

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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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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<sup>1</sup> Inter-American Convention Against Corruption, Mar. 29, 1996, O.A.S.T.S. No. B-58 [hereinafter IACAC], available at <http://www.oas.org/juridico/english/treaties/b-58.html>; see *Inter-American Convention Against Corruption: Background*, DEP'T OF LEGAL COOPERATION, ORG. OF AM. STATES, [http://www.oas.org/juridico/english/corr\\_bg.htm](http://www.oas.org/juridico/english/corr_bg.htm) (last visited Mar. 15, 2013).

<sup>2</sup> IACAC, *supra* note 1, at pmbl.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at art. III.

standards for the “correct, honorable and proper fulfillment of public functions” to prevent conflicts of interest at the governmental level.<sup>5</sup> Other suggested measures—such as income reporting and new ethics requirements for public officials,<sup>6</sup> the implementation of reporting systems for conflicts and acts of corruption,<sup>7</sup> and the creation of oversight bodies to investigate such allegations of corruption<sup>8</sup>—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.<sup>9</sup> 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.<sup>10</sup> These reports are issued in accordance with regularly scheduled rounds, and the MESICIC is currently entering into its fourth round of review and reporting.<sup>11</sup> 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.<sup>12</sup> 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,<sup>13</sup> formal policies addressing administrative and disciplinary concerns,

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<sup>5</sup> *Id.* at art. III(1).

<sup>6</sup> *Id.* at art. III(3)–(4).

<sup>7</sup> *Id.* at art. III(8).

<sup>8</sup> IACAC, *supra* note 1, at art. III(9).

<sup>9</sup> *What is the MESICIC?*, DEP’T OF LEGAL COOPERATION, ORG. OF AM. STATES, [http://www.oas.org/juridico/english/mesicic\\_intro\\_en.htm](http://www.oas.org/juridico/english/mesicic_intro_en.htm) (last visited Mar. 15, 2013).

<sup>10</sup> *Id.* See *Country Reports*, DEP’T OF LEGAL COOPERATION, ORG. OF AM. STATES, [http://www.oas.org/juridico/english/mesicic\\_reports.htm](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).

<sup>11</sup> *Id.* see *Rounds of Review*, DEP’T OF LEGAL COOPERATION, ORG. OF AM. STATES, [http://www.oas.org/juridico/english/mesicic\\_rounds.htm](http://www.oas.org/juridico/english/mesicic_rounds.htm) (last visited Mar. 15, 2013).

<sup>12</sup> *What is the MESICIC?*, DEP’T OF LEGAL COOPERATION, ORG. OF AM. STATES, [http://www.oas.org/juridico/english/mesicic\\_intro\\_en.htm](http://www.oas.org/juridico/english/mesicic_intro_en.htm) (last visited Mar. 15, 2013).

<sup>13</sup> See, e.g., Comm. of Experts of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention Against Corruption [Comm. of Experts of the MESICIC], *Report on Implementation in Argentina of the Convention Provisions Selected for Review in the Framework of the First Round*, at 5 (Feb. 13, 2013) [hereinafter *MESICIC Argentina Report I*]; Comm. of Experts of the MESICIC, *Final Report on Implementation in Belize of the Convention Provisions Selected*

and penalties to be imposed in the event of a conflict of interest violation.<sup>14</sup> 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.<sup>15</sup> Overall, a majority of IACAC state parties have updated their laws in some way to include conflicts of interest as a criminal offense.<sup>16</sup>

In several states, conflicts of interest have been established as an express bar to police service,<sup>17</sup> service as a member of the judicial branch<sup>18</sup> or the

*for Review in the Framework of the First Round*, at 20, SG/MESICIC/doc.169/05 Rev. 4 (Mar. 31, 2006) [hereinafter *MESICIC Belize Report 1*]; Comm. of Experts of the MESICIC, *Final Report on Implementation in the Federative Republic of Brazil of the Convention Provisions Selected for Review in the Framework of the First Round*, at 7, SG/MESICIC/doc.168/05 Rev. 4 (Mar. 31, 2006) [hereinafter *MESICIC Brazil Report 1*]; Comm. of Experts of the MESICIC, *Report on its Implementation in Columbia of the Convention Provisions Selected for Review in the Context of the First Round*, at 3 (July 18, 2003) [hereinafter *MESICIC Columbia Report 1*]; Comm. of Experts of the MESICIC, *Report on Implementation in the United States of America of the Convention Provisions Selected for Review in the First Round of the Framework*, at 4, SG/MESICIC/doc.153/05 Rev. 4 (Mar. 31, 2006) [hereinafter *MESICIC USA Report 1*].

