: for example, the tax and customs administrations; anti-money-laundering authorities, including the Finance
Intelligence Unit (FIU), the police and law enforcement authorities; the Public Prosecution Office and financial regulators.

- Analysis of the different organisational models of each of these bodies to obtain the maximum benefit from co-operation. The identification of responsibilities for each activity concerned will have a direct impact on the processes and agreements required to obtain the desired benefits of co-operation.

- Advice on how to set up a multidisciplinary structure on the basis of the different models included in the report “Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes”, cf. www.oecd.org/ctp/crime/effectiveinter-agencyco-operationinfightingtaxcrimesandotherfinancialcrimes.htm

- Development and implementation of the strategy: for example, sharing of responsibilities, information sharing systems, co-operation mechanisms, reporting rules and procedures, etc.

- Assistance in preparing a trainer-training programme to reinforce civil servants’ capacity to combat financial crimes on the basis of the capacity building programme launched in Rome in May 2013 under the Oslo Initiative; see website above.
WHISTLEBLOWER PROTECTION
I. **Whistleblower Protection: Role in Promoting Integrity and Combating Corruption**

The risk of corruption increases significantly in environments where the reporting of wrongdoing is neither encouraged nor protected. Public and private sector employees have access to the latest information on their employers' practices and are generally the first to detect such wrongdoing. People who report wrongdoing, however, may suffer retaliation in the form of intimidation, harassment or violence – if not dismissal – by colleagues or superiors. In many countries, whistleblowing is often treated as treason or espionage.

Whistleblower protection is therefore essential to encourage the reporting of professional misconduct, fraudulent practice or corruption. When it is effective, this protection encourages an open organisational culture within which employees not only know how to report situations but also have confidence in the reporting procedure. Protection of this type encourages other enterprises to prevent and detect corruption that taints certain commercial transactions. Protecting public and private sector whistleblowers – against retaliation for reporting their suspicions of corruption and other misconduct in good faith – is therefore an integral part of efforts to combat corruption and promote integrity, accountability and the creation of a healthy business environment.

II. **Whistleblower Protection: Current Status and Critical Analysis**

Tunisia does not currently have mechanisms or laws that protect whistleblowers. A mechanism to increase the detection of corruption and reinforce integrity in the country must therefore be introduced as a matter of urgency.

It is important to have a clear definition of whistleblower and to distinguish that concept from the notion of witness. In effect, whistleblowers and witnesses are involved at two different stages of the investigation: the whistleblower triggers the investigation and referral to trial, while the witness is involved in a later stage of the proceedings. In most corruption cases, the whistleblower may also be a witness. However, this does not necessarily hold true, as the person who reports suspicions of bribery or corruption may not have sufficient information to serve as a witness during the prosecution phase. Thus, a witness protection law may not be enough to protect whistleblowers. Moreover, it must be borne in mind that, technically speaking, whistleblower protection applies only to public and private sector employees, and does not extend to the general public.

The Tunisian Government is aware of the need to introduce a witness protection law. Article 11 of Decree Law No. 2011-120 of 4 November 2012 requires the introduction of laws and mechanisms to guarantee the protection of victims, witnesses and whistleblowers in cases of corruption. This article has also expanded the institutional provisions for reporting crimes.
ARTICLE 11 OF DECREE LAW NO. 2011-120 OF 4 NOVEMBER 2012  
(TEXT AVAILABLE IN ARABIC ONLY – UNOFFICIAL TRANSLATION)

In its anti-corruption policy, the State acts to encourage the reporting of corruption by raising public awareness of the dangers it represents, reducing the legal and practical obstacles preventing the detection of evidence of corruption and encouraging the adoption of measures to protect victims, witnesses and whistleblowers.

By virtue of this Article, the National Anti-corruption Unit has a mandate to receive complaints and reports of corruption. Moreover, the Government has created a dedicated Internet site (www.anticorruption-idara.gov.tn) through which cases of corruption can be reported. The site was launched in April 2012, and it would be useful to have information on its impact (number of reports, follow-up to reports, etc.). These two initiatives (reporting to the National Anti-corruption Unit and via the Internet) may in fact be of limited effectiveness in light of the confidentiality rules that apply.

Civil society, more specifically the “iwatch” association, launched a website in early 2013 (www.bilikamcha.com) for gathering complaints of corruption. This tool could complete the mechanism and allow people who do not yet have confidence in the official channels to provide useful information in combating corruption. It is therefore important to safeguard and reinforce this communication channel. It would also be useful to monitor the impact of this website and to ensure effective co-operation between civil society and government in this matter.

Contradictory laws exist on reporting misconduct and corruption. Article 29 of the Code of Criminal Procedure requires public officials to report violations, while Article 253 stipulates that any disclosure of a document or correspondence belonging to another person is punishable by law. This legal ambiguity does not encourage whistleblowing. In the context of simplifying the existing range of regulations, it is therefore essential to eliminate regulations (including Article 253 of the Code of Criminal Procedure) which hinder the reporting of corruption.

ARTICLE 29 OF THE CODE OF CRIMINAL PROCEDURE

All authorities and officials shall report violations they become aware of in the course of their duties to the Public Prosecution Office, and shall forward to it all related information, reports and notes. In no event may proceedings be brought against them for making false accusations or for damages due to the warnings they are obliged to give under this Article, unless it is established that they acted in bad faith.

ARTICLE 253 OF THE PENAL CODE

Any person who discloses the content of a letter, telegram or any other document belonging to another party without the authority to do so shall be sentenced to a term of imprisonment of three months.

Lastly, the OECD can contribute its expertise to support the implementation of laws and mechanisms that will provide better protection for whistleblowers, drawing upon experience in its member countries.

III. REFORMS UNDER WAY

Consideration is now being given to a new regulatory framework governing whistleblower protection, but there is unlikely to be any reform until the new Constitution is ready.
IV. IDENTIFICATION OF PRIORITY REFORMS

It is now urgent to develop an adequate legal and institutional framework for whistleblowing and for ensuring whistleblowers’ protection and rights.

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| Develop and implement an effective system for whistleblower protection | ✔ | – It is important to provide legal protection through clear and comprehensive legislation on this issue.  
– Such legislation could take the form of a dedicated law or various legal provisions within the penal code or the labour code.  
– Legal protection must be instituted through an effective institutional device that includes clear procedures and well-defined channels for reporting corruption. |

V. EXAMPLES OF GOOD PRACTICE IN THE INTRODUCTION OF PRIORITY REFORMS

EXAMPLES OF THE USE OF MEASURES TO ENCOURAGE REPORTING IN THE UNITED STATES, SOUTH KOREA AND INDONESIA

In the United States the False Claims Act allows individuals to sue on behalf of the government to recover lost or misspent money, and subsequently to receive up to 30% of the amount recovered. The Dodd-Frank Act authorises the Securities and Exchange Commission (SEC) to pay rewards to individuals who provide it with original information leading to successful prosecutions (and certain related actions). Rewards may range from 10% to 30% of the funds recovered.

Korean law also provides for monetary rewards for whistleblowers who disclose acts of corruption. The Anti-corruption and Civil Rights Commission (ACRC) may provide whistleblowers with rewards of up to USD 2 million if their report has contributed directly to recovering or increasing revenues or reducing expenditures for public agencies. The ACRC may also grant or recommend awards if the whistleblowing has served the public interest.

Indonesian law also makes provision for the granting of “tokens of appreciation” to whistleblowers who have contributed to efforts to prevent and combat corruption.

Source: United States False Claims Act and Korean Act on the Protection of Whistleblower making a disclosure in the public interest
EXAMPLES OF A REDRESS MECHANISM IN SOUTH KOREA

The Korean Act on the Protection of Whistleblowers making a disclosure in the public interest provides for significant remedies to compensate the loss suffered by the whistleblower.

ARTICLE 17 (REQUEST FOR PROTECTIVE MEASURES)

1. When the whistleblowers making a disclosure in the public interest or similar is penalised for his or her disclosures (including when the revelation was made after the party concerned was subjected to penalties while he or she was preparing to make disclosures in the public interest by collecting evidence, etc.), the whistleblower making a disclosure in the public interest may call upon the Commission to take the measures necessary to allow his or her previous living conditions to be restored or to declare invalid the discriminatory measures that may have been taken against him or her (hereinafter “protective measures”).

2. Any application for protective measures must be filed within three months of application of the penalties (or the date on which such penalties concluded if they had been in force for a limited period). However, should the whistleblowers making a disclosure in the public interest be unable to apply for protective measures within three months due to force majeure (such as a natural disaster, war, emergency or other circumstance), he or she may file his or her application within 14 days of the date on which the above-mentioned cause concluded (this time period shall be extended to 30 days when the application is made from a foreign country).

3. Where other laws or implementing regulations provide for administrative remedies for penalties adopted by way of retaliation, the whistleblower making a disclosure in the public interest may seek redress in accordance with the procedure provided for by such laws and implementing regulations. This provision shall not apply, however, if the whistleblower making a disclosure in the public interest has already applied for protective measures in accordance with paragraph 1 of this Article.

4. The Presidential Decree shall specify the method and procedures for applying for protective measures and other points.

ARTICLE 27 (MONETARY COMPENSATION)

1. The whistleblower making a disclosure in the public interest or similar, his or her close relations or cohabitants may call upon the Commission to pay monetary compensation where they have suffered losses falling into one of the following categories or have paid money to allow the party concerned to make their disclosures:
   a. expenditure on physical or psychological therapy;
   b. removal costs due to a transfer or new post;
   c. legal costs incurred by the party concerned in restoring his or her previous living conditions;
   d. loss of salary during the period of application of the penalties;
   e. other significant economic losses [excluding those in Article 2(6)(h) and (i)].

2. On receiving an application for monetary compensation brought pursuant to paragraph 1, the Commission may pay such compensation after discussing the matter and obtaining a resolution of the Council responsible for examining proposals for compensation, in accordance with the conditions set out in the Presidential Decree.

3. The Commission may hear the applicant for compensation and certain other interested parties or may refer to an administrative body or other bodies of the same type concerning the action to be taken. In this case the administrative body or related organisation must agree to pursue the
examination, unless exceptional circumstances prevail.

4. Should the whistleblower making a disclosure in the public interest or similar, his or her close relations or cohabitants have already obtained compensation for losses or expenditure falling within one of the subparagraphs of paragraph 1, the Commission shall only pay the additional amount, if any, by way of monetary compensation.

5. Should the Commission have paid the monetary compensation, it shall subrogate the right – held by the individual who obtained the compensation – to claim compensation or reimbursement of expenditure by way of the means provided for by one of the subparagraphs of paragraph 1, up to the limit of the amount paid.

Source: South Korea, Act on the Protection of Whistleblower making a disclosure in the public interest s, 2011.

VI. ACTION PLAN FOR THE IMPLEMENTATION OF PRIORITY REFORMS

Within Phase 3 (2014) of a project funded by the UK, the OECD objective is to support the Tunisian Government in introducing a framework for protecting whistleblowers who report wrongdoing and corruption, a process involving the following stages:

- Initially, Tunisia could avail itself of clear and complete legislation providing for protection – against retaliation, discrimination or disciplinary action – for employees who report suspected wrongdoing or corruption to the competent authorities. Particular attention could be paid to the introduction of a mechanism encouraging reporting.

- Once the legislation has been adopted, an effective institutional framework and clearly identified channels could be put in place to inform public and private sector employees of the party to whom they should report wrongdoing or corruption which comes to their knowledge. It is essential to assure public and private sector employees that an appropriate investigation will be carried out and that they will be informed of the results so as to reassure the public of the effectiveness of the reporting mechanism.

- The legislation could include appeals and penalties to protect whistleblowers against retaliation. In addition, the practical effectiveness of the whistleblower protection framework should be periodically evaluated and analysed.

- Finally, awareness-raising activities could be provided to encourage the reporting of wrongdoing and corruption and to disseminate information on the whistleblower protection mechanisms available. These activities could also allow the authorities to gather suggestions from private sector officials and employees as to how to improve the system.
Criminalising Bribery
I. CRIMINALISING BRIBERY: ROLE IN PROMOTING INTEGRITY AND COMBATING CORRUPTION

Criminalising the bribery of public officials, whether national or foreign, and enforcing the law are essential components of a general anti-bribery framework which combine with other parallel initiatives that seek to prevent and detect bribery.

The introduction of an effective anti-bribery system first involves defining the broadest possible range of violations. It is also necessary to ensure that the law enforcement authorities are independent and vigilant in applying the relevant penalties.

