CONFLICTING TRENDS: LESSONS FROM CURRENT EVALUATIVE MECHANISMS IN INTERNATIONAL AND REGIONAL ANTI-CORRUPTION SYSTEMS REGARDING CONFLICTS OF INTEREST

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INTRODUCTION

Corruption is an important topic at the domestic, regional and international levels. The focus on corruption has intensified as it has become widely understood that corruption impacts many facets of law and policy, ranging from finance and development to human rights and environmental concerns, as well as general concepts of good governance. Like the areas that it impacts, corruption itself is not one-dimensional. Rather, it consists of many components that, both individually and collectively, undermine the legal and societal stability of states. One of the most fundamental aspects of corruption is a conflict of interest because, as this article asserts, without the existence of a conflict of interest, the corrupt act in question would likely not qualify as corrupt. Indeed, competition arising from conflicts of interest, particularly in the public sphere, is a theme that runs through the understanding of anti-corruption measures in all jurisdictions.

This article explores the impact of conflict of interest evaluations in international and regional anti-corruption systems—specifically the Inter-American Convention Against Corruption (the “IACAC”), the Group of States Against Corruption (“GRECO”), the Organization for Economic Cooperation and Development (the “OECD”), and the Asian Development Bank/OECD Anti-Corruption Initiative for Asia-Pacific (the “ADB/OECD”)—along with the trends that emerge from these methods of evaluation. Part II of this article establishes the role of conflict of interest prevention within the IACAC and discusses the findings of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention Against Corruption (the “MESICIC”) regarding conflict of interest regulation by state parties. GRECO state parties are similarly evaluated in Part III, the OECD state parties in Part IV, and the ADB/OECD state parties in Part V. Using a comprehensive system that examines the positive and negative aspects of conflict of interest regulation, as demonstrated through the member state evaluations in the studied regimes, Part VI discusses the trends that can be observed from these evaluation systems. Part VII provides basic information on the state party evaluation mechanisms, which have been created under the auspices of the United Nations Convention Against Corruption (the “UNCAC”) and the European Union (the “EU”), but are not yet in force. Part VIII examines the implications of these trends, in terms of

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effectiveness and future development for the existing conflict of interest provisions. Part VIII also uses these observed trends to suggest areas in which the yet-to-be implemented UNCAC and EU evaluation procedures could be better focused to address the member state-based issues that arise in attempting to regulate conflicts of interest through international and regional treaty regimes.

The goal of this article is to gain a more robust understanding of how conflicts of interest are treated in international and regional anti-corruption treaty regimes, as well as the trends that can be discerned from evaluations of regime member practices regarding these conflicts of interest measures. At present, only the IACAC, GRECO, the OECD, and the ADB/OECD have significant member state compliance procedures in place, although, as previously noted, the UNCAC and the EU have created mechanisms to undertake member state compliance procedures in the future. The evaluations used by the IACAC, GRECO, the OECD, and the ADB/OECD have gone through several phases to date, and examination of such existing procedures will help to provide an understanding of the conflict of interest situations in individual member states, as well as the collective situation within each regime overall. As such, the evaluation procedures offer important lessons for each of their respective regimes. Furthermore, the lessons and trends from these existing mechanisms offer additional insights and lessons for those regimes that are in the process of implementing review mechanisms in the future.

I. THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION

A. The IACAC Conflict of Interest Provisions

The Organization of American States adopted the IACAC in 1996 as the region’s first major attempt to address the issue of corruption at the domestic and regional level.\(^1\) The IACAC is a wide-ranging convention that addresses many issues related to or affecting corruption and underlines the detrimental impact of corruption on law and society.\(^2\) In particular, the IACAC focuses on corruption in the public sector and the commission of public functions because these forms of corruption are identified as especially detrimental to society and development.\(^3\)

The IACAC directly addresses the conflict of interest issue by recommending preventative measures for state parties to consider adopting in order to improve the ability of their legal regimes to withstand and avoid corruption.\(^4\) With that goal in mind, state parties to the IACAC have agreed to consider the implementation and strengthening of codes of conduct and other

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\(^2\) IACAC, supra note 1, at pmbl.

\(^3\) Id.

\(^4\) Id. at art. III.
standards for the “correct, honorable and proper fulfillment of public functions” to prevent conflicts of interest at the governmental level. Other suggested measures—such as income reporting and new ethics requirements for public officials, the implementation of reporting systems for conflicts and acts of corruption, and the creation of oversight bodies to investigate such allegations of corruption—also reinforce the desire to root out conflicts of interest.

In order to assist state parties with the implementation of their IACAC obligations and to evaluate the levels of state party compliance with their obligations over time, the IACAC created the MESICIC. MESICIC observers periodically compile information on state party implementation of the IACAC and create reports detailing each state party’s compliance with the IACAC recommendations and requirements. These reports are issued in accordance with regularly scheduled rounds, and the MESICIC is currently entering into its fourth round of review and reporting. The resulting reports form the basis of the IACAC’s conflict of interest analysis because they reveal the status of each individual state party’s compliance with the recommended conflict of interest measures while also expertly discussing additional measures that it may be necessary for the parties to take. It should be noted that the MESICIC review round reports are by far the most comprehensive of the reviews discussed in this article. Therefore, the MESICIC reports provide the greatest insight into the successes and failures in implementing a conflict of interest regime at the domestic and regional levels.

B. Evaluation Trends

1. General Conflicts of Interest Laws

Among the reviewed IACAC party states, there have been many legislative responses to the conflict of interest requirements set out under the IACAC. Some states have enacted laws targeting conflicts of interest in relation to public ethics, formal policies addressing administrative and disciplinary concerns,

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5 Id. at art. III(1).
6 Id. at art. III(3)–(4).
7 Id. at art. III(8).
8 IACAC, supra note 1, at art. III(9).
10 Id. See Country Reports, DEPT’R OF LEGAL COOPERATION, ORG. OF AM. STATES, http://www.oas.org/juridico/english/mesicic_reports.htm (last visited March 15, 2013) (providing an online compilation of all of the country reports for each round).
and penalties to be imposed in the event of a conflict of interest violation.\textsuperscript{14} Several states have further compartmentalized conflict of interest laws based on the function of the targeted public official, thus creating differences in standards and requirements.\textsuperscript{15} Overall, a majority of IACAC state parties have updated their laws in some way to include conflicts of interest as a criminal offense.\textsuperscript{16}

In several states, conflicts of interest have been established as an express bar to police service,\textsuperscript{17} service as a member of the judicial branch\textsuperscript{18} or the


\textsuperscript{17} See, e.g., MESICIC Belize Report 1, supra note 13, at 3–4.

executive branch, and/or public service in general. Some states have also established that conflict of interest issues can extend beyond the particular public servant and include the public servant’s immediate family members and their interests. In some instances, states have enacted laws requiring public servants with conflicts of interest to recuse themselves from the affected position.

Conflicts of interest can be particularly damaging and pervasive in the realm of public contracting. The relationship between corruption and public contracts has resulted in several states creating specific governmental entities that oversee conflicts of interest in the bidding process. Certain states have also created publicly accessible databases of those potential bidders who have been debarred from the contracting process as a result of conflict of interest issues.

