OECD Public Governance Reviews

# OECD Integrity Review of Tunisia

## THE PUBLIC SECTOR FRAMEWORK



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# *Foreword*

Since the revolution of 14 January 2011, the Tunisian people have embarked upon a new path towards more inclusive and fairer political, economic and social development, based on the rule of law, good governance, and transparency. The adoption of a roadmap of political reforms led to the election of a Constitutional Assembly in October of 2011, in charge of drafting a new constitution. The new government formed out of these elections has made the fight against corruption a national priority. A permanent governmental agency aimed at fighting corruption was established, and a minister in charge of governance and the fight against corruption was appointed to serve under the head of government in coordinating anti-corruption policies within the public sector.

The Organisation for Economic Cooperation and Development (OECD) has been committed to supporting the Tunisian people in this transition from the start. We have put the expertise and experience of all our member countries, especially in matters relating to the struggle against and prevention of corruption, at the disposition of the new Tunisia. With this objective in mind, and thanks to the financial assistance of the United Kingdom, a support project aiming at establishing an integrity framework was developed. This initial assessment of this public sector integrity framework constitutes part of this project.

This study provides to the new authorities an overview of the full range of legislative measures and institutional mechanisms geared towards the prevention of corruption in Tunisia today. It focuses on public procurement, as it is currently one of the areas most susceptible to corruption. It also highlights certain high priority reforms that are still necessary in order to bring the whole public sector integrity framework, including in matters of procurement, in conformity with international best practices.

The battle against corruption is a continuous effort requiring preventive measures, investigative procedures, and legal actions. Tunisia is only just beginning the campaign to reinforce the transparency and integrity of the public sector. The recent legislative reforms and institutional initiatives are promising. They nonetheless should be strengthened and supported over the

long term by sufficient means, as well as by specific measures enabling the prevention of public sector corruption.

Effectively and visibly combating corruption and encouraging integrity in Tunisia will have a significant impact on the social and economic development of the country. The OECD stands ready to support the unfolding reform process and to join Tunisia in its transition towards a stronger, healthier, and more equitable economy. The Tunisian Revolution has revealed the scope of corruption during the Ben Ali era, when public resources were embezzled to serve personal interests to the detriment of Tunisia's economic and social development. In January of 2011, the Tunisian people rose up against this nondemocratic system diseased by corruption and the supremacy of individual interests over the common good.



Richard Boucher
Deputy Secretary-General
OECD

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The OECD Secretariat wishes to express its gratitude to all the stakeholders who made this project possible, starting with the Head of the Tunisian government, Hamadi Jebali. He has demonstrated his personal commitment to launch, in the immediate aftermath of the Revolution, a comprehensive collaborative effort between the OECD and the Tunisian government aimed at reinforcing public governance and the fight against corruption.

To further encourage this drive for reform and share the experience of member countries, the OECD has mobilized at the highest level, in particular with the active participation in this project of Yves Leterme and Richard Boucher, Deputy Secretary-Generals of the OECD.

This project has been carried out under the authority of Rolf Alter, Director of the Public Governance and Territorial Development Directorate. It has also benefited from the strategic advice of Janós Bertok, Head of the Public Sector Integrity Division, and from Carlos Conde, Head of the MENA-OECD Governance Programme.

This report was written under the supervision of Elodie Beth, Head of the Public Procurement Unit, by Sana Al-Attar, Policy Analyst in the Public Sector Integrity Division, Marijana Trivunovic, Integrity Expert, and Peter Pease, Public Procurement Expert. Sarah Michelson also contributed to the preparation of the publication, and Jennifer Allain prepared the manuscript for publication.

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- the Minister of State Property and Land Affairs, Slim Ben H'midan;
- the Minister of Administrative Reform, Mohamed Abbou;

- The presidents of the oversight institutions, such as Abdelkader Zgholli, First President of the Court of Auditors; Ghazi Jribi, President of the High Committee of Administrative and Financial Control; Mohamed Salah Chebbi, Head of the General Inspection of Finances; Khaled Ladhari, Head of the General Audit Office of Public Services; Khmaies Abdelli, General Director of Public Spending Control; and Nacer Ben Hamida, Head of State Control.
- The President of the Competition Council, Mohamed Faouzi Ben Hammed; the Chief Executive Officer of the Central Pharmacy, Lamine Moulahi; and the Chief of the Cabinet of the Minister of Infrastructure, Rached Ben Romdhane.

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The OECD Secretariat would also like to thank the High Commission of Public Procurements within the Office of the Prime Minister, which played a critical role in illuminating the challenges and conditions Tunisia faced in the area of public procurement. Individuals within this institution who played particularly important roles in this process were: former President Khalil Lajimi, current President Khaled El Arbi, as well as Khaled Johmani, President of the National Observatory of Public Procurements.

Neila Chaabane and Hamadi Hadj Aissa have also played crucial roles in writing this report thanks to their experiences on the ground and their understanding of the reality of the Tunisian situation.

As national coordinators of the MENA-OECD programme, Ahmed Zarrouk and Tarek Bahri have contributed to finalizing this project.

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# Executive summary

In the aftermath of the Revolution of 14 January 2011 and at the request of the Tunisian authorities, the current report assesses the public sector integrity framework in order to illuminate the kinds of measures that need to be implemented. This assessment is mainly based on the 1998 OECD Recommendation on Improving Ethical Conduct in the Public Service and the 2008 OECD Principles for Enhancing Integrity in Public Procurement, which brings together the best practices and findings from OECD member countries. This report also includes references to the experiences of Middle East and North African (MENA) countries in establishing policies to promote integrity and prevent corruption.

The proposals for action contained in this first assessment provide the Tunisian authorities with a roadmap designed to enhance the integrity framework in the public sector. A particular focus is placed on public procurement, an area highly susceptible to corruption.

In order to develop an integrity framework for the public sector, Tunisian authorities could consider:

- Conducting detailed analyses of the vulnerabilities and risks existing in the public sector per activity and per sector;
- Closing the most important loopholes within the legal framework that limit the ability of authorities to define and impose sanctions on corruption and wrongdoing;
- Providing the newly created anti-corruption institutions and existing oversight institutions with the sufficient human and financial means to guarantee their independence.
- Developing specific measures intended to raise the awareness of civil servants about standards of conduct to follow and to help them better manage risks, including through tools such as codes of conduct, training and counselling mechanisms designed to help civil servants apply integrity principles in the management of public funds, as well as the reactivation of asset declarations that could serve as efficient tools to help fight against illicit enrichment.

- Enhancing specialized public sector corruption prevention mechanisms and the independence of monitoring agencies.
- Enhancing transparency and accountability in all the parties involved, notably through the development of an adequate legislative framework to promote access to information.

In order to promote transparency and integrity in public procurement, Tunisian authorities could consider:

- Rationalising their legal and regulatory system and developing guides to help public purchasers to manage risks through every step of the public procurement process.
- Professionalising the function of public purchaser and developing capacities.
- Developing objective data on public procurement that could be used, most notably, in the creation of an electronic platform for public procurement.
- Developing a partnership with the private sector for the implementation of public procurement reforms by, among other things, creating a regular mechanism for consulting and dialoguing with the private sector.
- Assuring integrity in relations between the government and potential suppliers, in particular, by reinforcing the independence of recourse mechanisms.

# *Introduction*

The OECD project to support the establishment of an integrity framework in Tunisia was launched immediately after the Revolution in order to assist efforts to develop a permanent anti-corruption mechanism in Tunisia. This support took several different forms, including:

- a series of field missions for the purpose of making an initial assessment of the existing legal and institutional framework for the prevention of public sector corruption;
- an intensive dialogue on public policies, both in the immediate aftermath of the Revolution as well as after the establishment of the government in December of 2011, with the goal of creating a national consensus on reform choices;
- the sharing of international best practices and lessons drawn from the experiences of other countries with such matters, notably through this report.

The various steps of this project, which is inscribed within an evolving political context, are presented in this introduction.

## The fight against corruption: an immediate priority in the aftermath of the Revolution

Responding to the demand of Tunisian citizens, the interim government has made the fight against corruption one of its top priorities. A National Commission for Investigating Cases of Corruption and Embezzlement (CNICM) was set up in February 2011 to investigate the abuses of the Ben Ali era and submit proposals for action to the government in order to enhance the struggle against and the prevention of corruption. Thanks to financial assistance from the Arab Partnership Program Fund of the United Kingdom Foreign Office, the OECD has launched a program to assist Tunisia in establishing a national integrity framework based on international best practices. A first conference was organized jointly with the CNICM on September 22-24, 2011 in Hammamet, Tunisia, in order to build a national consensus on the key measures to adopt in the fight against corruption.

## A longstanding collaboration with the OECD in an area of critical importance for the new government

The government formed in December of 2011 and headed by Hamadi Jebali has renewed its commitment to preventing corruption, an objective revealed, most notably, by its appointment of a Minister of Governance and the Fight against Corruption and by its move to bolster its collaboration with the OECD in this area. Thus, a conference entitled "Strengthening the Integrity Framework and Preventing Corruption" was organized jointly with the new government and the CNICM. While based on the conclusions of the Hammamet conference and the final report of the National Commission for Investigating Cases of Corruption and Embezzlement, this conference provided an opportunity to:

- discuss the process to enhance the national anti-corruption framework, using peer dialogue, international best practices, and the integrity framework developed by the OECD;
- involve all concerned stakeholders, including civil society and the private sector, in the development of this framework;
- identify priority reforms, including the formulation of specific policies to prevent corruption in risk areas such as public procurement.

The conference participants, who came from all reaches of government, as well as from the private sector and civil society, arrived at the following recommendations:

- develop an integrity and anti-corruption framework based on an assessment of the existing legal and institutional anti-corruption frameworks;
- immediately establish a permanent body specialising in the fight against corruption to implement the integrity and anti-corruption framework;
- establish specific anti-corruption policies intended to demonstrate to citizens the progress being made. These policies include creating a transparent system of asset declarations for the members of the new Cabinet, defining standards of conduct for civil servants, as well as enhancing transparency and integrity in public procurement.
- involve all the key concerned stakeholders, including civil society and the private sector, in the development and implementation of policies geared towards the prevention of corruption.

## A first assessment of the gaps in the legal and institutional framework for preventing corruption:

This report examines the legal and institutional anti-corruption framework to provide an initial assessment of the measures that need to be developed by the government. In addition, it presents the best practices from OECD and MENA countries in the implementation of anti-corruption policies.

The objective of this report is two-fold. It seeks, on the one hand, to provide an overall assessment of the current state of corruption prevention in post-revolutionary Tunisia, in the first trimester of 2012. It aims, on the other, at directing the attention of the Tunisian authorities towards the experiences, lessons, best practices, and most relevant resources related to the key issues they must face.

This report is based on interviews with representatives from Tunisian public institutions, civil society and the private sector that were conducted during two field missions from December 12-17, 2011 and from February 15-17, 2012, as well on the conclusions of the international conference on "Strengthening the Integrity Framework and Preventing Corruption," which took place in Tunis on February 13-14, 2012. Analyses and additional data were also provided by Neila Chaabane from the National Commission for Investigating Cases of Corruption and Embezzlement, and by Hadj Aissa, Professor at the National School of Administration of Tunisia.

This study constitutes an introduction to the key issues related to corruption and the fight against corruption in Tunisia in 2012. It provides an overview of the primary questions that need to be addressed. More comprehensive assessments will of course need to be made on each of the specific areas (or sub-areas) mentioned in this report. This report should thus be considered as a first step, rather than as a definitive study of the subject.

This report mostly focuses on the framework for preventing corruption, even if it will also deal briefly with matters related to repression and law enforcement, which, because of their capacity to guarantee there is no longer impunity even for top government officials, are vital to the establishment of an integrity framework. As public procurement constitutes one of the areas most vulnerable to corruption, the second part of this report will examine measures to be adopted to improve transparency and integrity in the Tunisian public procurement system.

# Key Findings and Proposals for Action

Although provisions in the Tunisian Criminal Code and Civil Service law pertaining to corruption prevention do exist, there is no coherent legal framework to ensure transparency and accountability and to prevent corruption in the public sector in Tunisia.

Moreover, due, in part, to the absence of political leadership, specialised anti-corruption capacities, and adequate sanctions, the enforcement of existing provisions proved largely ineffective over the last decade. Weaknesses in the system for preventing corruption were systematically exploited, culminating in the total confiscation of public resources by the former President, Ben Ali.

The proposals for action contained in this initial assessment provide the Tunisian authorities with a roadmap to enhance the integrity framework for the public sector. They specifically focus on the area of public procurement, which is particularly susceptible to corruption.

This assessment is largely based on the 1998 OECD Recommendation on Improving Ethical Conduct in the Public Service, which brings together best practices and lessons drawn from the experiences of its member countries (see Annex A). As for the proposals pertaining to public procurement, these are based on the OECD Principles for Enhancing Integrity in Public Procurement (see page 67).

This assessment illuminates two categories of priority reforms for Tunisia in this area: i) those that will facilitate the establishment of an overarching integrity framework in the public sector; ii) those that will enhance integrity in public procurement.