This section examines the measures that have been taken to criminalise the bribery of national and foreign public officials. It does not cover other forms of corruption, such as misappropriation of funds, influence peddling or illicit enrichment. Neither does it cover the corruption of private individuals. Furthermore, it also stresses “active corruption” (promising, offering or giving a bribe) in contrast to “passive corruption” (soliciting or accepting a bribe).

II. CRIMINALISING BRIBERY: CURRENT STATUS AND CRITICAL ANALYSIS

This chapter offers an in-depth analysis of legal provisions defining public officials and criminalising bribery. This section also presents examples of the implementation of international obligations on the criminalising of bribery, drawing upon reports on Phase 3 of the OECD Working Group on Bribery (grey boxes).

1. Definition of public official

It is not certain that the definition of “public official” in Article 82 of the Penal Code is consistent with the international standards of Article 2(a) of the United Nations Convention against Corruption and Article 1(4)(a) of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention).

**ARTICLE 82 OF THE PENAL CODE**

Any person is deemed to be a public official, and thus subject to the provisions of this law, who is invested with public authority or exercises functions in the service of the State or a local government or of a public office or institution or a public enterprise, or who performs functions for any other person participating in the management of a public service.

The definition of public official also covers any person who has the status of a public officer or is invested with an elected public mandate or has been appointed by the justice system to perform a judicial mission.

The definition of public official should in particular include any person:

- holding a legislative, executive, administrative or judicial office;

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20 The examples are presented purely for illustration and do not necessarily prejudge best practice in this field. Readers are invited to consult the parts of the Phase 3 reports, which address the relevant recommendations of the working group and compare them with the national laws cited. Examples of good international practice are presented in section V of this chapter.
• appointed or elected;
• permanent or temporary;
• paid or unpaid;
• irrespective of seniority.

The definition should also include any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in domestic Tunisian law. Foreign public officials, which means any civil servant or official of a public international organisation, must also be included in this definition.

2. Offence of active bribery of public officials

Pursuant to Article 15 of the UNCAC, Tunisia should criminalise the “promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.”

**ARTICLE 91 OF THE PENAL CODE**

A punishment of five years’ imprisonment and a fine of TND 5 000 shall be incurred by any person who has bribed or attempted to bribe, through gifts or promises of gifts, or presents or advantages of any kind, one of the persons mentioned in Article 82 of this code to perform an act pertaining to his or her function, even if proper, but not subject to consideration, or to facilitate the performance of an act pertaining to his or her function, or to refrain from performing an act that it is his or her duty to perform.

This penalty is applicable to any person who has served as the intermediary between the briber and the recipient.

The penalty shall be doubled if the persons mentioned in Article 82 have been induced to perform the above-mentioned acts by deeds or threats against them personally or against members of their family.

“the promise, offering or giving” – Article 91 of the Tunisian Penal Code penalises “gifts or promises of gifts”, but does not make reference to offers, which are an important element in the UNCAC model definition.

“a public official” – see the analysis above.

“directly or indirectly” – the second paragraph of Article 91 punishes the intermediary, whereas the international instruments refer to the promising, offering or giving, directly or indirectly, of any undue advantage to a public official. Article 91 makes no reference to promises, offers or undertakings made indirectly to the public official. It is possible, then, that the perpetrators of bribery schemes may be exonerated for acts conducted through intermediaries.

“an undue advantage” – in using the words “gifts … or presents or advantages of any kind”, Article 91 covers the full range of possible advantages, monetary or other, thereby making this element consistent with international standards.
“for the official himself or herself or another person or entity” – Article 91 is limited to offers or gifts solely for the benefit of a public official, whereas the international standards refer to promises, offers and gifts to the official or another person, in order that the official act or refrain from acting in the exercise of his or her official duties.

“in order that the official act or refrain from acting in the exercise of his or her official duties” – Article 1(4)(c) of the OECD Convention makes clear that this phrase includes any use of the public official’s position, whether or not within the official’s authorised competence. Article 91 of the Tunisian Penal Code concerns the bribery of a public official in order (a) to perform an act pertaining to his or her function; (b) to facilitate performance of an act pertaining to his or her function; or (c) to refrain from performing an act that he or she should perform. The offence is thus limited to acts related to the official function of the public official in question, and does not cover the use of the official’s position to perform or facilitate acts that lie outside his or her official authorised duties or competence.

**Example of an offence of bribing foreign public officials: France**

**Penal code, Article 435-3**

The unlawful proffering, at any time, directly or indirectly, of any offer, promise, gift, present or advantage, for himself or another, of any kind to a person holding public office or discharging a public service mission, or an electoral mandate in a foreign State, or within a public international organisation, to carry out or abstain from carrying out an act of his function, duty or mandate or facilitated by his function, duty or mandate is punished by ten years’ imprisonment and a fine of EUR 150 000.

The same penalties apply to yielding to any person specified in the previous paragraph who unlawfully solicits, at any time, directly or indirectly, any offer, promise, donation, present or advantage, for himself or another, of any kind to carry out or abstain from carrying out an act specified in the previous paragraph.

**3. Sanctions**

Article 30(1) of the UNCAC obliges States Parties to make the commission of an offence liable to sanctions that take into account the gravity of the offence. Article 3 of the OECD Convention requires the bribery of a foreign public official to be punishable by effective, proportionate and deterrent criminal penalties. The sanction provided for in Article 91 of the Tunisian Penal Code is five years’ imprisonment and a fine of TND 5 000 (around EUR 2 441). While the prison penalty seems comparable to that applied in other countries, the monetary sanction of TND 5 000 does not seem high enough to satisfy international standards.
**Example of a Monetary Penalty Regime for Legal Persons Convicted of Bripping Foreign Public Officials: Australia**

**Commonwealth Criminal Code Act, Section 70.2**

Penalty for body corporate

(5) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine not more than the greatest of the following:

(a) 100,000 penalty units;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence—3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period (the turnover period) of 12 months ending at the end of the month in which the conduct constituting the offence occurred.

(6) For the purposes of this section, the annual turnover of a body corporate, during the turnover period, is the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during that period, other than the following supplies:

(a) supplies made from any of those bodies corporate to any other of those bodies corporate;

(b) supplies that are input taxed;

(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the A New Tax System (Goods and Services Tax) Act 1999);

(d) supplies that are not made in connection with an enterprise that the body corporate carries on.

Article 3(4) of the OECD Convention requires each State Party to consider the imposition of additional civil or administrative sanctions upon a legal or natural person subject to sanctions for the bribery of a foreign public official. Commentary 24 on the Convention gives examples of such additional sanctions that can be imposed upon legal persons: exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from participation in public procurement or from the practice of other commercial activities; placing under judicial supervision; and a judicial winding-up order.

One of the additional sanctions – the one providing the greatest deterrent – is disqualification from participation in public procurement of legal persons convicted of bribery. Because legal persons are not liable for acts of bribery under Tunisian law, this measure is difficult to apply in the country. If Tunisia were to establish the liability of legal persons, it could also consider excluding enterprises convicted of bribery from Tunisian public procurement. It would then be important to create a criminal register or other mechanism to record companies convicted or penalised for bribery, and makes it available to the agencies responsible for public procurement to ensure their effective disqualification from such procurement.
EXAMPLE OF A FRAMEWORK OF ADDITIONAL SANCTIONS FOR LEGAL PERSONS: LUXEMBOURG

Penal Code, Article 35. (L 3 March 2010)

The penalties for felonies or misdemeanours committed by legal persons are:

1) a fine, under the terms and conditions set forth at Article 36;

2) special confiscation;

3) disqualification from public procurement procedures;

4) dissolution, under the terms and conditions set forth at Article 38.

4. Confiscation

Under Article 31(1) of the UNCAC, each State Party must take such measures as may be necessary to enable confiscation of (a) the proceeds of crime derived from bribery, or property the value of which corresponds to that of such proceeds; and (b) property, equipment or other instrumentalities used in or destined for bribery. Also, Article 3(3) of the OECD Convention requires each Party to take such measures as may be necessary to seize and confiscate the bribe and the proceeds of the bribery of a foreign public official or property of an equivalent value. Article 94 of the Tunisian Penal Code allows the confiscation of “things given or received” and therefore does not in itself satisfy international standards.

Article 94 of the Penal Code

In all cases of bribery, the things given or received shall be forfeited to the State.

However, Articles 28 and 29 of the Tunisian Penal Code provide for the confiscation of the proceeds of the crime, or the instruments that were used to commit it, or their value. It is not certain how these various provisions will be applied in cases of bribery, and whether they will be enough to satisfy international standards.

Article 28 of the Penal Code

Special confiscation is the forfeiture to the State of the proceeds of the offence or the instruments that served or could serve to commit it.

In the event of conviction, the judge may order the confiscation of the items that were used or were intended for use in the offence and those that are the proceeds of the offence, irrespective of their ownership.

Confiscation of the things the manufacture, use, possession or sale of which constitutes an offence shall be ordered in all cases.

Article 29 of the Penal Code

If the objects for which confiscation is ordered have not been seized and remitted, the court may determine the value for the application of attachment.
EXAMPLE OF A CONFISCATION SCHEME: SWITZERLAND

PENAL CODE, ARTICLE 69

5. Forfeiture

a. Forfeiture of dangerous objects

1. The court shall, irrespective of the criminal liability of any person, order the forfeiture of objects that have been used or were intended to be used for the commission of an offence or that have been used as a result of the commission of an offence in the event that such objects constitute a ... danger to public safety, morals or public order.

2. The court may order that the object forfeited be rendered unusable or be destroyed.

ARTICLE 70

b. Forfeiture of assets.

Principles

1. The court shall order the forfeiture of assets that have been acquired through the commission of an offence or that are intended to be used in the commission of an offence or as payment therefor, unless the assets are passed on to the person harmed for the purpose of restoring the prior lawful position.

2. Forfeiture is not permitted if a third party has acquired the assets in ignorance of the grounds for forfeiture, provided he has paid consideration of equal value therefor or forfeiture would cause him to endure disproportionate hardship.

3. The right to order forfeiture is limited to seven years; if, however, the prosecution of the offence is subject to a longer limitation period, this period also applies to the right to order forfeiture.

4. Official notice must be given of forfeiture. The rights of persons harmed or third parties expire five years after the date on which official notice is given.

5. If the amount of the assets to be forfeited cannot be ascertained, or may be ascertained only by incurring a disproportionate level of trouble and expense, the court may make an estimate.

PENAL CODE, ARTICLE 71

Equivalent claim

1. If the assets subject to forfeiture are no longer available, the court may hold a claim for compensation by the State in respect of a sum of equivalent value, which claim may be enforced against a third party only if he is not excluded by Article 70 paragraph 2.

2. The court may dismiss an equivalent claim in its entirety or in part if the claim is likely to be unrecoverable or if the claim would seriously hinder the rehabilitation of the person concerned.

3. The investigating authority may seize assets of the person concerned with a view to the enforcement of an equivalent claim. Such seizure does not accord the State preferential rights in the enforcement of the equivalent claim.

5. Attempt

According to Article 27 of the UNCAC and Article 1(2) of the OECD Convention, each State Party must take the measures necessary to establish as a criminal offence participation in any capacity in an offence, any attempt to commit an offence, and preparation for an offence. Consistent with international standards, Tunisia’s Penal Code punishes the attempt. There is a specific offence of attempted bribery (Article 92)
and a general offence of criminal attempt which applies to all offences under the Penal Code (Article 59) except for those punishable by more than three years’ imprisonment. It is not made clear which form of criminal attempt would apply to the bribery of foreign public officials, a crime that is punishable by up to five years’ imprisonment.

**Article 92 of the Penal Code (attempted bribery)**

The penalty shall be one year’s imprisonment and a fine of TND 1 000 if the attempt has produced no effect. It shall be two years’ imprisonment and TND 2 000 if the attempt at coercion by deeds or threats has produced no effect.

**Article 59 of the Penal Code (attempted offence)**

Any attempted crime is punishable in the same way as the crime itself if it has not been suspended or if its failure was due to circumstances beyond the control of the perpetrator. However, the attempt is not punishable, unless the law provides otherwise, if the offence does not carry more than five years’ imprisonment.

Moreover, although the general offence of criminal attempt carries the same penalties as the underlying offence, the specific offence of attempted bribery carries different penalties, depending on the outcome of the attempt. According to international standards, sanctions should be the same even if the attempt has produced no effect. This double standard for attempted crimes could therefore create problems when it comes to practical application.