Despite these positive measures, the MESICIC review rounds have highlighted issues with the implementation and effectiveness of conflict of interest laws and regulations. Overall, the reports generated throughout the MESICIC review rounds have recommended that nearly all reviewed states take measures to strengthen their conflict of interest laws and regulations. In several instances, a report specifically recommended that the reviewed state create a legal definition of what a conflict of interest is since their legal regimes were operating without such a definition. The first three MESICIC review rounds have

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19 See, e.g., MESICIC Guatemala Report 1, supra note 18, at 4.
20 See, e.g., MESICIC Brazil Report 1, supra note 13, at 26 n.119 (indicating that familial relationships can also cause conflicts of interest).
22 See MESICIC Dominican Republic Report 1, supra note 14, at 6; MESICIC Honduras Report 1, supra note 14, at 9.
rounds have also identified issues arising from the implementation of penalties for conflicts of interest violations and informed the calculation of the costs of monitoring the application of conflict of interest laws.

2. Codes of Conduct/Ethics

According to the most recent MESICIC review reports, twenty-one states within the IACAC system currently use codes of conduct or ethics in relationship to conflicts of interest and public authorities. Some of these codes are very comprehensive and/or explicit, while others are more limited in scope or narrowly tailored to the branch of government in which a targeted person is employed. In some states, such as the Bahamas, this is problematic in that there are no specific codes of conduct or ethics applicable to the legislature, which is historically more corrupt than other areas of government. Similarly, in Suriname, codes of conduct are only used in the military, and even in that context the scope of such codes is limited.

In terms of procurement, certain states, including the United States and Canada, have explicit rules and regulations governing the conduct of procuring that there was no coherent definition of the term “public servant” in Jamaican law and that this hindered the application of the definition of conflicts of interest).


29 See sources cited supra note 28.

30 See MESICIC Bahamas Report 1, supra note 24, at 10.

31 See MESICIC Suriname Report 1, supra note 26, at 4.
entities and those who obtain procurement agreements with the state.  As a federal system, many of the states within the US also use codes of conduct to regulate procurement activities.

In order to implement the codes of conduct, some states have published guidebooks or other materials that are made available to the general public workforce. Further, Guatemala has created a guidebook that explains how supervisors within governmental departments must handle real or potential conflicts of interest, and Trinidad has established a requirement that departmental heads report violations of its codes of conduct to their superiors.

Interestingly—and tellingly, from the perspective of assessing the importance of periodic implementation reviews for anti-corruption regimes—several states were found to have implemented or strengthened their codes of conduct following initial MESICIC reviews which highlighted shortcomings in this area. Additionally, several states, such as the Bahamas and Ecuador, indicated during the third review that they were in the process of drafting more comprehensive codes of conduct.

3. Disclosure and Reporting Requirements

A majority of the states subject to MESICIC review have some form of requirement for the disclosure of assets by state employees, members of the legislature, members of the executive, and other public officials. Some of these requirements are targeted at certain groups, such as public servants and high-level members of the executive or the judiciary. Other requirements are


33 See MESICIC USA Report 2, supra note 32, 13–23.


36 See MESICIC Trinidad and Tobago Report 1, supra note 28, at 19.

37 See generally MESICIC reports, supra note 28.


39 See, e.g., MESICIC USA Report 1, supra note 13, at 25–27.

40 See, e.g., id. at 25.
the result of specific constitutional provisions that mandate them. Additionaly, some states require that those seeking an office make asset disclosures as well. States such as Bolivia and Guatemala go even further by requiring specific registration of property held by certain public officials.

A number of state parties have provisions that impose monetary penalties or jail time as punishment for an individual found to have violated the disclosure requirements. During the MESICIC review rounds, at least one state, Brazil, explained that it had established governmental investigatory powers for potential violations of its disclosure requirements. Chile and Mexico, on the other hand, noted that they had increased auditing requirements for disclosures during the MESICIC review rounds. Both Chile and Ecuador, however, expressly noted that there were issues with societal acceptance of the disclosure requirements and their implementation. Further, during the MESICIC review rounds, particularly the second and third rounds, a number of states noted that they had implemented increased disclosure requirements.

Despite these advances and improvements in implementation of the IACAC requirements by means of asset disclosure by public officials, the MESICIC review rounds revealed consistent areas of identified weaknesses in implementation. Overall, it was recommended that many states—representing all forms of development status—needed to make their disclosure requirements

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42 See, e.g., MESICIC Bahamas Report 1, supra note 24, at 14–16; MESICIC Brazil Report 1, supra note 13, at 25-26.
43 See MESICIC Bolivia Report 1, supra note 21, at 17; MESICIC Guatemala Report 1, supra note 18, at 18.
44 See, e.g., MESICIC Bahamas Report 1, supra note 24, at 15 (noting that the penalties include monetary aspects and/or jail time); MESICIC Guyana Report 1, supra note 24, at 8 (noting that the penalties include monetary aspects but not jail time); MESICIC Nicaragua Report 1, supra note 14, at 8 (explaining that there is a penalty but its true extent is unknown); Comm. of Experts of the MESICIC, Final Report on Implementation in the Bolivarian Republic of Venezuela of the Convention Provisions Selected for Analysis in the Framework of the First Round, at 18, SG/MESICIC/doc.117/04 Rev. 4 (June 30, 2004) [hereinafter MESICIC Venezuela Report 1] (explaining that there are monetary penalties only).
and processes more transparent. The majority of states received recommendations to increase their reporting requirements in general, and some were subject to specific recommendations to increase their income reporting requirements, as well as the oversight mechanisms used in the disclosure reporting process.

4. Constitutional Provisions Relating to Conflicts of Interest

Constitutions are essential to law and society for many reasons, not the least of which being that they express the mores and principles of a society. While all laws necessarily have power, constitutional law has a different and typically more hallowed place in law and society, in both civil legal systems and common law legal systems. With the exception of the United States and Canada, there has been a concerted trend among MESICIC states of incorporating anti-corruption provisions into their constitutional framework, particularly in the form of conflict of interest provisions.

Most states have coalesced around the inclusion of provisions that create public service ineligibilities in certain instances where a conflict of interest would otherwise exist. A majority of applicable states have otherwise coalesced by including express constitutional prohibitions regarding conflicts of interest, thus constitutionally requiring that public servants act only for the

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50 See, e.g., MESCIC Guyana Report 1, supra note 24, at 21; MESCIC Ecuador Report 1, supra note 15, at 33; MESCIC Bolivia Report 1, supra note 21, at 42–43; MESCIC Costa Rica Report 1, supra note 14, at 44–45; MESCIC Guatemala Report 1, supra note 18, at 41.


52 See MESCIC Belize Report 1, supra note 13, at 22; MESCIC Dominican Republic Report 1, supra note 14, at 44.


54 See, e.g., MESCIC Colombia Report 1, supra note 13, at 3 (prohibiting appointments based on kinship); MESCIC Ecuador Report 1, supra note 15, at 4 (prohibiting nepotism); Committee of Experts of the MESCIC, Report on Implementation in Grenada of the Convention Provisions Selected for Review in the First Round of the Framework, at 3, SG/MESCIC/doc.166/05 Rev. 4 (Mar. 31, 2006) [hereinafter MESCIC Grenada Report 1] (prohibiting certain appointments); MESCIC Honduras Report 1, supra note 14, at 4 (prohibiting most public servants from holding two offices); MESCIC Nicaragua Report 1, supra note 14, at 2 (prohibiting officials from acting on behalf of a party other than the State when making contract with the State).
good of the nation and constitutionally mandating that public officials register assets with a designated entity upon taking public office. Additional relevant constitutional provisions in some MESICIC states include overall governmental transparency requirements, required codes of conduct for public officials, the creation of a state duty to combat corruption, and the requirement that the state create a corruption oversight body.