## Develop an integrity framework in the public sector

### *Conduct detailed assessments of the vulnerabilities of the system to identify priority reforms*

*Better understand the vulnerabilities in the public sector by activity and by sector*

The work of the National Commission for Investigating Cases of Corruption and Embezzlement has finally shed light on the scope of corruption and identified some high-risk activities, such as public procurement and customs. Tunisia, however, has still not produced a detailed and systematic analysis of the activities and sectors most vulnerable to corruption in the public sector and of the underlying reasons for this corruption.

More intensive studies of sectoral vulnerabilities might be conducted to identify risk areas and to guarantee the adoption of adequate reforms. The experience of OECD member countries reveal that risks are often serious in interactions between governments and citizens, especially in the contexts of social services (health, education, pensions, and other social benefits), and administrative services for small and large businesses (authorisations, inspections).

### *Close the most important loopholes within the legal framework to limit the risks of abuse*

This initial assessment has shown that one source of risk and vulnerability in the system lies in the legal texts inherited from the former regime, which are filled with loopholes. For example, illicit corporate enrichment and corruption is not prosecuted, which, in turn, prevents the sanctioning of these abuses. In addition, specific legal provisions that define the standards of conduct expected from civil servants and that protect whistleblowers are nonexistent.

However, it is important to note that a comprehensive assessment of the legal anti-corruption framework was launched in June of 2012 as part of the Review Mechanism of the United Nations Convention Against Corruption (UNCAC). Beyond thoroughly transforming its legal anti-corruption framework, it is crucial that Tunisia mobilise all the human and financial means necessary to guarantee its implementation.

### *Identify priority measures based on a comprehensive analysis in cooperation with all concerned stakeholders*

It is advisable that this initial assessment by the OECD be complemented by a comprehensive analysis within each public institution in order to guarantee that the suggested solutions are truly adapted to the political and administrative context. The OECD applauds the Tunisian government's move to launch a self-assessment of its anti-corruption mechanisms in both the public and private sectors as part of the OECD's clean.gov.biz initiative in June 2012.[1]

The introduction of management tools such as plans for action or sector strategies could also be useful in determining a realistic time frame for the implementation of reforms. The adoption of a national strategy for fighting corruption could also be considered, provided that it defines priority measures in a feasible timeframe and, even more importantly, that it includes a section on corruption prevention. Indeed, many countries that have developed similar strategies have come to the conclusion that they are often excessively ambitious.

### *Reinforce specialised capacities for preventing public sector corruption and enhance the independence of supervisory institutions*

#### *Provide the newly created institutions with sufficient human and financial means*

A *sine qua non* precondition to the establishment of an anti-corruption framework is the creation of specialised capacities within the government that can facilitate the development and implementation of specific anti-corruption policies. Such capacities should be granted sufficient human and financial means so as to guarantee their independence.

In 2012, the Tunisian government took certain measures in order to offset this problem, such as the creation of a Ministry of Governance and the Fight against Corruption, of liaison cells within each ministry, as well as a national anti-corruption body. These moves constitute an important step towards the development of specialised capacities in this area. The main challenge moving forward will be to provide these new institutions with sufficient human and financial means to enable them to fulfil their missions and ensure the coherence of the whole range of anti-corruption policies.

The Ministry of Governance and the Fight against Corruption possesses the potential to reinforce inter-ministerial cooperation. One of the challenges for this newly created ministry will be to bring together all concerned

stakeholders – including the Ministry of Justice, the Ministry of Administrative Reform, and the various supervisory bodies – around the shared project of developing an integrity framework. It is imperative to clearly define an institutional framework and coordination mechanisms between institutions so as to ensure the effective implementation of anti-corruption policies. In addition, this ministry could develop specific measures to promote clear standards of conduct in the public sector and increased transparency (see section above).

The recent establishment of good governance and anti-corruption cells within public institutions to act as liaisons with the Ministry of Governance and the Fight against Corruption can facilitate the coordination of anti-corruption policies and help develop specialised capacities within each public institution. These cells could identify risk areas, in particular in specific institutions or sectors, and inform the development of adequate counter-measures. It is indeed essential that specialised anti-corruption capacities also be developed for certain risk areas, such as customs or public procurement.

Oversight, audit, and management bodies should be reinforced in order to avoid overlapping controls and to give them the means to guarantee their autonomy. More specifically, it is important to systematically make public the results of their audit activities so as to enable better coordination of these audits, and to allow citizens to have some oversight over the management of public affairs.

Finally, in order to ensure the efficacy of the institutional framework, it is necessary to allocate adequate financial and human means to these institutions so they are able to fulfil their missions.

### *Develop specific measures for civil servants aimed at raising their awareness of recommended standards of conduct and helping them better manage risks*

Before the Revolution, one of the challenges civil servants faced was to remain honest when the country's political leadership was itself corrupt. Moreover, no specific measures exist in Tunisia to promote the integrity of civil servants (such as codes of conduct). An analysis of risks and vulnerabilities will provide the foundations for a campaign aimed at raising awareness among civil servants in order to establish standards of conduct, help them better prevent such risks, and sanction them for abuses.

The Tunisian government could consider reinforcing the integrity framework by defining, in particular:

1. the key principles and values of civil service, especially by developing a code of conduct for the whole public service sector;
2. training and advisory mechanisms to help civil servants apply these integrity principles in the management of public funds. The governance cells that were newly created in public institutions could contribute to this awareness effort;
3. follow-up mechanisms, such as through the reinstatement of asset declarations, so that they become efficient tools for fighting against illicit enrichment;
4. law enforcement mechanisms as well as sanctions in cases of abuse so as to guarantee effective enforcement of the laws.

### *Enhance transparency and accountability by involving all the concerned stakeholders*

One essential prerequisite to improved accountability and increased citizen involvement in anti-corruption efforts is the existence of an information access law, a situation demonstrated by the experiences of numerous OECD countries.

In 2011, the Tunisian government introduced a decree allowing citizens to access administrative data. Yet, an institutional mechanism for implementing this decree still has to be established. Improving the access of citizens to information will enable them to play a more vital role in surveying the progress made by the government and public institutions in the fight against corruption. In addition, in order to inform the public of possible abuses, it is essential that the reports from the various supervisory bodies be systematically made public.

Furthermore, all concerned parties have not been systematically involved in the formulation of public policies in Tunisia. For instance, neither the private sector nor professional organizations were consulted during the development of the 2011 Decree on public procurement or during the development of the framework-decree on the fight against corruption. Yet the experience of the OECD countries has demonstrated that the active participation of all concerned parties in the development of anti-corruption policies has been a determining factor in their successful implementation.

Tunisian authorities should thus seek to involve all the concerned parties (governmental or not) in the process of formulating and implementing public policies in this area. It would be advisable to map out the terrain of

concerned parties to be systematically consulted in order to guarantee, among other things, the involvement of the civil society and private sector stakeholders most concerned by such policies. That said, the first initiatives of the government in this direction are to be commended, such as the integration of representatives from both civil society and the private sector in the national anti-corruption body.

## Enhance integrity in public procurement

### *Rationalise the legal and regulatory system and develop manuals to guide public purchasers*

Over the course of the last decade, Tunisia has made numerous efforts to develop a coherent legal framework for regulating the entire public procurement cycle.

Yet, the various reforms have also had the effect of creating a situation of legal instability that tends to hinder public purchasers and bidders from fulfilling their tasks. This situation is all the more problematic in that the latter have not, due to the urgency for fast reform in the aftermath of the Revolution, been systematically included in the development of the most recent reform related to public procurement (Decree No 2011-623 adopted on 23 May 2011)

In order to guarantee the successful implementation of the new reforms adopted after the January 2011 Revolution, accompanying documents and template documents are necessary to help the primary stakeholders implement the new procedures related to public procurement, which would thus foster better understanding of the new regulations.

It would also be necessary to define the scope of regulation concerning exemptions to the rule of competitive procedures, for instance in cases of extreme urgency. Indeed, Tunisia should clearly define the conditions under which competitive bidding is unnecessary.

### *Professionalise the function of public purchaser and develop its capacities*

#### *Professionalise the function of public purchaser*

The 2011 Decree has established buying commissions staffed with public purchasers who will be able to award contracts whose amounts remain below the thresholds established by the relevant public procurement commissions. Yet, as public buyers are not specifically trained or certified, they are not necessarily well equipped to fulfil their missions.

Public purchasers themselves, as well as private sector and civil society actors, have referred to this lack of professionalisation characterising public purchasers as one of the main obstacles to the development of a transparent and efficient public procurement system in Tunisia. As a consequence, the private sector has insisted on the necessity of developing specific training for suppliers so they can bid in conformity with the law.

Similarly, the professionalisation of the public purchaser function is crucial so as to develop specific competencies and a better understanding of the law. This is all the more important in that public procurement is not only an administrative function, but also a major policy lever (for example for boosting SMEs) that underpins some very important financial stakes.

The Tunisian government could consider professionalising public purchasers through the creation of a profile of specific skills and specific training procedures that work to promote the exchange of best practices. The National Observatory of Public Procurements can play a leading role in this process of professionalisation while supporting the creation of buying commissions.

### *Develop reliable data on public procurement, especially with regard to the creation of an electronic public procurement platform*

Building capacities in the area of public procurement also requires the creation of electronic public procurement systems to assist public purchasers and assess the system performance through the collection of reliable data.

The National Observatory of Public Procurements has established an information system to collect, process, and analyse public procurement data. Some data already exists on the public procurement portal, but it is of inconsistent quality and is not regularly updated.

In addition, it is important to consider that the Tunisian government is considering creating an electronic public procurement portal, in cooperation with the South Korean government. This project provides the opportunity to automatically and systematically generate data by interconnecting the various existing information systems. This platform could also facilitate access to public procurement data for the various concerned parties.

### *Develop a partnership with the private sector for implementing public procurement reforms*

Public procurement is positioned at the interface between the public and private sectors. Developing a partnership between the government and the private sector is crucial to better understand the expectations of both the public and private sectors and the gaps to be closed.

### *Establish a regular consulting and dialogue mechanism with the private sector*

Tunisia lacks any kind of ongoing dialogue between the government and the private sector about public procurement. The private sector remains systematically excluded from the development of new public procurement regulations, as was the case during the elaboration of the 2011 Decree. In addition, the government seldom informs the private sector of its needs, for instance through the publication of plans forecasting its needs in terms of goods and services. Finally, the private sector lacks the kind of training that could ensure that businesses are regularly informed of existing procedures and of any regulatory changes. A mechanism for regular dialogue and consulting with the private sector should therefore be established.

### *Ensure integrity in relations between government and potential suppliers by reinforcing the independence of recourse mechanisms*

Recourse mechanisms for examining suppliers' complaints constitute a central element in the integrity of the public procurement system. However, the Investigation and Follow-up Committee within the High Commission of Public Procurements, which provides businesses with an administrative recourse system, is today subject to the final decision of the Prime Minister. This Committee should have executive power to make its decisions final so as to provide objective and efficient follow-up on the complaints made by suppliers.

Furthermore, the government should encourage businesses to reinforce integrity in their relations to the public administration throughout the entire public procurement cycle, including its execution phase. The public administrations could, for instance, establish integrity pacts that require a mutual pledge from both the administration and all bidders to abstain from any wrongdoing, to prevent any acts of corruption, and to submit to sanctions in cases of violations. Finally, the government could more systematically control the use of additional agreements during the execution phase so as to prevent possible abuses.

## Note

1 For more information, refer to *www.oecd.org/cleangovbiz*.

# *Chapter 1*

# The Anti-Corruption and Integrity Framework

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

## The current state of corruption

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

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

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

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

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

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

## The existing anti-corruption framework

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

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

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

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

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

**The experience of the Netherlands**

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

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

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

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

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

### The experience of Georgia

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




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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *Legal framework to prevent corruption*

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

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

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

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

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

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

### *The penal code*

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

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

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

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

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

### *Public access to information*

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

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

### Box 1.3. Criminalisation as required by the UNCAC

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

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

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

### *Asset declarations to detect illicit enrichment*

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

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

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

### Box 1.4. Access to information in Mexico

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

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

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

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

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

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

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

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

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

### *Political parties and campaign financing*

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

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

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

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

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

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

## *An effort at strengthening the institutional arsenal for preventing corruption*

### *Prospective measures for strengthening the integrity framework*

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

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

### *A ministry of governance and the fight against corruption*

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

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

### *A national anti-corruption authority*

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

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

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

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

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

### *Supervisory agencies*

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

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

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

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

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

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

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

*External control*

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

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

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

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

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

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

### *Finance disciplinary court*

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

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

### *The national committee for the recovery of misappropriated assets abroad*

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

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

## Possible approaches to strengthening the public sector integrity framework

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

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

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

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

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

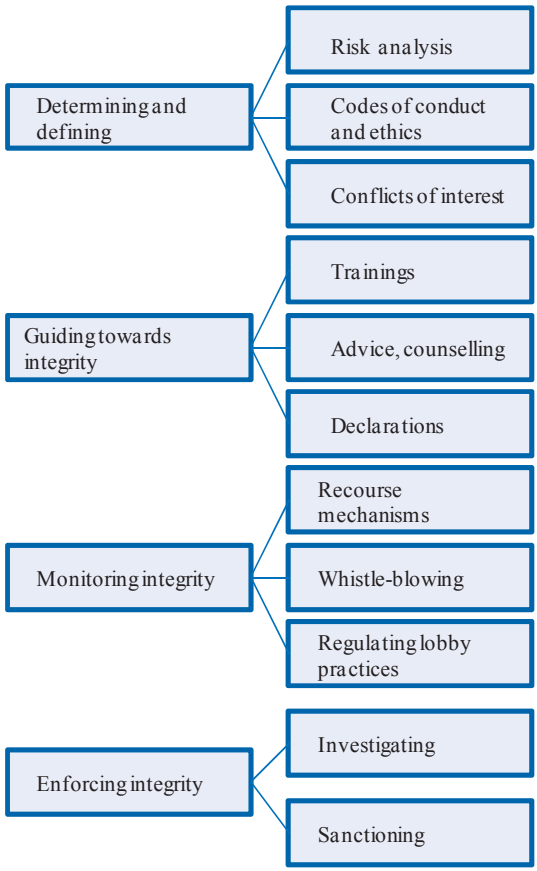
The 2008 Constitutional Revision has confirmed the principle of the equidistance of the Court of Auditors from the government and from Parliament. The Court thus assists the Parliament and the government in monitoring the execution of finance bills and in evaluating public policies.