6. Participation

Article 27(1) of the UNCAC obliges States Parties to penalise participation in any capacity such as an accomplice, assistant or instigator in a bribery offence. Article 1(2) of the OECD Convention requires States Parties to take the measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official is a criminal offence. All of these categories seem to be covered in Article 32 of the Tunisian Penal Code, but Tunisian law does not provide penalties for making preparations for the crime.

**Article 32 of the Penal Code**

The following shall be deemed to be an accomplice and shall be punished as such:

1 - any person who, by means of gifts, promises, threats, abuse of authority or power, conspiracy or criminal deception, has provoked the commission of an offence or given instructions for its commission;

2 - any person who, aware of the purpose to be achieved, has procured weapons, instruments or other means to facilitate commission of the offence;

3 - any person who, aware of the above-mentioned purpose, has aided the perpetrator in preparing the offence or in facilitating or committing it, without prejudice to the penalties specifically provided by this code for the perpetrators of a conspiracy or provocation affecting the domestic or external security of the State, even in cases where the offence that was the object of the conspiracy or provocation has not been committed;

4 - any person who has knowingly assisted the criminals to secure, by concealment or other means, the benefit of the offence or the impunity of its perpetrators;
5 - any person who, being aware of the criminal conduct of the criminals in engaging in armed robbery or other attacks against State security, law and order, persons or property, has regularly provided them with accommodation, hideouts or meeting places.

7. Defences

While recognising the importance of co-operative witnesses in the effective prosecution of bribery cases, the OECD Working Group on Bribery has systematically criticised parties that have established “effective regret” as a full defence against bribery charges. In the view of the Working Group, co-operation is not a full defence recognised by the OECD Convention. Even if it may constitute a mitigating circumstance when it comes to fixing the penalty (provided that the sanctions remain effective, proportionate and deterrent), it cannot constitute a full defence that relieves the briber of liability. Article 93 of the Tunisian Penal Code exonerates a briber or intermediary who, before any investigation begins, voluntarily discloses and provides proof of the act of bribery, and thus raises the same concerns.

ARTICLE 93 OF THE PENAL CODE

A briber or intermediary who, before any investigation begins, voluntarily discloses and provides proof of the act of bribery shall be exonerated.

EXAMPLE OF OECD WORKING GROUP RECOMMENDATION ON “EFFECTIVE REGRET”: PHASE 3 EVALUATION OF THE SLOVAK REPUBLIC’S CONFISCATION SCHEME

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery

1. Regarding the foreign bribery offence, the Working Group recommends that the Slovak Republic:

(c) Amend its legislation to exclude the defence of effective regret from the offence of foreign bribery under section 335 CC and from the provisions applying to legal persons, currently under sections 83(a)(2) and 83(b)(2) CC [Convention, Article 1, 2009 Recommendation III(iii) and V, Phase 2 evaluation, recommendation 8a.];

8. Active bribery of foreign public officials

Article 1 of the OECD Convention requires States Parties to establish that “it is a criminal offence for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.” Article 16 of the UNCAC also obliges States Parties to criminalise the bribery of foreign public officials and officials of public international organisations.

9. Criminal liability of legal persons

Article 26 of the UNCAC and Article 2 of the OECD Convention oblige the Parties to establish the liability of legal persons for acts of bribery. This liability may be administrative, civil or criminal, depending on the

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21 See, for example, the evaluations of Bulgaria (Phase 2), Spain (Phase 2) and the Republic of Slovakia (Phase 2; Phase 3).
requirements of each national judicial system. It must also apply to public enterprises. It is essential, however, that the liability of the legal person be without prejudice to the criminal liability of the natural persons who have committed the offence. Legal persons held liable must also be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

As Tunisia has established the criminal liability of legal persons for the crimes of money laundering and terrorism financing, it is also obliged under the OECD Convention to establish the same framework of criminal liability for companies involved in cases of bribery. The liability stipulated in Article 66 of the money-laundering and terrorism financing law contains monetary sanctions (five times the value of the fine stipulated for natural persons, or an amount equal to the value of the funds laundered) and non-monetary sanctions (prohibition from doing business for a specified period, or dissolution).

**ARTICLE 66 OF LAW NO. 2003-75 OF 10 DECEMBER 2003 ON SUPPORT TO INTERNATIONAL EFFORTS TO COMBAT TERRORISM AND SUPPRESS MONEY LAUNDERING**

The penalties stipulated in the preceding Article shall be extended, as the case may be, to the managers and representatives of legal persons whose personal liability has been established.

This is without prejudice to the prosecution of those legal persons, if it is established that the laundering operations were conducted for their benefit or if they obtained revenues from the operations or if laundering was their purpose. They shall thereby incur a fine equal to five times the value of the fine stipulated for natural persons. The fine may be raised to an amount equal to the value of the funds laundered.

This is also without prejudice to the extension of the stipulated disciplinary sanctions to those legal persons under existing legislation applicable to them, including the prohibition on doing business for a determined period of time, or their dissolution.
EXAMPLE OF A LEGAL FRAMEWORK FOR THE CRIMINAL LIABILITY OF LEGAL PERSONS: SWITZERLAND

Penal Code, Article 102: Criminal liability

1. If a felony or misdemeanour is committed in an undertaking in the exercise of commercial activities in accordance with the objects of the undertaking and if it is not possible to attribute this act to any specific natural person due to the inadequate organisation of the undertaking, then the felony or misdemeanour is attributed to the undertaking. In such cases, the undertaking is liable to a fine not exceeding CHF 5 million.

2. If the offence committed falls under Articles 260ter, 260quinquies, 305bis, 322ter, 322quinquies or 322septies paragraph 1 (…), the undertaking is penalised irrespective of the criminal liability of any natural persons, provided the undertaking is responsible for failing to take all the reasonable organisational measures that were required in order to prevent such an offence.

3. The court assesses the fine in particular in accordance with the seriousness of the offence, the seriousness of the organisational inadequacies and of the loss or damage caused, and based on the economic ability of the undertaking to pay the fine.

4. Undertakings within the meaning of this title are:
   a. any legal entity under private law;
   b. any legal entity under public law with the exception of local authorities;
   c. companies;
   d. sole proprietorships.

10. Jurisdiction

Article 42 of the UNCAC and Article 4 of the OECD Convention establish the international standards for jurisdiction in cases of bribery. Thus, a party must establish its jurisdiction for acts of bribery committed: (i) in whole or in part in its territory, and (ii) by its nationals, including its enterprises, in any country. The condition of dual criminality must be deemed satisfied if the act is unlawful in the territory where it is committed, even if it is classified differently in that territory.

The national jurisdiction of Tunisia extends to all Tunisian citizens outside the territory of the Republic, subject to dual criminality and the principle of *ne bis in idem* (Article 305, Code of Criminal Procedure). There is no specification as to how this framework for national jurisdiction applies to businesses. Tunisia has not provided any information on its territorial jurisdiction framework.
ARTICLE 305

Tunisian citizens may be prosecuted by the Tunisian courts if they have committed outside the country a crime or offence punishable under Tunisian law, unless it is demonstrated that such violation is not punishable under the foreign law or that the suspects have been tried abroad and, if convicted, have served their sentence or been pardoned.

The above conditions are applicable to perpetrators who acquire Tunisian citizenship only after committing the offence attributed to them.

ARTICLE 306

Foreign nationals may not be prosecuted for a crime or offence committed within Tunisian territory if they prove that they have been tried abroad and, if convicted, have served their sentence or been pardoned.

ARTICLE 307

Foreign nationals who, as principal or accomplice, have committed outside Tunisia a crime or offence that threatens State security or have forged the State seal or counterfeited the national currency may be prosecuted under Tunisian law if arrested within Tunisia or if the government obtains their extradition.

ARTICLE 307bis

Any person who, outside Tunisian territory, is found guilty, either as the perpetrator or as an accomplice, of a crime or offence, may be prosecuted [by the Tunisian courts] if the victim is of Tunisian nationality.

Prosecution may be undertaken only at the request of the Attorney General’s office, upon a complaint filed by the injured party or his or her heirs.

No prosecution may be undertaken if the suspect proves that he or she has been tried abroad and, if convicted and sentenced, has served the penalty or has been granted a pardon or amnesty, or that the statute of limitations applies.

EXAMPLE OF A PROVISION ON TERRITORIAL JURISDICTION: SWITZERLAND

Penal Code, Article 8: Place of commission of the act

1. A crime or offence is considered to be committed at the place where the person concerned commits or unlawfully omits to act, and at the place where the offence has taken effect.

2. An attempted offence is considered to be committed at the place where the person concerned attempted it and at the place where he intended the offence to take effect.

11. Independent investigation and prosecution

Article 5 of the OECD Anti-Bribery Convention obliges States Parties to ensure that “Investigation and prosecution of the bribery of a foreign public official ... shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.”
The role of the Attorney General’s office and the initiatives reserved to it by law, at all phases of the procedure, can determine the direction, the pace and the outcome of the case. We understand that the question of the independence of the Attorney General’s office vis-à-vis the executive branch is to be reviewed as part of the work on the new Constitution of Tunisia.

In practice, the Tunisian Attorney General’s office follows the entire procedure, step by step, from directing the preliminary investigation, through the decision to dismiss a case (except for crimes), to the committal of suspects for trial. While this poses no problems under ordinary law, the situation may be different in cases involving bribery. For cases of this kind, the chief prosecutor (who in Tunisia is a magistrate reporting to the Minister of Justice) may take into account discretionary considerations in weighing the likely consequences, both political and economic, of the decision to pursue the case.

We note, however, that there is an important instrument under Tunisian law for overcoming possible inaction by the Attorney General’s office (which, informed of the facts, might find it inopportune to pursue a crime such as the active bribery of public officials): that instrument is the possibility accorded to the victims of a crime to bring a civil suit for damages. The effect of this procedure is to deprive the prosecution of its power to dismiss the case on grounds of expediency. In their current thinking on the independence of the Attorney General’s office, the Tunisian authorities should consider retaining the possibility of bringing a civil suit, even in cases where the bribery of foreign public officials has been established.
**ARTICLE 28 CODE OF CRIMINAL PROCEDURE**

In the event of a crime, the Public Prosecutor’s Office shall immediately advise the Public Prosecutor and the competent Advocate General and shall immediately request regular reports from the investigating magistrate.

**ARTICLE 30 CODE OF CRIMINAL PROCEDURE**

The Public Prosecutor’s Office shall decide the treatment to be accorded to complaints and reports received or transmitted to it.

**ARTICLE 31 CODE OF CRIMINAL PROCEDURE**

In the event of a complaint with insufficient grounds or justification, the Public Prosecutor’s Office may ask the investigating magistrate, on a provisional basis, to investigate an unnamed person until new charges can be brought or until new accusations against named persons are justified.

**ARTICLE 36 CODE OF CRIMINAL PROCEDURE**

Dismissal of the case by the Public Prosecutor’s Office does not prevent the injured party from initiating public action, as a civil party, to demand that an investigation be opened or that the defendant be brought directly before the court.

**ARTICLE 47 CODE OF CRIMINAL PROCEDURE**

A preliminary investigation is mandatory for all crimes; except in special circumstances, it is optional in the case of an offence or misdemeanour.

12. Statute of limitations

To make Tunisia’s statutory limitation provisions in bribery cases compatible with international standards will require the resolution of an apparent contradiction in the classification of violations as crimes, offences or misdemeanours. According to Article 5 of the Code of Criminal Procedure, the limitation period for any violation classified as an *offence* is 5 years, while for a violation classified as a *crime* it is 10 years.
ARTICLE 4 OF THE CODE OF CRIMINAL PROCEDURE

A penal action is extinguished by:
1. the death of the defendant,
2. the expiry of the statutory time limit,
3. amnesty,
4. repeal of the criminal law,
5. a court judgment,
6. a transaction where the law expressly so provides,
7. the withdrawal of a complaint, where it is a necessary condition to prosecution; the withdrawal of a complaint against one defendant benefits all the others.

ARTICLE 5 OF THE CODE OF CRIMINAL PROCEDURE

Except as specifically provided by law, the statutory limitation period for penal action expires after ten years in the case of a crime, after three years in the case of an offence, and after one year in the case of a misdemeanour, counting from the date on which the violation was committed, if during that time no investigation or prosecution has been initiated.

The limitation period is suspended by any legal or factual obstacle that prevents the taking of penal action, except for obstacles instigated by the defendant.

In the case covered by Article 77, the limitation period shall continue to run during suspension of proceedings for reasons of mental incompetence, to the benefit of a defendant who is not in preventive detention.

