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The United Nations Convention against Corruption

**Procurement and
Corruption in Small Island
Developing States:
Challenges and Emerging Practices**

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UNITED NATIONS OFFICE ON DRUGS AND CRIME
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Procurement and Corruption in Small Island Developing States: Challenges and Emerging Practices



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Acronyms

COSO	Committee of Sponsoring Organizations of the Treadway Commission
CPI	Caribbean Procurement Institute
OECD	Organisation for Economic Co-operation and Development
FICAC	Fiji Independent Commission Against Corruption
ICAC	Independent Commission Against Corruption (Mauritius)
INTOSAI	International Organization of Supreme Audit Institutions
SIDS	Small island developing States
UNCITRAL	United Nations Commission on International Trade Law
UNODC	United Nations Office on Drugs and Crime
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law
WB	World Bank

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Executive summary

The United Nations Convention against Corruption (UNCAC) is the sole global, comprehensive anti-corruption instrument. It provides a framework for addressing corruption through prevention, criminalization, international cooperation and asset recovery. The Convention formulates specific requirements on how to structure States parties' procurement systems in order to effectively manage the risk of corruption.

The United Nations Convention against Corruption recognizes that the goal of strengthening integrity requires an approach based on respect to the local environment. It emphasizes in its article 9 that implementing an effective public procurement system based on transparency, competition and integrity is an important step towards preventing corruption. Establishing such a system poses a significant challenge for many Member States, including small island developing States (SIDS). Small and often isolated, with limited resources, SIDS require a customized approach to addressing corruption in procurement; an approach that reflects the unique challenges of their environment.

This publication is intended to serve as a reference guide to addressing corruption in procurement in SIDS for governments, the private sector, academia and civil society, as well as for development assistance providers that work with SIDS.

It provides an overview of the elements of a strong procurement system, the international standards relevant to the prevention of corruption in procurement and the requirements of UNCAC. It focuses on some of the specific challenges SIDS face in strengthening integrity in procurement and provides examples of how the general suggestions contained in international standards are translated into specific norms and are implemented locally.

This publication is meant to complement the Guidebook on anti-corruption in public procurement and the management of public finances: Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption published by UNODC in 2013;* it is meant to complement it with some SIDS specific examples and suggestions.

* Available at www.unodc.org/documents/corruption/Publications/2013/Guidebook_on_anti-corruption_in_public_procurement_and_the_management_of_public_finances.pdf.



Introduction

1. Procuring goods, construction and services is a key function of government and an important tool for achieving individual countries' development strategy goals. The construction of schools, hospitals, roads and other infrastructure is usually carried out by private contractors with public funds. Goods procured by governments are produced and sold by private entities. A wide range of services is provided by the private sector to governments and the general public. The price and quality of construction, of the goods purchased and the services provided are of crucial importance for the community. An effective system of public procurement is a prerequisite for the delivery of high-quality services to the public.

2. At the same time, the sheer size of the procurement market, its proportion as a percentage of gross domestic product and the fact that procurement involves interaction between public and private interests, makes it vulnerable to corruption¹ and a primary area of concern for the integrity of public administration.² The United Nations Office on Drugs and Crime (UNODC) estimates that the cost of public procurement can account for up to 30 per cent of gross domestic product,³ making it the largest single area of government spending.

3. The focus on corruption in recent years has been largely a result of the realization by both governments and the international community that corruption is a key governance challenge that impedes development and is directly linked to levels of inequality in society, undermining the rule of law, weakening institutions and destroying citizens' trust in them.

4. Corruption is a main obstacle to social and economic development. Most social scientists and economists agree that corruption introduces uncertainty into economic life, undermining fair competition and introducing perverse incentives in the private sector. When the quality and price of goods and services matter less than bribes and political connections, the competitiveness of the economy suffers; honest companies with

¹United Nations, *Integrity in public procurement processes and transparency and accountability in the management of public finances* (CAC/COSP/WG.4/2015/3).

² *Ibid.*

³ *Guidebook on anti-corruption in public procurement and the management of public finances: Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption.*

otherwise competitive products fail to realize their full potential and lose out to their corrupt competitors. In the worst case scenario, in an environment of systemic corruption only the companies that play by the “rules” of corruption survive.

5. Corruption thrives in societies where inequality is high; it has a disproportionate effect on vulnerable groups. Corruption and human rights abuse go hand-in-hand in countries with weak legal and institutional frameworks. The inability or unwillingness of governments to prevent human rights abuse and corruption further damages trust in institutions and compromises social stability.

6. Corruption is both a cause and a consequence of ineffective institutions. Integrity is a core feature of effective organizations and a prerequisite for unbiased and results-driven work. Corrupt organizations are often unpredictable; to secure predictability, citizens and businesses may resort to corruption—the bribe becomes the price of certainty.

7. Corruption has a corrosive impact on the national security of a country. Security sector organizations can only be effective if they operate with integrity; if their staff are primarily motivated by professional concerns and work in the public interest. Organized crime or powerful business groups might try to penetrate public sector bodies and security services, and capture them from within making them work primarily in the interest of the captors. Corrupt low level officials may try to exploit opportunities presented to them by the lack of accountability and control, making the impartial and effective discharge of public functions impossible. Thus the security of the State is compromised; borders become transparent to illicit trafficking in drugs, arms and human beings, and law enforcement becomes ineffective.

8. The dangers that corruption poses have been recognized by national authorities, international organizations and development assistance providers. The importance of integrity is stressed in the 2030 Agenda for Sustainable Development, and in particular in the Sustainable Development Goal 16 and its targets: to promote the rule of law at national and international levels and to ensure equal access to justice for all; to significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime; to substantially reduce corruption and bribery in all their forms; and to develop effective, accountable and transparent institutions at all levels.

International standards

9. In the age of globalization, corruption has become an international issue rather than a strictly national one. Bribery in international business transactions, the use of foreign jurisdictions to hide the proceeds of corruption, and the use of transborder money-laundering practices to hide the illicit origin of funds are only a few examples of criminal activities that necessitate international cooperation and coordination. This has led to increasing interest in the adoption of international anti-corruption standards that have an impact on national procurement systems. A number of regional or organization-specific international legal instruments were put in place in order to address corruption, strengthen good governance and support sustainable development. Examples include the Inter-American Convention against Corruption (1996), the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997), the Council of Europe Criminal Law Convention on Corruption (1999), the Council of Europe Civil Law Convention on Corruption (1999) and the African Union Convention on Preventing and Combating Corruption (2003).

10. Specialized international legal instruments with a specific focus on procurement systems include the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement; the World Trade Organization Agreement on General Procurement; the procurement regulations and directives of the European Union; and the standards and regulations of donor organizations, including those of international organizations such as the World Bank and the European Bank for Reconstruction and Development.

11. A key element of the international efforts to promote integrity in procurement is the United Nations Convention against Corruption, in particular its article 9.

United Nations Convention against Corruption

12. The sole legal instrument to address corruption on a global scale is the United Nations Convention against Corruption. The Convention was adopted by General Assembly resolution 58/4 of 31 October 2003 and entered into force on 14 December 2005. As of September 2016, the Convention against Corruption has 180 States parties,⁴ including 31 of the 38 small island developing States (SIDS).⁵

Article 9. Public procurement and management of public finances

Each State party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

⁴A full list is available at www.unodc.org/unodc/en/treaties/CAC/signatories.html.

⁵According to the United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, the following countries are classified as small island developing States: Antigua and Barbuda, Bahamas, Bahrain, Barbados, Belize, Cabo Verde, Comoros, Cuba, Dominica, Dominican Republic, Fiji, Grenada, Guinea-Bissau, Guyana, Haiti, Jamaica, Kiribati, Maldives, Marshall Islands, Micronesia (Federated States of), Mauritius, Nauru, Palau, Papua New Guinea, Samoa, Sao Tome and Principe, Singapore, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Solomon Islands, Suriname, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu and Vanuatu.

13. Countries that become party to the Convention against Corruption must adhere to a set of standards and implement a number of measures to address corruption, including measures aimed at preventing and criminalizing corruption; strengthening law enforcement and international cooperation; addressing money-laundering; and facilitating the recovery of assets. The Convention explicitly emphasizes the need to strengthen the integrity of procurement and public financial management systems in article 9. In addition to article 9, the Convention against Corruption contains a number of provisions that may impact the integrity of procurement systems. Chapter II requires States parties to undertake specific actions to prevent corruption, including putting in place effective and coordinated anti-corruption policies; the designation or establishment of specialized anti-corruption bodies; measures to prevent corruption in public administration and the private sector; and measures to promote the participation of society.

14. Most SIDS are parties to the Convention with the exception of Barbados, Belize, Saint Kitts and Nevis, Saint Vincent and the Grenadines, the Independent State of Samoa, the Republic of Suriname and the Kingdom of Tonga.⁶ The Cook Islands is not a United Nations Member State and as a result, it is not on the list of SIDS, but it has been a party to the Convention since 17 October 2011.

15. To support States parties in implementing article 9, UNODC as the guardian to the Convention has developed and published a number of tools and publications.

16. The UNODC *Legislative Guide for the Implementation of the Convention against Corruption* notes that the introduction of measures may require amendments to existing legislation or regulation, or the drafting of new legislation or regulation, depending on the existing legal framework in each State party.

17. The UNODC *Technical Guide to the Convention against Corruption* devotes special attention to enhancing transparency in procurement and suggests the establishment or designation of a specialized body in charge of the procurement process.

18. The 2013 UNODC *Guidebook on anti-corruption in public procurement and the management of public finances: Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption* provides an extensive overview of the corruption risks in the different stages of the procurement process and suggests measures to address them.