5. Existence and Creation of Oversight Bodies

A constant theme throughout the MESICIC review process has been that it is necessary to strengthen or create oversight bodies for conflict of interest laws and regulations and anti-corruption measures in general. In the wake of the IACAC’s adoption, a number of state parties created national oversight bodies to police conflicts of interest, often under the rubric of the oversight of public ethics. Many state parties designated an ombudsman to address these issues, particularly in terms of conflicts of interest in legislative activities. Other entities that have been established include anti-corruption offices, police service commissions, judicial and legal service commissions, and oversight bodies for government contracting and related contractors. Additionally, several state parties have created programs, which assist state employees in seeking guidance regarding the potential existence of conflicts of interest.

Coordination—or the lack thereof—between oversight bodies within the governmental structure is an identified problem in regard to oversight bodies.

55 See, e.g., MESISC Bolivian Report 1, supra note 21, at 4; MESISC Guatemalan Report 1, supra note 18, at 3; MESISC Peruvian Report 1, supra note 14, at 4; MESISC Uruguayan Report 1, supra note 15, at 3.
56 See, e.g., MESISC Bolivian Report 1, supra note 21, at 17; MESISC Costa Rican Report 1, supra note 14, at 19 (applying only certain public servants); MESISC Paraguayan Report 1, supra note 26, at 9; MESISC Peruvian Report 1, supra note 14, at 18–19 (applying only to certain public officials); MESISC Trinidad and Tobagonian Report 1, supra note 28, at 21.
57 See, e.g., MESISC Chilean Report 1, supra note 46, at 22.
58 See MESISC Belizean Report 1, supra note 13, at 3.
59 See MESISC Ecuadorian Report 1, supra note 15, at 5.
60 See, e.g., MESISC Ecuadorian Report 1, supra note 15, at 5; MESISC Peruvian Report 1, supra note 14, at 6; MESISC Trinidad and Tobagonian Report 1, supra note 28, at 5 (applying only to judges and other limited officials).
61 See, e.g., MESISC Belizean Report 1, supra note 15, at 5; MESISC Costa Rican Report 1, supra note 14, at 6; MESISC Dominican Republic Report 1, supra note 14, at 2; MESISC Ecuadorian Report 1, supra note 15, at 3; MESISC Trinidad and Tobagonian Report 1, supra note 28, at 5.
62 See MESISC Argentinian Report 1, supra note 13, at 9; MESISC Bolivian Report 1, supra note 21, at 37.
63 See MESISC Bahamian Report 1, supra note 24, at 7; MESISC St. Vincentian Report 1, supra note 24, at 4; MESISC Trinidad and Tobagonian Report 1, supra note 28, at 7.
64 See, e.g., MESISC Bahamas Report 1, supra note 24, at 7; MESISC Grenadian Report 1, supra note 2454, at 5; MESISC Jamaican Report 1, supra note 25, at 8; MESISC St. Vincentian Report 1, supra note 24, at 5; MESISC Trinidad and Tobagonian Report 1, supra note 28, at 3.
65 See MESISC Belizean Report 1, supra note 13, at 5; MESISC Dominican Republic Report 1, supra note 14, at 10; MESISC Jamaican Report 1, supra note 25, at 12.
66 See, e.g., MESISC Honduran Report 1, supra note 14, at 9.
and conflicts of interest. A number of state parties have experienced issues with this type of splintered oversight, which can often undermine the efficacy of the conflicts of interest laws and rules that they are charged with overseeing. In response, some state parties have taken measures to establish a coordinating body or to generally facilitate such coordination efforts. Despite all of these efforts, throughout the MESICIC review rounds there has been a consistent finding that all IACAC state parties need to strengthen conflicts of interest oversight.

6. Incompatibilities for Governmental Service

As a general matter, the majority of IACAC state parties have legal restrictions that render a person ineligible for public service under certain conditions, such as holding another office at the same time or prior governmental service. In addition, some state parties have created position-

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71 See, e.g., MESICIC Ecuador Report 1, supra note 15, at 4; MESICIC El Salvador Report 1, supra note 51, at 4; MESICIC Grenada Report 1, supra note 54, at 6; MESICIC Guatemala Report 1, supra note 18, at 3; MESICIC Honduras Report 1, supra note 14, at 4.
specific disqualifying incompatibilities, such as those for office seekers, legislative servants, judicial officials, senior members of the government, other officials in general, labor-related positions, and certain individuals involved in the procurement process. Several state parties have also extended their regulations to address incompatibilities at the local government level.

7. Training in Conflicts of Interest

The establishment of a meaningful conflict of interest regime cannot be fully achieved until the members of the government and the public generally understand what such regulations mean and how they apply. In recognition of this, a number of state parties have enacted publicity requirements for conflict of interest laws and regulations. The MESICIC review rounds, however, have continually stressed the need for training in conflicts of interest and ethics requirements in the state party system.

8. Regulation of Post-Governmental Service Conflicts of Interest

The ability of former civil and government servants to enter the private sector is rife with potential conflict of interest situations. In recognition of this, many IACAC state parties have enacted laws and regulations that restrict—at

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72 See, e.g., MESICIC Chile Report 1, supra note 46, at 6; MESICIC Colombia Report 1, supra note 13, at 5; MESICIC Ecuador Report 1, supra note 15, at 4.
73 See, e.g., MESICIC Bahamas Report 1, supra note 24, at 9.
74 See, e.g., MESICIC Bolivia Report 1, supra note 21, at 5; MESICIC Colombia Report 1, supra note 13, at 4; MESICIC El Salvador Report 1, supra note 51, at 3; MESICIC USA Report 1, supra note 13, at 8.
75 See, e.g., MESICIC Guatemala Report 1, supra note 18, at 3; MESICIC Peru Report 1, supra note 14, at 4; MESICIC Suriname Report 1, supra note 26, at 3.
76 See, e.g., MESICIC Bolivia Report 1, supra note 21, at 4.
77 See, e.g., MESICIC Chile Report 1, supra note 46, at 7.
78 See, e.g., MESICIC El Salvador Report 1, supra note 51, at 5; MESICIC Nicaragua Report 1, supra note 14, at 3.
79 See MESICIC Panama Report 1, supra note 53, at 7–8; MESICIC Paraguay Report 1, supra note 26, at 1–2.
80 See, e.g., MESICIC Nicaragua Report 1, supra note 14, at 3; MESICIC Trinidad and Tobago Report 1, supra note 28, at 13; MESICIC Uruguay Report 1, supra note 15, at 7; MESICIC USA Report 1, supra note 13, at 10–11.
least temporarily—the ability of these former public officials to enter into negotiations or contracts with governmental entities. 82

Government contracting and procurement is the most commonly referenced area where these types of conflicts of interest occur. As a result, several state parties have created conflict of interest-based restrictions for government contracts. 83 Other state parties have created restrictions that bar former state officials and employees from the contracting process, 84 and El Salvador has created a specific procurement oversight body to handle the issue. 85

During the MESICIC review rounds, Chile has noted that it is attempting to strengthen its restrictions on this form of conflict of interest regulations. 86 Overall, the MESICIC reviewers have noted that there are additional possibilities for strengthening these suggestions for certain state parties. 87

9. Relationship Between Federal/National Implementation and Municipal/Local Implementation

Conflict of interest laws and regulations that stem from the IACAC are often not implemented beyond the national or federal level. 88 This limitation, however, can stand in the way of fully realizing the purpose of the conflict of interest provisions, as identified in the Argentinean review round reports. 89 As a result, the MESICIC review rounds have continually stressed the need to ensure that the appropriate conflict of interest provisions extend to the local and municipal level. 90

Overall, while the MESCIC review rounds have highlighted many areas in which progress needs to be made for the terms of the IACAC to be fully implemented, these findings are beneficial in that they demonstrate the power of the review entity. Rather than serving as a rubber stamp, the MESCIC process is able to function as a meaningful entity that assists the IACAC state parties in realizing the full reform potentials of their convention commitments.