ARTICLE 6 OF THE CODE OF CRIMINAL PROCEDURE

If, during the time limits listed in the previous Article, acts of investigation or prosecution have been carried out but no judgment handed down, the suspended penal action is prescribed only as of the last act, even for persons not involved in that act of investigation or prosecution.

On the one hand, Article 14 of the Penal Code provides that a violation is deemed a crime if it carries a minimum penalty of five years’ imprisonment. On this basis, the bribery of public officials is a crime, as it is punishable by a maximum of five years’ imprisonment.

ARTICLE 14, PENAL CODE

Under Article 122 of the Code of Criminal Procedure, if the violation is deemed a crime the prison penalty shall be at least five years. It shall be at least 16 days if the violation constitutes an offence, and at least one day if it constitutes a misdemeanour. For the purposes of calculating prison penalties, one day is 24 hours and one month is 30 days.

On the other hand, Article 122 of the Code of Criminal Procedure classifies as an offence any violation punished by a maximum of five years’ imprisonment, and on the basis of this provision the bribery of public officials is an offence.
ARTICLE 122, CODE OF CRIMINAL PROCEDURE

For the purposes of this code, crimes are violations that are punishable by death or by imprisonment of more than 5 years.

Offences are violations punishable by imprisonment of more than 15 days but not more than 5 years, and a fine of more than TND 60.

Misdemeanours are violations punishable by not more than 15 days’ imprisonment or a fine of not more than TND 60.

As a benchmark, the OECD Working Group on Bribery has systematically held that any statutory limitation period of less than five years is inadequate for investigating and prosecuting the bribery of foreign public officials. Moreover, Tunisia reports that there are a number of operational problems that will have to be reviewed, and certain legal loopholes that could allow those who pay or receive bribes to benefit from time bars.

13. Investigative techniques

International standards demand “adequate resources” that will permit the effective investigation and prosecution of bribery, as well as special investigative techniques (OECD Convention, Commentary 27 and Annex 1 to the 2009 recommendation; UNCAC, Article 50). With respect to investigative techniques, the UNCAC notes the importance of allowing the competent authorities to use controlled deliveries, electronic or other forms of surveillance and undercover operations, and of ensuring that the evidence derived from these techniques will be admissible in court. Tunisia notes that it will have to establish a specialised judicial unit for bribery cases and adopt a law allowing that unit to resort to special investigative techniques, as has been done in many States Parties to the OECD Convention.

Tunisia reports that Decree Law No 120 of 2011 on the fight against corruption gives very broad prerogatives to the National Anti-corruption Unit for investigating presumed cases of bribery before handing over the files to the competent judicial authorities (Article 13 in particular) – (Available only in Arabic)

Tunisia also mentions the powers of the Tunisian Financial Analysis Commission (CTAF) to demand information from the administrative authorities and from the persons cited in the law on combating terrorism and money laundering. The general tools and procedures to be used by investigating magistrates are governed by Articles 47 to 57 of the Code of Criminal Procedure:

ARTICLE 47

Preliminary investigation is mandatory for crimes; except where the law provides otherwise, it is optional in the case of offences and misdemeanours.

ARTICLE 48

The functions of an investigating magistrate are entrusted by decree. If necessary, a judge may be appointed by ministerial order to perform the functions of investigating magistrate on a provisional basis or to investigate specific cases.

An investigating magistrate who is absent or temporarily prevented from performing his functions is
replaced, in urgent cases, by a sitting judge appointed by the President of the Court.

**Article 49**

When a court has several investigating magistrates, the Public Prosecutor’s Office shall appoint the judge responsible for each investigation.

**Article 50**

The task of the investigating magistrate is to prepare the way for criminal proceedings by diligently seeking the truth and determining all the facts needed by the competent court as the basis for its decision.

Investigating magistrates may not participate in the trial of cases they have investigated.

**Article 51**

The evidence and charges prepared are turned over to the investigating magistrate.

That magistrate is required to investigate the facts cited, and only those facts, unless new facts come to light that would aggravate the circumstances of the referred charges.

**Article 52**

The case may be referred to the investigating magistrate of the place where the violation was committed, or the place of the defendant’s domicile or of the defendant’s last residence, or of the defendant’s current location.

If the violation falls within the competence of an exceptional jurisdiction, the investigating magistrate shall proceed with urgent investigative acts and then withdraw from the case.

**Article 53**

Assisted by the clerk, the investigating magistrate shall hear witnesses, question the defendants and proceed to on-site verifications, house visits and the seizure of evidence.

The investigating magistrate shall order such expertise and perform such acts as needed to provide evidence that will prove or disprove the charges.

The magistrate, the clerk and the witness must sign each page of the investigative report.

There may be no additions between the lines, and any deletions or cross references shall be approved and signed by the investigating magistrate, the clerk and the witness. Deletions and cross references not approved, as well as any additions between the lines, are deemed null and void.

**Article 54**

The investigating magistrate may conduct an inquiry into the personality of the suspects as well as their material, family or social situation, or may have this done by officers of the judicial police mentioned in Article 10(3) and (4).

The investigating magistrate may also have the suspect undergo a medical and psychological examination.
Note. A psychiatric examination is mandatory if the suspect commits a violation within ten years after the first sentence has been served or suspended or has expired, and if the two violations are punishable by imprisonment of ten years or more.

**Article 55**

In his initial submission, and at any time during investigation pursuant to additional referrals, the Public Prosecutor’s Office may request the investigating magistrate to perform any act deemed useful for discovering the truth.

The case file may be sent to the Public Prosecutor’s Office for this purpose, provided it is returned within 48 hours.

If the investigating magistrate believes he should not proceed with the requested acts, he must issue a substantiated ruling within three days of the Public Prosecutor’s Office’s submissions, which ruling may be appealed before the accusation chamber within four days of its communication.

**Article 56**

The investigating magistrate, at his own initiative or at the request of the Public Prosecutor’s Office, may visit the scene of the crime, the home of the suspect, or any other place where evidence useful to revealing the truth is likely to be found.

If the investigating magistrate decides to make such visits at his own initiative, he must so advise the Public Prosecutor’s Office and, notwithstanding the latter’s absence, he may carry out the necessary operations.

The suspect will be taken to the place of the visit, if his presence is deemed necessary.

**Article 57**

If it is impossible for the investigating magistrate to undertake in person all the investigative steps, he may, by letter rogatory, commission the investigating magistrates of other districts or the judicial police officers of his own district, as relevant, to perform such acts, with the exception of judicial mandates. For this purpose he must issue an order which he sends for execution to the Public Prosecutor’s Office.

Note: if execution of the rogatory commission requires the suspect to be heard, the judicial police officers must inform him of his right to be assisted by an attorney of his choice, and this fact is noted in the report. If the suspect appoints an attorney, he will be immediately advised by the judicial police officer of the date of the hearing, which fact is mentioned in the report. In this case, the hearing will not be held without the presence of the authorised attorney, unless the suspect expressly waives his right to the assistance of an attorney or the attorney fails to appear on the date set, which fact is mentioned in the report.

Note: this hearing does not relieve the investigating magistrate of his duties pursuant to Article 69, if he has not already performed them.

Note: if for the purposes of fulfilling the rogatory commission the judicial police officer must detain a suspect whom the investigating magistrate has not yet heard, the suspect may be placed in police custody, after referral to the investigating magistrate, for not more than three days. The committing magistrate may issue a written decision extending that custody for the same period, one time only,
citing in that decision the reasons and the applicable law. The judicial police officer must then comply with the provisions of Article 13bis relating to the registration of identities, the keeping of records, and the medical examination.

The district judge commissioned by letter rogatory may not delegate his responsibilities to other judicial police officers without the express authorisation of the investigating magistrate.

**Article 58**

If the investigation so requires, the investigating magistrate may, accompanied by the clerk, conduct visits to neighbouring court precincts provided he first advises the Public Prosecutor’s Office of those precincts, and records the reasons for the visit in his report.

He must also notify this visit to the prosecutor of his own court, and notwithstanding the latter’s absence may carry out the necessary operations.

14. International co-operation

The OECD and UN Conventions on corruption and bribery specify that when a party makes mutual legal assistance conditional upon the existence of dual criminality, that condition is deemed to exist if the offence for which assistance is sought is within the scope of these Conventions. Tunisia must ensure that there is no need to verify the existence of dual criminality when it receives requests for assistance from other parties to these two Conventions.

With respect to international standards on mutual legal assistance and bank secrecy, a country may not refuse to render mutual legal assistance for criminal matters within the scope of the Convention on the grounds of bank secrecy. For this reason, Tunisian legal provisions prohibiting the authorities from invoking bank secrecy to deny requests for mutual assistance are very important.

As to the principle of Tunisian law that prohibits the extradition of Tunisian nationals, Article 44(11) of the UNCAC and Article 10(3) of the OECD Convention provide that if a party refuses to extradite a person for bribery solely on the ground that the person is its national, that party shall, at the request of the State Party requesting extradition, submit the case promptly to its competent authorities for the purpose of prosecution. These provisions reflect the principle of international law known as *aut dedere aut judicare* ["extradite or prosecute"]. It is important for Tunisia to ensure that, if extradition is not possible, it can prosecute, as a priority, any national whose extradition is requested for an offence of bribery.
## III. Reforms under way

<table>
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<th>Reform under way</th>
<th>Objective</th>
<th>Co-operation with international institutions</th>
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| The national anti-corruption strategy announced on 9 December 2012 includes an item for reviewing the legal framework governing the fight against corruption and bringing it into line with the provisions of the United Nations Convention against Corruption | Making the legal framework against corruption consistent with the UNCAC. | − STAR (World Bank and United Nations Office on Drugs and Crime (UNODC)  
− UNDP  
− European Union  
− Interpol  
− OECD  
− AfDB  
− Bilateral co-operation |
| The strategic plan to reform the judicial system includes as a principal theme the overhaul of national criminal law to respond to the requirements for combating crime and complying with international standards. | Reform of the Penal Code to make it consistent with international standards. | − STAR  
− UNDP  
− European Union  
− Interpol  
− OECD  
− AfDB  
− Bilateral co-operation |
| Decree Law No. 120 of 2012 on combating corruption requires the State to ensure criminal liability for any natural or legal person guilty of corruption. | Establishment of the criminal liability of legal persons for offences of corruption. | |
| Drafting of a new Tunisian Constitution. | Guarantee of the independence of the Attorney General’s office vis-à-vis the executive branch. | |
| Project to overhaul the Code of Criminal Procedure. | Introduction into Tunisian law of special investigation techniques such as controlled delivery, undercover operations, interception of communications, search and seizure of electronic data. | |
| Project to create a specialised judicial unit for bribery cases. | A specialised unit for bribery cases is to be instituted in support of the national anti-corruption effort. The legislation creating it will give it the flexibility and jurisdiction needed to investigate cases of bribery. | |
IV. IDENTIFICATION OF PRIORITY REFORMS

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<th>Reform</th>
<th>Evaluation</th>
<th>Comments</th>
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<tr>
<td>Reform of criminal law – definition of foreign public official</td>
<td></td>
<td>- Establish the offence of bribing foreign public officials by adding to the definition of public official any foreign civil servant/public official and official of a public international organisation.</td>
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<td>Reform of criminal law – criminal liability of legal persons for bribery offences</td>
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<td>- Establish the criminal liability of legal persons, including public enterprises, for bribery.</td>
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<td>- This liability must be independent of the criminal liability of natural persons who have committed the offences, and must be accompanied by sanctions that are effective, proportionate and dissuasive.</td>
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<td>Reform of criminal law – bribery of foreign public officials</td>
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<td>- Make the bribery of foreign public officials a criminal offence, consistent with Article 1 of the OECD Convention and Article 16 of the UNCAC.</td>
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<td>Reform of criminal law – definition of public official</td>
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<td>- Ensure that the definition of public official includes all the categories covered by the UNCAC and the OECD Convention, in particular all persons who provide a public service, appointed or elected, permanent or temporary, paid or unpaid, irrespective of seniority.</td>
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<td>Reform of criminal law – offence of bribery of public officials</td>
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<td>Ensure that the offence covers:</td>
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<td>- offers of bribes and not only the promise or giving of bribes;</td>
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<td>- promises, offers or payment of bribes indirectly to a public official;</td>
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<td>- promises, offers or payment of bribes to third parties;</td>
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<td>- bribes offered to perform or facilitate acts beyond the official competences of the public official in question.</td>
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<td>Reform of criminal law – sanctions for bribing public officials</td>
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<td>- Increase the monetary penalty for the offence of bribing public officials.</td>
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<td>- Ensure uniform sanctions for attempted bribery.</td>
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<td>- Impose sanctions for preparation of the offence (Article 32, Penal Code).</td>
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<td>- Confirm the possibility of confiscating (i) the proceeds of bribery; and (ii) assets of a value equivalent to those proceeds.</td>
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<td>- Eliminate the “effective regret” defence in Article 93.</td>
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Reform of criminal law – jurisdiction for prosecuting acts of bribery

- Confirm national jurisdiction over Tunisian companies when they commit the offences abroad.
- Confirm territorial jurisdiction when the offence is committed wholly or in part on Tunisian territory.