The United Nations Commission on International Trade Law Model Law on Public Procurement

19. The 2011 United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement has the following goals: to maximize economy and efficiency in procurement; to foster and encourage participation in procurement proceedings by suppliers and contractors regardless of nationality, thereby promoting international trade; to promote competition among suppliers and contractors for the supply of goods, construction and services; to provide for the fair and equitable treatment of all suppliers and contractors; to promote the integrity of, and fairness and public confidence in the procurement process; and to achieve transparency in procedures relating to procurement. It is fully harmonized with the requirements of the United Nations Convention against Corruption.

⁶A full list is available at www.unodc.org/unodc/en/treaties/CAC/signatories.html (last accessed July 2016).

20. The Model Law on Public Procurement is not an international agreement; it contains recommendations on the legal framework that countries may use in the process of reforming their procurement systems, in order to ensure that they are structured according to the highest international standards. It provides for a degree of flexibility: States that choose to use it can adapt its provisions to their national environment and legal traditions, while still reducing legal uncertainty and harmonizing their legal regimes.⁷ Currently, 21 countries and five international organizations have officially confirmed that their procurement legislation or rules are based on the UNCITRAL Model Law on Public Procurement.⁸ As there is no explicit requirement for countries to notify UNCITRAL if they use the model law, it can be assumed that the actual number of countries whose legislation is influenced by the model law is higher.

21. Both the UNCITRAL Model Law⁹ and article 9 of the Convention against Corruption require countries to base their procurement systems on the principles of transparency, competition and objective criteria in decision-making.¹⁰

22. These principles represent the key elements of the concept of integrity in procurement, ensuring that the system is free from corruption and the objectives of procurement (value for money, non-discrimination, sustainable procurement and promotion of horizontal policies) are achieved. Translating these principles into practice requires specific measures in all stages of the procurement process: the pre-tender, tender and contract management and administration stages.

23. SIDS are influenced to a differing degree by these international standards. The European Union *acquis communautaire* are a part of the legislation of the European Union Member States and the European Commission, which are the largest donors to SIDS. World Trade Organization Agreement on General Procurement (WTO GPA) standards are reflected in the regulations of donor organizations that originate from WTO GPA members. While donor regulations and WTO GPA are not directly translated into SIDS¹¹ internal legislation, they might be applied by SIDS when implementing specific donor-funded projects because conditions of World Bank or European Union funding often require recipient countries to apply the procedures of the respective donor organization (instead of the relevant national legislation) for the purposes of contracting, payment and implementation control.


⁷ *Guide to Enactment of the UNCITRAL Model Law on Public Procurement (2011)*. Available at www.uncitral.org/uncitral/en/publications/publications.html.

⁸ A full list is available at www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/2011Model_status.html.

⁹ *Guide to Enactment of the UNCITRAL Model Law on Public Procurement*. Section I, Main features of the Model Law, Objectives.

¹⁰ UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Corruption* (available at www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC_Legislative_Guide_E.pdf) and UNODC, *Technical Guide to the United Nations Convention against Corruption* (available at www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf).

¹¹ A full list of parties to WTO GPA is available at www.wto.org/english/tratop_e/gproc_e/memobs_e.htm.



Elements of a strong public procurement system

24. A strong procurement system is a prerequisite for achieving government development objectives. Multiple, uncoordinated national procurement regimes may become an obstacle to economic exchange, increasing legal uncertainty and transaction costs. The needs of the globalized economy require a certain degree of harmonization of legislation and practices, removing obstacles to trade, and ideally encouraging competition and helping to achieve better value for money. Both the United Nations Commission on International Trade Law (UNCITRAL) Model Law and article 9 of the United Nations Convention against Corruption require that procurement systems are based on the principles of transparency, competition and objectivity.

Principles of procurement

Transparency

25. Transparency supports trust in the procurement system and promotes integrity by making it difficult to conceal irregularities and malpractices. Transparency in itself is not a goal: rather, it is an important principle that enables and facilitates the achievement of the objectives of the procurement system.¹²

Procurement systems consist of the following elements:

1. A legislative framework that takes into account international standards but is also sensitive to local specificities and legal traditions, and is tailored to the challenges of the specific country.

¹²United Nations, United Nations Convention against Corruption: implementing procurement-related aspects (CAC/COSP/2008/CRP.2). Submitted by the United Nations Commission on International Trade Law.

2. An institutional infrastructure with adequate administrative capacity to implement the legislative framework; institutions that are effective and act with integrity (in accordance with Article 7 of the Convention.) It is particularly important that the institutions act in a coordinated manner and exchange information effectively, thus allowing for the effective monitoring of the implementation of contracts and the taking of proper remedial action if an irregularity is detected. The use of information and communications technology is increasingly being seen by States parties to the United National Convention against Corruption as an important element of the efforts to strengthen the overall implementation infrastructure.

3. An effective system for internal and external control, and for reviewing procurement decisions and sanctioning violations.

The sufficient allocation of resources is important to ensure the effectiveness of a system. Lack of resources could limit the scope, the number and size of institutions and the availability and use of information and communications technology

Source: Guide to Enactment of the UNCITRAL Model Law on Public Procurement (2011).

26. In procurement, transparency is understood as having three important elements:

(a) The open and transparent publishing of all procurement notices and the rules, criteria and standards to be followed in the course of the procurement process;

(b) A procedure that is open to public scrutiny and that utilizes clear, standardized documents and published rules and criteria; and

(c) The existence of a system that facilitates effective internal and external control over the procurement process, and ensures that non-compliance is sanctioned.¹³

27. Transparency allows equal access to information for all participants in the public procurement process. Thus it promotes fair competition. To ensure transparency, countries are increasingly using specialized Internet portals and websites, thus minimizing printing costs and ensuring quick and easy access to information.

Objectivity

28. Objectivity ensures that all procurement decisions are justified and taken in accordance with preselected criteria. Objectivity aims to ensure disinterested, neutral decision-making and to avoid subjective evaluations or biases. Integrity of the procurement process is a direct outcome of the correct application of the principle of objectivity.

29. Typical approaches to ensuring objectivity in procurement include the early, open publication of all criteria for participation and selection in the procurement process and the drafting of technical specifications and terms of reference in a way that is not discriminatory.

30. Use of open procurement procedures should be emphasized and become a rule. Whenever possible, open procedures should be used and preferred to procedures that limit competition, such as direct negotiations with a single supplier.

¹³ Ibid.

31. Whatever the procedure, the specific rules for its implementation should be laid down in a publicly available document that is accessible to all potential participants. In addition, ensuring procedures have a high level of detail will enable governments to put in place an effective review process, the use of which would increase the likelihood of detecting irregularities.

32. It should be noted that the use of restricted methods for selecting suppliers or contractors may still be possible in case of procurements below a certain threshold value or in cases of force majeure.

Competition

33. Article 9 (1) (c) UNCAC requires “the use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures”.

34. Both effective control of corruption and strengthened competition improve the efficiency of market mechanisms and are prerequisites for sustainable development. Ensuring competition between candidates reduces risks of bid-rigging and collusion, and facilitates detection of other procurement fraud schemes.

35. Competition is a factor that always influences the cost of the procurement procedure and may improve the quality of the services and goods procured. To ensure fair competition, the procedures described above and equal access to information should be respected. Clear, openly publicized rules should be followed. Eligibility and selection criteria must be predetermined and any change of the criteria should not be allowed.

36. In addition, special attention should be paid to ensuring that the formulation of technical specifications does not limit competition. For example, the goods or services to be procured should be formulated in a generic, objective way, with no reference to trademarks or specific technologies that would favour particular bidders (unless this is a key requirement of the process).

37. Technical and qualitative characteristics must be used that describe the product in terms of outcome rather than as a specific model or brand. Ensuring that all procedures are recorded and minutes are kept is a prerequisite for effective control of the procedure and may be required in case of a judicial or administrative review.



Small island developing States: key distinguishing features

Small island developing States: background

38. Globalization offers unique opportunities for business and economic growth, but it also provides more opportunities for organized crime groups and corrupt officials. Industrialized countries have introduced regulations and practices to identify and address some of the risks associated with corruption in both the public and the private sectors. However, there are other countries with smaller population bases, with few or no natural resources, in remote locations and with limited access to technology for which taking such steps is a significant challenge. Some of these countries are referred to as small island developing States (SIDS).

39. Most SIDS gained their independence in the middle or late 20th century. They have undergone a number of political and legislative changes and adopted international conventions amidst limited human and institutional capacities, including limited economic and financial resources.

40. SIDS are grouped into three main categories:

(a) *Pacific Island SIDS*. These States have a limited institutional capacity, are remote and have weak technological infrastructure.

(b) *Caribbean Island SIDS*. These States generally have strong, if often outdated legal systems based mostly on the British colonial tradition, with established civil service bureaucracies and systems of procurement, and good access to technology. In the region, there are also islands with a strong French heritage, such as the Republic of Haiti, and those strongly influenced by Spanish legal tradition, such as the Republic of Cuba and the Dominican Republic.

(c) *Africa, Indian Ocean, Mediterranean and South China Sea SIDS*. These States have a mix of continental and common law traditions. Access to technology varies (good in Mauritius, less so in Comoros, Sao Tome and Principe, and at times weak outside of the capital in the Maldives).

41. Despite their different geographic location, SIDS often share similar characteristics because of their inherent smallness, isolation and remoteness, as well as the colonial

past that has prevented them from developing indigenous institutions. Close ties within a society with strong social cohesion, fragmentation and isolation can create a culture where loyalties to local groups might be stronger than loyalty to national institutions. Remoteness is associated with difficult access to large centres of education and government as well as a high cost of transactions. This leads to unique challenges in terms of achieving institutional effectiveness.

