

Report on
information relating to the agenda of the third intersessional meeting of
the Open-ended Intergovernmental Working Group on Prevention

I. - Information relating to conflicts of interest, reporting acts of corruption and asset declarations, particularly in the context of articles 7-9 of the Convention

1. Has your country adopted and implemented articles 7-9 of the UN Convention against Corruption?

Tunisia acceded to the United Nations Convention against Corruption by virtue of Law No. 16 of 2008, dated 25 February 2008, and ratified it by virtue of Decree No. 763 of 2008, dated 24 March 2008. It has also instituted a number of measures in order to implement the articles on conflicts of interest, reporting acts of corruption and asset declarations.

2. Please cite, summarize and, if possible, provide copies of the applicable policy(ies) or measure(s).

- Identify and address potential conflicts between the professional duties and personal interests of civil servants or elected public officials.

In application of the provisions of article 7 of the Convention concerning conflicts of interest, the Tunisian legislator has established a general principle in the Statute of senior public servants prohibiting conflicts of interest. The provisions of Section 5 of Law No. 112 of the year 1983, dated 12 December 1983, concerning regulation of the general statute of servants of the State, local public corporations and institutions of an administrative nature is the model of the prohibition of conflicts of interest reiterated in all statutes, such as the statute of the judiciary, the military statute and the statute of security personnel. Section 5 provides as follows: "No public servant may exercise a private paid activity of any kind regulated by conditions that may infringe this prohibition. No public servant whatever his position shall directly or through an intermediary under any designation whatsoever have an interest in an institution subject to the control of the department in which he works if that interest compromises his independence. Where relatives of public servants exercise paid private professional activities, a statement of these shall be submitted to the department in which the public servant works. When necessary, the oversight authorities shall take the necessary measures to protect the interests of the department".

In application of the provisions of article 9 of the Convention, Decree No. 3158 of 2002, dated 17 December 2002, concerning the revised public procurement system, completed by Decree No. 3018 of 2009, dated 19 October 2009, [contains] provisions concerning prohibition of conflicts of interest. Paragraph 2, of Section 13, stipulates as follows: "Contracts may not be concluded with suppliers or representatives of manufacturers in Tunisia or abroad who are public servants in the same department or public institution or establishment that will conclude the contract for goods or services or who have ceased to work for it within the last five years".

The legislator strengthened this principle, giving it penal force by criminalizing acts involving conflict of interest. In this framework, Section 97 bis of the Criminal Code provides as follows: "A prison sentence of three years and a fine of three thousand dinars shall be imposed on any public servant who undertakes directly or indirectly or as an associate to participate himself or through an intermediary in the form of work or capital in running a private establishment that is by virtue of his duties subject to his control or who was responsible for the conclusion of the contract with it or was an active element in the conclusion of that contract. The penalty shall be reduced to two years' imprisonment and a fine of one thousand dinars if the public servant has taken advantage of his former position and entered into such

participation within five years of ceasing to exercise his duties and did so in order to obtain benefit for himself or another person or in order to harm the department”.

Section 97, 2, of the Criminal Code provides as follows: “A prison sentence of two years and a fine of one thousand dinars shall be imposed on any civil servant who directly or indirectly or as an associate embarks upon a paid private activity that has a direct connection with his duties without having obtained permission to do so. The conditions and procedures for obtaining permission from the department shall be regulated by decree. The same penalty shall be imposed on any civil servant who commits such an act within five years of ceasing to exercise his duties and has not been legally permitted to do so”.

- Allowing and encouraging members of the civil service to report acts of corruption

Section 29 of the Code of Criminal Procedure provides as follows: “All authorities and civil servants shall inform the Prosecutor if crimes come to their knowledge during the performance of their duties and shall communicate to him all information, reports and documents pertaining to them. Under no circumstances may a false claim or damage be imputed to them on the basis of the opinions this section enjoins them to express unless ill-intent is proven”.

Section 15 of Decree No. 7 of 2011, dated 18 February 2011, establishing the National Fact-finding Committee on Bribery and Corruption provides as follows: “The State authorities, and in particular the administrative authorities, the various control and inspection authorities and organizations, local authorities, public institutions and establishments, shall provide the Chairperson of the Committee with statements containing all the information included within the terms of reference of the Committee or pertaining to them that has been communicated to them or that they have been able to obtain in the course of their duties in order to help it perform the duties entrusted to it as well as possible. The aforementioned authorities and bodies shall submit this information and these documents directly and spontaneously to the Chairperson of the Committee or at his request when necessary”.