Investigative and prosecutorial independence

- Ensure the independence of the Attorney General’s office vis-à-vis the executive branch.

Statute of limitations for cases of bribery

- Verify the limitation period applicable to the bribery of public officials.
- Address the operational problems and legal loopholes that allow bribers or the recipients of bribes to benefit from time bars.

International co-operation

- Ensure that there is no need to confirm the existence of dual criminality in the case of requests for mutual assistance from other parties to the two conventions (UNCAC and OECD Convention).
- Ensure that, if extradition is not possible, Tunisia can prosecute, as a priority, any Tunisian national whose extradition for bribery is requested.

V. Examples of good practice in the introduction of priority reforms

Based on the text of the OECD Convention on Combating Bribery, its commentaries and the 2009 Recommendation for further combating bribery (www.oecd.org/fr/daf/anti-corruption/conventioncontrelacorruption/38028103.pdf), the evaluations of implementation of the Convention by member countries of the OECD Working Group on Bribery contain important analyses and recommendations on criminalising the bribery of foreign public officials. These will also be useful in connection with reforming the framework for combating bribery of national public officials: www.oecd.org/fr/daf/anti-corruption/rapportsparpayssurlamiseenoeuvredelaconventiondeluttecontre lacorruptiondeloce.htm.

With respect to criminalising the bribery of foreign public officials and the criminal liability of legal persons for acts of corruption, Annex I of the 2009 OECD Council Recommendation on further combating bribery is the only guide for good practice at international level in this area:

A. Article 1 of the OECD Convention on combating bribery: the bribery of foreign public officials

Article 1 of the OECD Anti-Bribery Convention should be implemented in such a way that it does not provide a defence or exception where the foreign public official solicits a bribe.

Member countries should undertake public awareness-raising actions and provide specific written guidance to the public on their laws implementing the OECD Anti-Bribery Convention and the Commentaries to the Convention.
Member countries should provide information and training as appropriate to their public officials posted abroad on their laws implementing the OECD Anti-Bribery Convention, so that such personnel can provide basic information to their companies in foreign countries and appropriate assistance when such companies are confronted with bribe solicitations.

**B. Article 2 of the OECD Convention on Combating Bribery: Responsibility of legal persons**

Member countries’ systems of liability of legal persons for the bribery of foreign public officials in international business transactions should not restrict the liability to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted.

Member countries’ systems of liability of legal persons for the bribery of foreign public officials in international business transactions should take one of the following approaches:

a. the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons; or

b. the approach is functionally equivalent to the foregoing even though it is only triggered by acts of persons with the highest level of managerial authority, because the following cases are covered:

- a person with the highest level managerial authority offers, promises or gives a bribe to a foreign public official;
- a person with the highest level managerial authority directs or authorises a lower level person to offer, promise or give a bribe to a foreign public official; and
- a person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics and compliance programmes or measures.

**C. Responsibility for bribery through intermediaries**

Member countries should ensure that, in accordance with Article 1 of the OECD Anti-Bribery Convention, and the principle of functional equivalence in Commentary 2 to that Convention, a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to offer, promise or give a bribe to a foreign public official on its behalf.

**VI. Action plan for the implementation of priority reforms**

The reforms to the anti-corruption framework in Tunisia, particularly to the Penal Code, are intended to bring Tunisia into line with international standards in this area. Tunisia has introduced the following initiatives to that end:

- Creation of the National Anti-corruption Unit
- International co-operation for the recovery of ill-gotten assets
- Programme to reinforce governance, integrity and transparency
- Programme to develop e-procurement
- Association Agenda with the European Union
- National strategy for combating bribery
- Strategic plan to reform the legal system
In the context of these initiatives, Tunisia, which has shown an interest in the Working Group’s activities, should consider establishing the offence of active bribery of foreign public officials and should extend the criminal liability of legal persons, which already exists for money-laundering, to this new offence.

Sharing of knowledge and experience: the OECD is at the disposal of the Tunisian Government to support the initiatives set out above. In particular, the member countries of the OECD Working Group on Bribery could share their knowledge and experience in implementing the OECD Convention on combating bribery and criminalising corruption.

Participation in plenary meetings of the OECD Working Group on Bribery as a Guest Country: Tunisia could attend the Working Group’s annual plenary meetings in March, June, October and December as a Guest Country, subject to the agreement of the member countries.

Technical seminars on the legal reform: the Working Group’s Secretariat could support the Tunisian authorities when they organise technical seminars on the process of reforming the anti-corruption legal framework. This support, based on the Secretariat’s experience to date in organising such seminars, could involve the provision of advice on the subjects to be addressed and the participation of national or international experts.
PART 2: INTEGRITY OF PUBLIC EDUCATION IN TUNISIA
Integrity of public education in Tunisia: Restoring Trust and fighting corruption

Results of a preliminary Integrity Scan (PRINTS) of Tunisian education

The preliminary study of integrity in the education sector was prepared in the OECD Directorate for Education and Skills by Mihaylo Milovanovitch, Early Childhood and Schools Division, and Simone Bloem, Innovation and Measuring Progress Division. It would have been impossible without the support and inputs of Michael Davidson, Head of Early Childhood and Schools Division (ECS), OECD Directorate for Education and Skills (EDU); Selim Guedouar, Policy Analyst, OECD CleanGovBiz Initiative; Julie Bélanger, Education Policy Analyst (ECS/EDU); Miyako Ikeda, Education Policy Analyst (ECS/EDU); Isabelle Moulherat, Innovation and Measuring Progress Division (EDU); Célia Braga-Schich (EDU); Lynda Hawe (EDU); and also Nawel Ayadi, Forum Universitaire Tunisien (Tunisia); Professor Serge Ebersold, Institut national supérieur pour l’éducation des jeunes handicapés et les enseignements adaptés (France); Kate Lapham, Open Society Foundations; and Ivana Ceneric, Education Policy Analyst, National Education Council of Serbia. The team also wishes to thank all the opposite numbers it met during the field visit to Tunisia in April 2013.

The preliminary study of integrity in the education sector was prepared with the financial support of the Education Support Program of the Open Society Foundations.

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22 The Integrity Scan was prepared in the OECD Directorate for Education and Skills by Mihaylo Milovanovitch, Early Childhood and Schools Division and Simone Bloem, Innovation and Measuring Progress Division.
Preliminary Integrity Scan (PRINTS) in Education

The Approach

The 1990s witnessed a wave of corruption scandals in Western and Eastern Europe that shook public confidence and raised awareness of just how endemic the problem has become, in both established democracies and countries in transition (Della Porta and Mény 1997). Since then national governments and International Organisations have stepped up efforts in strengthening public sector integrity and have agreed on anti-corruption standards, embodied in legally binding instruments such as the Council of Europe Criminal Law Convention on Corruption of 1999, or the United Nations Convention against Corruption of 2003 (OECD 2008; Milovanovitch 2013a; see also OECD 2005).

Integrity matters in education too. Strengthening the integrity of education systems can be a rewarding approach in preventing corruption and limiting the damage that corrupt schools and universities cause to society, the economy and the human potential of nations. Consequently, in 2010 the OECD initiated work on a novel framework for assessing integrity in education – a sector of long-term importance for OECD members and partner economies alike.

The OECD Integrity of Education Systems project (INTES) was designed to support national education and anti-corruption authorities in detecting and effectively preventing corruption in the sector by reconstructing the landscape of the root, systemic causes of malpractice and helping them identify areas of concern, such as the shortcomings of staff and resource management, effectiveness of learning in schools, accountability and transparency deficits, etc. The aim is not to support law enforcement officials in chasing criminals, but to shed light on factors that drive malpractice and to provide guidance on how to best eliminate them. There can hardly be a better way to raise the effectiveness of anti-corruption policies than by targeting the root causes of corruption.

Some of the malpractice in education will always be due to the criminal intentions of individuals who are, above all, interested in personal gain. The majority of potential perpetrators in this particular sector are, however, regular people – parents, students, teachers, principals. Instead of attributing criminal intent to all of them, the INTES approach suggests that their motives to bend or break rules to their own or their children’s advantage are more likely rooted in a perception that education is failing to deliver what is expected, and that by-passing rules is a possible, sometimes even the only available, “remedy” for schools which regularly fail to prepare their students for graduation exams, for the insufficient number of places in universities, for the lack of professional recognition of teachers and their low wages, for inadequate school budgets, etc (OECD 2012a: 18).

The primary aim of the INTES approach is 1) the detection of instances of mismatch between education deliverables and stakeholder expectations which might create incentives for malpractice and 2) finding the loopholes in the prevention and detection framework which allow those who have the incentives (and the readiness) to commit corruption offences the opportunity to do so.

What do stakeholders expect from their schools and universities? INTES groups these expectations in three major categories: expectations related to quality education, to access to education, and to fair and sound management of staff and resources. A fourth transversal dimension is a strong and effective prevention and detection framework (PDF), which comprises anti-corruption policy solutions a country applies to the public sector in general and the education sector in particular, including anti-corruption legislation, the work of specialised institutions such as anti-corruption agencies, civil society involvement, financial control, but also more sector-specific elements such as school inspections, data availability and administrative transparency of schools regional and central level education departments, etc.
For the fulfilment of this complex task INTES relies on analysis of standard education indicators and data from large scale assessments (e.g. from the OECD Programme for International Student Assessment – PISA), combined with peer review type activities, most notably stakeholder interviews. The available data and information is classified according to its informative value for detecting corruption incentives in the four assessment dimensions: quality of education, access to education, staff and resources, detection and prevention, and interpreted with the help of a comprehensive analytical framework. The methodology can be used to guide full scale country assessments such as the one recently completed in the Republic of Serbia (OECD 2012a), or the preparation of more limited but faster preliminary Integrity Scans (PRINTS), like the one carried out in Tunisia and presented here.

**Application of the approach in Tunisia**

The integrity PRINTS of education in Tunisia was requested by the Tunisian authorities in the course of the public sector Integrity Scan carried out by the OECD in 2012/2013. The work relied mostly on desk research, and on a field trip to Tunis in early May 2013 which helped contextualise the analysis through talks with representatives of civil society, student organisations, representatives from the Ministry of Education and the Ministry of Governance, the Centre for Evaluation and Assessment, as well as with students and educational professionals -- primary and secondary teachers, pedagogical inspectors, university professors and a rector of a private university in Tunis. The data sources mobilised for the PRINTS included the UNESCO Institute of Statistics, the World Bank Development Indicators Database, and the database of the OECD Programme for International Student Assessment (PISA).

By definition, the integrity PRINTS are more limited than a full assessment of the education system. The integrity PRINTS of Tunisian education discusses a sample of major integrity shortcomings in secondary and higher education, touch upon sector specific elements of the prevention and detection framework, and provide suggestions for national follow-up.
THE TUNISIAN EDUCATION SYSTEM

The education system of Tunisia is organised into 4 levels, pre-primary, basic, (upper) secondary and higher education. Obligatory schooling in Tunisia is from age 6 to 16 with 13 years of primary and secondary schooling.

Despite some efforts to strengthen pre-primary education and a sharp increase in the number of private kindergartens since the 1990s, pre-school attendance rate remains low (from 7% in 1990 to 13% in 1998 and 14% in 2000). Less than one third of children aged 5 attended pre-primary education in 2002/2003, the latest year for which the UNESCO Institute of Statistics has data. Kindergartens are mainly run by private organisations or by the local authorities.

The duration of basic education is nine years with six years of primary and 3 years of lower secondary education. Upper secondary education takes 4 years and is divided in two stages, general academic and specialised. It is open to students who hold the basic education school leaving certificate. In the first year of upper secondary education, students follow a common curriculum and from the second year onwards specialise in literature, sciences, economics and management, mathematics and technical studies. The language of instruction in technical, scientific and mathematics fields is French. Other subjects are taught in Arabic. At the end of the fourth year students sit the Examen National du Baccalauréat (baccalaureate). Successful completion of the baccalaureate gives access to higher education institutions. Students that do not pass the exam receive a certificate of completion which can be used for employment or for access to private education institutions. About half of the students that sit the baccalaureate exam complete it successfully.