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82 See, e.g., MESICIC Belize Report 1, supra note 13, at 4; MESICIC Bolivia Report 1, supra note 21, at 5; MESICIC Canada Report 1, supra note 49, at 4; MESICIC Colombia Report 1, supra note 13, at 4; MESICIC Venezuela Report 1, supra note 44, at 43.

83 See, e.g., MESICIC Colombia Report 1, supra note 13, at 3.

84 See, e.g., MESICIC Panama Report 2, supra note 26, at 12.

85 See MESICIC El Salvador Report 1, supra note 51, at 5.


87 See, e.g., MESICIC Belize Report 1, supra note 13, at 20; MESICIC El Salvador Report 1, supra note 51, at 31; MESICIC Honduras Report 1, supra note 14, at 36; MESICIC Nicaragua Report 1, supra note 14, 16–17; MESICIC Panama Report 1, supra note 53, at 32–33.

88 See MESICIC Bolivia Report 1, supra note 21, at 2; MESICIC Brazil Report 1, supra note 13, at 4; MESICIC Canada Report 1, supra note 49, at 2–3 (noting however that although the treaty is at a federal level, all levels of government participate where necessary); MESICIC USA Report 1, supra note 13, at 3–4; MESICIC Venezuela Report 1, supra note 44, at 6–7, 42.

89 See MESICIC Argentina Report 1, supra note 13, at 4.

90 See id. at 5; MESICIC Brazil Report 1, supra note 13, at 4; MESICIC Venezuela Report 1, supra note 44, at 12.
II. GRECO

A. GRECO Conflicts of Interest Provisions

GRECO was established in 1999 under the auspices of the Council of Europe. GRECO was formed in response to the Programme of Action against Corruption, which was adopted by the Council’s Committee of Ministers in 1996, as well as various joint and individual policy statements against corruption made by the governments of European Union member states. Notably, all EU member states are also members of GRECO, along with several non-EU member states, such as Switzerland and the United States. While there have been other EU action plans regarding corruption, and the European Commission even created the European Anti-Fraud Office (“OLAF”) after GRECO was established, GRECO is currently the predominant provider of reports and analysis regarding member state actions effecting corruption. As discussed below, it is expected that an EU-specific anti-corruption reporting mechanism will be in effect in 2013. This mechanism, however, has not yet been implemented, and the lack of available information has prompted even the European Commission to acknowledge the need for member states to cooperate with the GRECO review mechanism in order to determine the levels of compliance with anti-corruption measures.

The recognition of the social and economic ills that corruption brings and the need for a concerted domestic and regional effort to combat them is a key justification for GRECO’s founding. In order to identify and address such issues, the GRECO states empowered GRECO as an entity to advise member states on the suitability of their anti-corruption practices and on potential corrective efforts that could be taken by member states to eradicate corruption. The requirements that review reports be generated for all GRECO states—

92 Comm. of Ministers, Agreement Establishing the Group of States Against Corruption, 102d Sess., Res. 98(7), at 5 (1998).
98 Id. at 9.
similar to the MESICIC review reports— and that GRECO monitor the overall activities of member states in areas that effect anti-corruption efforts are essential aspects of this function. Conflicts of interest, along with associated policy areas which lead to or perpetuate them, have been evaluated and discussed throughout the GRECO review reports and have yielded telling information.

B. Evaluation Trends

1. General Conflicts of Interests Laws

The GRECO review mechanism evaluates the conflict of interest laws, rules and regulations promulgated by member states, as well as any relevant draft laws, in order to determine their overall strength and efficacy. Interestingly, unlike the MESICIC mechanism discussed earlier, GRECO evaluations extend to the implementation of conflicts of interest protections at the local or municipal level, as well as at the national or federal level.

A significant number of member states were identified as having passable laws, rules and regulations at the federal or national level, while a far smaller number of member states were identified as having passable laws, rules and regulations at the local or municipal level. Some member states were identified as having limited or weak conflict of interest laws, rules and regulations, and a handful were identified as having limited or weak conflict of interest laws, rules and regulations at the local or municipal level.

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99 Id. at 10, 13–14.
100 Id. at 6.
102 See id. (containing links to electronic copies of all rounds of evaluation reports).
During the periods of GRECO review evaluations, the GRECO review body consistently recommended that states strengthen their conflict of interest laws, rules and regulations. At the same time, several member states also enacted new conflict of interest laws that were intended to further compliance with the GRECO standards, and several other member states were considering draft laws that would strengthen the conflicts of interest protections in these states.

2. Conflict of Interest Definitions

When evaluating conflicts of interest provisions it is, perhaps obviously, important to understand how the legal system being evaluated defines conflicts of interest. The GRECO review evaluations found that a majority of the member states had passable or well-defined conflict of interest laws. Interestingly, most of these states had defined “conflict of interest” through relatively new laws and rules. Several member states, however, were

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identified as having weak or insufficient conflict of interest definitions.\(^{112}\) Further, the GRECO review reports noted that several states were working on draft legislation which would enact or expand their definition of conflicts of interest as a matter of law.\(^{113}\)

3. Codes of Conduct/Ethics

Several GRECO member states have indicated that they have enacted national codes of conduct with wide-ranging impacts on their governments and society.\(^ {114}\) Some of these codes, however, although in existence, have limited effects because they are based on extremely broad definitions or are discretionary in terms of certain applications.\(^ {115}\) Several codes were identified as being generally weak,\(^ {116}\) and others have been created but are not yet fully implemented.\(^ {117}\)


\(^{115}\) See GRECO Czech Republic Report 2, supra note 104, at 15; GRECO, Second Evaluation Round, Evaluation Report on Estonia, at 14, Greco Eval II Rep (2003) 4E (July 2, 2004) [hereinafter GRECO Estonia Report 2]; GRECO Georgia Report 1, supra note 103, at 7 (explaining that the code excludes certain high level actors); GRECO Malta Report 1, supra note 114, at 7 (explaining that the applicable code is weak in terms of application to customs officials); GRECO UK Report 1, supra note 114, at 6 (explaining that the applicable code is weak in terms of punishments for violations).


While some member states have opted for national codes of conduct or ethics, other member states have opted for codes that apply to certain entities and areas, such as administrative agencies and quasi-governmental entities.

4. Disclosure and Reporting Requirements

The GRECO reviews found that a majority of member states have passable reporting requirements for conflict of interest violations or potential violations. Other member states were found to have limited reporting requirements with identified flaws, and Iceland was found not to have an express reporting requirement. Further, the Czech Republic was found to have problems applying the reporting requirements at both the local and national levels.