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

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

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

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




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

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

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

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

#### *Specialisation*

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

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

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

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

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

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

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

### *The objective of a national anti-corruption strategy*

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

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

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

### *Elements of a SNLC*

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

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

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

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

### *Implementation plans*

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

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

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

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

### *Strategy development process*

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

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

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

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

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

### *Coordination, implementation follow-up, and assessment*

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

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

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

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

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

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

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

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

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

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

### *Conflict of interest*

The OECD provides the following definition:

> A 'conflict of interest' involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.[1]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *Declarations of interest*

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

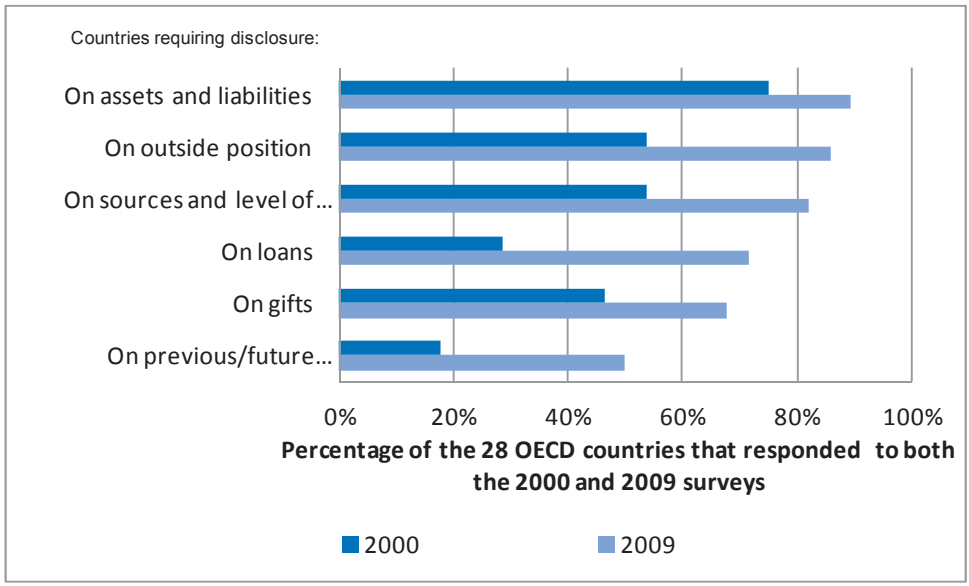
Considering the fact that the nature of conflict of interest has changed over time, the types of private interests to be disclosed in OECD countries have evolved too. Traditionally, declarations mostly focus on information related to assets and liabilities. But in view of the growing interface between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

### *Incompatibilities*

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

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

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




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

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

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

### *Policies on gifts*

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

### *Instruments employed*

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

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

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

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

### *Developing standards of conduct for public officials*

#### *Public sector officials*

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

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

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

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

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

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

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

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

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

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

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

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

### *The judges*

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

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

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

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

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

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

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

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

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

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

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

### *Promoting open and inclusive public policy-making processes*

#### *Transparency*

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

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

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

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

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

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

## *Civil society participation*

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

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

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

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

# Notes

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

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

3. Global Integrity Report (2008).

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

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# *Chapter 2*

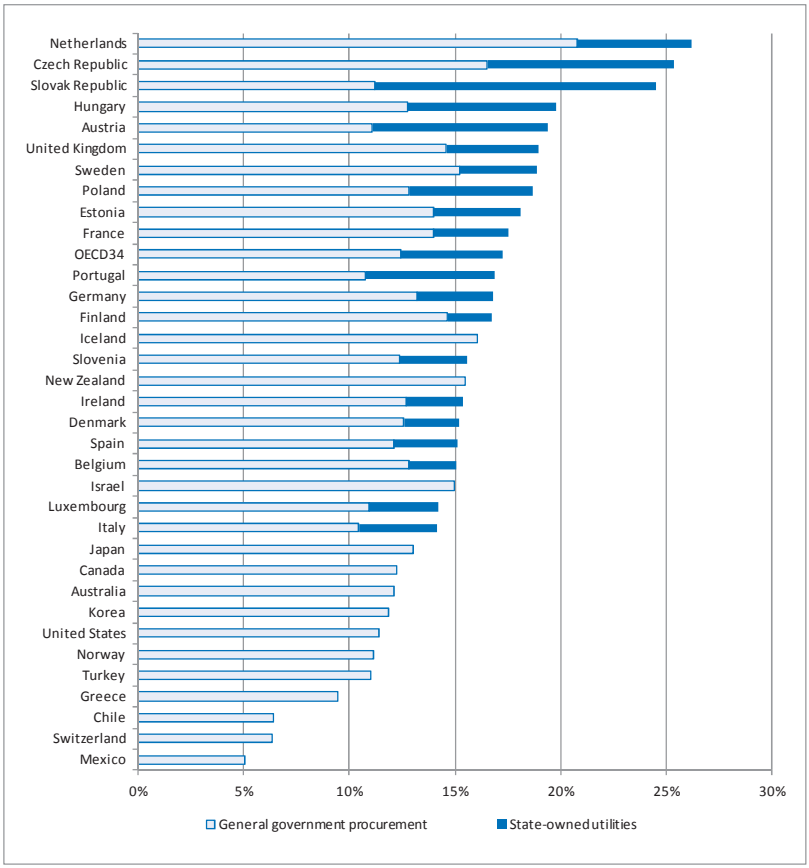
# Enhancing Integrity in Public Procurement: A Risk Area

*Public procurement represents 18% of Tunisia's GNP and almost 35% of the State's budget. This area was particularly affected by corruption during the previous regime. The government was therefore forced to react immediately after the Revolution to make the public procurement system more transparent and efficient. A new Decree governing public procurement was adopted on 14 January 2011. This chapter examines the existing mechanisms for enhancing the transparency and integrity of public procurement in Tunisia, and proposes additional measures the Tunisian authorities could consider implementing.*

## Public procurement: a risk area

Public procurement is among the sectors most exposed to waste, fraud, and corruption, because of its complexity, the size of the cash flows it generates, and the close interaction between the public and private sectors. It accounts for about 12% of the GNP in OECD countries, and a bit more in Middle East and North African (MENA) countries.

Figure 2.1. **General government and state-owned utilities procurement in selected OECD countries as a percentage of GDP (2008)**

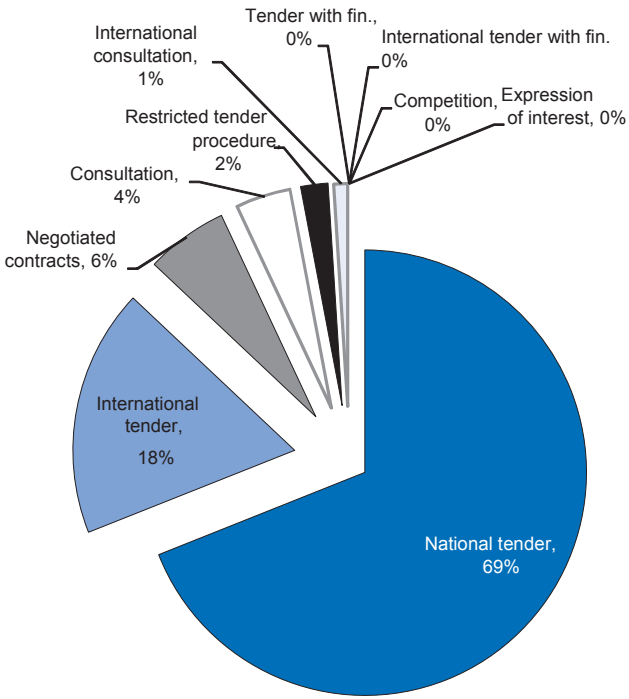



*Note :* The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

*Source:* OECD (2011), *Government at a Glance 2011,* OECD Publishing, Paris. doi: *dx.doi.org/10.1787/gov_glance-2011-en*.

Public procurement is a major economic issue in Tunisia since it accounts for about 18% of the country's GNP and almost 35% of the State budget. Sixty-nine percent of the total number of public contracts are awarded by invitation to tender.

Figure 2.2. **Number of public contracts awarded by type of competition**




*Source* : National Observatory of Public Procurements, Tunisia, *www.marchespublics.gov.tn*, last update: Tuesday, 26 June 2012.

However, the National Commission for Investigating Cases of Corruption and Embezzlement has identified public procurement as an area that was particularly exposed to corruption under the former regime despite its use of competitive procurement process. The High Commission of Public Procurements and other supervisory bodies have identified a certain number of recurrent problems in Tunisia's public procurement process in Tunisia:

- tender specifications tailored for a particular company;

- the systematic interference of the President of the Republic in the awarding of contracts without necessarily taking into account the opinion of the High commission of public procurements;
- abusive use of contract amendments to modify the turnaround time for contract delivery.

OECD countries, for their part, have noted the same type of risks in their own procurement cycles. Indeed, their experience shows that risks of fraud, embezzlement, and corruption can exist throughout the entire public procurement cycle, whether:

1. during the definition of requirements, a phase particularly susceptible to public interference;
2. during the awarding phase, especially in cases of exceptions to competitive tendering;
3. during contract management and payment. Fewer transparency measures apply to this phase since it is generally not subject to regulations on public procurements.

In this perspective, the OECD developed in 2008 its OECD Principles for Enhancing Integrity in Public Procurement, which aims to promote transparency, good governance, prevention of misconduct, accountability, and oversight in the public procurement process.

## Overview of the public procurement legal framework

The regulation of public procurements is governed by many different legal texts, dating back to the decree of 25 July 1888 on the formalities governing the invitations to tender for public works contracts. The Public Accounting Code enacted on 31 December 1973 outlines, in its articles 99 to 118, 251, and 234, the general principles governing public procurement for the State, local authorities, and administrative establishments. Article 105 of this law stipulates that public procurement procedures will be set by decree. The first decree to apply article 105 of the Public Accounting Code was published on 27 July 1974 (Decree No. 74-754). In 1989, upon the publication of a new law on state enterprises (1 February 1989), another decree repealed the old one and laid out the entire set of rules governing the awarding, delivery and oversight of public contracts for government and state enterprises (Decree No. 89-412 of 22 April 1989).

### Box 2.1. OECD Principles for Enhancing Integrity in Public Procurement Transparence

**Transparency**

1. Provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers.
2. Maximise transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering.

**Good management**

3. Ensure that public funds are used in public procurement according to the purposes intended.
4. Ensure that procurement officials meet high professional standards of knowledge, skills and integrity.

**Prevention of Misconduct, Compliance, and Monitoring**

5. Put mechanisms in place to prevent risks to integrity in public procurement.
6. Encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management.
7. Provide specific mechanisms to monitor public procurement as well as to detect misconduct and apply sanctions accordingly.

**Accountability and Control**

8. Establish a clear chain of responsibility together with effective control mechanisms.
9. Handle complaints from potential suppliers in a fair and timely manner.
10. Empower civil society organisations, media and the wider public to scrutinise public procurement.

*Source*: OECD (2009), *OECD Principles for Integrity in Public Procurement*, OECD Publishing. doi: *10.1787/9789264056527-en*.

In 2002, a comprehensive reform of the public procurement system was conducted through the adoption of Decree No. 2002-3158 of 17 December 2002, which defines the procedures for public procurement contracting, awarding, and delivery, as well as the prerogatives of the procurement commissions.

This decree was modified nine times[1], including after the Revolution of 14 January 2011. Indeed, an emergency decree was adopted on 23 May 2011 (Decree No. 2011-623) to make public procurement procedures more flexible, promote transparency, speed up the completion of projects, and assign more responsibility to public purchasers, all in the name of reviving economic activity in Tunisia. These successive reforms have contributed to creating a situation of legal instability that hinders public purchasers and bidders from fulfilling their duties.