Technical and vocational training (VET) is under the responsibility of the Ministry of Employment. Students can enrol into two year vocational programmes after the second year of basic secondary education. The successful completion of these programmes with the Certificat d’Aptitude Professionnelle gives access to advanced two-years vocational programmes and lead to the Brevet de Technicien Professionnel, which in turn gives access to two-year Brevet de Technicien Supérieur programmes.

The higher education sector has experienced rapid expansion in the last decade (see Figure 2) and currently comprises 178 public institutions, of which 155 institutions are under the direct supervision of the Ministry of Higher Education. Besides the general higher education institutions, there are 20 university-level private institutions, 24 higher institutes of technological studies and six higher institutes of teacher training. Public higher education is free of charge. Tunisia undertook reforms to implement the three-tier Bologna system, with three years licence programmes, two year Master programmes and five year Doctorate programmes. The creation of a national evaluation and accreditation agency was envisaged to be completed by 2012, but the new institution has not yet taken up its duties.

Private education is of growing importance in Tunisia, especially in primary education.

THE INTEGRITY CONTEXT OF EDUCATION IN TUNISIA

In the decades following independence in 1956, Tunisia was one of the fastest growing economies in Africa and the Middle East after the Gulf States (UN DESA 2011) and in 2010 and 2011 had the highest level of human development in the MENA region after the Gulf States (UNDP 2011). The country was also quick to leave behind the times when education was a privilege reserved for the very few, and became one of the first in the region to embrace the value of good schooling as key to individual prosperity. Economic growth went hand in hand with an impressive expansion of education coverage, with improvements in educational attainment (Figure 2), and certainly also with the creation of jobs.
Throughout the 1970s and the 1980s, Tunisia prided itself as providing the best education in Africa and the Middle East and today the government still considers it to be a source of comparative advantage in attracting foreign direct investment. Public policies are shaped accordingly – the education sector has consistently been placed at the core of national development strategies (World Bank 2008) and continues to benefit from a lion’s share of the public budget, despite the economic crisis of 2008/2009 and the political changes. In 2008 for example Tunisia allocated close to 23% of its public budget to education, a share that was almost twice the OECD average, surpassed only by resource allocations in Morocco and the United Arab Emirates (Figure 3). Tunisia also devotes a high proportion of its overall national wealth to education – in 2008 education expenditure as share of GDP was 6.3%, which is the second highest of all countries in the region for which there is data, and above relative spending in OECD countries.
Figure 3: Expenditure on educational institutions as a share of GDP and of overall government spending, 2008 or most recent year

Notes on years of reference:
1) 2003
2) 2004
3) 2007
4) 2009


Yet, after decades of dictatorship and despite all investments, the situation does not look promising. The quality of learning outcomes is very low by international comparison (see section on quality of education below) and the numbers of unemployed university graduates have skyrocketed in recent years (Figure 4), shaking the public conviction that education leads to employment and leaving stakeholders and graduates with the impression that education institutions lack the capacity to provide what is demanded – by them and by the labour market.

Figure 4 Share of unemployed people with tertiary education, 1989-2009

Source: Tunisian Institute of Statistics
The gradual loss of trust in public education institutions which stakeholders also reported on during the field visit must be a painful process, especially against the background of expectations still directed at the sector, and of the amount of public and household resources invested in it. From an integrity perspective, the loss of trust is an alarming development.

Participants in education depend on each other: students on their teachers and parents, teachers and schools on education authorities (and sometimes on support and/or approval from parents), and parents on teachers and education authorities for the success of their children (Milovanovitch 2013a). What holds these relationships together is trust – trust that authority is not abused, that everyone involved is doing his or her best for the benefit of all involved, and that behind the closed doors of their classrooms, education institutions are fulfilling their noble mandate to instil knowledge and values instead of abusing it. Universities function on the basis of trust as well – trust that researchers who work at the frontiers of knowledge and “beyond the expertise of all but a few others in the world” do their work right and do not falsify its results (Anderson 2008) and trust that academic credentials reflect achievement and not illicit deals.

A loss of trust in education institutions is a loss of trust in their integrity, which in turn invites tolerance for malpractice. Tunisia does not participate in Transparency International’s Global Corruption Barometer which surveys corruption perceptions in sectors, but the preliminary results of a survey carried out in 2013 among students and staff in Tunisian universities confirm that perceptions of corruption are widespread. Media reports also regularly suggest the presence of corruption in the sector. The Ministry of Education is one of the few ministries that work in close co-operation with the Ministry of Good Governance and in 2012 alone it transferred approximately 300 corruption allegations that originated from complaints from citizens, associations, civil parties, etc. and concerned administrative and financial processes at regional and central levels, as well as in schools. In some 150 cases the accused persons/institutions have been sanctioned, 31 disciplinary proceedings were initiated, 41 persons were removed from office and 15 cases have been sent to court. Furthermore, 4 persons working in the cabinet have also been removed from office.

Reports on individual cases are very common as well. A recent article in a journal for example reports on a petition signed by teachers of a college against their principal, who was accused of misappropriating college funds. The principal was removed from his post and transferred to a high-level position in the Ministry of Education, whereas four of the teachers were convicted and given minor sentences, for reasons not fully explained. The authorities should explore to what extent vested interests that date back to the former regime still influence the structures governing the education system. Examples of de facto pardoning of perpetrators by sidestepping the rule of law can easily jeopardise efforts to curb corruption and should be prevented.

INTEGRITY IN SECONDARY EDUCATION

In order to detect systemic failures that have the potential of generating incentives for malpractice, and to identify practices of participants in the system that bear corruption potential, the INTES framework grouped standard indicators on learning outcomes in Tunisia along three of the four assessment dimensions, benchmarked them against average performance in OECD countries as a proxy of stakeholder expectations, and contextualised their interpretation in discussions with stakeholders during the field trip. Table 1 presents the results of the integrity PRINTS in the area of quality, which suggest a massive failure of pre-university education to deliver quality according to stakeholder expectations, as well as the presence of strong incentives for remedial malpractice. The following sub-sections provide detail on current practices of stakeholders and education professionals which, if not addressed, bear
corruption potential; factors that determine the rationale for such practices and fuel the integrity risk; and shortcomings that provide opportunity for malpractice.

Table 1 Integrity PRINT: quality and effectiveness of classroom learning

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**LEGEND: QUALITY AND EFFECTIVENESS OF CLASSROOM LEARNING**

Q1: Student performance, PISA 2006
Q2: Student performance, PISA 2009
Q3: Allocation of total learning time: regular lessons, PISA 2009
Q4: Allocation of total learning time: out-of-school lessons, PISA 2009
Q5: Proportion of students participating in one-to-one out-of-school lessons with non-school teachers, upper secondary education, PISA 2006
Q6: Proportion of students participating in one-to-one out-of-school lessons with school teachers, upper secondary education, PISA 2006
Q7: Ratio of all students that want to become teachers and students scoring in the upper third on the national reading scale that want to become teachers, PISA 2006

Source: OECD PISA 2006 and 2009 databases; UNESCO Institute of Statistics

**Practices with corruption potential in pre-university education in Tunisia**

*Quality of education* is a key education deliverable. Parents and students are usually prepared to go to great lengths to ensure that their expectations in this area are met (Milovanovitch 2013a). Education institutions that consistently fail to convince stakeholders (in particular parents) of the quality of what they deliver are likely to trigger reactions – some of them legitimate, such as the choice of another school if permitted, or seeking a dialogue with teachers and principals, others not so, such as pressuring the teachers of their children or bribing them, for example through private tutoring. If limited to individual institutions, quality failures are manageable through good policies. If widespread in the education system they represent a severe integrity threat by undermining trust in the ability of schools to fulfil (some or many) of their functions and the capacity of the education system to function properly.

The public in Tunisia seems to have indeed lost trust in its public schools. Remarkably many secondary school students in Tunisia have to “shift” learning in a number of subjects away from their classrooms to various forms of out-of-school instruction: 70% of 15-year-olds in the country participate in out-of-school lessons (9th highest of all 54 countries for which PISA provides data, as shown in Figure 5), and an astounding 54% of future high school graduates are given private lessons by teachers from their own school – 5th highest after Kyrgyzstan (the worst PISA performer), Azerbaijan, the Russian Federation and Jordan. As virtually all students receive extra lessons at some point in their education, private tutoring in Tunisia is very likely something of an obligatory activity in order to keep up. Students from socio-economically advantaged backgrounds can afford to take extra lessons more frequently than students from more disadvantaged backgrounds – a tendency which widens an already existing gap in education quality between the have and have nots. In PISA 2006, four out of five of students from affluent socio-economic background in Tunisia (those in the top quarter of the PISA index of economic, social and cultural status (ESCS) reported taking part in out-of-school lessons, compared to only three out of five of their peers from less affluent backgrounds (those in the bottom quarter of ESCS). During the field visit stakeholders shared a conviction that by now the frequency of out-of-school lessons must have become
similarly high for all students, well off or not. They also reported on rising enrolment in private education as an alternative to the deteriorating quality of public schools.

**Figure 5 Percentage of students participating in out-of-school lessons, Tunisia and selected countries**

![Graph showing percentage of students participating in out-of-school lessons.](image)

Source: PISA 2006 and 2009 Databases

Is private tutoring a corruption offence? Sometimes it is, for example when teachers request from their own students to take private lessons as condition for passing an exam (Bray 2013). Things become less clear when, for example, parts of the curriculum are purposefully skipped in regular lessons to stimulate demand for tutoring -- a case of a “softer” form of corruption which falls short of being a criminal offence, but still poses a serious integrity threat (Milovanovitch 2013a). Data on the prevalence of different tutoring forms can be misleading, especially when teachers resort to private tutoring schemes in which they send their students to each other or to fellow tutoring companies. What is certain is that private tutoring is a phenomenon that many countries are confronted with – most notably countries in East Asia and East and Central Europe (Figure 5).

The question of how much is too much does not have an easy answer, but there should be less doubt that action needs to be taken whenever existing practices start to nurture popular beliefs of corruption and distrust in the fairness of the system and affect its equity and when, like in Tunisia, more than half of the secondary school population needs to meet its teachers out-of-school in order to succeed in school. Failing to react to such developments facilitates the emergence of a “shadow” system in which tutoring becomes a pre-condition for passing exams or progressing to higher levels of education, hence trapping students in a vicious circle of limited learning during regular school hours that creates need for tutoring, which in turn limits the effectiveness of learning in class (OECD 2012a). Further analysis suggests that in Tunisia this may already be the case.

Recognising a problem is good, knowing what to do about it is better. What drives the corruption risk?

**Incentives: misconceptions about working conditions**

By the time the integrity PRINTS was carried out in Tunisia (April/May 2013), the practice of private tutoring was so widespread that it was impossible to determine what is cause and what is consequence – whether there are systemic shortcomings (such as overburdened curriculum, insufficient time for teacher preparation, inefficient organisation of the school day, etc.) that lower the effectiveness of learning and
trigger a need for remedial teaching, or whether remedial teaching is affecting the motivation of teachers and students to do their best during regular school hours, or possibly both.

Research suggests that wages are always a good starting point in the analysis of reasons for integrity threats. Adequate salaries are very important for ensuring honesty and professionalism in the civil service and in the teaching profession. Low salaries and inadequate working conditions tend to cause “adaptive responses” to difficult situations, in some cases even with the blessing of governments which are not in the position to invest more resources and improve working conditions (U4 2006). The integrity PRINT for Tunisia in the area of staff and resources suggests that, contrary to perceptions among teacher professionals, their remuneration and conditions of work are fair by international comparison. The two exceptions are the status of the teaching profession which is very low (indicator SR1, Table 2), and career progression in terms of salary after 15 years of teaching in proportion to starting salary, which is smaller than in OECD countries on average (indicator SR4).