5. Existence and Creation of Oversight Bodies

A majority of the member states that were identified as having central anti-corruption oversight bodies used either a universal ombudsman or a corruption committee framework. For example, France reported using an ethics committee, and Estonia reported using a parliamentary committee for

118 See GRECO Bulgaria Report 1, supra note 108, at 8; GRECO Ukraine Report 1, supra note 109, at 18.
120 See, e.g., GRECO Austria Report 1/2, supra note 106, at 15; GRECO Czech Republic Report 2, supra note 104, at 14 n.27; GRECO Estonia Report 2, supra note 115, at 11; GRECO Finland Report 2, supra note 116, 13–15; GRECO Georgia Report 1, supra note 103, at 10. Other states with passable reporting requirements include: Italy, Latvia, Moldova, the Netherlands, Portugal, Slovenia, Sweden, the Ukraine, the United Kingdom, and the United States. See GRECO Evaluations, supra note 101 for the remaining reports.
121 See GRECO Armenia Report 1/2, supra note 105, at 17, 31–32 (explaining that reporting requirements are for tax purposes rather than strictly COI and there were limited punishments for failure to report); GRECO Belgium Report 2, supra note 112, at 13 (explaining that reporting requirement applies to only some public servants); GRECO Croatia Report 1, supra note 105, at 11 (explaining that reporting requirements identified as weak); GRECO Luxembourg Report 2, supra note 109, at 12 (finding that there were many loopholes in the reporting requirements); GRECO Montenegro Report 1/2, supra note 112, at 23 (explaining that reporting requirements identified as weak); GRECO Romania Report 2, supra note 114, at 16–17, 23 (finding that there were many loopholes and that the reporting requirements were essentially limited in scope); GRECO Switzerland Report 1/2, supra note 106, at 29 (finding that there were limited reporting requirements).
123 See GRECO Czech Republic Report 2, supra note 104, at 17.
oversight issues. Bosnia and Herzegovina, on the other hand, has created an oversight body mechanism.

6. Incompatibilities

A number of GRECO member states have anti-corruption laws that apply to public servants, in general, with the purpose of distinguishing which forms of conflicts of interest or incompatibilities are passable. GRECO review reports, on the other hand, have identified several member states with weak incompatibilities laws. Some of the specialized restrictions that have been enacted target incompatibilities that arise in contract solicitations and negotiations, in the concurrent holding of multiple offices, in potentially conflicting business interests, in judicial situations, and in relation to membership of and certain activities in political parties and associations. France was found to have established a committee to determine whether an incompatibility might exist prior to it actually occurring.

7. Conflicts of Interest in the Procurement Process

In general, GRECO review reports have identified conflicts of interest in the procurement process as an area of particular concern. The reports have revealed that only a few members have laws that are overall passable.

127 See GRECO Bosnia and Herzegovina Report 2, supra note 112, at 8.
129 See GRECO Luxembourg Report 2, supra note 109, at 12; GRECO Monaco Report 1/2, supra note 112, at 22.
131 See GRECO Czech Republic Report 2, supra note 104, at 14; GRECO Monaco Report 1/2, supra note 112, at 22.
135 See GRECO France Report 1, supra note 103, at 17.
other states need to rework their laws in this area.\textsuperscript{137} Some states, however, were identified as having effective conflict of interest provisions for procurement in certain agencies,\textsuperscript{138} and the ability to annul contracts when there are issues with the procurement process.\textsuperscript{139}

8. Conflicts of Interest and Gifts

Giving gifts to public officials and employees can carry implicit and/or explicit expectations that amount to issues of conflicts of interest. Accordingly, the GRECO review reports have found that some member states have gift regulations in order to address and prevent the potential for conflicts of interest.\textsuperscript{140} Other states, however, have weak laws on this topic.\textsuperscript{141}

9. Conflicts of Interest in the Electoral Sector

The issue of conflicts of interest is highly associated with the electoral sector, perhaps because of the role that campaign contributions and other methods of support can superficially or actually have on the actions of an elected candidate. The GRECO review reports have identified that, under the terms of the GRECO review standards, some states had passable conflict of interest election laws,\textsuperscript{142} some states had limited or weak conflict of interest election laws,\textsuperscript{143} and a few states had no conflict of interest election laws.\textsuperscript{144}

\begin{itemize}
\item \textsuperscript{139} See GRECO Croatia Report 1, supra note 105, at 22.
\item \textsuperscript{141} See GRECO Montenegro Report 1/2, supra note 112, at 23.
\end{itemize}
10. Training in Conflicts of Interest

As noted in previous sections, training government officials and employees, as well as society in general, in conflicts of interest laws and rules and their applicability is essential to combatting conflicts of interest as a whole. The GRECO review reports found that some state parties use training exercises within governmental departments to raise awareness of their conflict of interest provisions, while others use guidelines and pamphlets, public awareness campaigns, and/or programs to educate administrators on how to identify and handle conflicts of interest. Still, GRECO review reports have suggested that some state parties could improve their training systems for addressing conflicts of interests.

In addition to governmental training per se, the GRECO review reports have highlighted the importance of enacting rules related to conflicts of interest and auditing in the corporate sphere.

11. Pantouflage Issues

Several state parties were identified in GRECO review reports as having decent or passable pantouflage laws. Almost as many state parties, however, have no pantouflage laws at all. Between these extremes, the GRECO review

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147 See GRECO Latvia Report 1, supra note 124, at 26.

148 See GRECO Sweden Report 2, supra note 146, at 11.

149 See GRECO Switzerland Report 1/2, supra note 106, at 34; GRECO Ukraine Report 1/2, supra note 109, at 41.


151 As used in the GRECO context, pantouflage refers to instances where public officers/employees leave public service, enter the private sector, and attempt to use their previously existing governmental relationships for private gain.


reports have identified other states with limited pantouflage laws.\textsuperscript{154} Furthermore, at the time of the last GRECO review, some state parties had proposed pantouflage laws that were in the process of being considered or enacted.\textsuperscript{155}

In some contexts, limiting the pantouflage opportunities of some state parties is actually quite controversial. There is an argument that, in some societies, pantouflage is an accepted practice that is necessary given the small size of the particular state and the expertise of the individuals in question.\textsuperscript{156} Despite this view, the GRECO review reports have continually offered suggestions on how these states, and other states, might strengthen their pantouflage laws.\textsuperscript{157}

The GRECO review reports have also found that there are related issues regarding privatization and conflicts of interest that often implicate pantouflage.\textsuperscript{158} Another pantouflage issue, which the GRECO review reports have further addressed, is whether family members have interests which would be implicated under standard pantouflage laws.\textsuperscript{159}

12. Local and Municipal Powers Regarding Conflicts of Interest

Since conflicts of interest are important issues at the local level, as well as at the national level, the GRECO review reports have paid special attention to applicable municipal laws. These review reports have found that many state parties have passable laws and rules regarding conflicts of interest at the local level,\textsuperscript{160} although there have been some issues with implementation.\textsuperscript{161} Other
state parties, however, only have conflict of interest laws at the national level. The GRECO review reports have suggested that such state parties enact laws to strengthen their local-level conflict of interest regimes.