### *The 2011 decree on public procurement*

The 2011 decree was introduced by the transitional government in the aftermath of the 14 January 2011 Revolution for the purpose of meeting, in the short term, the requirements imposed by international aid, and to lay the foundations for a more comprehensive reform of the public procurement system.

The decree governs public contracts awarded by the State, local authorities, administrative establishments, and State enterprises for the completion of works, service provision, and studies. Contracts for public service concessions, contracts of association, consortium agreements, subcontracting agreements, and assistance contracts between the public purchaser and other partners, towards the completion of a public or a private order, do not constitute a public contract. In addition, sales contracts (orders passed between third parties and the government or a state enterprise), as well as purchases made on the basis of a simple purchase order within fixed limits are not considered "public contracts".

The objectives of this decree are:

1. To bring Tunisian law on public procurement more in line with international standards.
2. To introduce temporary provisions that make it possible to speed up procedures (shortened times, administrative streamlining, relaxed ex-ante control, increased responsibility of public purchasers). Thus, for example, the new decree provides for a single opening of (technical and financial) bids, as well as for the suppression of ex-post control for public contracts below a certain threshold.

3. Establish measures to enhance transparency in the entire public procurement cycle, such as the mandatory publication of calls for tenders.

The core innovations introduced by the May 2011 Decree include, in particular:

- increases in the maximum thresholds for the High Commission of Public Procurements;
- requirements that public purchasers publish on the Internet the contracts awarded;
- recognition of the right of appeal on the part of stakeholders before the signing of a contract, and a change in both the appeal procedure and the procedure for publishing investigations and legal decisions.

While this reform fosters transparency, the temporary provisions that make it possible to speed up the procedures are not strictly established. Indeed, the decree defines exceptions to competitive tender procedures as follows:

> Public contracts are awarded, after competitive bidding, through calls for tenders. Yet, they can be exceptionally granted by way of extensive consultation or by way of negotiated contracts, without requiring an authorization by decree or executive order beforehand. Such exceptions, which should be justified and required by the specific nature of certain procurements, do not affect the obligation to respect principles of transparency and equal opportunity (art. 3).

***Note***: The experiences of OECD countries have shown that in order to avoid all risks of corruption, it is essential to define as specifically as possible the conditions under which the public administrator can suspend the rules of competitive bidding. To guarantee a level-playing field, exceptions should be strictly defined in public procurement regulations, especially with regard to the following elements:

- the value and strategic importance of the contract;
- the particular aspect of the contract that justifies the absence of genuine competition, because of, for instance, exclusive rights;
- the confidentiality of the contract, in the name of protecting State interests;

- exceptional circumstances, for example, extreme emergencies.

A recent review of the progress made in OECD countries indicates that, since the adoption of recovery plans responding to the financial and economic crisis, the proliferation of fast-track procedures intended to accelerate the allocation of public funds have increased risks to integrity. Conversely, the excessive regulation and rigidity of public procurement procedures can be counterproductive when they lead to limited competition and high procedural costs. It is impossible to reduce ex-ante controls without increasing waste, fraud and corruption unless other risk mitigation mechanisms have been put into place. One can, for instance, establish fast and efficient review and redress mechanisms, a risk assessment of public procurement, specific training on integrity and stricter transparency rules (see the United States experience in Box 2.2).

### Box 2.2. **Mitigating risks in fast-track procedures (United States)**

In the United States, The Council of Inspectors General on Integrity and Efficiency provides an independent authority to foster improvements and collaboration among the Offices of Inspectors Generals in the United States. In 2009, the Council led the development of tools for audit to identify fraud and abuse in procurement. In particular a contract risk assessment tool was developed by the Contracting Committee of the Federal Audit Executive Council to mitigate risks linked to the increase of procurement spending associated with the 2009 Reinvestment and Recovery Act, which had forecasted USD 787 billion in public spending.

The excel-based tool is intended to serve as a tool to assist auditors in identifying high-risk contracts meriting audit attention. Its use may be particularly appropriate when contract volumes exceed available audit resources, and the audit organisation must decide which contracts to review. The worksheet instructs individuals to assign a risk value to 12 risk factors, using information that is readily available in department/agency and government-wide contract databases. The risk factors were chosen as those that were most critical based upon the collective experience of committee members, but can be easily modified based on each organisation's views on risk. The first five risk factors relate to size, nature, and type of contract. The remaining factors range from contractor performance to personally identifiable information considerations. Each risk is assigned a weight by internal audit staff based on their judgment of the relative importance of each factor – these can be substantiated by qualitative considerations. The product of the risk weight and risk factor generates a composite score to aid risk.

### Box 2.2. **Mitigating risks in fast-track procedures (United States) (*cont.*)**

The U.S. Department of Justice has also sought to mitigate risks to integrity by launching a targeted initiative aiming at detecting fraudulent financing requests made under the recovery package. As part of this initiative, public purchasers, civil servants in charge of allocating subsidies, private businesses, as well as auditors and public investigators have been trained to detect signs of collusion and fraud. Furthermore, government agencies have received help to investigate cases of alleged collusion and fraud and to sanction them. Throughout the country, thousands of public purchasers and officials empowered by the federal government and the federated states to grant subsidies have received training from their respective divisions. Consumers, private businesses, and public institutions can report suspicions of misconduct and get information on competition law on the website: *www.justice.gov/atr/public/criminal/economic_recovery.htm*.

*Source*: OECD (forthcoming), *OECD Public Governance Reviews: Review of the United States Federal Public Procurement System*, OECD Publishing.

### *Ensuring implementation and enforcement of the law: towards a more active participation of concerned parties*

The discrete reforms on public procurement have created legal instability that confuses public purchasers and bidders about the rules by which they must abide.

Furthermore, during the field mission, some institutions informed the review team that they were not consulted about the formulation of the 2011 Decree, due to the urgency to enact the reform immediately after the Revolution.

Moreover, certain provisions introduced by the 2011 Decree have not yet been entirely adopted within public institutions. This is, for instance, the case for the creation of internal purchasing committees.

It is therefore crucial that the High Commission of Public Procurements, and more particularly, the National Observatory of Public Procurements, raise the awareness of stakeholders about the new procurement procedures.

In order to strengthen the legitimacy of the reforms and to guarantee their actual implementation, the government should develop mechanisms to involve the different actors, including those of the private sector, in the development of reforms related to the public procurement process.

To this end, the government should, based on the experiences of other countries, for example, identify the various degrees of participation of the various stakeholders, and determine which actors are the most concerned by

certain reforms and should therefore be systematically consulted. Public involvement in government activities can vary considerably, in terms of:

- Awareness-raising and information: the government may go beyond simply informing the public on its activities, and facilitating access to information (access to public archives, official bulletins, websites, etc.).

- Consultation: the government may consult with the public on policy development and implementation. It is crucial that the private sector be systematically involved in the development of future rules governing the public procurement process.

- Active Participation: citizens are invited to actively participate in defining the policy-making process and the content of policies. The active participation of a civil society actor may be a means to exercise oversight of specific public procurement areas that are especially vulnerable to corruption due to the amounts of money at stake. (see Box 1.4 on Mexico's experience).

## The actors in the reform process

### *The Public Procurement Commission: ensuring its independence*

The Tunisian system is characterised by the existence of several procurement commissions that examine the legality of the tendering, procuring, awarding, and implementation procedures for transactions above certain fixed thresholds:

1. The High Commission of Public Procurements, placed under the supervision of the Prime Minister, is composed of four specialised committees (Building, Communication and Computer Technologies, Raw Materials, Miscellaneous Orders), a Follow-Up and Petition Committee, as well as the National Observatory of Public Procurements;
2. The Departmental Procurement Commission, which is chaired by the relevant minister or his representative;
3. The Regional Procurement Commission, chaired by the governor of the region or his representative;
4. The Communal Procurement Commission, chaired by the president of the municipal council or his representative;

5. Internal Procurement Commissions that have been created within each state enterprise.

In matters of public procurement for the State, local authorities, administrative establishments, and public non-administrative establishments, the jurisdictional thresholds of the procurement commissions, as set by the Decree No. 2011-623 of 23 May 2011, are as follows:

Table 2.1. **Jurisdictional thresholds of the procurement commissions for public contracts awarded by the state, local authorities, administrative establishments and public non-administrative establishments**

| Object | Local/Communal Procurement Commission | Regional Procurement Commission | Departmental Procurement Commission | High Procurement Commission |
|---|---|---|---|---|
| Work | Up to TND 2 million | Up to TND 5 million and up to TND 7 million for projects of regional scope | Up to TND 10 million | Over TND 10 million |
| Provision of capital goods and services | Up to TND 400 000 | Up to TND 1 million | Up to TND 4 million | Over TND 4 million |
| Provision of computer supplies and hardware | Up to TND 200 000 | Up to TND 1 million | Up to TND 4 million | Over TND 4 million |
| Software and computer services | Up to TND 200 000 | Up to TND 500 000 | Up to TND 2 million | Over TND 2 million |
| Studies | Up to TND 150 000 | Up to TND 200 000 | Up to TND 300 000 | Over TND 300 000 |
| Pre-surveys for internally-controlled work | Up to TND 2 millions | Up to TND 5 millions | Up to TND 7 millions | Over TND 7 millions |

Table 2.2. **Jurisdictional thresholds of the procurement commissions for public contracts awarded by state enterprises**

| Object | State Enterprise Procurement Commission | High Commission of Public Procurement |
|---|---|---|
| Works | Up to TND 10 million | Over TND 10 million |
| Provision of capital goods and services | Up to TND 7 million | Over TND 7 million |
| Provision of computer supplies and hardware | Up to TND 4 million | Over TND 4 million |
| Software and computer services | Up to TND 2 million | Over TND 2 million |
| Studies | Up to TND 300 000 | Over TND 300 000 |

Tunisia's past experience demonstrates that it is important to reinforce the role of the High Commission of Public Procurements to ensure that the executive power will no longer be able to disregard its opinions. In addition, the proliferation of commissions contributes to making the system excessively complex and can lead to a dilution of responsibilities.

***Note***: Whatever model is chosen, the most important point is to guarantee the independence of the authorities in charge of determining compliance with the rules governing public procurement. In effect, political interference in the awarding of public contracts prevailed in Tunisia under the former regime, and it is therefore necessary to provide the High Commission of Public Procurements with the means to safeguard its independence, particularly by making its opinions binding and public. The decisions of the High Commission of Public Procurements should be mandatory for both public managers and public authorities.

### *The National Observatory of Public Procurements: reforming the database*

A National Observatory of Public Procurements was created in 2002 within the High Commission of Public Procurements. Its mission is to:

- create an information system to collect, process, and analyse public procurement data;
- follow-up on the assessment of public purchases, purchase procedures, the study of the economic and social impact of public procurement;
- improve public procurement regulation and propose any measure capable of doing so;

- regulate public procurement;
- assist public purchasers through training programmes;
- publish calls for tenders online (it has its own website: *www.marchespublics.tn*).

The Observatory does not exactly have an oversight role for public procurement, but rather, it aims at training and informing public purchasers and the private sector so as to familiarise them with new procedures.

Its role is also to disseminate objective and reliable data on public procurement with in the interest of improving access to information. Yet, some representatives of the private sector have told us that the Observatory does not always play its role of supporting public purchasers and, above all, the private sector.

Civil society actors also indicate that the Observatory does not provide public procurement data that would enable an overall assessment of the progress that had been in the effort to enhance the system's transparency and integrity. Indeed, even if the 2011 Decree requires calls for tenders to be published on the public procurement portal, the information that is available on the website is incomplete and irregularly updated. Hence, among the first measures the Observatory should consider for bringing about greater transparency is to ensure that calls for tenders and the opinions of the procurement commissions are systematically published.

The Italian example (see Box 2.3) presents the database that the Authority for the Supervision of Public Contracts has developed to reinforce its oversight role in public procurement.

The Observatory should be able to assess the performance of the public procurement system through indicators informed by data collected. The Italian example (Box 2.3) suggests that certain elements could be taken into account in order to detect irregularities in the public procurement process, which may represent signs of embezzlement and corruption (for instance, signs of excessive rebates given).

### Box 2.3. **Database on public procurement in Italy**

In Italy, the Authority for the Supervision of Public Contracts has been established by Law No. 109/1994, with the aim of supervising public contracts in order to grant compliance with principles of transparency, rightfulness, and competition among operators in the public procurement market. The Authority is responsible for enforcing the law by delivering an identification code to public procurement payments. Guidelines are also available to promote conformity with the law.

The Authority for the Supervision of Public Contracts has created a national database on public procurement, as ordered by Law No. 136/2010. This database ensures the collection and processing of data on public procurement, in order to provide indications for the supervising departments and to address the regulating activity towards rules of transparency, simplification and competition. In addition to collecting data, it also provides market analysis. More specifically, it collects and assesses data on the following issues:

- the structural characteristics of the market of public procurements and its evolution. Statistics about number and value of awarding procurements are grouped by localization, procurement entities, awarding procedures; the different typologies of procurement are periodically published.
- conformity with the criteria of efficiency and value for money during the procurement process. Changes of the earlier contractual conditions are recorded in the database of the Authority.
- dysfunctions and anomalies of the market that are detected through the following measures: i) signs of excessive tendering rebates, with respect to the average rebates; ii) the number of bids to be presented in each awarding procedure; iii) the localization of awarded companies with respect to the localization of contracting authority. Similarly, the database is an important instrument for supporting the SOAs certifying activity, with reference to the procedures of verification of the requirements prescribed by art. 17 of D.P.R. 34/2000 (and following modifications).