42. SIDS markets are usually small and, apart from certain industries (such as tourism or fishing), the number of potential providers of services and goods, particularly in complex procurements or when import is required, can be limited. The private sector on these small islands is usually well shielded from external competition, by the virtue of the very location and remoteness of the islands. This means that the local private sector may not be able to effectively withstand competitive pressure from companies from larger industrialized countries. A careful balance is required, recognizing the fact that a totally free trade environment could potentially destroy island economies.

43. SIDS are a highly diverse group. Some countries rank at the top of the United Nations Human Development Index (HDI)¹⁴ and some at the bottom. Similar contrasts are apparent when analysing gross national income per capita. However, the relatively low level of gross national income per capita (only nine SIDS have gross national income per capita higher than the global average) indicate that many face resource-related challenges, both financial and human, in terms of running an effective procurement system.

Table 1. 2014 United Nations Human Development Index

HDI rank	Country	Index 2014	Gross national income per capita in 2011 PPP \$
VERY HIGH HUMAN DEVELOPMENT			
11	Singapore	0.912	76,628
45	Bahrain	0.824	38,599
HIGH HUMAN DEVELOPMENT			
55	Bahamas	0.790	21,336
57	Barbados	0.785	12,488
58	Antigua and Barbuda	0.783	20,070
60	Palau	0.780	13,496
63	Mauritius	0.777	17,470
64	Seychelles	0.772	23,300
64	Trinidad and Tobago	0.772	26,090
67	Cuba	0.769	7,301
77	Saint Kitts and Nevis	0.752	20,805
79	Grenada	0.750	10,939
89	Saint Lucia	0.729	9,765
90	Fiji	0.727	7,493
94	Dominica	0.724	9,994
97	Saint Vincent and the Grenadines	0.720	9,937
99	Jamaica	0.719	7,415

¹⁴ Full details available at <http://hdr.undp.org/en/content/human-development-index-hdi>.

Table 1. 2014 United Nations Human Development Index

100	Tonga	0.717	5,069
101	Belize	0.715	7,614
101	Dominican Republic	0.715	11,883
103	Suriname	0.714	15,617
104	Maldives	0.706	12,328
105	Samoa	0.702	5,327
MEDIUM HUMAN DEVELOPMENT			
122	Cabo Verde	0.646	6,094
123	Micronesia (Federated States of)	0.640	3,432
124	Guyana	0.636	6,522
133	Timor-Leste	0.595	5,363
134	Vanuatu	0.594	2,803
137	Kiribati	0.590	2,434
143	Sao Tome and Principe	0.555	2,918
LOW HUMAN DEVELOPMENT			
156	Solomon Islands	0.506	1,540
158	Papua New Guinea	0.505	2,463
159	Comoros	0.503	1,456
163	Haiti	0.483	1,669
178	Guinea-Bissau	0.420	1,362
HDI NOT MEASURED			
	Marshall Islands	..	4,674
	Nauru
	Tuvalu	..	5,278

Source: <http://hdr.undp.org/en/composite/HDI>

44. As demonstrated in the table above, most SIDS have limited human and financial resources, with the average human development index score at 0.66 and the average gross national income per capita at \$6,991, putting them below the global average. In some islands, government investment capacity is limited by a low level of economic development and an overreliance on foreign aid; often there is simply no money to invest in more robust processes, equipment and staff training.

Public administration in small island developing States

45. Effective institutions are a prerequisite for development and economic growth, enabling States to cope with the challenges they face. Procurement system institutions do not operate in isolation. The public procurement system is a subsystem of the public administration: whether centralized or decentralized, the procurement system interacts with other institutions. Establishing a public administration that operates in a coherent and coordinated manner is critical for the success of procurement reforms. The coordination and exchange of information facilitates the timely receipt of correct information

on the performance of certain contractors from other public bodies; it facilitates external oversight; and it increases transparency. In this regard, it is particularly important to link the procurement system with financial management, oversight and financial control systems. Such a link might be electronic (as part of the introduction of a broader system of e-government, including an e-procurement subsystem) or based on more traditional processes.

46. As is the case with human development, administrative capacity in SIDS varies. Meeting administrative demands is less of a problem on the islands in the Caribbean and the Indian Ocean. However, in most of the Pacific island countries, it is more of a challenge.

Administrative capacity of Pacific Island States

A recent analysis by the World Bank¹⁵ determined that the performance of small Pacific Island States lags behind that of countries in other regions that have a similar level of income. The scores on procurement, internal auditing and strategic budgeting were particularly low.

Population size is seen as an important limitation to performance. The impact of this factor is most strongly felt in areas where highly specialized resources are required and especially in cases where high-capacity functions have to be carried out by a number of staff and outside of central agencies at the line ministry level.

Source: The World Bank. East Asia and the Pacific Region, Poverty Reduction and Economic Management Unit. Policy Research Working Paper 6297, December 2012. Capacity Constraints and Public Financial Management in Small Pacific Island Countries by Tobias A. Haque, David S. Knight. Dinuk S. Jayasuriya

47. At the same time, most SIDS have limited access to the specialized knowledge and skills required to establish the effective Weberian style bureaucracy typical of most industrialized States. The public administration infrastructure of SIDS is usually small and characterized by a strong tendency to personalize relations rather than to rely on formal, impersonal structures and procedures. This has a direct impact on decision-making processes. The smallness of SIDS which facilitates close interpersonal contacts often leads to conflicts of interest.

48. Access to technology is also limited in SIDS. Barriers to the introduction of IT systems include the high costs of acquiring and maintaining such systems, and the unreliability of Internet connections. A low level of Internet penetration on remote islands reduces the benefit of introducing information and communication technologies.

49. This limited public administration capacity negatively affects the ability of States to prevent and detect corruption in both the public and private sectors, and to ensure transparency of beneficial ownership of companies,¹⁵ particularly in relation to tender processes. This increases the risk of conflicts of interest and consequently corruption in public procurement.

¹⁵The Financial Action Task Force (FATF) has formulated a generally accepted definition of “beneficial owner”: “Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. Reference to ‘ultimately owns or controls’ and ‘ultimate effective control’ refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control. This definition should also apply to a beneficial owner or a beneficiary under a life or other investment linked insurance policy”. (FATF Glossary to the FATF Recommendations, as quoted in *FATF Guidance: Transparency and Beneficial Ownership*, October 2014).

50. To address these limitations, some SIDS have explored the establishment of multi-function institutions: the combination of institutions with compatible functions that require similar skill sets. The Anti-Corruption Commission of Timor-Leste is a good example: the anti-corruption body has absorbed some of the Ombudsman's functions in relation to the prevention of corruption while retaining a specialized mandate to investigate corruption.

51. This approach is also used at regional level. For example, a subregional audit initiative that involves auditors being shared between countries to help carry out audits across the subregion is in place in the Pacific. In another example, a single chief justice serves both Kiribati and Tuvalu, and the countries share the costs. In addition, sharing scarce human resources on a regional basis by making it possible for islanders from one SIDS to take civil service positions in another is a feasible strategy that is already being used by some countries in the Pacific. For example, Fiji citizens are employed as judges in courts in Kiribati and Nauru.

52. The limited capacity of SIDS is rooted in their inherent smallness: many of these countries have a population smaller than that of a mid-size European city. The size of SIDS also affects their economies—financial and technological limitations combined with small internal markets present challenges; budgets may be small, human and technological resources may be limited and competition may be weak. In addition, the establishment of a permanent pool of qualified candidates to take civil service positions is a challenge. Furthermore, the conflicts of interest that might arise in the smaller communities might make the impartial performance of public duties difficult. The inherent smallness of communities makes standard conflict of interest management strategies, such as recusal, hard to implement.

Accountability mechanisms

53. In some SIDS, particularly in the Pacific, outer islands may be difficult to access—in terms of distance, the regularity of transport connections and cost. The inhabitants of these islands are usually engaged in a form of traditional subsistence living, sometimes in complete isolation from the government. Traditional, informal governance and accountability structures there may be stronger than, and used instead of, formal governance systems. However, while traditional governance and accountability structures are useful and effective in dealing with typical local issues, they may be unable to cope with public procurement fraud and corruption.

54. *Political arrangements* in SIDS are diverse. While in Caribbean and Indian Ocean SIDS, parliamentary traditions are established and function well, in Pacific SIDS, some countries lack an established party system. Members of Parliament are often based exclusively in the capital with limited access to communities on outer islands. This can lead to a focus on the capital and to the most vocal constituents, limiting the opportunities of smaller communities to effectively influence the political process.

55. *Management of public finances and financial control* presents a challenge, in particular in the case of decentralization, where local governments are given extensive control on spending, for example in archipelagos. Weak control structures outside of capitals pose a corruption risk. Some island States use highly decentralized systems of development in which rural development constituency funds are paid directly to members of parliament, who have discretionary use of these funds. This has its own set of challenges in relation to the control of discretionary powers and the fair allocation of constituency funds.

56. *Transparency legislation and practices* are underdeveloped and the participation of society is often weak. Most SIDS have yet to adopt access-to-information legislation and develop related policies. All these factors contribute to lower levels of political accountability. Some island States are trying to address the challenge of weak accountability and transparency, and are strengthening the quality of services, using locally developed practices. For example, access to information is promoted in Jamaica through the Office of Contractor General website and all reports are made available to the public.