Table 2 Integrity PRINT: staff and resources

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<td>Ratio of all students that want to become teachers and students scoring in the upper third on the national reading scale that want to become teachers, PISA 2006</td>
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<td>SR2</td>
<td>Ratio of teachers’ salaries after 15 years of experience to GNI per capita, upper secondary school teacher (2003)</td>
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<td>SR3</td>
<td>Ratio of teachers’ salaries after 15 years of experience to GNI per capita, primary school teacher (2003)</td>
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<td>SR4</td>
<td>Teachers’ annual salaries in public institutions after 15 years of experience relative to starting salaries (in US dollars PPP), upper secondary teacher (2008)</td>
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<td>SR5</td>
<td>Teachers’ annual salaries in public institutions after 15 years of experience relative to starting salaries (in US dollars PPP), primary education teacher (2008)</td>
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<td>SR6</td>
<td>Ratio of salary after 15 years of experience (minimum training) to earnings for full-time workers with tertiary education aged 25 to 54 (2009)</td>
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Note: Indicators for which no data is available for Tunisia are marked in grey.
Source: OECD PISA 2009 and 2006 databases; UIS statistics and World Bank Development Indicators for SR2 and SR3.

Apart from that, when compared to per capita income and to relative teacher salaries in other countries, the salaries of teachers in Tunisia in both primary and secondary education are rather generous. Figure 6 shows that the starting salaries of teachers in secondary schools in Tunisia are 1.7 times higher than per capita GDP. This is above the relative income of beginner teachers in OECD countries on average. The second highest wage in relative terms is paid in Turkey (1.6 times higher than GDP per capita), followed by Germany (1.4 times higher), Spain (1.3 times higher), and Mexico (1.3) – all of them countries with influential trade unions. The average starting teacher salary in the OECD area is lower than average per capita GDP (0.9). In contrast, the pay-scale progression of teachers in Tunisia is somewhat flat by international comparison (1.3), which means that the difference in income between mid-career teachers and graduates just entering the profession is smaller than in OECD countries on average (OECD: 1.5).
Figure 6 Teacher salaries and pay-scale progression in proportion to GDP per capita, Tunisia and selected countries

Note 1: Actual base salaries.

Data on OECD countries from 2009. Data on Tunisia from 2008.

Sources: OECD; GDP per capita data: World Bank Development Indicators; Kazakhstan: Ministry of National Education; National Statistical Agency and World Bank Development Indicators.

This might or might not have an impact on the motivation of more experienced teachers to develop professionally and teach effectively. It would be fair to note that the official annual workload of Tunisian teachers is among the lowest of all countries for which the UNESCO Institute of Statistics has data (Figure 7). The average workload in secondary education is 493 hours per year, the second lowest after Uruguay (427), and lower than in Denmark (506), Korea (513), and the OECD on average (577). The schools in the two other MENA countries included in Figure 8 - Egypt and Jordan – keep their teaching staff working for 614 and 792 hours per year respectively. Tunisian teachers also have the lowest number of teaching weeks per year – 30. Their peers in the OECD countries teach 38 weeks annually on average.
Certainly, the results of international benchmarking might not coincide with perceptions of staff working in the system about how adequate their compensation is. Nevertheless, as far as available evidence is concerned, teacher wages would not be the best choice to start an effective anti-corruption intervention in Tunisian pre-university education. This is good news, as salaries and salary increases can be the biggest driver of cost in the sector (OECD 2012b).

INCENTIVES: QUALITY FAILURE AS A DRIVER OF RISK

Another piece of good news is that teachers in Tunisia have more hours per week for teaching classes in mathematics, science and language of instruction than their peers in OECD countries on average: almost one hour more in language of instruction (OECD average: 3 hours and 37 minutes), half an hour more in science lessons (OECD average: 3 hours and 22 minutes), and just a few minutes more in mathematics (OECD average: 3 hours and 14 minutes). Yet despite favourable conditions and time allocations, the effectiveness of classroom learning in Tunisia seems to be very low. Tunisian students still spend most of their total learning time in these subjects in out-of-school lessons – more than in any other PISA country in mathematics, second highest after Greece in science, and second highest after the Kyrgyzstan in language of instruction (Figure 8).
PISA analysis has shown that, across countries, the allocation of learning time over regular lessons, out-of-school lessons and individual study is decisive for the quality of learning outcomes. Findings show that students tend to perform better if a high percentage of their total learning time is dedicated to regular school lessons. The amount of learning time in out-of-school-time lessons and individual study is even negatively related to performance (OECD 2011a). For example, students in Japan, Australia, New Zealand and Finland spend more than 70% of their total time for learning in science in regular lessons. These are all high performing countries in PISA. In Tunisia, on the contrary, the share of total learning that that
takes place in regular lessons is very low -- depending on the subject, learning in classroom takes only between 37% and 45% of total learning time.

Why do Tunisian students need to spend most of their learning time on out-of-school instruction, given the above average time allocations? What prevents them from learning effectively in school and their teachers from doing the job they are paid for -- teach the curriculum during regular classes? Certainly, parents that see private lessons as a means to boost their child’s performance in class and increase the chances to become one of the best among his or her classmates are not blameless, but the figures presented here suggest that private tutoring might in fact be a necessary evil for survival in school. Finding the answers is a task beyond the scope of this preliminary scan and the first of two urgent steps that the authorities must undertake to rebuild trust in public schooling and strengthen the integrity of the pre-university system. Ideally, the analysis of reasons will go along with public consultations in order to verify the findings and reach a consensus with all sides involved on what policy reaction is needed and appropriate.

The second urgent step is to determine what the widespread private tutoring in the country is about. It is alarming to note that despite the prevalence of remedial teaching in Tunisia and the presumably enormous financial burden on families it represents, its effectiveness is hardly better than that of the teaching in schools: 43% of Tunisian students assessed in PISA in 2009 stated that they had failed and repeated a grade at least once in primary or secondary education. This is the second highest rate of failure (grade repetition) in the world of PISA participating countries after Macao-China and is more than three times higher than the OECD average (Figure 9). Also, year by year roughly half of the students fail the important Examen National du Baccalauréat, almost one out of four students repeats the year and one out of ten students drops out completely.

Figure 9 Percentage of students reporting that they have repeated a grade at least once in primary, lower secondary or upper secondary school, Tunisia and selected countries (2009)

Source: PISA 2009 database

Countries with high rates of grade repetition are also those that show poorer student performance (OECD 2010a) – a statement that certainly holds for Tunisia. Tunisia has participated in PISA since 2003 and in the Trends in International Mathematics and Science Survey (TIMSS) for some cycles. The results in both
are disappointingly low in international comparison. In PISA 2009, Tunisia achieved a mean score of 404 points in reading. Given that 39 score points are associated with one year of schooling, Tunisia lags behind by almost 3 years compared to OECD countries. About half of the students assessed performed below the PISA baseline level of proficiency (Level 2), which means that they were de facto lacking the essential skills needed to participate effectively and productively in society (OECD 2010b). Five percent of students are situated in the lowest proficiency level in PISA, which means that their performance is too low to allow for a meaningful interpretation of their skills and competences. The mean performance of Tunisia in TIMSS also remains far below the international average of 500 score points: 359 score points in mathematics and 346 score points in science in 2011 in grade four, and 425 score points in mathematics and 439 in science in grade eight.

And yet, private tutoring in Tunisia continues to flourish, which probably means that despite these alarming messages it generates results for the money invested and/or maybe that it is a necessary evil. In the light of the persisting quality failures the question must be asked – what kind of results are these? Is private tutoring in Tunisia really about knowledge? If so, why do students continue to underperform even after they attend private classes? If not, what is the actual purpose of out-of-school learning? The education authorities would be well advised to follow-up on these questions urgently. Further analysis suggests that one of the more prominent reasons why teachers provide (well paid) private tutoring services to such an extent (aside from possible perceptions of inadequate pay) is because they can. The accountability and quality assurance mechanisms in schools and for the teaching profession are weak, as discussed in the next sub-section on opportunities for malpractice.

**Opportunities: Accountability Gaps as Facilitators of Malpractice**

Opportunities created by weak monitoring and control will always cause temptation, in even the best of education systems (OECD 2012a, p. 68). Although officially forbidden, the widespread practice of teachers charging their own students for additional lessons seems to be tolerated, often enough requested by the parents themselves and, according to reports from stakeholders on the field trip, sanctioned only in exceptional cases. There are no pressure groups that could bring this issue into the open and strong teacher unions contribute to a preservation of a state of affairs that provides teachers with an attractive source of income.

A weak system of regular monitoring of quality in the education system – the quality of learning outcomes of individual students, the performance of staff and the integrity of its behaviour, and the quality of schools as institutions – allows for a remarkable degree of freedom for Tunisian teachers that, in practice, goes without an obligation for much in return. Codes of professional conduct and transparent, clear criteria for classroom assessment are absent, and compliance with education standards is only rarely (if ever) verified. This not only allows malpractice to go undetected but, even more importantly, it undermines the efforts of those education professionals (and their students) who wish to do their work to the best of their ability with integrity, by depriving them of meaning. The accountability-related shortcomings in three major areas deserve special attention: assessment of student achievement; school inspections; and use of evidence in policy making.

**Assessment**

Student assessment is essential for measuring progress of individual students, for policies to improve teaching and learning, and for accountability vis-à-vis relevant stakeholders (OECD 2013a, p.139).

Most countries have introduced centrally organised, external examination at key stages of the education path. In Tunisia, the only external examination takes place at the end of upper secondary education. Before that and throughout the duration of schooling there are no objective criteria to evaluate student
performance and assessment is limited to summative classroom assessment. It is not surprising that the ranking of students in the classroom has become the principal indication of success and student capacity, and is considered by parents to be one of the most important markers of their children’s success.

Consequently, the power over success and failure of students is concentrated in the hands of the teachers who in the best case, in the absence of objective criteria and assessment standards, provide marks by comparing the achievement of students with those of other students in the same class.

Such an approach to assessment has disadvantages -- there are no clear criteria by which to assess and compare learning outcomes, teachers tend to award grades by benchmarking against the median, highest and lowest level of student knowledge in their class, and there is no guarantee that two students given the same mark by different teachers in different schools are performing at the same level. The results of the assessments are of limited validity for comparisons of performance of students between schools, or against national expectations of students in a given grade. They can also not be validly used to determine whether a pupil has mastered the knowledge and skills needed to pass to the next grade (OECD 2013bxiv).

Box 1 Evaluation and accountability in education in OECD countries

| Evaluation is expanding and becoming more diverse, as most OECD countries now see evaluation and assessment as playing a central strategic role, and are expanding their use. They are also taking a more comprehensive approach: formerly, evaluation and assessment focused mainly on student assessment, but the focus is now broader and includes greater use of external school evaluation, appraisal of teachers and school leaders, and expanded use of performance data.

Regarding student assessment, countries in the OECD area now mostly use criteria-based approaches which allow for comparisons of students’ achievement with clearly defined, collectively developed criteria that are known to all participants in the process (teachers, students, parents, education school administrators) in advance. The criteria used are chosen to correspond with the goals and content of the students’ education. The criteria are used in both ‘summative assessment’ – assessment undertaken at the end of a period of education (e.g. primary school) to establish and define the level of knowledge and skills reached by that point – and ‘formative assessment’ undertaken by teachers in the course of their classroom teaching, to establish the level of knowledge and skills currently reached by each student and design appropriate supportive action.

Source: OECD 2013a, p. 13-14; OECD 2013bxiv

Despite these problems, in recent years the exclusive influence of teachers over the assessment of student progress has even been extended to include the decisive, final exam at the end of the 13th grade which gives access to university. From a marking system that relied only on performance in the exam, Tunisia switched to grading that gives 75% of the weight to the exam results, and 25% to the performance throughout the final school year. Although such mixed grading systems can reduce the stakes of exams and remove some of the pressure for students, their parents and teachers (OECD 2012), in Tunisia the new system appears to have fuelled even more private tutoring in the final year. Cases of malpractice triggered the Tunisian authorities to set up a commission in 2012 to work on a change in the marking system of the baccalaureate but, according to reports documented during the field visit, discussions have stopped without any outcome.

A competence test based on a representative sample of students at the end of grade 6 has recently been introduced. The results are currently being analysed. This presents an important step towards a more objective evaluation of student performance in Tunisia, but it cannot be a substitute for a proper individual assessment of students as not all of them participate in the test.

Criteria-based assessment in general and upper secondary education should be introduced as a matter of priority. Furthermore, the baccalaureate exam should be reviewed in the light of increasing number of reports about malpractices related to its set-up, and administration.
**School Inspections**

Another central accountability measure in education is the school inspection system. The school is increasingly recognised as the key agency within the education system and its effective monitoring and evaluation as central to the continuous improvement of student learning and outcomes. Across OECD countries school evaluation is increasingly considered as a potential lever of change that could assist with decision making and resource allocation. With further autonomy given to individual schools, market forms of accountability are gaining importance (OECD 2013a: 383-384).