The database of building industry companies (casellario informatico) and the declarations provided by economic agents about the capacities expended by other entities are incorporated, among other elements, into the National database on public procurement.

The Authority has improved its performance thanks to the quality of the data provided by the Database on public procurement. In particular, it has reinforced its oversight and supervisory role, which has enabled it to offer guidance on the measures that need to be adopted in order to foster transparency, streamlining, and competition throughout the entire public procurement process, and, perhaps most significantly, during the phases preceding and following the calls for tenders.

*Source* : OCDE (2012), "Progress made in Implementing the OECD Recommendation on Enhancing Integrity in Public Procurement", internal working document, OCDE, Paris, *www.oecd.org/gov/ethics/combined%20files.pdf*.

In addition to this data on integrity risks in public procurement, the experience of OECD member countries shows that data collection should also make it possible to assess the efficiency of the system. Thus, the Observatory could provide performance indicators, such as:

- the average duration, as well as the cost of planning and preparing a call for tenders;
- the percentage of annual participation in tenders;
- the number of contracts awarded to small- and medium-sized businesses, and the percentage this represents of the total number of awarded contracts;
- the number of claims and petitions, etc.

### Box 2.4. **Establishing performance indicators in procurement: The Chilean experience**

The Public Management Improvement Programme (Program de Mejoramiento de Gestión) is a national programme – run by the Directorate of Budgets of the Ministry of Finance – with the aim of achieving measurable improvement in key aspects of public management. In particular, the programme focuses on the following: human resources, customer assistance, planning and implementation, internal auditing, financial management and quality of service. Public procurement is identified as a priority area for the programme, and objectives established for this area also figure prominently in the domain of financial management. The public procurement component of the management improvement programme specifies key performance indicators, and establishes rewards at the individual and organisational levels. In order to bestow greater recognition upon the procurement function through adequate salaries and thereby improve capacity, the programme incorporates performance-based incentives. Thus salary increases are tied to achievement of PMG goals. Performance indicators, among others, include:

- The rate of acquisitions made by way of an emergency purchase process;
- The share of the budget reserved for acquisitions made through public calls for tenders; and
- The difference between the number of acquisitions set in the annual purchasing plan and the actual number made during the year.

*Source :* OCDE (2007), Integrity in Public Procurement: Good Practice from A to Z, OECD Publishing. doi:*dx.doi.org/10.1787/9789264027534-en*.

The example of Chile (see Box 2.4) illustrates the types of indicators that have been included in the national programme for improving public management in order to measure the performance of public procurement.

***Note:*** The Observatory could, following the examples of Chile and Italy, reform the information system in order to make it possible in the medium term to:

- measure the performance of the public procurement system;
- indicate the possible risks of corruption and embezzlement (for example, the abusive use of exceptions to competitive bidding);
- use this information to reform the system on the basis of weaknesses that have been identified.

### *Purchasing commissions: towards the professionalisation of public purchasers*

The High Commission of Public Procurements initiated the project of the May 2011 Decree in an effort to respond rapidly to the challenges facing Tunisia in the aftermath of the revolution.

The Decree of 2011 effectuated some changes to the institutional framework, including, most notably, the establishment of purchasing commissions to work with public purchasers who will award contracts in amounts not to exceed thresholds set by the relevant procurement commissions.

All procedures for publishing calls for tenders, and opening and examining bids should abide by the provisions governing public procurement for these purchasing commissions.

This measure will attribute more responsibility to the public purchaser and help to make the system more effective and rapid. However, since public purchasers lack both specific training and certification, they are not necessarily equipped to effectively carry out their missions.

Therefore, it is first necessary to make sure that these purchasing commissions become veritable sources of expertise within public institutions in matters related to public procurement. These members should not exercise other duties, but, rather, should be recognized as being specialized civil servants.

Two-thirds of OECD member countries have identified public purchasers as constituting a wholly distinct professional sector. Countries

considering the awarding of contracts as a specific profession generally issue formal job descriptions for public purchasers. An increasing number of countries have established certification or professional licensing programmes for these purchasers (for example, Australia, Canada, Chile, the United States, Ireland, New Zealand, the Slovak Republic, and Switzerland). The case of Canada offers a long-running experience of efforts to create a community of qualified public purchasers who are publicly recognised as such (Box 2.5).

Building upon the efforts already made by the National Observatory of Public Procurements, which has established a certification system for instructors only, a more comprehensive system covering all public purchasers could be developed.

### Box 2.5. **Canada's professional development and certification programme**

The community of public purchasers coordinated the programme with the objective of improving standards of professionalism and increasing public recognition of the training and technical know-how behind their occupational skills in materiel and real property management. The responsibility for managing the life-cycle of assets – from the evaluation and planning of needs during the entire acquisition stage until their elimination – serves as the glue holding the community together. The presence of this shared responsibility has led the community to develop common competencies, training objectives, and required skills. A singularly important characteristic of professional development and certification is the explicit recognition of this community and the creation of a profile of key competencies and training mechanisms. The program has two main aspects:

- Professional development: involving a profile of basic competencies and self-evaluation tools available on the web, as well as a programme of course studies and other training activities aimed at strengthening and acquiring specific skills. The profile of competencies describes the 4 main categories of competencies and the 22 competencies and the behavioural indicators associated with them, divided into 3 levels of competence.
- Certification: including the Standard for Competencies, the Certification Programme Manual, and the request for certification and the Maintenance Manual.

### Box 2.5. **Canada's professional development and certification programme (*cont.*)**

There are a certain number of organisations within the federal government that play a critical role in the management and provision of the Certification:

- The Treasury Board, which is responsible for supervising and managing the whole process of professional development and certification.
- The Standards Council of Canada plays three roles: it facilitates the registration and supervision of candidates as they make their way through the Programme of certification; it conducts testing in order to determine who is eligible to take the exam; it deals with the organization and programming of the exam, and is responsible, with the aid of an independent panel, for certifying candidates.
- The Canada School of Public Service provides a certain number of courses that are required to take on order to be certified.
- Also, The Public Works and Government Services of Canada offers specific courses on public procurement that are recommended for certification.

*Source*: Website of the Treasury Board of Canada Secretariat, *www.tbs-sct.gc.ca/pd-pp*.

Moreover, one possible course of action could be to re-establish a specialized programme of study within the Tunisian National School of Administration. In the meantime, the Observatory has indicated that it would publish online the most frequently asked questions (FAQ) during the training programme so as to develop a body of information civil servants can access in order to draw lessons about their experiences.

If certain pitfalls, however, are to be avoided in the process of putting these commissions in place, it is important to:

- maintain a clear separation of responsibilities (between the definition of needs, the awarding of contracts, and making of payments); and
- make certain that warning mechanisms are in place in cases of contract splitting, so as to ensure that contracts remain below the thresholds determined by the appropriate commissions.

The High Commission of Public Procurements and the National Observatory of Public Procurements must assume advisory and support functions for the purchasing commissions to help them overcome the potential challenges they will face.

***Note***: The granting of greater responsibility to public purchasers cannot be effectively achieved without raising the standards of professionalisation within the whole public purchaser community. The OECD Principles highlight the importance of ensuring that civil servants in charge of awarding contracts meet high standards in terms of their training, competences, and integrity. To make this so, the Tunisian government could consider granting civil servants working in the area of public procurement a truly distinct professional status. The public authorities should also make sure to regularly update the competencies of such civil servants so as to take into account changes in regulations, management, and technology.

### *The private sector: a key partner*

#### *To ensure a regular exchange of information between the public and private sectors*

As mentioned earlier, the private sector is a key partner of the government in the area of public procurement. Yet, like public administrators, those in this sector need to be informed about recent reforms to be able to adhere to them. For example, the private sector lacks access to the kind of training that would enable businesses to respond to calls for tenders in conformity with the latest regulations.

In addition to the development of specific training resources for the private sector, the Tunisian government has not established a regular dialogue with the private sector. This dialogue could lead to:

- A systematic association of private sector representatives to develop and examine policies and regulations governing public procurement. This would better assure that proposed norms are well understood by the two parties and reflect their expectations.

- The publication of plans (annual or multiannual) detailing the needs foreseen by the government in terms of goods and services.

- The opportunity for businesses to study innovative solutions to help the public authorities understand how different markets function, to adapt to them, and to take advantage of the possibilities they create.

#### *Promoting the participation of SMEs in public procurement*

Small- and medium-sized enterprises (SME) are central to the private sector and a privileged partner for the government since they contribute to economic and social development, as well as to local job creation. As such,

the Tunisian government grants them with certain privileged conditions to facilitate their participation in public procurement. In effect, Decree No. 2011-623 of 23 May 2011 stipulates that the public purchaser "reserves annually up to 20% of the estimated value of contracts in works, goods, services, and studies to small- and medium-sized enterprises (art. 6)."

To ensure a level-playing field, certain countries have also adopted measures directly targeting SMEs, which suffer from comparative disadvantages when they participate in calls for tenders. Thus, preferences are extended to SMEs in such countries as Australia, South Korea, the United States, and France. In the United States, 23% of direct contracts and 40% of sub-contracts are set aside for SMEs (Box 2.6).

### Box 2.6. **The Small Business Act in the United States**

The Small Business Act was adopted in 1953, establishing the Small Business Administration (SBA). The activities of the SBA involve five key areas of operation: financial aid, aid for supply, management assistance, and disaster and regulatory assistance. The Small Business Act stipulates that each federal agency must possess an annual objective for promoting "the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers."

In 1996, in conformity with chapter 15(g) of the Small Business Act, Congress moved to facilitate the access of small businesses to public contracts by obligating the federal government to allocate 23% of the total estimated value of its procurements to these enterprises.

Businesses founded by women also benefit from these conditions. Five per cent of the total value of contracts attributed by the federal government are earmarked for businesses owned by women.

The SBA also offers other services such as training and a platform for exchanging ideas on the challenges encountered by businesses participating in its development programme called Minority Enterprise, as well as loan services to SMEs.

The actual implementation of these initiatives is verified regularly by the Office of Federal Contract Compliance Programmes.

*Source*: OECD (forthcoming), *OECD Public Governance Reviews: Review of the United States Federal Public Procurement System*, OECD Publishing.

### *The role of enterprises in promoting codes of conduct*

Enterprises need to become more involved in reforms oriented around strengthening their codes of conduct, especially with regard to their interactions with the government. However, the Tunisian Union for

Industry, Commerce and Handicrafts (UTICA) has indicated that efforts in this direction have already begun.

OECD member countries and private sector representatives have recognised in the establishment of the "Principles of Corporate Governance" in 2004 that "the corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities." Numerous enterprises today thus incorporate approaches to reinforcing codes of conduct and ethics into their activities.

In Morocco, for example, the General Confederation of Moroccan Companies (CGEM) has worked in collaboration with the government to establish standards of good governance within enterprises. The Moroccan Code of Good Corporate Governance Practices that came out of this effort thus developed out of a broad consensus of private and public sector actors. This Code divides the principles of good governance into four categories: i) the responsibilities of the governance body; ii) the rights of shareholders and associates, and their fair treatment; iii) the transparency and the dissemination of financial information; iv) the role of stakeholders and their fair treatment. The partnership between the private sector and the Moroccan government was extended even further with the establishment of an Integrity Pact for each sector. The Integrity Pact represents the commitment of operators in a given sector to limiting and preventing risks of corruption. Its objectives consist of the following: i) prevent all forms of corruption in the sector; ii) establish high standards of ethics and good governance; and iii) develop specific action plans.

## Principles of transparency and integrity throughout the entire procurement cycle

On the whole, legislative and institutional reforms of the procurement system in Tunisia have aimed at enhancing the transparency and flexibility of procedures. Nonetheless, an examination of the different steps composing the procurement process demonstrates that there are still some challenges to be overcome, especially in the interest of striking a balance between enhancing transparency and increasing efficiency.

### *Needs assessment, planning and budgeting*

The experience of OECD member countries shows that the risks of corruption or embezzlement exist at every step of the procurement cycle, even in pre-bidding.