III. OECD

A. OECD Conflicts of Interest Provisions

The primary OECD legal instrument addressing corruption is the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the “Convention”). While the text of the Convention itself does not directly regulate conflicts of interest, the issue is discussed within the evaluative reports that the OECD has generated throughout several review rounds conducted in accordance with the Convention. As with the other evaluative reports discussed in this article, the OECD conducts reviews of member state practices in relation to the Convention’s terms.

B. Evaluation Trends

1. General Conflict of Interest Laws

OECD reviews do not contain as much information regarding conflicts of interest laws and practices used by state parties as the other reporting mechanisms discussed in this article. The information provided, however, does establish that some state parties have passable conflicts of interest regimes under the OECD standards, while others have limited or weak regimes. Within the regimes identified as limited or weak, the OECD reviews have established

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165 See generally id.
166 Country report on the implementation of the OECD Anti-Bribery Convention, OECD, http://www.oecd.org/document/24/0,3746,en_2649_34859_1933144_1_1_1_1,00.html (last visited Mar. 15, 2013) (providing online access to each country’s reports).
that state parties are continuing to work toward strengthening those regimes. In some instances, however, balancing the interests of the state party with the implementation of robust conflict of interest regimes is an issue.\footnote{See OECD, \textit{Canada: Phase 2, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions}, at 33 (Mar. 25, 2004) [hereinafter OECD Canada Report 2].} It should be noted that at least one state party, Italy, has reported taking measures to control conflicts of interest during the privatization of certain government-held entities.\footnote{See OECD, \textit{Italy: Phase 2, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions}, at 12 (Nov. 29, 2004) [hereinafter OECD Italy Report 2].}

2. Codes of Conduct and Guidelines

3. Oversight Bodies

Contrary to the results of some other reporting systems, most of the OECD’s state parties have reported that their conflict of interest oversight bodies were given specialized, rather than general, jurisdiction. One exception to this trend was Argentina, which described using a Comptroller General to handle issues of conflicts of interests, along with corruption in general.  

Several other state parties reported that they had established oversight bodies for specific portfolios, primarily those involving some form of quasi-corporate entity, rather than a traditional governmental entity. Additionally, New Zealand reported using multiple oversight commissions to handle conflict of interest issues, rather than using a consolidated oversight body.  

4. Disclosure and Reporting Requirements

To the extent that the OECD review process has examined and commented on the legal adequacy of member states’ conflict of interest disclosure and/or reporting requirements, several state parties have been found to have passable disclosure and reporting regimes in place. At least one state, however, was found to have implemented only a weak or limited regime.  

5. Procurement

Conflict of interest and procurement issues are not widely discussed in the OECD review reporting system, but Canada has acknowledged in its reports that

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175 See OECD Argentina Report 2, supra note 171, at 12.
178 OECD New Zealand Report 2, supra note 172, at 10–11.
180 See OECD, Iceland: Phase 2, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions, at 23, 32–33 [hereinafter OECD Iceland Report 2] (noting that the determination of limited effectiveness was made because the reporting regime did not extend to parliament and parliamentary officials).
it has dedicated conflict of interest provisions in its procurement procedures, particularly in the context of its foreign aid agency.\textsuperscript{181} Additionally, the OECD reports noted that, at the time of review, Mexico had no overall conflict of interest policies in place for procurement practices, although some individual agencies had started to implement their own policies.\textsuperscript{182}

6. Training in Conflict of Interest Issues

Several state parties reported that they have systems in place for training employees within specialized agencies to identify and address conflicts of interest\textsuperscript{183} or that they have made publications discussing how to deal with conflicts of interest available in some capacity.\textsuperscript{184} Additional OECD report information relating to training practices used by state parties was not as readily available as the comparable data obtained by means of other reporting mechanisms discussed in this article.

7. Conflicts of Interest in Auditing

The OECD has concentrated on potential conflict of interest issues in auditing procedures throughout the implementation of its reporting mechanism. Many state parties have established conflict of interest regimes that are specifically applicable to at least corporate auditors.\textsuperscript{185} According to OECD review reports, however, many of these regimes have limited practical value, particularly because of loopholes that exist within the applicable laws and policies.\textsuperscript{186} The French regime should be highlighted as a positive example in

\textsuperscript{181} See OECD Canada Report 2, supra note 169, at 36–37 (relating to the Canadian International Development Agency).

\textsuperscript{182} See OECD Mexico Report 2, supra note 167, at 32.


\textsuperscript{184} See OECD, Austria: Phase 2, Follow-up Report on the Implementation of the Phase 2 Recommendations, at 7 (Mar. 20, 2008).


\textsuperscript{186} See OECD Argentina Report 2, supra note 171, at 22; OECD Bulgaria Report 2, supra note 185, at 20 (challenging the effectiveness of these measures due to existing loopholes); OECD Italy Report 2, supra note 170, at 21 (challenging the effectiveness of these measures due to existing
that it specifically addresses the potential for collusion and conflicts of interest by auditors and officials as well as corporate actors.\footnote{187} Furthermore, the OECD review reports found that Hungary and Switzerland were in the process of establishing a conflicts of interest regime for auditors.\footnote{188}

8. Societal Issues

As noted in the GRECO review reports discussed above, an issue that plagues the application and understanding of conflicts of interest is social acceptance of conflicts of interest both as having a negative impact and as being susceptible to legal control. Unfortunately, societies in some state parties view conflicts of interest as prevalent in society and, therefore, essentially impossible to eradicate at either the national or social level.\footnote{189} At least one state party, Iceland, reported that there was a direct societal tie between the necessity for some level of conflicts of interest and the well-functioning grey economy.\footnote{190}

IV. ADB/OECD

A. ADB/OECD and Conflicts of Interests

The Asian Development Bank (“ADB”), which exists to provide financing to member Asian states that seek to engage in development-based projects, and the OECD have formed an alliance to combat corruption. This partnership is a novel method of combining resources to address the corruption-related needs and problems facing the ADB member states with the expertise of both entities with the ultimate goal of preventing corruption.\footnote{191} Currently, there are 30 ADB/OECD member states from the Asia-Pacific region, representing all spectrums of developmental status and a variety of legal systems.\footnote{192}

The ADB/OECD alliance was created in 2001 through the Anti-Corruption Action Plan for Asia and the Pacific (the “ADB/OECD Action Plan”), a

\footnote{187} See OECD France Report 2, supra note 185, at 20.


\footnote{190} See OECD Iceland Report 2, supra note 180, at 7.


\footnote{192} Member countries and economies, ADB/OECD, http://www.oecd.org/document/23/0,34982156_35315367_35030743_1_1_1_1,00.html (last visited Mar. 15, 2013).
document that set out the foundational pillars of the alliance’s efforts. Although the ADB/OECD Action Plan did not create a systematic policy review mechanism for member states to the same extent that the IACAC, GRECO, and the OECD did, the ADB/OECD Secretariat has overseen the review of state party policies on certain topics that relate to conflicts of interest.

B. Evaluation Trends

The primary review reports issued under the joint ADB/OECD structure focus on procurement and related topics. Despite their narrow scope, however, the reports still provide some insight relating to conflicts of interest by shedding light on how many of the reviewed state parties address the high-risk relationship between procurement and conflicts of interest.