Section 17 of the same Decree provides as follows: “The Governor of the Central Bank of Tunisia, the President of the Financial Market, the President of the Stock Market, the President of the Competition Council and all other relevant bodies shall provide the Chairperson of the Committee with all the information, data and documents in their possession pertaining to the transactions conducted by lending institutions, collective investment institutions, investment companies and companies listed on the stock exchange that fall within the Committee’s terms of reference”.

Framework Decree No 120 of 2011, dated 14 November 2011, concerning combating corruption lays down the same provisions as those imposed upon civil servants to notify cases of corruption and urges them to submit the evidence to the body responsible for combating corruption.

Since its establishment, the National Fact-finding Committee on Bribery and Corruption has been responsible for making effective the duty of notification through holding periodic seminars with a number of relevant civil servants in order to urge them to cooperate with the Committee by submitting all the facts in their possession. These seminars have succeeded in strengthening the trust between civil servants and the Committee and have resulted in cooperation in the form of several public departments and bodies notifying cases of corruption that have been uncovered. The report of the Committee on Bribery and Corruption contains examples of cases of corruption that cooperation has uncovered.

- Duty of civil servants to complete declarations of earnings.

Law No. 17 of 1987, dated 10 April 1987, concerning declarations of earnings by members of the Government and certain categories of civil servants establishes the duty to make a declaration of their earnings and the earnings of their wives and minor children in accordance with the form determined by virtue of Order No. 466 of 1999, dated 27 February 1987. [sic]

3. Please provide examples of the successful implementation of domestic measures adopted to comply with articles 7-9 of the Convention.

- Identification of conflicts of interest between the professional duties and personal interests of public officials and the process used to resolve such conflicts.

The national approach imposes a duty to avoid conflicts of interest upon all civil servants and considers it a general duty that results in the requirement to refrain from any situation involving conflict of interest. Breach of this duty results in severe sanctions that may be disciplinary or criminal, as well as the possibility of the civil servant being required to remedy the harm done to the department or a third party in the event that this duty has been breached. The control and inspection system ensures respect of this duty by granting wide-ranging powers to prohibit and uncover conflicts of interest.

- Reporting by a public official of an act of corruption through mechanisms established in accordance with the provisions of the Convention.

Section 29 of the Code of Criminal Procedure is the framework that allows civil servants to report cases of corruption. There have been a number of criminal prosecutions based on complaints by the relevant authorities and administrative bodies, especially relating to misappropriation and squandering of public funds.

Since the establishment of the National Fact-finding Committee on Bribery and Corruption on 18 February 2011, the reporting system has seen an important development through the possibility for the Committee to obtain the reports of the control and inspection bodies, as well as the information that is directly referred to it by the relevant departments and bodies, and it is this that has allowed several cases of corruption to be uncovered and investigations and inquiries to be conducted concerning them, in application of the provisions of sections 15 and 17 of Decree No. 7 of 2011, dated 18 February 2011.

- Identification of conflicts of interest on the basis of the assets declaration.

Despite the existence of the system of declaration of income, this system was not previously used to prevent corruption and declarations were deposited in the audit office without processing, follow-up or updating.

4. Have you ever assessed the effectiveness of the measures adopted to implement articles 7-9? Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized.

No complete, official assessment has been conducted of the system to prevent corruption particularly relating to prohibiting conflicts of interest, reporting corruption and declaration of income. The Tunisian Revolution proved clearly that few procedures and measures had previously been established and it is this that requires an assessment to be conducted in order to identify the reasons for this failure and the audits that need to be conducted.

Decree No. 120 of 2011, dated 14 November 2011, contains provisions relating to laying down the basis for the reform operation by establishing the duty to conduct an assessment of the legal framework and the institutional framework in order to bring them into line with the provisions of the Convention and remove the obstacles that limit the usefulness of the preventive measures.

5. Which challenges and issues are you facing in (fully) implementing articles 7-9 of the Convention?

Since 14 January 2011, Tunisia has been in a phase of reconstruction, one of the most important aspects of which is combating corruption. Work is currently under way to devise and draft a national vision

to combat corruption, the main characteristics of which were laid down in Decree No. 120 of 2011, dated 14 November 2011, implementation of which began with the appointment of the president of the National Authority to Combat Corruption.

- Communication challenges such as the ability to disseminate, publicize and promote the new policy or practice both to public officials and the public more broadly.