Improving transparency and accountability in public procurement in Fiji

Since 2007, the Fiji Government has been strengthening legislation and regulations in an effort to improve the transparency and accountability of its financial systems and processes in the administration of its procurement of goods and services. However, it is recognized that legislation can only be useful if it is properly implemented by procurement officers of government entities and is rigorously scrutinized by the Government Tenders Board.

Also, the monitoring of procurement processes and compliance can only be effectively carried out by relevant oversight bodies, such as the Public Accounts Committee, the Auditor General and Internal Audit Section of Finance, if enabling legislation is implemented. The independence of oversight is critical so that this work can be objective and reflect the principles of accountability, transparency and integrity.

Prior to the promulgation of the Audit (Public Accounts Committee) Regulation 2007, the media didn't have access to the findings of the Auditor General's examination of government accounts and finances. Recommendations by this office on the treatment of breaches of public procurement rules and mismanagement of public finances were often read by the relevant government entities but few attempts were made to implement the measures. Furthermore, there was no sense of ownership by the members of the Parliamentary Public Accounts Committee because their report was written by the Parliament Secretariat.

Since the promulgation of the Audit (Public Accounts Committee) Regulation 2007 and the appointment of the Committee, the Committee writes that the following improvements have been made:

- A media release on the Committee's findings and its recommendations relating to the Auditor General's report is produced and disseminated to all media outlets once the Cabinet Office notifies the Committee of its adoption as per Audit (Public Accounts Committee) Regulation 2007 Section 5(3).
- Section 5(4) specifies that "The Permanent Secretary responsible for Finance shall coordinate responses to the report under sub-regulation (1) to be tabled in Cabinet by the Minister responsible for Finance; and writes its own report which is vetted by all members of the Committee and there is ownership by each member of its report (Section 5(1))."

As a result, the Public Accounts Committee was approached to work with the Independent Commission Against Corruption on the design and implementation of a multi-stakeholders seminar. This cooperation has resulted in the development of key strategies that will improve systems and processes that will reduce incidences of procurement breaches in all government entities

Legal systems

57. SIDS legal systems are often mixed in nature, reflecting their traditions and their colonial past. Countries generally follow the legal traditions of former colonial powers but with great importance attached to traditional practices. Such an arrangement entails both risks and opportunities. While a common legal background shared with many other neighbouring countries, as well as with a former colonial power, makes legal interaction and cooperation relatively easy and facilitates informal, local accountability, at the same time, using traditional norms may lead to inconsistencies in legal frameworks.

Societal and cultural factors

58. Loyalties are often local in SIDS and citizens feel that they are primarily accountable to their communities, families or churches and not to the central government. The South Pacific *wantok* community system is a good example of an informal societal traditional (and power) arrangement. Deeply ingrained in society, these traditions are understood as part of a country's ethical framework and are practically mandatory for all. Not acting in accordance with these rules and abusing traditional norms may actually be regarded by communities as corruption; public officials who do not respect these traditions face the danger of being expelled from the community. This presents the potential for conflict with formal legal systems whose requirement for modern bureaucracy is that it is impersonal, rational and functions without nepotism or favouritism.

59. The unique challenges associated with designing and implementing sustainable anti-corruption reform in SIDS have been considered by many international organizations. The World Bank's Governance Global Practice has addressed anti-corruption reform in some SIDS and has facilitated peer learning and focused technical assistance. The United Nations Department of Economic and Social Affairs has focused its work on transparency and accountability in SIDS. The United Nations Office on Drugs and Crime (UNODC) and the United Nations Development Programme (UNDP) addressed these problems during a side event in relation to the joint UNDP-UNODC project, the United Nations Pacific Regional Anti-Corruption Project, at the Third International SIDS Conference in Samoa in September 2014, and on the margins of the Implementation Review Group session in Vienna in October 2014. Key considerations that have been explored in relation to anti-corruption reform in SIDS include affordability, capacity, sustainability, accessibility and accountability, as well as the role of partnerships, the relevance of development modalities and the merits of peer-to-peer/South-South learning.



Small island developing States: procurement reform

60. Procurement is generally a high-risk area for corruption and the issues discussed above make the risk of corruption in SIDS even greater. During the Global Conference on Anti-Corruption Reform in Small Island States in Mauritius in August 2015, SIDS officials agreed on certain priorities for anti-corruption reform. Among these priorities, preventing corruption in procurement was identified as a key challenge.¹⁶ In November 2015, the Conference of States Parties to the United Nations Convention against Corruption adopted resolution 6/9 on “Strengthening the implementation of the United Nations Convention against Corruption in small island developing states”. The Resolution recognized that “SIDS have specific contextual characteristics that require tailored technical assistance and affordable and sustainable anti-corruption reform” and encouraged States parties “to support the implementation of anti-corruption reforms in small island developing States, including those priorities and reforms identified in the Mauritius Communiqué.”¹⁷

Public procurement system in Mauritius

61. While difficult, addressing corruption risks in procurement in SIDS is possible. There are success stories of SIDS implementing effective public procurement systems in compliance with the provisions of article 9 of the Convention against Corruption and demonstrating how provisions of the Convention can be transposed to a small island environment.

62. The enactment of the Public Procurement Act in 2006 in Mauritius strengthened transparency, competition, fairness and objective criteria in decision-making within the public procurement processes. The Act has established three institutions: the Procurement Policy Office (PPO), the Central Procurement Board (CPB) and the Independent Review Panel (IRP). PPO is responsible for setting policies, guidelines and practices for a sound procurement process. To this end, the World Bank’s standard bidding documents for

¹⁶The participants from States that are currently party to the Convention against Corruption identify and recommend the following priorities for reform: (iii) Prevent corruption in the public procurement process as a priority. CAC/COSP/2015/10 pages 27-29.

¹⁷UNODC, CAC/COSP 6 Resolutions. Available at www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session6-resolutions.html.

goods, works and services have been customized and are being used in procurement procedures in Mauritius. PPO has also been given the power to blacklist companies that engage in unethical or unlawful business practices. CPB is responsible for the approval of the awarding of major contracts by public bodies. Both PPO and the Mauritius Independent Commission against Corruption have been active in promoting a culture of integrity among public officials involved in procurement, providing training to educate bidders and public bodies on the use of the bidding documents, as well as on the rights and obligations that procurement actors have. Both institutions jointly issued a code of conduct for public officials involved in procurement¹⁸ that includes guidance for public officials on what to do in situations of conflict. Several training sessions were conducted jointly to educate public officials on responsible/ethical conduct in their professional activities.

63. The current system of procurement allows for reviews in cases of bidder dissatisfaction. Below is an example of an IRP decision, demonstrating how the system of independent review of procurement decisions works in a small island setting.

In October 2010, the Mauritius Police Department launched an open procedure for the supply of certain frozen foods. Four bidders submitted bids. Two of them were considered non-compliant. A notification of award was sent to the selected bidder for the supply of eight of the ten food items and another notification was sent to another contractor for the supply of the remaining two items. All bidders were informed of the outcome of the procurement procedure.

The second contractor was dissatisfied with the decision and appealed. The Panel suspended the procurement process. The appeal was based on whether the evaluation committee of the public body rightly considered the documents provided by the bidders in respect of the eligibility criteria, in particular with regard to the declaration of source of supply. According to the rules, a certificate from the source supplier should be submitted and the bidder should be in possession of their own cold room facilities. The capacity and location of cold room(s) should be stated and a copy of cold room permit(s) should be submitted.

The first contractor had provided a certificate from its source supplier, but there was nothing in the bid to demonstrate the mandatory requirements relating to cold room facilities has been met. The Police Department argued that it was irrelevant whether the selected bidder has its own cold room facilities so far as the goods were from an established importer of frozen foods with cold room facilities. This argument was not accepted by the IRP, which stated that “it failed to understand the rationale of the public body in considering that a letter albeit from a supplier with cold room facilities will dispense a bidder from having its own cold room facilities, as clearly specified in the bidding documents”. The Panel held that first contractor should have been considered non-compliant, and recommended the annulment of the award.

Building public support for reforms

64. The need for public support to initiate reforms in such an environment cannot be overstated. Public support is needed at all stages of the reform process: to develop legislation, to ensure that reforms are properly implemented, to build capacity of new systems and to maintain newly established systems and to make them work. Procurement reform may be a sensitive and controversial issue. While in theory it benefits society and contributes to more efficient use of limited resources, it also affects deeply rooted interests

¹⁸ <http://ppo.gov.mu/English/Documents/Codeofconduct.pdf>.

and traditional economic and power structures. Particularly in environments where corruption is a systemic problem, it may be the case that the only way to obtain a government contract is to “play by the rules”, by which is meant unwritten rules requiring payment of bribes, services in exchange for political protection and the use of personal contacts and networks to secure government patronage.

65. If these “rules” have existed for prolonged periods of time, it may be the case that all companies that have chosen not to abide by them may be out of the market already. It would also mean that the companies operating in the market benefit from existing corruption, along with public officials who are a part of corruption schemes. A key risk in environments where systemic corruption is present, and where vested interests have captured institutions and have influenced legislation so that it benefits them and not public interest, is that sweeping anti-corruption reforms in procurement may not be feasible politically.

66. Strong opposition to reforms from powerful economic interests means that reform may be opposed by the private sector. They may present their case as nationally responsible and frame anti-corruption reform as harmful to national companies and the national economy.

In 2013, the Fiji Independent Commission against Corruption (FICAC) held a seminar entitled Public Sector Accountability and Integrity in Project Implementation and Procurement.