*Needs assessment, procurement planning, and budgeting: allocating public funds for the uses intended*

Table 2.3. **Risks in pre-bidding in OECD countries**

| Pre-bidding | Risks identified |
|---|---|
| Needs assessment, planning and budgeting | – The lack of adequate needs assessment, deficient business cases, poor procurement planning.<br>– Failure to budget realistically, deficiency in the budget.<br>– Procurements not aligned with the overall investment decision-making process in departments.<br>– Interference of high-level officials in the decision to procure.<br>– Informal agreement on contract. |
| Definition requirements | – Technical specifications:<br>– Tailored for one company;<br>– Too vague or not based on performance requirements.<br>– Selection and award criteria:<br>– Not clearly and objectively defined;<br>– Not established and announced in advance of the closing of the bid;<br>– Unqualified companies being licensed, for example through the provision of fraudulent tests or quality assurance certificates. |
| Choice of procedure | – Lack of procurement strategy for the use of non-competitive procedures based on the value and complexity of the procurement which creates administrative costs.<br>– Abusive of non-competitive procedures on the basis of legal exceptions through:<br>– Contract splitting on the basis of low monetary value contracts;<br>– Abuse of extreme urgency;<br>– Abuse of other exceptions based on a technicality or exclusive rights, etc.;<br>– Untested continuation of existing contracts. |
| Time frame for bid preparation | – A time frame that is not consistently applied for all bidders, for example, information disclosed earlier for a specific bidder.<br>– A time frame that is not sufficient for ensuring a level playing field. |

*Source*: OECD (2007), *Integrity in Public Procurement: Good Practice from A to Z*, OECD Publishing, Paris. doi: *dx.doi.org/10.1787/9789264027510-en*.

### Needs assessment

Article 9 of the 2002 Regulatory Decree on procurement stipulates that:

- Services for which a public contract is awarded must exclusively meet the nature and the scopes of the needs to be met. Their technical specifications should be determined before any competitive tendering or any negotiation can take place.

- These specifications should be defined in such a manner as to guarantee the quality of the public contract and to promote domestic production.

Specifications should be based on intensive studies so as to give a precise idea of the nature and scope of the needs to be satisfied. In order to ensure the quality of specifications, the same decree enabled public purchasers to submit the proposed specifications beforehand to the procurement commissions to get their opinion on them.

In the interest of simplifying procedures, the 2011 Decree, for its part, eliminated this step. Yet, supervisory bodies have indicated that the poor quality of specifications is one of the main issues hampering the procurement process. In short, public purchasers are hardly specialists in this area, and lack proper training. Specifications define the conditions under which contracts are awarded and executed, and so their poor quality can have a direct impact on the performance of suppliers.

### Planning

Absent from Tunisia's public institutions is any kind of procurement planning process or programme that makes use of purchasing forecasts. What does exist, however, is a circular issued by the Prime Minister that requests that managers plan and establish purchasing programmes and forecast their overall costs. Effective planning would enable the avoidance of certain potential problems, such as the practice of cost-splitting, which is formally prohibited by 2001 Decree (Article 8), and the development of regulated markets that could be considered as anti-competitive practices.

Planning enables the formulation of a long-term strategic approach to assessing purchasing needs and managing procurement. The evaluation of needs is seldom approached in a systematic way in Tunisia. The government should force all institutions to define their purchasing needs through the use of an annual planning programme. This would make it possible, on the one hand, to identify potential framework contracts if necessary, and on the other hand, to more effectively mobilise the private sector. A proper

definition of needs will also have a positive impact on the completion of the public contract.

The public purchaser should analyse purchasing procedures in order to define objectives and target forecasts that closely correspond to the priorities of his institution and, more generally, of the government. Tools like scorecards could be used to facilitate a regular feedback of information and to make necessary adjustments. These measures would contribute to a change in attitudes within the Tunisian government, transforming its culture from one in which conformity to regulations is the sole objective to one oriented around results in which managers can evaluate the opportunity of each spending and the results derived from it.

### Budgeting

In many countries, the Minister of Finance disseminates an annual policy brief for each investment programme. The brief describes the implementation process, the funding parameters, and the programme's specific objectives. A committee composed of senior government officials is organised under the chairmanship of the Minister of Finance to coordinate planning and implementation.

In order to establish a logical and transparent link between public spending and the outcome of tenders – from the Public Investment Programme (PIP) to the contracting entities – the government should consider formulating a multi-annual budget and an estimate of its spending based on PIP needs. Each ministry and contracting entity will use this financial plan as the basis for its own budgetary targets and as a support for contracting plans. This form of national exercise focused on budgetary needs and on the ministries and entities involved throughout the process requires leadership by a high-level official within the Ministry of Finance. It should also involve the officials in charge of purchasing at the national, governmental, and local levels.

A discussion bringing together civil society and the private sector could provide an opportunity to get feedback on public sector planning capacities. This will be all the more important when Tunisia moves towards establishing a result-based budgetary management system by 2016.

Moreover, the experiences of OECD member countries reveal the importance of setting up an integrated system linking the earmarking, budgeting, investment, contracting and contract management procedures, and validating them through an efficient verification system. This kind of system stands in sharp contrast with the traditional budgeting approach of compartmentalising functions, which was characterised by a lack of information on performance and financial management, as well as by a

transaction-based idea of the role of verification. New technologies can facilitate this integration of the budgeting, purchasing, and payment procedures, as the example of Dubai's Tejari system shows.

### Box 2.7. **Integrating budgetary procedures, purchasing, and payment in Dubai**

Dubai has established a regulation to facilitate the development of an integrated e-procurement system, Tejari. Tejari is a government-initiated, profit-driven online marketplace that enables all phases of negotiation to take place on line.

In addition, governmental departments can place their orders via an Enterprise Resource Planning system (ERP) that is linked to the accounting and invoicing system. These systems are used together in an integrated manner. All government departments dispose of a shared internal information system that gathers together available data.

With the introduction of Tejari, Dubai has benefited, in particular, from the reduced duplication of procurement functions and offices, and a more unified and user-friendly procurement system that consolidates budget, purchasing and payment processes on line.

*Source :* OECD (2007), *Integrity in Public Procurement: Good Practice from A to Z*, OECD Publishing. doi: *dx.doi.org/10.1787/9789264027510-en*.

## *Specifications*

Article 9 of the 2002 Decree governing public procurement provides that:

1. Services for which a public contract is awarded must correspond exclusively to the nature and scope of the needs to be met. Their technical specifications should be determined before any competitive tendering or negotiation can take place.
2. These specifications should be defined in such a manner as to guarantee the quality of the public contract and to promote domestic production.

In order to ensure the quality of specifications, the same decree enabled public purchasers to submit proposed specifications to procurement commissions beforehand to obtain their opinion on them.

In the interest of streamlining procedures, the 2011 Decree has eliminated this step. Yet one of the problems identified during verifications is that the specifications do not meet expectations in terms of quality.

Specifications indicate the conditions under which the public contracts are awarded and executed. They include, among other elements:

- The General Conditions of Contract establishing the administrative provisions applicable to all contracts of the same nature.
- The General Recommendations establishing mostly the technical provisions applicable to all contracts of the same nature.
- The Special Conditions of Contract establishing the administrative provisions specific to each contract and indicating, as a matter of obligation, the articles of the General Conditions of Contract which may be waived or from which a specific contract deviates.
- The Technical Specifications establishing the technical provisions specific to each contract and necessarily indicating the articles of the General Recommendations that may be waived or from which these Technical Specifications deviate.

The General Conditions of Contract and the General Recommendations are made applicable by executive order of the Prime Minister after consultation with the High Commission of Public Procurements.

***Note***: In the process of transition towards assigning public purchasers with greater responsibilities and streamlining procedures, it is essential to ensure that public purchasers dispose of the right tools to prepare specifications meeting the appropriate needs (for example, reference database, appropriate training).

In addition, Article 4 of the 2011 Decree indicates that "specifications must not favour any particular bidder." Moreover, the 2002 Decree stipulates that the definition of specifications must be based on intensive studies in order to precisely define the qualitative and quantitative aspects of the needs to be met.

Yet, in practice, public purchasers are not necessarily aware of the necessity to manage the risks of patronage and corruption that exist in the specification preparation process. For example, if private engineering and design agencies can assist public purchasers in define the specific needs and the capacity of entrepreneurs, producers, and service providers to meet them, one should be sure to ascertain that the said agencies are not themselves bidders.

The experiences of OECD member countries reveal that in order to ensure the objectivity of specifications, it is important that they be:

- Based on clear needs. Providers and end users may be consulted during the process of defining specifications as long as the participants in such consultations are numerous and representative enough, and the results are examined against a market analysis conducted by the public procurement authority to enable greater objectivity.

- Written in such a way as to avoid any form of bias. In particular, they must be precise and complete, without being discriminatory (no exclusive brands, or descriptions of branded products). It is essential to avoid any form of specification that favours a specific product or service.

- Written according to the intended results. They should focus on the goal rather than on the means to reach it, so as to encourage innovative solutions and the best use of public spending.

### *Public procurement*

#### *Transparency and equal access to information for bidders*

The 2002 Decree clearly stipulates that public procurement is governed by the following principles:

1. equal opportunity for all bidders;
2. transparent procedures;
3. competition.

These principles have been upheld by the various reforms that have been introduced following, in particular, the 2011 Decree. Thus, Article 3 reaffirms that "public contracts are awarded, after competitive bidding, through calls for tenders."

Yet, some public contracts can be awarded, on an exceptional basis, by way of extensive consultation or by way of negotiated contracts, without requiring an authorisation by decree or executive order beforehand, as was obligated by the 2002 Decree. Such exceptions, which should be justified and required by the specific nature of certain procurements, do not affect the obligation to respect principles of transparency and equal opportunity.

The High Commission of Public Procurements has nonetheless indicated to the review team conducting the field mission of December of 2011 that negotiated contracts represent a small proportion of the total number of public contracts (about 6-7%).

In order to enhance transparency, the Decree also required that the contract notification be published in the press and on the National Observatory of Public Procurements web portal at least 20 days before the bidding deadline. Yet, to expedite the entire process, the time required for publication of the contract notification has been shortened in comparison with the time specified in the 2002 Decree. The contract notification must include:

- the subject of the contract;
- the place where the specifications and, when applicable, the sale prices, are made publicly available;
- the place and final date for reception of bids;
- the place and date of the commission meeting to open the bids;
- the duration for which bidders remain bound by their offers;
- the type of necessary supporting documents to provide for references and professional and financial guarantees;
- the selection criteria for successful bidders, other than those stipulated in the rules.

As mentioned above, small- and medium-sized enterprises possess certain benefits, such as being exempted from providing the provisional guarantee for their participation, as well as enjoying the 20% quota of the total estimated contract value that is reserved for them. Small- and medium-sized enterprises are categorised as such on the basis of their overall sales and level of investment, with a maximum amount of the contract to be awarded to them.

However, the private sector indicates that certain problems hinder the implementation of these provisions:

- Formalities and procedures that remain ponderous despite the streamlining efforts launched by the 2011 Decree;

- Lack of transparency in the publication of tender outcomes. Indeed, even if the 2011 Decree stipulates that outcomes be published, the private sector has noted that, in practice, this is not done systematically.

***Note***: In the interest of enhancing transparency and competition between potential suppliers, it is essential for the Tunisian government to ease the formalities and procedures for registering companies. Moreover, the experiences of OECD member countries show that it is important to provide suppliers the opportunity to submit their bids electronically, which may make the submission process easier. To this end, the dematerialisation of public contracts constitutes a major project of the Tunisian government, as exemplified in Morocco's experience (see Box 2.8).

### Box 2.8. **Expediting the administrative files of potential suppliers: The experience of Morocco**

Morocco has developed a Supplier Database geared towards simplifying public purchasing procedures. In effect, the companies registered in the database will no longer need to furnish the basic documents for the establishment of their administrative file, other than the provisional guarantee. Rather, the General Treasury of the Kingdom will perform the verification of documents as companies register themselves in the database, which will provide public purchasers with an updated list of all potential suppliers.

This initiative takes shape out of the broader project launched by the General Treasury of the Kingdom in January 2007 (www.marchespublics.gov.ma) aimed at dematerialising the public procurement process. However, to achieve this objective, Morocco has opted for a three-stage approach (over the period between January of 2007 and the first half of 2010) for activating the different features of its electronic procurement platform:

- Stage 1: The online activation of the public procurement portal and Database so as to ensure the publication and tracking of public expenditures (January 2007 - March 2009).
- Stage 2: The establishment of a dematerialised procurement platform and Supplier Database with the objective of facilitating electronic filing (1st semester of 2010).
- Stage 3: The establishment of e-procurement markets (2nd semester of 2010).

*Source :* Moroccan Portal for Public Procurements, *www.marchespublics.gov.ma*.

### *Dematerialisation*

Dematerialisation facilitates the access of bidders to information (contract notices), ensures transparency in the public procurement process (publication of the outcomes of tenders), makes it possible to collect data on public procurement, and finally, enables electronic bid submission.

Contract notices and the outcome of tenders are published on the *www.marchespublics.gov.tn* platform that was created by the High Commission of Public Procurements. However, while these functions are clearly established, the website is not regularly updated and some information is missing. It is therefore urgent to update such data, and to make the transmission of information by public institutions mandatory and systematic.

The website also enables access to decrees and other rules governing public procurement. This information is published in its entirety, alongside a description of the main actors in the public procurement system. Some data on contracts also exists, but because it generally does not specify the time periods associated with them, it does not enable one to measure the performance of the system.