The majority of reporting state parties have a legal system that establishes a framework for the procurement process. While some state parties have highly detailed legal frameworks for procurement, others have more limited frameworks that depend largely on a combination of other laws. Still other

194 Id. at 3.
195 See id. at 9–11.
state parties have procurement frameworks which either do not apply to some quasi-state actors\textsuperscript{199} or do not apply at the local level.\textsuperscript{200}

Similarly, there is a lot of variation in state party propensity to either include or exclude\textsuperscript{201} specific references to conflicts of interest in procurement laws and policies. Those states that do include references to conflicts of interest position such references in various locations throughout their legal frameworks. Some states place them directly within their legal and rule-based structures,\textsuperscript{202} while others place them within the applicable general\textsuperscript{203} or procurement-specific codes of conduct.\textsuperscript{204} There is also a notable difference among states in terms of whether state actors are the sole actors who are eligible for punishment under the conflicts of interest laws\textsuperscript{205} and whether culpability for conflicts of interest extend to public and private actors.\textsuperscript{206} Training in dealing with procurement-

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\textsuperscript{205} See, e.g., ADB/OECD Cook Islands Report, supra note 198, at 6; ADB/OECD, Anti-corruption policies in Asia and the Pacific: Thematic review on provisions and practices to curb corruption in public procurement: Self-assessment report Hong Kong, at 5 (2005); ADB/OECD, Anti-corruption policies in Asia and the Pacific: Thematic review on provisions and practices to curb corruption in public procurement: Self-assessment report Indonesia, at 8 (2005); ADB/OECD Korea Report, supra note 197, at 7; ADB/OECD Kyrgyz Republic Report, supra note 197, at 9.

\textsuperscript{206} See generally ADB/OECD Reports, supra notes 197 and 198.

\textsuperscript{206} See ADB/OECD Korea Report, supra note 197, at 7–8; ADB/OECD Thailand Report, supra note 200, at 7.
\end{small}
related conflicts of interest is another area in which states reviewed differ in dedication and strength of legal and/or regulatory frameworks.

V. FUTURE UNITED NATIONS AND EUROPEAN UNION EVALUATIVE MECHANISMS

A. The UNCAC

The UNCAC entered into force in 2005, but it did not immediately result in the creation of an evaluation mechanism for state party compliance with its terms. Under the UNCAC, state parties are to “adopt, maintain and strengthen” their governmental systems in order to “prevent conflicts of interest.” The EU further suggested that UNCAC state parties adopt codes of conduct and other measures for public officials in order to promote transparency and to address issues relating to conflicts of interest. The UNCAC encourages state parties, in addition to public sector actors, to enact measures that control the potentially corrupt activities of the private sector, such as conflicts of interest, especially where there is an interaction between public and private sector actors.

As stated above, although the UNCAC went into effect in 2005, the UNCAC Conference of the Parties did not create any form of review mechanism for UNCAC state parties until several years later. The initial goal of this evaluative mechanism was for state parties to first use self-assessments of UNCAC compliance, followed by a more comprehensive assessment under the Mechanism for the Review of Implementation of the UNCAC (the “UNCAC Mechanism”). The UNCAC Mechanism provides for a state party review process that assesses the efficacy of state party implementation of the UNCAC, while also providing suggestions and insights into potential improvements. Technical assistance will also be offered to state parties for identified issues and weaknesses in UNCAC implementation. The UNCAC Mechanism is presently in its early stages of implementation.


209 Id. at art. 7.

210 Id. at art. 8.

211 Id. at art. 12.


213 See id. at iv, ¶ 7.

214 Id. at iv, ¶¶ 6–12.

215 See id. at Annex I art. IV. A.

216 Id. at iv, ¶ 10.

217 See id. at iv, ¶ 14 (explaining that the Mechanism will not be implemented until 2013).
B. **European Union**

In 2011, the European Commission issued a decision establishing the EU Anti-corruption reporting mechanism for periodic assessment (the “Assessment”). Although GRECO already covers EU member states, it was deemed to be in the best interest of the EU as a whole to create an EU member-only system that provides for evaluations of the corruption practices of each member state and the EU as a whole. Additionally, the EU has stated that the Assessment could be used to inform future EU policy developments in the field of corruption and associated areas. The Assessment will be published every two years starting in 2013.

VI. **LESSONS FROM THE EVALUATIONS**

The above review of the key issues identified in each set of conflicts of interest evaluations provides valuable insights into the common issues associated with conflicts of interest, as well as insights for the development of future review mechanisms. Such insights relating to conflict of interest laws, codes of conduct and/or ethics, disclosure and reporting requirements, oversight bodies, incompatibilities, post-governmental service conflicts or pantouflage, procurement and gifts, training and auditing, and local and municipal issues are discussed in this section.

A. **Conflicts of Interest Laws**

A majority of evaluated states evaluated had enacted at least some form of general legislation regarding conflicts of interest, and many of these states have enacted laws that are at least facially passable in terms of conflict of interest protections. Some states, however, still only have limited or weak conflict of interest laws at the national level, much less the local or municipal level. At the core of the issue, most evaluations have found that there is a split between states that have enacted passable conflict of interest definitions in their legal systems and those that have either limited or weak definitions that do not create robust enforcement mechanisms.

On a positive note, some states have also updated their criminal, administrative, and disciplinary laws to include conflict of interest prohibitions. Issues in implementing penalties, however, were also found. Balancing state interests with the application of conflict of interest laws and rules was an issue in some instances. All reporting systems noted that state parties needed to

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218 Commission Decision EU Anti-Corruption Report, supra note 95, at art. 1.
219 See generally id. at pmbl.
220 Id. at pmbl., ¶ 11.
221 Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: Fighting Corruption in the EU, at 4, 6 COM (2011) 203 final (June 6, 2011).
strengthen their conflict of interest laws; and, among these systems, there were consistently noted attempts by states to create stronger regimes.

From this information, it is apparent that evaluations involving conflicts of interest need to focus on ensuring that there are conflict of interest laws in each state party under evaluation and that such laws work their way into local legal regimes as well as national or federal legal regimes. These laws need to include robust definitions of the term “conflicts of interest.” Evaluations also need to examine the depth of conflict of interest laws’ application, especially in terms of providing for penalties, as well as effectively implementing them. Further, an evaluative system needs to be able to examine the strengths of existing conflict of interest laws beyond their facial adequacy and to provide guidance to states when they are attempting to strengthen their laws.

B. Codes of Conduct/Ethics

As the above sections have discussed, there is a trend among all of the evaluative systems for states to address conflict of interest concerns in codes of conduct that are used at some level of government. Across the board, however, there was a difference in strength of the codes of conduct used and their applicability to either the entire governmental apparatus or to individual governmental agencies. In addition, regardless of whether they were definitionally strong or weak, there was a noticeable pattern of failure to properly implement and oversee such codes of conduct.

Where codes of conduct were used for specific governmental agencies and entities, uniformity of application has been an issue. Although, alternatively, the use of these specialized codes was found to be beneficial in that it allows for targeted measures to address agency-specific concerns. The evaluations, however, also observed states using a fragmented system of codes of conduct in order to shield certain problematic agencies from attention. Further, while guidelines for the implementation of codes of conduct were created by states throughout the evaluation systems, there were inconsistencies in their application and effectiveness.

From this information, it is apparent that the use of strong codes of conduct is important and that evaluative systems need to examine such codes carefully because the use of general governmental or agency specific codes of conduct can either be used effectively or used as a way to deflect the effectiveness of codes of conduct that address conflicts of interest. Additionally, the implementation of the terms of codes of conduct must be carefully scrutinized along with the overall strength of these terms.