The participants issued a communique and committed to establish a multistakeholder working group to monitor the implementation of the provisions of article 9 of the United Nations Convention against Corruption and the recommendations from the seminar. Further, they agreed to provide the Fiji Anti-corruption Commission with necessary information to establish a database that would facilitate effective monitoring and evaluation of procurement activities.

The participants recommended that FICAC, through the proposed working group in consultation with the relevant Permanent Secretaries, facilitate and implement the following:

- Capacity-building on technical and financial literacy for procurement officers in the public sector.
- The vigorous pursuit of succession planning in key ministries involved in both capital projects and grant management to ensure sustainable technical capacity, particularly given the scarcity of technical expertise and high staff turnover.
- The alignment of all procurement policies of government companies, commercial statutory authorities and off-budget State entities with Procurement Regulations 2010.
- The development of a procurement checklist to ensure consistency in the application of Procurement Regulation 2010.
- The development of a directory of expertise and resources that can be utilized by ministries to strengthen procurement processes and measures to prevent corruption risks.
- The review of annual breaches of procurement policies and remedial interventions through investigations and reports by the Auditor General’s Office and other oversight bodies.
- The institutionalization of the Corporate Integrity Pact with stakeholders in ministries and the private sector.

- The integration of anti-corruption clauses in the project appraisal checklist and the recognition of existing anti-corruption standards in the private sector.
- The correct deposition of project funds (e.g. not in consolidated accounts).
- The carrying out of independent anti-corruption and integrity assessments.

Legislative framework

67. Establishing a proper legislative framework requires more than adopting a new procurement law. The procurement system is part of the public administration; it is interconnected with all other systems, structures and laws. To meet the challenges of ensuring integrity in procurement, a solid legal framework for public administration should be put in place, regulating the status of public officials; laws on electronic transactions should be put in place, including regulations on electronic signatures; effective control systems should be provided for; and legislation should lay the ground for more transparency, participation of society and the effective detection of irregularities and malpractices. Debarment of companies that use unethical or unlawful practices (mostly associated with corruption) to win or to implement procurement contracts is increasingly being used to shield the procurement system from corrupt businesses.

68. Legislative reform should be undertaken in a participative manner, involving stakeholders from civil society and the private sector. The process of public discussion would help build momentum and would support the reform process, and consensual decisions would help the implementation of the new legal framework.

69. To help countries meet this challenge, the UNCITRAL Model Law on Public Procurement described above is recommended as a starting point for national discussions. The model law promotes transparency, objectivity, fairness, participation, competition and integrity. It is fully in line with the Convention against Corruption and can be used by interested States parties that are willing to strengthen their procurement legislation. The model law is a flexible instrument that allows countries to adapt provisions to their environment and traditions at the same time as benefiting from the harmonization of procurement regulation.

Trinidad and Tobago legislation provides for a system of controls and procedures to ensure propriety and efficiency in government services from the local, regional and private sectors through the establishment of the Central Tenders Board (CTB) as “the sole and exclusive authority in inviting, considering and accepting or rejecting offers for the supply of articles or for the undertaking of works or any services necessary for carrying out the functions of Government or any statutory bodies, and to dispose of surplus or unserviceable articles belonging to the Government or statutory bodies”. The Act (dating back to 1961) applies to Government ministries and departments and some statutory authorities. Since 1979, a process of procurement regime decentralization has seen the establishment of new statutory corporations and the removal of some older bodies from the purview of CTB. Also, in an attempt to reduce red tape, special purpose companies were created that fall outside the control of CTB.

The limitations of CTB were highlighted in a white paper on the reform of the public sector procurement regime. It was noted that the CTB mandate is limited mainly to the tendering stage of the procurement process and that the Board is not responsible for critical decisions about the spending of public money, and is neither responsible nor equipped for the monitoring of project implementation. Furthermore, the exclusion of several significant procuring agencies from the purview of CTB has resulted in the creation of a parallel procurement system, with concerns relating to guidance and control, lack of transparency and accountability, and unfair practice. Notably, the Act did not apply to tendering relating to financial matters and as a result, it does not regulate Design/Finance/Build, Build Own Lease and Transfer, and Build Own Operate and Transfer projects.

The shortage of trained staff at CTB, the office of Chief State Solicitor and several of the purchasing agencies negatively impacts the efficiency of the system. While the Auditor General is responsible for annually auditing and reporting on public expenditure matters, there is no agency charged with the responsibility for systemic monitoring and dispute resolution in relation to public procurement within an accepted policy framework.

To address the identified issues, a new public procurement framework has been brought before the Legislative Review Committee for consideration. A hybrid system of centralized and decentralized institutions functioning under the operating and governing principles of transparency, accountability, integrity and value for money was proposed. The new law on procurement was enacted in 2015. It is described as “an Act to provide for public procurement, retention and disposal of public property in accordance with the principles of good governance, namely accountability, transparency, integrity and value for money, the establishment of the Procurement Regulatory Authority and the Procurement Tribunal, and the repeal and replacement of the Central Tenders Board Act, Chap. 71:91 and related matters.”

E-government and e-procurement

70. The use of information and communications technologies (ICT) in the fight against corruption is becoming increasingly popular. The dramatic increase in the use of computers and mobile devices has led to the introduction of new solutions to reinforce transparency, build trust in government and increase the participation of society.

71. It is widely accepted that corruption becomes possible where there is direct interaction between clients and public officials, and where there is a lack of transparency. Hence, it is argued that the introduction of transparency portals and tools, and the provision of electronic services to citizens and the private sector would promote transparency and accountability, and would limit face-to-face interaction, thus reducing opportunities for corruption.

72. To this effect, information, public participation and procurement portals are being used in many countries to facilitate access to information, to engage in public consultations and to simplify the procurement process. Simplified, paperless procurement has the potential to increase the number of bidders and to stimulate competition, allowing broader access of small and medium-sized enterprises to procurement contracts.

73. In addition, the use of e-procurement as a part of a broader effort to introduce ICT-based procurement systems contributes to better overall governance by encouraging the participation of society, enabling transparency and ensuring public accountability.

74. Economies achieved by the use of e-procurement could be substantial, an eventuality that is particularly important in the context of the limited resources of SIDS. Even minimal price reductions, due to increased competition and increased procurement process speed, could make the difference for SIDS that have an adequate ICT infrastructure. The benefits of increased transparency in terms of avoiding inflated prices are also widely recognized.

75. It must be taken into account that the introduction of ICT in procurement brings a new set of challenges for public administrations—those relating to information security, public confidence and the capacity of public administrations to manage complex electronic systems. Some SIDS are introducing e-government and one-stop-shop solutions to simplify public sector interaction with citizens and the private sector.

76. E-procurement was introduced by Trinidad and Tobago in 2006.¹⁹ Since the introduction of e-auction functionality in 2006, the Ministry of Finance has held several seminars to raise awareness of e-procurement among State-owned enterprises. To coordinate and spearhead the e-auction process, the Government established a task force comprising officials from the Ministry of Finance and representatives of the institutions whose companies are at an advanced stage of implementing e-procurement. Since its establishment, the e-auction task force has worked in coordination with the Water and Sewerage Authority and Petroleum Company of Trinidad and Tobago (Petrotrin) to conduct e-auctions. To date, e-auctions are estimated to have generated savings of over \$119 million across 32 State agencies. Having identified e-procurement as a major aspect of the proposed public procurement laws and regulations, the Government passed the Electronic Transactions Act 2011, and made amendments to the Exchequer and Audit Act to allow for e-payments, e-receipts and electronic funds transfer. By 2011, over 200 State agencies were trained in the process of e-procurement and had adopted e-procurement as an integral part of their procurement regime. E-auctions have contributed to a reduction of up to 60 per cent in the time taken to invite and receive bids.

77. Both buyers and suppliers have benefitted from e-auctions. Buyers have benefitted from the creation of new markets, the development of improved specification, the standardization of data relating to purchasing, improved communication between organizations and contractors, and the fact that the lowest bidder is selected by price comparison. Suppliers benefit from a more transparent decision-making process, increased visibility, more business opportunities and the ability to place and modify bids simultaneously regardless of location. Suppliers also benefit from being placed on a database for future e-auctions.

78. Jamaica introduced a pilot e-procurement project in July 2015. The web-based system aims to automate the annual public procurement process, the online advertisement of bids, electronic submissions and the publication of contract awards.

79. The procurement system in the Cook Islands is regulated according to the Purchase and Sale of Goods and Services Policy. The policy requires that an open tender process is used for all purchases over \$30,000. An e-procurement portal was created to improve access to tender opportunities and to ensure accountability and transparency of the procurement process.

80. Mauritius has also embarked on e-procurement focused reform. A dedicated public procurement portal has been developed that allows public bodies to post information such as bid invitations, annual procurement plans, bid evaluation reports and notices of awards. Interested companies can view current and future bidding opportunities and

¹⁹ www.finance.gov.tt/content/172.pdf.

download bidding documents. A number of training sessions involving bidders and other stakeholders have been organized to educate them on the knowledge and skills required for the effective implementation of e-procurement.

Strong ethics infrastructure, including systems for managing conflicts of interest

81. Article 9 of the Convention against Corruption requires States parties to put in place “measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements”.

82. As underlined above, the public procurement system is a part of the public administration and is staffed with civil servants. As such, it is subject to government efforts to promote integrity in the public administration. Taking into account the risk of corruption in procurement, it is crucial for governments to take measures in order to ensure that the officials engaged in procurement behave ethically at all times.

83. Establishing a strong ethics infrastructure requires the adoption of rules (e.g. a code of conduct); the provision of training to ensure that staff has the knowledge and skills to apply the rules; clear leadership (including leading by example); and a functioning enforcement mechanism. As a part of this infrastructure, many countries have introduced asset disclosure systems that focus on the external interests of public officials and facilitate the management of conflicts of interest.