Moreover, bidders lack the opportunity to submit their bids on the website. In a second phase, Tunisia would like the platform to become a real electronic procurement platform. The Observatory has told the review team that collaboration with South Korea is under way to better understand the features of their electronic procurement platform. This collaboration will aim to support Tunisia in the creation of its own electronic procurement platform to be named TUNEPS. This platform will first cover a few pilot ministries and public institutions before being expanded to encompass the entire Tunisian public sector. During the international conference on "Strengthening the Integrity Framework and Preventing Corruption" on 13-14 February 2012, Chile and Italy presented their electronic procurement platforms, which could constitute two additional models for Tunisia (Box 2.9). Useful lessons can be drawn from the comparison between the Chilean and the South Korean platforms.

### Box 2.9. **The different uses of electronic platforms: The cases of Chile and South Korea**

Chile's electronic procurement platform (*www.chilecompra.cl*) has managed to effectively integrate the different systems governing the different phases of the procurement cycle. This system has guaranteed an extremely high level of transparency to all stakeholders, mainly through the production of accurate data on public procurement. It has also promoted the investigation of the conditions for awarding contracts, thereby strengthening the overall integrity of the Chilean system.

In South Korea, the Korea Online E-Procurement System (KONEPS) is an integrated electronic system for public procurement that covers the entire national territory and allows the online processing of every step of the procurement cycle, from requisition to payment. Thanks to this digital system, consumer associations and companies participate in monitoring the management of public funds in the public procurement domain. The system covers all stages of the procedure, from those prior to submission to contract management to payment. For example, the procurement service publishes the specifications of tenders on KONEPS before the publication of the contract notice to encourage interested suppliers to make suggestions.

This information system can also track payments and prevent risks to integrity during this operation. The company submits an invoice and receives payment upon presentation of documents sent by an inspector of the user agency. Because the paperless payment system is connected to the finance settlement system, the user agency, the company, and the bank all have access to all of the relevant payment information. To avoid delays, payment is made online automatically within two business hours after receipt of the invoice.

*Source*: OECD (2007), *Integrity in Public Procurement: Good Practice from A to Z*, OECD Publishing. doi: *dx.doi.org/10.1787/9789264027510-en*; and OECD (2010), "Conclusions of the 2nd Multilateral Meeting on Public Procurement," conference paper, Rome, 14-15 June 2010.

## *Execution and final settlement*

Final settlement constitutes the last phase of execution of a contract. It is the responsibility of the purchaser to evaluate the execution of the contract and determine its exact amount. It represents the end of contractual obligations for the contractor. Article 121 of Decree No. 2002-3158 of 17 December 2002 states that: "Each contract must reach a final settlement that must be submitted to the competent Procurement Commission within a period not exceeding 90 days from the date of final acceptance of services

The final settlement file includes: an introductory note, the final accounts, the comparative table of forecasts and realisation, the minutes of provisional and definitive acceptance, the time limits, etc. After approval of the final settlement, the buyer releases all securities and guarantees to the contractor.

The results of investigations conducted by horizontal supervisory bodies, such as the General Audit Office of Public Services, the Finance General Controller, or the General Controller of State Domains and Land Affairs, have highlighted some notable abuses that are common during the procurement execution phase:

- Delays in the payments due to contractors and suppliers. Even if the regulations require the administration to pay amounts due within two months, in reality, excessive delays are reported for the settlement of accounts and supplier invoices.

- Delays in turnaround because of additional conditions and contingencies due to a flawed definition of requirements or because of political interference in the granting of award that does take into account the technical capabilities of the supplier to actually execute the contract.

- Delays in the final settlement of the contract and in the release of securities.

In effect, as the experiences of OECD member countries have demonstrated, this phase is particularly vulnerable to various forms of misconduct. The most common risks to integrity are due, most notably, to:

- abusive practices by the contractor in the implementation of the contract, particularly with regard to quality, price and timeliness;

- a lack of control exercised by public officials or collusion between the contractor and the official responsible for overseeing the conduct of operations;

- opacity in the selection of subcontractors and partners, and a lack of accountability of these parties;

- a lack of supervision by public agents;

- an inadequate separation of financial duties, particularly those dealing with payment.

A process of awarding contracts that is both transparent and based on competition regulated by effective internal and external auditing mechanisms is necessary to ensure the sound and timely execution of contracts. The direct participation of citizens in monitoring and verifying contract performance through the dissemination on the public procurement portal of reports on the execution of contracts and detailed descriptions of the real-time status of projects can, on the one hand, reduce risks of delay in execution, and, on the other hand, compel public purchasers to meet payment schedules. Thus, in Mexico, for example, an online portal has been put in place to monitor the progress of works contracts by locality, and to provide access to payment schedules.

## Suggested course of action for Tunisia: implementing specific measures to promote integrity in public procurement

In addition to the aforementioned proposals on how to strengthen the integrity framework in the public sector, this final section offers some more specific measures that could be introduced in the domain of public procurement.

### *Preventing conflicts of interest*

Conflicts of interest are among the primary risks to integrity in the field of public procurement. In this perspective, it is essential to develop specific ethical standards for public officials in charge of procurement.

As previously mentioned, it is first important to adopt measures at the organisational level in order to avoid potential conflicts of interest. The Tunisian government could learn from the experiences of OECD countries in guaranteeing a separation of responsibilities and skills throughout the entire procurement cycle (see Box 2.10).

In addition, procurement officials must conduct themselves in a manner that is consistent with the public service mission of their institution, and therefore must avoid situations that create conflicts of interest. Tunisia has yet to enact specific measures to prevent conflicts of interest. As was discussed in Chapter 1, Tunisia should consider developing a regulatory framework to identify, prevent, and sanction conflicts of interest.

### Box 2.10. **The separation of duties and competencies**

- Entities: In Austria and Germany, for example, there is a separation between the administrative entities requiring specific goods and services and those who purchase them.
- Functions: in Turkey, for example, there is a clear separation between strategic planning, the monitoring of budgeting and performance, accounting and reporting, and internal auditing.
- Stages of the procurement procedure: in the United States, for example, authorisation for disbursing expenditures, approval of the main procedural steps, and recommendations for awards and payments must remain separate processes.
- Commercial and technical aspects: in the United Kingdom, for example, business assessment must be conducted separately from technical evaluation, and then the information is brought together in order to clarify the award recommendation.
- Financial aspects: ex-ante monitoring performed by financial services and the financial transaction itself should be separate operations. In particular, the tasks of authorising payment and those related to accounting cannot be entrusted to a single official (Ireland, Luxembourg, and Turkey, for example).

*Source*: OECD (2007), *Integrity in Public Procurement: Good Practice from A to Z*, OECD Publishing. doi: *10.1787/9789264027510-en*.

Specific provisions for public purchasers could be included in this framework, such as a prohibition on accepting any gift, given the risks associated with their duties. To communicate these obligations, it is also possible to develop a code of conduct or guidelines that can be adapted to the context of each public institution. In Mexico, for example, the Federal Electricity Commission (CFE), which is the supplier, producer, and distributor of public electricity, has implemented several measures to prevent conflicts of interest and strengthen the integrity of public officials (See Box 2.11).

### *Establish procedures to allow officials to report abuses in public procurement*

The Tunisian government should seek provide public officials with the means to report abuses in public procurement. To this end, clearly defined procedures could be established for reporting misconduct. These could

include: an internal claims office, a direct hotline, an outside mediator, as well an electronic reporting system that protects the whistleblower's anonymity while awaiting requests for clarification.

### Box 2.11. **The Code of Conduct of the Mexican Federal Electricity Commission (CFE)**

The CFE Code of Conduct defines the values and standards of conduct that public officials must adopt. This code is based on the Federal Code of Ethics for Civil Servants and it lists as its main values: responsibility, honesty, and respect.

It provides an overview of the attitudes and behaviour of its employees in the performance of their duties, and highlights the importance of increasing their responsibility. It also underlines the fact that honesty implies probity, transparency, and efficiency in the use of the public funds allocated to the CFE. Since 2003, an advisory board has been responsible for monitoring adherence to the code and for interpreting it. The code is periodically revised (at least once every three years).

The code prohibits employees from accepting or soliciting any type of favour, advantage, donation, or reward while performing their official duties. It also prohibits the use of CFE resources (public funds, information, or other types of resources) for personal interest, or to favour or harm any political party or association.

*Source*: OECD (2013), "Public Procurement Review of the Electric Utility of Mexico, Towards Procurement Excellence in the *Comisión Federal de Electricidad*", internal document, Public Governance and Territorial Development directorate, Paris.

A law promoting the protection of whistleblowers should be implemented in Tunisia, as mentioned above. This will create a favourable environment for officials willing to report cases of misconduct. The legal framework should define wrongdoing and the appropriate sanctions to be applied in an effective, professional, and timely manner. It should also expressly prohibit any form of retaliation. In May of 2012, the Tunisian government established an alert portal (*www.anticorruption-idara.gov.tn*) for the purpose of exposing abuses and administrative corruption. At the initiative of the Minister for Administrative Reform, the portal allows citizens, civil servants, and businesses to anonymously report online abuses they observe in the context of their interactions with the government, as well as to follow up on the handling of these reports by the relevant authorities.

However, there is currently no legal framework in place to protect whistleblowers. Moreover, the authorities responsible for investigating cases that are reported are not listed on the portal.

One of the main problems to solve is to ensure the protection of civil servants who signal an anomaly against retaliation. This can be done by providing them legal protection, by protecting their personal data, by preserving their anonymity, and by creating a protection commission. It is also important to make certain that handling of claims is well documented and impartial so as to avoid unduly harming the reputations of people affected by the allegations.

***Note:*** The OECD has developed within the framework of its activities with the G20 some principles as well as a comparative study to assist countries in the establishment of a legal framework to protect whistleblowers against retaliation. This study could provide a source of good practices for the Tunisian government, which plans to develop a legal framework to protect whistleblowers.[2]

### *Recourse mechanisms*

The Investigation and Follow-Up Committee within the High Commission of Public Procurements provides businesses with a system of administrative recourse. It was created by the Prime Minister in 2003. This committee is composed of a judge of the Court of Auditors and two auditors from the General Audit Office of Public Services and the Finance General Controller. Claims can be addressed to the committee during the entire public procurement cycle (notification, award, etc.). The committee can also audit awards that are already contracted or under execution.

The bidders may, within three days following the publication of the tendering outcome, lodge a petition about the results and the competing process with the Investigation and Follow-Up Committee. As soon the petition is lodged, the committee forwards a dated copy to the concerned public purchaser. The public purchaser suspends the signature of the award until he receives the Committee's opinion. The Committee shall decide on these petitions within ten business days of the date of reception of the public purchaser's response, supported by any clarification that may have been requested. The claim process is as follows: i) reception of the petition; ii) quick review; iii) drafting of a notification so that the public purchaser automatically suspends the process; iv) thorough review of the file, and final opinion submitted to the Prime Minister for his final decision.

The Committee also provides enterprises with assistance on interpreting the laws/regulations. The Committee has received a considerable number of

claims – 195 petitions in 2009, 248 in 2010, and 308 in 2011 (63% of which were valid and involved tailored technical specifications, excessively low technical bids, and short deadlines for preparing the bids). Moreover, the Committee was consulted 34 times in 2009 and 33 in 2011 about interpreting the law. The opinions of the Investigation and Follow-Up Committee are published on the website of the National Observatory of Public Procurements.

Article 5 of Decree No. 2002-3158 of December 17, 2002 stipulates that any public procurement must include provisions on dispute settlement. The settlement of disputes is done either out-of-court or in court. Out-of-court settlement is conducted by the head of the public purchaser's administration or by the concerned procurement commission (Article 85 of the Decree). Legal settlement can be initiated by any of the contracting parties who can lodge a dispute with the administrative court or submit it to arbitration.

***Note***: Reinforcing this recourse mechanism should be a priority. This committee should have enforceable authority to make its decisions final, whereas today it is dependent on the Prime Minister's decision and thus on outside political authority. Officials who participate in this process of re-examining contract awards must be protected from any outside pressure. Potential suppliers must have the possibility of applying to the administrative court for a re-examination of the procurement authority's final decision.

## *Institutional and social oversight mechanisms*

### *Supervisory bodies*

As mentioned in Chapter 1, in addition to the departmental inspections, the Tunisian government has three main supervisory bodies: the General Audit Office of Public Services, the Finance General Controller, and the General Controller of State Domains and Land Affairs. There is also the High Committee of Administrative and Financial Control which is in charge of coordinating the different programs of these supervisory bodies. In addition to their supervisory function, these institutions also fulfil an advisory role on legal documents related to the organisation and modernisation of government.

The oversight system in Tunisia raises some issues related to independence (the work orders of the supervisory bodies are determined by the executive branch), coordination, and collaboration, since the different bodies do not systematically share information and their task of providing horizontal monitoring overlaps. It seems that the history behind the creation of these bodies has led to the development of feelings of mistrust between

them. Thus, the General Audit Office of Public Services was created within the Office of the Prime Minister, while the Finance General Controller is placed under the supervision of the Ministry of Finance, the General Controller of State Domains and Land Affairs is under that of the Ministry of State Domains and Land Affairs, and the High Committee of Administrative and Financial Control is under control of the Presidency. Moreover, the State Controller monitors public spending in public establishments, and the General Service of Public Spending conducts ex-ante control on spending.

Meanwhile, the Court of Auditors conducts ex-post audits and it determines its own auditing missions.