It is unrealistic to expect integrity in the school network without an efficient school inspection system that functions with integrity. At present, it seems that school inspections in Tunisia are not functioning as well as they should. Teachers are supposed to be inspected every two years, but cases where teachers do not show up on the inspection day or have not been evaluated for a long time are quite common, according to stakeholder reports. The formally defined task of inspectors to assist and support teachers exists mostly on paper and plays a marginal role in the actual evaluation. Part of the problem is that negative evaluations are rare and the outcomes of the evaluation do not have any consequences -- neither rewards nor sanctions in case of negative results or abuse of position. Another issue is that school plans which would set out a transparent pedagogical programme and a plan of co-operation between teachers, principals and other school staff are absent, and that the schools as institutions are not themselves evaluated.

Codes of professional conduct for staff working in the education system, in particular teachers could provide a transparent guideline for strengthening the currently very weak control and sanction mechanisms and should be agreed on as soon as possible. Certainly, compliance with norms of honourable behaviour is not only a task for school inspectors to deal with. They should be a goal shared by all education professionals.

**Use of Evidence**

Tunisia has been participating in international student assessments for more than a decade, but the results are not systematically used and remain widely unknown to the general public. One stakeholder mentioned “lack of political will and know-how” as factors that have prevented and still hamper informed policy making. Indeed, official sources still praise the success of Tunisian national education despite, and without reference to, the continuous deterioration of results in international assessments. The lack of human and technical capacity is just one of the factors that prevent the harvesting of the full potential of available data. The absence of political will to confront the consequences associated with the so called “PISA shock” -- the potential impact of lower-than-expected performance in PISA on education policy and the public opinion – is another factor.

Accountability is about availability of information. Access to information is important for informed discussions among all stakeholders and for reaching an agreement on what are the problems that need addressing, and on how they should be addressed. The low awareness about results of international assessments in Tunisia is one of several symptoms of a generally low level of accountability in education. Tunisia disposes also of a rich national base of evidence on its education system, which is rarely analysed or used in policy decisions.
Higher education in Tunisia continues to expand at a rapid pace. Student numbers have more than doubled over the past decade and in 2011 reached 380 000. The increase in enrolment went along with a reform that restructured higher education in line with the three-tier system of Bologna. Tunisian universities now offer three-year license programmes, two-year master programmes and five-year doctorate programmes.

The improvement in access rates has not been without side effects. Despite the fact that the economy continues to grow (Figure 2) more and more university graduates are unemployed (Figure 4) which suggests that the academic credentials produced by the university boom might not be the credentials that the labour market demands. Also, the rising enrolment is in strong contrast to the deteriorating preparedness of secondary school graduates for university study — a problem that was repeatedly reported about by stakeholders during the field visit and is confirmed by the PISA results, and a consequence of missing investment in quality assurance that should have accompanied the growth in enrolment.

The fact that the universities continue to grow while the quality of secondary education stagnates is an important finding. It hints towards possible deficiencies in the process of admission to tertiary education, such as use of inadequate admission criteria, selection system, or both. The fact that the expanding higher education sector is being populated with students who might have limited academic readiness and are confronted with a pessimistic employment outlook can be detrimental to the morale and motivation of both students and academic staff. Indeed, the preliminary results of the research on corruption in Tunisian higher education that was already quoted suggest the presence not only of shortcomings with academic quality, but also lack of commitment to academic integrity among students and academic staff and widespread perceptions of malpractice, such as cheating and lowering of examination standards in view of passing exams.

Incentives: The random ways of access to higher education

Heuser und Drake (2008: 202) note that in systems, where students study to study, but may only do so because alternatives are lacking or do so only to obtain a degree without real interest in the field of study, motivation may be primarily extrinsic – that is, the primary cause of enrolment is not the subject matter of study, but something else, i.e. an academic credential or obtaining/keeping a student status. They suggest that the central cause of integrity loss and corruption risk in higher education institutions is a disproportionate focus on extrinsic motivation on the side of students and academic staff.

The current organisation of access to the higher education system in Tunisia has features that might be favouring extrinsic motivation and jeopardising its integrity. A considerable proportion of young people in the country want to study, but a central student admission system that is organised and decides on the basis of the grade in the final exam in upper secondary education, gives only a minority of best-performing students the choice to enrol in the disciplines they are really interested in. The majority of students in the middle and lower range of the performance spectrum has to consider taking a place in the (remaining) disciplines that have been assigned to them and make decisions by calculating the chance for admission to a discipline which is "the least bad alternative" – an alternative which is only marginally of interest and is chosen possibly in the knowledge that the academic credentials it will provide will be of little value in the labour market. The "bad" alternatives are thereby plenty, as the authorities tend to open study places independently of the needs of the labour market and in disciplines that cost less
philosophy is certainly cheaper than engineering). Conditions like these limit the motivation of students and lower their morale and academic ambitions.

As stakeholders reported, sometimes even those who are good enough to choose “better” subjects such as pharmacy, medicine or engineering, follow the wishes of their families which often do not coincide with the students’ interest and competences. Unfortunately, a career guidance system that could help students find out which field best reflects their interests and also help adjust family expectations is absent.

In order to establish a climate of integrity in higher education in Tunisia, the education authorities and the academic community will have to work hand in hand on the "creation of a context that encourages the pursuit of the goods intrinsic to the processes of higher education" (ibid: 200). Apart from possible questions related to resources and working conditions in universities (none of which discussed in this short scan), a reform of the current system of access to higher education will be central to such an endeavour and to improving commitment to academic standards of work. Making the selection process more adequate and precise would help to better detect student ability and academic aptitude, and respect to a greater degree the choices of potential students instead of making them accept what they are given.

**Opportunities: Absence of Integrity Standards**

Tunisia does not have ethical codes for academic staff and integrity standards in tertiary education in general. The introduction of standards of integrity in all areas of academic life, in particularly ethical codes for academic staff and standards regarding the quality of academic work should be another priority in the creation of a context of integrity in higher education. Yet, these standards can only be successful if their purposes and values are adopted by students and academic staff and if they are embedded in the daily practices through multiple institutional mechanisms. One of these mechanisms includes a "constant dialogue" of all stakeholders in higher education and their representations (student bodies, governing boards, advisory councils, etc.) about norms, values, and attitudes in higher education and about its purpose and quality.

**Opportunities: Absence of Authority on Accreditation and Evaluation**

A policy shortcoming with potentially considerable integrity implications is the absence of a dedicated national evaluation and accreditation authority. At present accreditation and evaluation is carried out by the Ministry of Higher Education according to rigid, uniform criteria which leave less room for higher education autonomy and development. In the absence of such entity and more differentiated approaches it is not really possible to reliably establish what universities offer and according to what standards, and also what individual courses are about. The absence of external evaluation and accreditation authority means that the scientific work of professors and the quality of their teaching are not subject to any form of external control.

Without an external quality assurance mechanism and in the current atmosphere of distrust in the integrity of public institutions, potential employers (but also the general public) will have reason to doubt in the credentials granted by universities and that they really stand for what they are promising.

In other countries the evaluation of the quality of the study programmes and their relevance to the labour market is generally undertaken by an accreditation and quality control agency, which works as an independent institution and relies on experts from the scientific and professional fields in question. Although envisaged for 2012, such an agency has not yet been created in Tunisia. In the 1990s there was an attempt to introduce an accreditation and quality control agency in higher education, but the motion
was rejected since a government-independent agency was deemed to be incompatible with the centralised management style of the Ministry of Higher Education.

**SUMMARY OF RECOMMENDATIONS**

Education reforms and integrity interventions should be aimed at the restoration of trust in the public education system of Tunisia, a system with great potential which Tunisians were and still are proud of.

Other countries are confronting the challenges discussed in this scan as well. Tunisia might be in a favourable position to set a good example in dealing with them. It is one of the very few countries that have opened themselves up to an external integrity analysis of the public sector and of education in particular. This is an important step in taking informed decisions regarding the course of action against corruption. The obvious commitment to education of a wide array of stakeholders is a very strong asset as well.

The challenges noted in this scan require action, but also persistence, time and patience. To rehabilitate education as a strong and high quality institution that works with integrity, the authorities could and should mobilise both education professionals and the public. To ensure credibility and ownership of reforms, all sides concerned -- parents, students, authorities, employers, education professionals and the wider public – should debate what needs to be done and make a pact for a strong and fair Tunisian education. Such an agreement could guide the reforms and safeguard their continuity.

The suggestions of this preliminary scan for national follow-up are summarised below. Ideally, they should ideally be verified by an in-depth assessment of the education system.

1. The authorities should commission an analysis of underlying reasons for the low effectiveness of classroom learning. To ensure the credibility of this analysis, it should be carried out by an external, preferably non-national entity. Its findings should be made public and addressed as soon as possible.

2. The bodies in charge of managing the education system should undertake a self-assessment to verify the integrity of their staff. Cases of sidestepping the rule of law and of overlooking corruption in the education system should not be tolerated.

3. The system of quality assurance in pre-university education needs urgent attention. Criteria-based assessment in general and upper secondary education should be introduced as a matter of priority. Furthermore, the baccalaureate exam should be reviewed in the light of increasing number of reports about malpractices related to its set-up and organisation.

4. Reforms should be initiated to strengthen the accountability of teachers and schools vis-à-vis the education authorities and stakeholders. This includes introducing a code of professional conduct and improving the school inspection system. A good inspection system will help in preventing teachers from giving private classes to their own students and improve the effectiveness of their teaching in class.

5. The higher education authorities should envisage a reform of the current system of access to university. A more adequate and precise selection process will help to better detect student ability and academic aptitude. This would ensure that the choices of potential students are better respected instead of making them accept what they are given.
6. Standards of integrity should be introduced in all areas of academic life and awareness raised about their importance.

7. To improve the labour market relevance of study programmes and their overall quality, it is recommended to establish an independent national evaluation and accreditation agency. This would also improve information provided to students.
BIBLIOGRAPHY


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i The scan was carried out within the framework of the OECD-wide integrity and anti-corruption initiative CleanGovBiz.

ii According to Maps of World, an Internet Service affiliated with the National Geographic Society, the International Map Trade Association and Google, before 1956 education was accessible to only 14% of the population in Tunisia (www.mapsofworld.com/tunisia/education/ retrieved on 3 June 2013).


iv Forum Universitaire Tunisien: www.fut.org.tn/


vi nawaat.org/portail/2012/10/10/ministere-de-leducation-ou-antre-de-la-corruption/

vii The identification of potential integrity concerns is based on a comparison of a selection of education indicators on the dimensions of integrity access, quality, staff and resources to the OECD mean. The relative position of a country is taken as a proxy of how well the system addresses stakeholder expectations in the education area in question. Stakeholders can be parents, students and staff employed in the system. The difference between a country’s value and the OECD average provides an estimate of the potential mismatch between expectations and deliveries. Indications of mismatch between outcomes and expectations are listed as instances of potential integrity concern that require subsequent contextualisation through qualitative analysis. The OECD averages stand for stakeholders’ expectations in the respective policy areas. This conceptualisation is meant as a tool for analysis in a national setting and is not aimed at producing comparative evidence on integrity levels between countries. Also, the PRINTS analysis does not assume that alignment with OECD averages is always desirable.

viii Remedial malpractice is malpractice driven by the need to compensate for shortcomings in the education system, unlike malpractice driven solely by prospects of personal gain (malicious malpractice).

ix In countries where enrolment is not limited to area of residence.

x See for example the case studies of Shanghai and Hong Kong China, presented in Chapter 4 of the OECD Publication *Lessons from PISA for the United States*, retrievable at www.oecd.org/pisa/pisaproducts/46581016.pdf

xi This is the case in the Republic of Serbia, which underwent an OECD INTES assessment in 2011/2012.
xiii This is the main language in which instruction is given.

xiv It is not possible to provide page references as at the time of preparation of this scan the OECD report on secondary education in Kazakhstan was still forthcoming.

xv Ibid.

xvi The commission proposed to take into account the 25% of school year grades only if the student achieved a minimum of 8 (out of 20) in the written test.

xvii The Bologna Process is a series of ministerial meetings and agreements between European countries that created the European Higher Education Area. The aim is to ensure the comparability and quality of academic credentials.

xviii Forum Universitaire Tunisien: www.fut.org.tn/
Integrity Scan of
TUNISIA

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Part 2: INTEGRITY SCAN OF THE EDUCATION SECTOR

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