84. The following widely used definition of conflicts of interest has been formulated by the Organisation for Economic Co-operation and Development and is accepted by many non-members of the Organization: “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.”²⁰

85. Conflicts of interest are not per se corruption; the private capacity interest could affect the performance of public duties, but it has not affected it yet—it is corruption in the making. Conflicts of interest exist in the grey area where public and private interests are mixed and where lines are blurred. In this area, it is easy to make a mistake. This grey area is particularly difficult to address in the traditional, small and isolated societies such as SIDS.

86. There are two general strategies for strengthening public sector ethics and for effectively managing conflicts of interest. The first strategy requires incorporating ethics management in the day-to-day operations of public bodies, in particular emphasizing the responsibility of line managers for managing the ethical performance of their subordinates. The second strategy calls for establishing an external structure (e.g. a conflict of interest commission or anti-corruption body) that would oversee the ethics regime in the public administration. In both cases, administrations need to introduce codes of conduct, effective disciplinary procedures and effective training systems, as well as designating specialized ethics officers who would advise staff.

²⁰ Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service, 2003 - C(2003)107. Available at <http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=130>.

87. Article 8 of the Convention requires that codes of conduct for public officials should be adopted. Violation of the codes should entail dissuasive and proportionate sanctions. These codes should clearly and unambiguously state what behaviours are acceptable and which will not be tolerated, and should provide clear guidance on how to act in a situation of a conflict of interest, such as when offered a gift or hospitality.

88. The codes should clearly set out conflict of interest management procedures, ensuring that both monetary and non-monetary conflicts of interest (relating to political affiliation, family relations, etc.) are avoided and properly managed. A key instrument for managing conflict of interest situations is the mandatory (ideally in written form) disclosure of the conflict to a direct supervisor or to a designated official or body. Disclosure (or signing a mandatory declaration that members are not in a situation of conflict of interest) is often a requirement and part of the procedures of tender evaluation committees.

89. Often declarations of assets and interests are used as a tool to ensure that the behaviour of public officials will not be affected by external undeclared interests. To be effective, such an approach should be complemented by the verification of declarations on a regular basis, ensuring that all declarations are at some point subject to verification. Proportionate and dissuasive sanctions should be put in place to ensure that the submission of declaration information with incorrect data is punished.

90. Another important tool to avoid conflicts of interest is the creation of a register of incompatibilities that ensures that a person cannot occupy mutually exclusive positions (for example, in the public and private sector, or in a political party).

91. The Convention against Corruption underlines the importance of integrity in public administration, including the bodies and officials responsible for procurement. Articles 7, 8 and 10 of the Convention against Corruption stress the importance of introducing a merit-based, ethical public administration, with procedures for disclosing assets, ensuring transparency of structure and decision-making processes of public bodies, and encouraging the adoption of measures such as codes of conduct and conflict of interests disclosure systems.

92. Conflict of interests is a criminal offence under the Mauritius Prevention of Corruption Act 2002, as described in Section 13 of the Act.

93. An important factor to be taken into account with SIDS is that their size makes them conducive to a wide range of conflicts of interest: pecuniary, non-pecuniary, apparent, actual and potential. Properly addressing and managing this situation is a precondition for effective prevention of corruption.

94. Some SIDS are working actively to address these challenges, while for others, this is still a task for the future. In an effort to strengthen public service integrity and in particular the integrity of public procurement structures, the Mauritius Independent Commission Against Corruption has developed an integrity management toolkit to guide integrity officers in fostering a culture of integrity in its organizations and to enhance local understanding of corruption risks in the public sector and its impact on organizations. The toolkit provides guidelines relating to a range of key corruption risk areas, such as procurement of goods and services. With regard to procurement, it highlights a number of requirements concerning the procurement process and makes a number of recommendations concerning lists of suppliers and contractors, quotation procedures, the receipt of good and services, and payment procedures. Additionally, a revised code of conduct for procurement officials,²¹ developed in collaboration with the Procurement

²¹ ICAC, Code of Conduct on Procurement. Available at www.icac.mu/code-of-conduct-on-procurement.

Policy Office in December 2015, emphasizes ethical issues and complements provisions of the law. The revised code provides a statement of values for all public procurement officers and it sets out a number of guidelines and practical actions to strengthen respect for the rule of law, accountability and transparency, and to prevent conflict of interests through the procurement process. It also provides guidance on relationships with suppliers. In addition, the code contains a sample conflict of interests declaration form to be used by public procurement officers in Mauritius. This reform was motivated by the need to educate procurement officials on corruption risks and create a common understanding on expected integrity standards. In 2014, procurement contracts above 100,000 Mauritian rupees represented nearly five per cent of gross domestic product in Mauritius. In addition, public bodies in Mauritius are required to adopt a comprehensive policy on probity and business ethics, and to develop and communicate effectively to all parties concerned their policies and procedures to handle situations of conflict of interest. To this end, public officials involved in procurement have to be trained to recognize situations of conflict of interests and are required to disclose in writing any such conflicts and to keep a record of these disclosures.

Specialized procurement oversight and anti-corruption bodies

95. In an effort to ensure accountability and strong oversight with regard to the implementation of the provisions of articles 6 and 36 of the United Nations Convention against Corruption, many States parties and some SIDS have established specialized anti-corruption bodies that have preventive and investigative mandates or specialized procurement agencies.

96. The *Technical Guide to the United Nations Convention against Corruption*²² recommends establishing through legislation a specialized procurement body with executive or monitoring responsibilities for:

- Bidding and implementation procedures
- Identifying fraud indicators, which might point to corrupt activity at an early stage
- Collating intelligence on procurement fraud and corruption
- Developing and overseeing integrity pacts
- Coordinating prevention strategies through education and training initiatives, provision of direction and guidance to internal audit, provision of advice on anti-corruption issues, performing due diligence reviews, or developing and maintaining debarment lists
- Promoting freedom of information legislation and access to information
- Promoting specialist training, codes of conduct and asset declaration requirements for procurement staff and auditors

97. While not strictly a part of the procurement system, specialized anti-corruption bodies (with preventive or enforcement functions) are a vital part of a country's overall anti-corruption infrastructure; their existence is also required by articles 6 and 36 of the Convention. They allow for effective oversight of procurement processes and the better planning of preventive anti-corruption activities. The Convention against Corruption does not require the establishment of a new body to investigate or prevent corruption: an existing public body may be entrusted with this function.

²²UNODC, *Technical Guide to the United Nations Convention against Corruption*, page 32.

98. Oversight and anti-corruption bodies operate as a part of a country's overall governance system, interacting and communicating with others. This is particularly true in the context of anti-corruption in procurement, where the anti-corruption institution by definition could only function as a facilitator of processes, while the actual preventive work is carried out by other authorities.

99. It must be underlined that there is no perfect structure or set of functions for anti-corruption bodies. Developing effective institutions requires tradeoffs, e.g. political bargaining and reaching political agreement. Institutions develop and they change as society evolves.²³ This is the reason why industrialized countries have different institutional frameworks. This would be particularly true in the context of the factors that frame governance in SIDS.

100. However, some factors are considered to be important and have to be taken into consideration when such a body is designated or established. Operational independence is important for the effective exercise of oversight functions. Investigators should be able to do their job without undue influence from anyone, including from other public officials or persons outside of the public administration.

101. A risk to consider when building the legislative framework of anti-corruption bodies is that sometimes in pursuit of independence a government might isolate the anti-corruption body from other public bodies, thus making communication and coordination more difficult. A single organization, particularly if isolated, will not be effective in addressing all corruption challenges in a country. Independence is not a replacement for government coordination and political will, particularly in the area of prevention of corruption in procurement. It is important that while an anti-corruption agency has operational and functional independence, it still interacts and liaises with other agencies with a relevant mandate to prevent, detect and counter corruption. In some countries, there are established anti-corruption networks or coordination mechanisms to ensure inter-institutional interactions and concerted strategies against corruption.

102. Accountability is another important prerequisite for the effectiveness of an anti-corruption body. When ensuring the accountability of anti-corruption and oversight bodies, it would be useful to emphasize transparency and to complement classic government accountability mechanisms with modern tools, using public reporting and free access to information, and promoting participation of society.

103. To ensure that an organization can perform its functions, it has to be adequately resourced. This is one of the primary challenges for SIDS and is a reason why some SIDS are considering the establishment of combined institutions (see the Timor-Leste example, page 19).

104. The size of the SIDS can be a disadvantage and an advantage from an anti-corruption point of view. Small and highly cohesive societies make secrets hard to keep, small territories pose fewer challenges in terms of institution interaction, and the small size of public administrations means easier oversight and control. Theoretically, these factors could make it easier to detect, act against and prevent corruption.

²³Fukuyama F., Do Defective Institutions Explain the Gap Between The United States and Latin America? (The American Interest, 2006). Available at www.the-american-interest.com/articles/2006/11/01/do-defective-institutions-explain-the-gap-between-the-united-states-and-latin-america.