The multiplication of these supervisory bodies may lead to redundant horizontal monitoring activities. However, the fusion of some of these bodies is currently under consideration in order to increase the efficiency of the oversight system and make sure it provides assistance to managers so as to reduce the risks of mismanagement of public funds (see Chapter 1).

As part of a comprehensive reform of public finance management that seeks to make the system more based on objectives, the oversight control will also be reformed to replace the current ex-ante control system with an ex-post system.

***Note***: The systematic exchange of information between internal and external supervisory bodies could also be encouraged in order to optimise the exploitation of the data generated by the different audits performed (see also Chapter 1). Finally, the frequency of audits in public procurement could also be linked to various factors, such as: the nature and scope of the risks involved, or the size and value of the public contracts, the different types of purchase, as well as the complexity, sensitive nature, and specificity of individual contracts (for example, in cases of exemption from the general rule of competitive bidding). Whatever the reform that will be put into place, it is necessary that it rationalises oversight mechanisms and gives supervisory bodies greater independence.

### *Public oversight*

As indicated above, the government should work to create a partnership with civil society and the private sector in order to guarantee transparency and integrity in public procurement.

In addition to its participation in defining and implementing reforms related to public procurement, civil society can serve as "scrutineers" of public procurement. For instance, Mexico has adopted this approach by fostering the direct public oversight of public procurement (Box 2.12).

### Box 2.12. **Direct public oversight of public procurement: the "social witness" in Mexico**

The "social witness" is a representative of civil society who acts as external observer during the public procurement process. In accordance with the recommendation of *Transparencia Mexicana*, Mexican public institutions inclined to do so have been able for the past few years to use this system to promote transparency, reduce the risk of corruption, and improve the overall efficiency of the process. In addition to giving public backing to the process, the social witness also gives non-binding recommendations during and after the process.

The social witness must be an honourable public figure, who is well-known and trustworthy, as well as independent from the parties involved in the bidding. He/she enjoys free access to the information and documents related to the public procurement process, and can participate in the key steps of the process. In particular, he/she can:

- verify the basis of the bid and the contract notice;
- participate as observer in all the meetings that are organised with the potential bidders to remove their possible doubts;
- receive the unilateral integrity declarations of the different parties;
- attend the submission of technical and financial bids;
- participate as observer in the meeting during which the outcome of the tender is published.

Since December of 2004, the criteria to participate as a social witness in the procurement process are strictly defined. The social witness must, among other things:

- prove that he or she is not a public official;
- prove that he/she does not have any criminal record, and that he/she has never been sanctioned or removed from the register;
- officially pledge not to participate in a public procurement likely to cause him/her a conflict of interest (because of a family or personal relation, or of a business interest, for example);
- be familiar with the legal regulations applicable to public procurement (or, at the least, undertake the training offered by the government).

The social witness is liable to sanctions if he or she violates ethical standards or discloses information on the procedure.

### Box 2.12. **Direct public oversight of public procurement: the "social witness" in Mexico** (*cont.*)

The intervention of the social witness proved positive during the awarding of the public insurance contract by the Federal Electricity Commission (*Comision Federal de Electricidad*). The social witness's recommendations indeed helped to improve the procurement process considerably by, notably, increasing by 50% the number of bidders, extending the tendering period, and offering more precise and clear answers to the questions the bidders asked. The government estimates that this intervention led to savings of USD 26 million on the total cost of this public contract.

The list of accredited "social witnesses" is available on the Website of the Ministry of Public Administration: *www.funcionpublica.gob.mx/unaopspf/u naop1.htm*.

*Source*: OECD (forthcoming), "Public Procurement Review of the Mexican State's Employees' Social Security and Social Services Institute: A Strong Procurement Function for a Healthy Public Service", OECD Publishing, Paris.

## Notes

1 Decree No. 2002-3158 of 17 December 2002 governing public procurements as modified and complemented by Decree No. 2003-1638 of 4 August 2003, Decree No. 2004-2551 of 2 November 2004, Decree No. 2006-2167 of 10 August 2006, Decree No. 2007-1329 of 4 June 2007, Decree No. 2008-2471 of 5 July 2008, Decree No. 2008-3505 of 21 November 2008, and Decree No. 2009-3018 of 19 October 2009.

2 The Principles and the study are available at: *www.oecd.org/dataoecd/42/43/48972967.pdf*.

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# *Annex A*

## Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service (1998)

**THE COUNCIL,**

**HAVING REGARD** to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development;

**CONSIDERING** that ethical conduct in the public service contributes to the quality of democratic governance and economic and social progress by enhancing transparency and the performance of public institutions;

**CONSIDERING** that increased public concern with confidence in government has become an important public and political challenge for OECD Member countries;

**RECOGNISING** that public sector reforms are resulting in fundamental changes to public management that pose new ethical challenges;

**RECOGNISING** that although governments have different cultural, political and administrative environments, they often confront similar ethical challenges, and the responses in their ethics management show common characteristics;

**RECOGNISING** that Member countries are concerned to address ethical standards in public life by strengthening the efforts made by governments to improve ethical conduct;

**HAVING REGARD** to the political commitment of governments of Member countries, demonstrated by their actions to review and redefine their public service ethics framework;

**CONSIDERING** that public service integrity is essential for global markets to flourish and for international agreements to be respected;

**HAVING REGARD** to the Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions which was signed on 17 December 1997;

**HAVING REGARD** to other recent developments which further advance international understanding and co-operation in promoting ethical culture in the public service, such as the Resolution on Action Against Corruption, including the International Code of Conduct for Public Officials, passed by the United Nations on 12 December 1996, the Inter-American Convention Against Corruption adopted by the Organization of American States in March 1996, the Programme of Action Against Corruption approved by the Council of Europe in November 1996, including the preparation of a model European Code of Conduct for Public Officials, and the adoption by the European Council of the Action Plan to Combat Organized Crime on 28 April 1997 and the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union on 26 May 1997;

**RECOGNISING** the need of Member countries to have a point of reference when combining the elements of an effective ethics management system in line with their own political, administrative and cultural circumstances;

**On the proposal of the Public Management Committee;**

**I. RECOMMENDS** that Member countries take action to ensure well-functioning institutions and systems for promoting ethical conduct in the public service. This can be achieved by:

- Developing and regularly reviewing policies, procedures, practices and institutions influencing ethical conduct in the public service;
- Promoting government action to maintain high standards of conduct and counter corruption in the public sector;
- Incorporating the ethical dimension into management frameworks to ensure that management practices are consistent with the values and principles of public service;
- Combining judiciously those aspects of ethics management systems based on ideals with those based on the respect of rules;

- Assessing the effects of public management reforms on public service ethical conduct;

- Using as a reference the Principles for Managing Ethics in the Public Service set out in the Annex to ensure high standards of ethical conduct.

**II. INSTRUCTS** the Public Management Committee to:

- Analyse information provided by Member countries on how they apply these principles in their respective national contexts. The purpose of the analysis is to provide information on a comparative basis to support Member country actions to maintain well-functioning institutions and systems for promoting ethics;

- Provide support to Member countries to improve conduct in the public service by, inter alia, facilitating the process of information-sharing and disseminating promising practices in Member countries;

- Present a report in two years time analysing the experiences, actions and practices in the Member countries that have proved effective in a particular national context.

## Principles for managing ethics in the public service

### *Foreword*

High standards of conduct in the public service have become a critical issue for governments in OECD Member countries. Public management reforms involving greater devolution of responsibility and discretion for public servants, budgetary pressures and new forms of delivery of public services have challenged traditional values in the public service. Globalisation and the further development of international economic relations, including trade and investment, demand high recognisable standards of conduct in the public service. Preventing misconduct is as complex as the phenomenon of misconduct itself, and a range of integrated mechanisms are needed for success, including sound ethics management systems. Increased concern about decline of confidence in government and corruption has prompted governments to review their approaches to ethical conduct.

In response to the above-mentioned challenges, the attached principles have been developed by the Member countries. The twelve principles are designed to help countries review the institutions, systems and mechanisms

they have for promoting public service ethics. They identify the functions of guidance, management or control against which public ethics management systems may be checked. These principles distil the experience of OECD countries, and reflect shared views of sound ethics management. Member countries will find their own ways of balancing the various aspirational and compliance elements to arrive at an effective framework to suit their own circumstances.

The principles may be used by management across national and sub-national levels of government. Political leaders may use them to review ethics management regimes and evaluate the extent to which ethics is operationalised throughout government. The principles are intended to be an instrument for countries to adapt to national conditions. They are not sufficient in themselves -- they should be seen as a way of integrating ethics management with the broader public management environment.

### *Principles for Managing Ethics in the Public Service*

#### *Ethical Standards for Public Service should be Clear*

Public servants need to know the basic principles and standards they are expected to apply to their work and where the boundaries of acceptable behaviour lie. A concise, well-publicised statement of core ethical standards and principles that guide public service, for example in the form of a code of conduct, can accomplish this by creating a shared understanding across government and within the broader community.

#### *Ethical Standards should be Reflected in the Legal Framework*

The legal framework is the basis for communicating the minimum obligatory standards and principles of behaviour for every public servant. Laws and regulations could state the fundamental values of public service and should provide the framework for guidance, investigation, disciplinary action and prosecution.

#### *Ethical Guidance should be Available to Public Servants*

Professional socialisation should contribute to the development of the necessary judgement and skills enabling public servants to apply ethical principles in concrete circumstances. Training facilitates ethics awareness and can develop essential skills for ethical analysis and moral reasoning. Impartial advice can help create an environment in which public servants are more willing to confront and resolve ethical tensions and problems. Guidance and internal consultation mechanisms should be made available to help public servants apply basic ethical standards in the workplace.

### *Public Servants should know their Rights and Obligations when Exposing Wrongdoing*

Public servants need to know what their rights and obligations are in terms of exposing actual or suspected wrongdoing within the public service. These should include clear rules and procedures for officials to follow, and a formal chain of responsibility. Public servants also need to know what protection will be available to them in cases of exposing wrongdoing.

### *Political Commitment to Ethics should Reinforce the Ethical Conduct of Public Servants*

Political leaders are responsible for maintaining a high standard of propriety in the discharge of their official duties. Their commitment is demonstrated by example and by taking action that is only available at the political level, for instance by creating legislative and institutional arrangements that reinforce ethical behaviour and create sanctions against wrongdoing, by providing adequate support and resources for ethics-related activities throughout government and by avoiding the exploitation of ethics rules and laws for political purposes.

### *The Decision-Making Process should be Transparent and Open to Scrutiny*

The public has a right to know how public institutions apply the power and resources entrusted to them. Public scrutiny should be facilitated by transparent and democratic processes, oversight by the legislature and access to public information. Transparency should be further enhanced by measures such as disclosure systems and recognition of the role of an active and independent media.

### *There should be Clear Guidelines for Interaction between the Public and Private Sectors*

Clear rules defining ethical standards should guide the behaviour of public servants in dealing with the private sector, for example regarding public procurement, outsourcing or public employment conditions. Increasing interaction between the public and private sectors demands that more attention should be placed on public service values and requiring external partners to respect those same values.

### *Managers should Demonstrate and Promote Ethical Conduct*

An organisational environment where high standards of conduct are encouraged by providing appropriate incentives for ethical behaviour, such

as adequate working conditions and effective performance assessment, has a direct impact on the daily practice of public service values and ethical standards. Managers have an important role in this regard by providing consistent leadership and serving as role models in terms of ethics and conduct in their professional relationship with political leaders, other public servants and citizens.

### *Management Policies, Procedures and Practices should Promote Ethical Conduct*

Management policies and practices should demonstrate an organisation's commitment to ethical standards. It is not sufficient for governments to have only rule-based or compliance-based structures. Compliance systems alone can inadvertently encourage some public servants simply to function on the edge of misconduct, arguing that if they are not violating the law they are acting ethically. Government policy should not only delineate the minimal standards below which a government official's actions will not be tolerated, but also clearly articulate a set of public service values that employees should aspire to.

### *Public Service Conditions and Management of Human Resources should Promote Ethical Conduct*

Public service employment conditions, such as career prospects, personal development, adequate remuneration and human resource management policies should create an environment conducive to ethical behaviour. Using basic principles, such as merit, consistently in the daily process of recruitment and promotion helps operationalise integrity in the public service.

### *Adequate Accountability Mechanisms should be in Place within the Public Service*

Public servants should be accountable for their actions to their superiors and, more broadly, to the public. Accountability should focus both on compliance with rules and ethical principles and on achievement of results. Accountability mechanisms can be internal to an agency as well as government-wide, or can be provided by civil society. Mechanisms promoting accountability can be designed to provide adequate controls while allowing for appropriately flexible management.

### *Appropriate Procedures and Sanctions should Exist to Deal with Misconduct*

Mechanisms for the detection and independent investigation of wrongdoing such as corruption are a necessary part of an ethics infrastructure. It is necessary to have reliable procedures and resources for monitoring, reporting and investigating breaches of public service rules, as well as commensurate administrative or disciplinary sanctions to discourage misconduct. Managers should exercise appropriate judgement in using these mechanisms when actions need to be taken.

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# OECD Integrity Review of Tunisia

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