C. Disclosure and Reporting Requirements

Throughout the evaluation mechanisms, there was a consistent pattern of state parties promulgating some form of disclosure or reporting requirements for

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222 See supra Parts II, III, IV, V, and VI.
conflicts of interest in the governmental setting. Again, there is a disjunction between states that have passable regimes and those that have limited or weak regimes. In general, all of the evaluative systems discussed the need for strengthening disclosure and reporting regimes.

The most detailed information about disclosure and reporting requirement compliance comes from MESICIC, which highlights issues such as the lack of transparency in reporting, the difficulties of societal acceptance of reporting requirements as necessary for good governance, the scope of the penalties available for violations of disclosure and reporting requirements, and the potential problems with targeting only certain areas of the government for disclosure and reporting requirements.

These comparisons and findings demonstrate that current and future evaluation mechanisms need to examine the terms and application of disclosure and reporting requirements to ensure that they are meaningfully crafted and implemented. Further, as the most detailed evaluation mechanism available at the moment, this article argues that the lessons from the MESICIC rounds regarding transparency, societal acceptance, penalties and limited disclosure should be taken into account when designing and implementing evaluation rounds.

D. Oversight Bodies

Most states discussed in the evaluations above had oversight bodies charged with monitoring the conduct of public employees and officers, including policing for conflicts of interest. The states split, however, in whether they used a government-wide oversight body, such as an ombudsman, or broke down oversight within individual governmental agencies or entities. Where internal oversight within governmental agency or entity was used, there tended to be issues with ensuring uniformity of oversight quality and protections. Some states with splintered oversight systems did report using an overall governmental coordinating body, but this was not the norm. Additionally, there was an uneven application of oversight over quasi-corporate entities in which the government held an interest.

In the future, evaluative mechanisms should examine the structure of the oversight body systems used within a state to determine the effectiveness of these structures on a case-by-case basis and to understand the scope of conflict of interest regulations within a particular state. Furthermore, as privatization becomes a pattern in many states, evaluative mechanisms need to examine the oversight used for monitoring quasi-corporations and during the privatization process in order to combat the potential for conflicts of interest in this sphere.

E. Incompatibilities

Both MESICIC and GRECO examined the use of incompatibility provisions within their member states to evaluate their existence and strength. Overall, most states in both systems did have some form of incompatibility
provisions, but some of the provisions were weak. Within these systems there were some instances of specialized incompatibility regulations, such as those specifically applicable to judicial offices, concurrent offices in general, public contracting, and political party activity.

Based on this information, it is apparent that evaluative mechanisms should examine the strength of incompatibility provisions as a whole, as well as the appropriateness of their use in certain instances.

F. Post-Governmental Service Conflicts/Pantouflage

As discussed in the sections above, both MESICIC and GRECO addressed pantouflage. In both mechanisms, a majority of state parties were found to have some form of pantouflage laws and/or restrictions, particularly in the realm of procurement activities. These laws ranged from passable to quite limited in existence and application, and most of the states at both ends of the spectrum received recommendations to strengthen their laws and/or restrictions.

Within the issue of pantouflage, there are two key areas of concern that must be mentioned. The first is the relationship between privatization and pantouflage, in which GRECO state parties, in particular, were found to lack significant controls. The second, which is a recurring theme in this article’s analysis, is society’s acceptance of pantouflage in general. In states where pantouflage is accepted as common, and perhaps even embraced as part of the traditional system, there has been limited success in trying to combat it.

In such states, where pantouflage is embraced as part of the local culture and as way of doing business, it is difficult to suggest an immediate way that future evaluative mechanisms can end this trend. Rather, this article submits that such a situation calls for long-term educational efforts by the particular evaluative entity. Where pantouflage does not enjoy such societal acceptance, future evaluative mechanisms should carefully examine state practice and regulation of pantouflage in the setting of privatization. Additionally, future evaluative mechanisms should examine the scope and application of pantouflage laws and regulations, as the issue itself can be insidious within a governmental or agency structure.

G. Procurement and Gifts

The issues of procurement and gift giving in the context of public actors is, by nature, heavily tied to conflicts of interest. A common trend between the findings of all of the evaluative mechanisms is that many of the states under their purview have largely limited or weak procurement laws that need to be strengthened. Furthermore, a focus on specialized agencies and quasi-corporate entities found that there was particularly uneven regulation of procurement in these areas.

See supra Parts II and III.
Given the high risk and gravity of conflicts of interest within the procurement process, future evaluative mechanisms must carefully examine and monitor the progress of procurement laws, rules and regulations. The evaluative mechanisms must also ensure that procurement laws and rules within specific agencies and quasi-corporate entities are functioning properly, as it is possible for government-wide policies regarding procurement to miss nuances that occur in particular agency or quasi-corporate settings.

H. Training and Auditing

Robust conflict of interest systems need training mechanisms in place in order to ensure that the systems work properly. With this assertion as a backdrop, the evaluative mechanisms have demonstrated that, while many states do have some form of training mechanism in place, most of the programs need to be strengthened, particularly to include educational components.

Additionally, auditing—both public auditing and transparent auditing for private entities that work with public agencies—has been identified as a critical area for the detection and prevention of conflicts of interest. Among the evaluation mechanisms, the OECD, in particular, has noted that there are often loopholes in auditing systems which need to be fixed in order for the laws to be meaningful.

In the future, evaluative mechanisms should ensure that they examine the types of conflicts of interest and anti-corruption training available to both governmental employees and the general public, as well as the effectiveness of such training programs. Furthermore, future evaluative mechanisms should ensure that they carefully scrutinize the auditing processes used.

I. Local and Municipal Issues

A final point to consider is the role of conflict of interest laws at the local and state levels. Conflicts of interest do not stop at the highest level of government. Rather, they permeate all levels of government. As the evaluative mechanisms discussed above have shown, there is a significant problem with the implementation of conflict of interest regulations and related regimes at the local level of government across a variety of states, levels of development, and governmental systems.

In the future, evaluative mechanisms should ensure that they carefully scrutinize the implementation of conflict of interest measures at the local level within each evaluated state, especially federal/provincial states such as Argentina, Brazil, and the United States.

CONCLUSION

Conflicts of interest are inherent to corruption. Without a conflict between the interests of the actor and his constituency, there would be few instances of corrupt behavior. As such, it is imperative that domestic, regional and
international regimes that aim to combat corruption by using mechanisms to evaluate the overall effectiveness of state party anti-corruption laws include effective and in-depth evaluations of the conflict of interest aspects of such laws, rules, and regulations in their reports.

This article has examined the key issues raised by and the lessons learned as a result of the evaluative mechanisms used under the IACAC, GRECO, OECD and ADB/OECD regimes. From these lessons, this article reviewed common trends in conflict of interest laws, rules, regulations and practices among these regimes and formulated recommendations as to how future evaluative mechanisms—such as those contemplated by the UNCAC and the EU—should conduct their evaluations.

The goal of this article has been to provide a comprehensive understanding of how conflicts of interest are handled, or not handled, under domestic, regional and international anti-corruption regimes. This understanding can, in turn, be used to inform the future of the evaluative mechanisms already in use and those evaluative mechanisms which will soon be put in place.