Jamaica

105. The Office of the Contractor General of Jamaica is an independent commission under the auspices of the Government. The Office has a mandate to investigate the registration of contractors; oversee tender procedures relating to contracts awarded by public bodies; investigate the award of contracts and their implementation; and to control the issuance or revocation of licences. The Office does not control procurement and the issuance of licences in the defence or law enforcement sectors. Prior permission is required in order to launch an investigation relating to these sectors. In 2013, the Office monitored pre- and post-contract stages of 375 public contracts. The number of contracts represented an increase of 2.2 per cent over the total monitored in 2012, when 367 contracts were monitored. This type of information is usually included in the annual reports of the Office, which are available to the public on its website. The Office oversees around 200 public bodies and ensures that public bodies conform to the requirements that govern the award, implementation and termination of government contracts and licences. In cases of a breach of duty and where there is evidence of a criminal offence and/or misbehaviour on the part of a public officer, the Office refers the case to the competent body for further action or prosecution.²⁴ Implementing the recommendations of the Office is not mandatory for government institutions. The actions of the Office show that innovation is integral to addressing recurring challenges in an evolving environment. Staff tasked with preventing, detecting and investigating corrupt practices need to be aware of the latest technology and procurement practices. Furthermore, the early involvement of key stakeholders in promoting anti-corruption reform is important to ensuring collaboration and cooperation with regard to transparency and accountability in the procurement process.

Mauritius

106. The Mauritius Independent Commission Against Corruption (ICAC) was established in 2002 as a specialized institution to investigate corruption and money-laundering cases. It also conducts prosecutions with the consent of the Director of Public Prosecution. ICAC plays a key role in efforts to strengthen good governance, transparency and accountability by eliminating opportunities for corruptive practices in the public sector. It works alongside the Office of Public Sector Governance, which operates under the aegis of the Ministry of Financial Services, Good Governance and Institutional Reforms. In line with the principles of the Global Compact, ICAC is also encouraging the private sector to join the fight against corruption. ICAC works in close collaboration with the Mauritius Revenue Authority and the Financial Services Commission (FSC), which is the regulatory body for non-banking financial services. The Financial Services Act, which established FSC, allows the exchange of information under a clause of confidentiality for public sector agencies. The Financial Intelligence Unit (FIU) also works in close collaboration with ICAC, in that it is empowered to refer reports to trigger money-laundering investigations. Locally, ICAC is also a member of the National Committee for Anti-Money-Laundering and Combating the Financing of Terrorism. This Committee comprises various other stakeholders, including the Customs Department, the Office of the Director of Public Prosecutions, the Ministry of Finance, FIU and FSC. The Committee assesses policies and measures to combat money-laundering and terrorist financing, and has a mandate to promote coordination between the various stakeholders, including those with supervisory or investigatory roles. In SIDS, it is easier to engage with all spheres of the community in order to educate people about corrupt practices and encourage them to report acts of corruption. Between 2005 and 2015, ICAC

²⁴Section 21 of Law 3/2001.

conducted 4,000 face-to-face sessions with the public, reaching 250,000 people. As a result, more people can recognize acts of corruption and resist, reject and report them. Internationally, ICAC is a member of the Association of Anti-Corruption Agencies in Commonwealth Africa. The Association promotes South-South cooperation and exchanges relating to addressing corruption. ICAC operates on the understanding that fighting corruption requires the collaboration of all stakeholders. It calls for collaboration between local, regional and international institutions. According to the Prevention of Corruption Act 2002, ICAC also examines the practices and procedures of public bodies in order to identify corruption risks. To this end, the agency carries out corruption prevention reviews of various public bodies, including those involved in procurement.²⁵ ICAC has conducted several reviews of procurement processes, providing recommendations to the reviewed agencies. On the basis of these reviews, ICAC has recommended measures to reinforce the procurement infrastructure and to promote transparency, accountability, fairness, value for money and competition. It has emphasized the principle of segregation of duties, so that no officer has total control over the procurement process, and has recommended that the people who prepare specifications or who are involved in bidding exercises should not be a part of bid evaluation committees. Other recommendations focus on ethics and integrity issues relating to procurement, including the management of conflicts of interest, a code of conduct for public officials and a statement of business ethics for suppliers and contractors. It has also recommended that public bodies conduct risk assessment in different areas of activities, including procurement. Furthermore, it has recommended that responsible technical staff (e.g. engineers in infrastructure projects) should be employed to ensure that contractors comply with the conditions of contracts. ICAC recommendations are not mandatory for institutions; however, they are usually taken into consideration. After a review, ICAC contacts the respective public body for a follow-up meeting on the implementation of the recommended actions.

In 2009, ICAC conducted a corruption prevention review of the procurement system of Lois Lagesse Trust Fund (LLTF) trust fund. As a result of the review, a number of recommendations were made for enhancing transparency and accountability. By July 2014, 70 per cent of the recommendations had been implemented. As a result, LLTF put in place an improved filing system containing information on all decisions. LLTF also put in place a mechanism for disclosing and managing conflicts of interest and organized for its staff involved in procurement to attend special training. In addition, a procurement manual was drafted.^a

^aICAC, Corruption Prevention Reviews, Volume 2: Procurement in Public Bodies, pages 6-7.

Protecting reporting persons

107. The protection of people who in good faith report corruption to authorities is critical for the detection of corruption and procurement irregularities. The United Nations Convention against Corruption acknowledges the importance of mechanisms to provide protection for reporting persons and, through its article 33, calls on States parties to consider appropriate measures to provide protection against unjustified treatment to those reporting offences of corruption to competent authorities when done in good faith and on reasonable grounds.

108. The United Nations Office on Drugs and Crime has developed the *Resource Guide on Good Practices in the Protection of Reporting Persons* (2015) that looks in detail at

²⁵ICAC, Corruption Prevention Reviews, Volume 2: Procurement in Public Bodies.

the legal obligations of States parties under the Convention against Corruption and the practical measures that can be taken to protect whistle-blowers.

109. There is limited information relating to protection of reporting persons in SIDS that could be used by countries that are considering the adoption of such legislation.

110. In Madagascar,²⁶ the protection of witnesses and whistle-blowers is provided for in articles 32 to 35 of Law No. 2004-030, which establishes some of the relevant measures, for example, the protection of identity. Law enforcement agencies can provide physical protection but they lack sufficient financial resources to carry out this function. Protection may be granted to witnesses but not to experts and a witness protection programme has yet to be established. Reprisals against whistle-blowers or witnesses are forbidden. The local anti-corruption agency (BIANCO) is responsible for protecting the identity of witnesses and whistle-blowers. Whistle-blowers can file written complaints with BIANCO and BIANCO can approach the competent authority, which may take measures such as those relating to reinstatement or reimbursement (arts. 32-35, Law No. 2004-30).

111. Solomon Islands has introduced protection for whistle-blowers, particularly with regard to maintaining confidentiality in defamation or civil suits. In early 2016, a new whistle-blowers protection bill was drafted to encourage reporting of corruption, maladministration and misconduct in office.

112. In the Federated States of Micronesia, a toll-free hotline for reporting corruption has been set up and the confidentiality of reporting persons is respected.

113. The above examples illustrate that SIDS are adopting different strategies with regard to the promotion of reporting corruption and protecting those people that report such actions. The practical challenges imposed by the size of SIDS are huge and cooperation between countries in the same region is required to overcome them.

Strengthening regional cooperation

114. Effective regional frameworks can be an important instrument for regional cooperation. They can facilitate the exchange of knowledge and skills, and the provision of direct assistance, and provide support for substantive public reforms.

115. Some countries, such as the Caribbean Community (CARICOM) members, are addressing the limitation posed by the small size of their economies by merging their economies into a single procurement market, increasing competition for contracts and ensuring economies of scale. Such an approach recognizes that larger markets are less prone to manipulation.

116. The Caribbean Community, including the CARICOM Single Market and Economy, was established in 2001.²⁷ The Caribbean Community Revised Treaty provided for the establishment and implementation of a regional public procurement regime. Article 239 of the Revised Treaty obliges Member States to “elaborate a Protocol relating

²⁶Madagascar is not on the UN-OHRLS list of SIDS, but the example is still relevant. It is an island country with a comparable level of development and similar challenges.

²⁷The Community comprises 15 member States: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname and Trinidad and Tobago. A full list of member States and Associate Members is available at <http://caricom.org/about-caricom/who-we-are/our-governance/members-and-associate-members>.

to government procurement”. To date, the Community has undertaken and concluded a significant volume of work regarding the establishment of a regional regime for public procurement. In 2005, the first draft of the Community Policy on Public Procurement was developed and disseminated to Member States for them to review. The policy is expressly based on the UNCITRAL Model Law for Public Procurement.

Access to information, transparency and participation of society

117. Transparency is a key principle of the Convention against Corruption. Its reach goes beyond the provisions of article 9 and the procurement context. The multiple benefits of ensuring access to information in relation to the integrity of public administration are widely recognized.²⁸ Transparency facilitates participation of society and enables better control over the activities and the discretionary decision-making of governments; it facilitates the introduction of an effective managerial framework in public administration; and it makes the detection of corruption easier. In this context, measures that aim to strengthen the transparency of public administration might have a positive impact on corruption in procurement. These measures include a strengthening of the public reporting framework so that public bodies provide access to information on their functions, structure and activities. Effective access to information helps to promote the participation of society.

Effective internal and external control

Internal control and internal audit

118. Article 9, subparagraph 2 (b) of the Convention requires States parties to establish an “effective system of risk management and control”. Putting in place such a system is important to detect and prevent irregularities and malpractices. Such a system requires the establishment of internal procedures to identify and manage corruption risks; the development of lists of red flags and indicators; the adjustment of internal procedures in order to ensure the separation of payment from contracting functions; the introduction of the “two pairs of eyes” principle; and the establishment of hierarchies of approvals and reviews, as well as the establishment of measures such as financial reporting, performance monitoring, protection of whistle-blowers and an effective system of internal audits.