The National Plan to Combat Corruption requires a particular effort in the communications field. In view of the importance of this aspect, Decree No. 120 of 2011, dated 14 November 2011, refers to the participation of communications and media specialists in the board of the National Authority to Combat Corruption in order to assist in devising, drafting and implementing a useful communications plan in the context of the endeavour to combat corruption.

- Implementation challenges such as the ability to enforce or otherwise encourage adherence to new or existing policies or practices by public officials.

Despite the existence of the political will to combat corruption and the willingness of the public authorities to provide the necessary means to make the National Strategy to Combat Corruption successful, the material and human resources currently available to all those involved in the anti-corruption field are insufficient and do not allow successful and effective performance and it is this that requires significant support from the State.

In this framework, a useful system of income declaration requires, in addition to the dissemination of the legal framework, training for the audit office, and provision of the human and material resources needed to process and make use of the declarations.

6. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

- Training for those involved, including training a group of trainees to build and strengthen capacities and capabilities.
- Conduct studies in order to identify contradictions and conduct assessments of the legal and institutional framework.
- Accompanying the reform and reconstruction process.

II - Information requested from States parties relating to implementation of article 12 of the Convention (Private sector), including the use of public-private partnerships

1. Has your country adopted and implemented article 12 of the UN Convention against Corruption?

Tunisia acceded to the United Nations Convention against Corruption by virtue of Law No. 16 of 2008, dated 25 February 2008, and ratified it by virtue of Decree No. 763 of 2008, dated 24 March 2008. It has also instituted a number of measures in order to implement the articles on conflicts of interest, reporting acts of corruption and asset declarations.

2. Policies and measures adopted to implement article 12 of the United Nations Convention against Corruption.

The private sector participates in the anti-corruption effort in two phases:

- State policy focuses in a first phase on encouraging and supporting use of the right system of good governance within private sector institutions, organization of the rules of competition

between them and endeavouring to provide an appropriate environment for business and investment based on the principles of transparency and plain dealing. This has been done in particular by developing the provisions relating to commercial companies by issuing the Commercial Company Code, the law on competition and prices, the law reorganizing the financial market, the law on the commercial register, the law on the integrity of financial relations and the law prohibiting money laundering.

-Now, in the second phase, the sector is a partner in combating corruption by virtue of Decree No. 120 of 2011, dated 14 November 2011, section 1 of which states that the Decree aims to combat corruption in the public and the private sectors. Section 9 of the Decree determines the involvement of the private sector through its being subject to the duty to take part in the efforts of the state aimed at combating corruption by devising and implementing adequate mechanisms for eliminating practices likely to encourage the spread of corruption in the public sector, subjecting the practice of various economic activities and commercial transactions between private sector institutions to the principles of lawful competition and strengthening the principles of transparency and plain dealing in the conduct of private sector institutions.

3. Please provide examples of the successful implementation of domestic measures adopted to comply with article 12.

Despite the achievement of tangible results in the field of organizing the practice of economic activities by the private sector, the participation of this sector in combating corruption is still limited and cooperation and partnership between the public sector and the private sector are in their early stages, so it is not possible to speak about complete initiatives.

4. Have you ever assessed the effectiveness of the measures adopted to implement article 12? If so, please outline the results of such an assessment including methods, tools and resources utilized.

No complete, official assessment has been conducted of the system to prevent corruption particularly relating to prohibiting conflicts of interest, reporting corruption and declaration of income. The Tunisian Revolution proved clearly that few procedures and measures had previously been established and it is this that requires an assessment to be conducted in order to identify the reasons for this failure and the audits that need to be conducted.

Decree No. 120 of 2011, dated 14 November 2011, contains provisions relating to laying down the basis for the reform operation by establishing the duty to conduct an assessment of the legal framework and the institutional framework in order to bring them into line with the provisions of the Convention and remove the obstacles that limit the usefulness of the preventive measures.

5. Which challenges and issues are you facing in (fully) implementing the provision?

Since 14 January 2011, Tunisia has been in a phase of reconstruction, one of the most important aspects of which is combating corruption. Work is currently under way to devise and draft a national vision to combat corruption the main characteristics of which were laid down in Decree No. 120 of 2011, dated 14 November 2011, implementation of which began with the appointment of the president of the National Authority to Combat Corruption.

6. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

-Training for those involved, including training a group of trainees to build and strengthen capacities and capabilities.

- Provision of the expertise and human and material resources to conduct studies in order to identify contradictions and conduct assessments of the legal and institutional framework.
- Accompanying the reform and reconstruction process.