119. Identifying and addressing irregularities and malpractice is an important element of corruption prevention and enforcement practices. It allows for measures to be taken to address detected problems and to protect against them happening again. These measures include reviewing staff manuals and guidelines, introducing new standard operating procedures, changing checklists and providing additional training.

120. Irregularities detected throughout the procurement process can be dealt with in several ways:

- (a) By criminal prosecution. If the evidence is sufficient to establish a criminal offence, this can lead to possible imprisonment, fines, restitution orders and other punishment;

²⁸More information is available at UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Corruption* and UNODC, *Technical Guide to the United Nations Convention against Corruption*.

(b) By administrative and disciplinary actions. These can lead to employment-related measures, such as suspension, demotion or dismissal, or the termination of a contract and the recovery of funds paid;

(c) By civil proceedings. Those directly affected or the contracting authority may seek to recover the proceeds of a crime or claim civil damages.

121. The extent and quality of evidence available will influence the selection of the type of procedure to be undertaken. Criminal proceedings require the prosecution to meet higher standards of probative value than in a case of administrative action.

122. Systems of internal control and internal audit, including the management of risks, should be an integral part of public sector bodies, and are particularly important in bodies that engage often in procurement. While traditional practice was to focus internal control mainly on financial aspects of the work of an organization, nowadays thinking has evolved and internal control structures deal with all aspects of public body operation.

123. Effective internal control is even more important in decentralized organizations and in the context of SIDS that comprise more than one island. Decentralization requires staff to make important decisions without necessarily consulting with the leadership of an organization, necessitating additional oversight and control.

124. The control environment in organizations focuses on the “personal and professional integrity and ethical values of management and staff”.²⁹ Strong emphasis is made on tone at the top, strong organizational structure and effective human resources policies and practices. A regular assessment of all risks is required, and in the context of corruption, of the corruption risks in particular.

The International Organization of Supreme Audit Institutions (INTOSAI) and the Committee of Sponsoring Organizations of the Treadway Commission (COSO) define internal control as a process that is impacted by an entity’s management and other personnel, and designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- Effectiveness and efficiency of operations
- Reliability of financial and operational reporting
- Compliance with applicable law and regulations
- Safeguarding resources against losses due to waste, abuse, mismanagement, errors, fraud and other irregularities

INTOSAI defines the five interrelated components that make up internal control as:

- Control environment
- Risk assessment
- Control activities
- Information and communication
- Monitoring

Source: COSO, Internal Control- Integrated Framework, available from <http://www.coso.org/documents/internal%20control-integrated%20framework.pdf> and INTOSAI, Guidelines for Internal Control Standards for the Public Sector, <http://www.intosai.org/issai-executive-summaries/view/article/intosai-gov-9100-guidelines-for-internal-control-standards-for-the-public-sector.html>

²⁹ COSO, Internal Control-Integrated Framework, available from <http://www.coso.org/documents/internal%20control-integrated%20framework.pdf> and INTOSAI, Guidelines for Internal Control Standards for the Public Sector, <http://www.intosai.org/issai-executive-summaries/view/article/intosai-gov-9100-guidelines-for-internal-control-standards-for-the-public-sector.html>.

125. A range of control activities should be implemented, at all levels and in all functions, including:

- Authorization and approval procedures
- Segregation of duties (authorizing, processing, recording and reviewing)
- Controls over access to resources and records
- Verifications
- Reconciliations
- Reviews of operating performance
- Reviews of operations, processes and activities
- Supervision (assigning, reviewing and approving, guidance and training)³⁰

126. Both internal and external communication of an organization is important, particularly in the context of organizational transparency. Internal audit, on the other hand, is an element of internal control that looks into the performance of an organization and recommends improvements. Identifying irregularities, fraud and corruption should be recognized as a part of the overall management process and as a primary responsibility of all staff, including line managers.

127. It is important to underline that as in the case of every other anti-corruption measure, internal control has its costs, both financial and in terms of human resources. This needs to be taken into consideration when designing or undertaking reform of internal control systems in relation to SIDS.

External control and external audit

128. While internal control operates from within an institution and is carried out under the auspices of the head of the respective public body, external control is independent from the controlled (audited) institution. Such control is exercised either through a Ministry of Finance financial control system or the supreme audit institution of a country.

129. The *Technical Guide to the United Nations Convention against Corruption* states that the overall purpose of an external or state audit “is to carry out an appraisal of management’s discharge of its stewardship responsibilities, particularly where they relate to the use of public money, and to ensure that these have been discharged responsibly”.³¹ It also emphasizes the need for an external appraisal of the work of internal auditors. The Guide underlines the importance of the scope of the audit mandate, in that it should include “extra budgetary funds, autonomous agencies and anybody in receipt of public funding, including private sector contractors involved in public procurement”.³²

130. An external audit may provide useful information on the efficiency of government spending and whether procurement is achieving its goals. Both the capacity of a supreme audit institution and the transparency of its audit reports are important preconditions for effective external control.

³⁰Ibid.

³¹UNODC, *Technical Guide to the United Nations Convention against Corruption*.

³²Ibid.

IV.



Conclusions and recommendations

131. SIDS face multiple challenges in terms of their development, and creating a fair, transparent and effective procurement system is one of them. Integrity is fundamental to the effectiveness of public institutions, including those responsible for procurement, which play an important role in responding to the needs of communities.

132. It would be impractical to suggest that SIDS introduce the complex, elaborate systems of control that are in place in large industrialized countries. Instead, a system that builds on the qualities and traditions of island culture is better suited to these particular environments. The system should keep bureaucratic requirements to a minimum while at the same time ensure integrity through strong, targeted control.

133. The following are some of the conclusions which stem from the work of UNODC in delivering technical assistance to SIDS with regard to the implementation of the United Nations Convention against Corruption.

134. Capacity restraints should be taken into consideration. The dearth of specialized skills in many SIDS means that a priority should be a focus on capacity-building to overcome limitations imposed by size and the relative weakness of the civil service. Addressing corruption risks in procurement requires certain skills. This shortage can be addressed at island, national or regional level; notably the latter option allows for the use of a larger pool of resources. However, while outsourcing procurement services is recommended by some practitioners and embraced by certain island nations, this should be a measure of last resort rather than a first choice. The issue of capacity substitution arises when procurement is outsourced to private consultancies. A country that outsources may have difficulty in building the knowledge, skills and required capacity in the civil service needed to implement and monitor procurement contracts if it is overly reliant on the private sector or donor support. It is important to recognize that resource limitations have a direct impact on effectiveness and that these limitations may be difficult to overcome. It should be recognized that more is not necessarily better in an anti-corruption context. For example, a system of asset disclosure that requires public officials to submit declarations that are subsequently not verified because of lack of resources could compromise the idea of asset declaration. When these limitations apply, it might be more prudent to take into account the financial and human resources restrictions and be less ambitious and more realistic.

135. Institutions of combined mandate may be a reasonable compromise in environments with scarce resources. In their quest for effective oversight systems, SIDS may explore the establishment of institutions that combine mandates (instead of multiple institutions with single mandates). This would promote efficiency. Establishing new oversight institutions can be costly and drain resources from other public administration sectors.

136. Accountability and transparency need to be strengthened and oversight systems that take into account the specific SIDS environment need to be built. A possible answer to the need to establish better systems of accountability, transparency and oversight is to build on the strengths of the SIDS environment, in particular the strong social cohesion and easy flow of information in small communities. Small communities tend to have their own strong internal accountability systems. They may differ from official ones, but it is a question of identifying the systems and using them properly to achieve the desired results. Introducing an effective access-to-information regime to strengthen transparency is recommended. This would ensure that every public body has internal procedures on providing information to the public and that there is a designated official responsible for providing this information. Transparency should also be promoted through existing informal channels of information sharing, using community channels and respecting traditions. Many SIDS might benefit from enacting legislation that facilitates access to information in that it would promote the participation of society.

137. Transparency and access to information should be promoted in practical terms in order to strengthen accountability and participation of society. Levels of transparency, administrative effectiveness, accountability and technology penetration vary across SIDS. This inconsistency impacts the integrity risks associated with the procurement process. Transparency could be provided through effective public reporting and the provision of access to information. This could be ensured partly through Government websites and in part through low-tech and low-cost means, such as public hearings. These channels could be used to make sure communities are aware of procurement projects and the benefits of carrying out procurement in an impartial and effective manner.

138. The integrity of agencies and units responsible for procurement should be strengthened by building on the requirements of articles 7 and 8 of the United Nations Convention against Corruption.

139. Combining efforts with other conveniently located SIDS should be explored to build administration capacity and to enlarge potential procurement markets.

140. Internal oversight mechanisms to monitor public procurement should be strengthened, including the involvement of civil society. Whenever possible, SIDS should try to use innovative e-procurement methods that might simplify the procurement process and improve transparency.

141. Local frameworks of asset declaration and mechanisms for the protection of reporting persons and witnesses should be formulated. Protection for reporting persons is an issue from a legal and practical perspective. It is difficult to ensure confidentiality and effective protection of a person in a small, tightly knit community that has numerous unofficial channels of information. It should be noted that the use of information and communication technology tools may facilitate reporting in good faith of information on corrupt practices.

142. Civil society should be heavily involved, in particular in the monitoring of contracts implementation. Levels of society participation and oversight vary significantly,

often as a result of limited access to information. Public consultations on future procurement plans may help to strengthen the participation of society and to generate valuable feedback on the needs of local communities.

143. The private sector should be involved in efforts to strengthen business ethics and compliance mechanisms and prevent opportunities for corruption offences, unfair competition and, ultimately, misuse of the public procurement process and the principles envisaged in article 9 of the Convention.





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