<sup>14</sup> See, e.g., Comm. of Experts of the MESICIC, *Final Report on Implementation in the Republic of Costa Rica of the Provisions of the Convention Selected for Review Within the Framework of the First Round*, at 4–5, SG/MESICIC/doc.118/04 Rev. 4 (Mar. 31, 2006) [hereinafter *MESICIC Costa Rica Report 1*]; Comm. of Experts of the MESICIC, *Report on Implementation in the Dominican Republic of the Convention Provisions Selected for Review in the Framework of the First Round*, at 4–5, SG/MESICIC/doc.138/04 Rev. 4 (Mar. 12, 2006) [hereinafter *MESICIC Dominican Republic Report 1*]; Comm. of Experts of the MESICIC, *Final Report on Implementation in the Republic of Honduras of the Provisions of the Convention Selected for Review Within the Framework of the First Round*, at 4–5, SG/MESICIC/doc.141/04 Rev. 4 (Mar. 12, 2006) [hereinafter *MESICIC Honduras Report 1*]; Comm. of Experts of the MESICIC, *Report on Implementation in Nicaragua of the Convention Provisions Selected for Analysis in the Framework of the First Round*, at 2–3 [hereinafter *MESICIC Nicaragua Report 1*]; Comm. of Experts of the MESICIC, *Final Report on Implementation in the Republic of Peru of the Convention Provisions Selected for Review in the Framework of the First Round*, at 4–6, SG/MESICIC/doc.120/04 Rev. 4 (Jul. 29, 2004) [hereinafter *MESICIC Peru Report 1*].

<sup>15</sup> See *MESICIC Brazil Report 1*, *supra* note 13, at 6, 9–10; Comm. of Experts of the MESICIC, *Final Report on Implementation in the Republic of Ecuador of the Provisions of the Convention Selected for Review Within the Framework of the First Round*, at 4–5, SG/MESICIC/doc.75/03 Rev. 4 (Feb. 6, 2004) [hereinafter *MESICIC Ecuador Report 1*]; Comm. of Experts of the MESICIC, *Final Report on the Implementation in the Oriental Republic of Uruguay of the Provisions of the Convention Selected for Review Within the Framework of the First Round*, at 5, SG/MESICIC/doc.86/03 Rev. 4 (Feb. 6, 2004) [hereinafter *MESICIC Uruguay Report 1*]; *MESICIC USA Report 1*, *supra* note 13, at 5.

<sup>16</sup> See Comm. of Experts of the MESICIC, *First Progress Report on Implementation of the Inter-American Convention Against Corruption*, at 14–24, SG/MESICIC/doc.263/10 Rev. 2 (Mar. 24, 2011), available at [http://www.oas.org/juridico/english/prog\\_rep1.pdf](http://www.oas.org/juridico/english/prog_rep1.pdf) (describing 136 actions regarding the implementation of the recommendations related to the prevention of conflicts of interest).

<sup>17</sup> See, e.g., *MESICIC Belize Report 1*, *supra* note 13, at 3–4.

<sup>18</sup> See Comm. of Experts of the MESICIC, *Report on Implementation in the Federative Republic of Brazil of the Convention Provisions Selected for Review in the Second Round, and on Follow-Up to the Recommendations Formulated to That Country in the First Round*, at 7–8, SG/MESICIC/doc.225/08 Rev. 4 (Dec. 12, 2008) [hereinafter *MESICIC Brazil Report 2*] (noting, however, that this is only a limited restriction); *MESICIC Colombia Report 1*, *supra* note 13, at 4; Comm. of Experts of the MESICIC, *Report on Implementation in the Republic of Guatemala of the Convention Provisions Selected for Review in the Framework of the First Round*, at 5, SG/MESICIC/doc.155/05 Rev. 4 (Sept. 30, 2005) [hereinafter *MESICIC Guatemala Report 1*].

executive branch,<sup>19</sup> 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.<sup>20</sup> In some instances, states have enacted laws requiring public servants with conflicts of interest to recuse themselves from the affected position.<sup>21</sup>

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.<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup> 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.<sup>25</sup> The first three MESICIC review

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<sup>19</sup> See, e.g., MESICIC *Guatemala Report 1*, *supra* note 18, at 4.

<sup>20</sup> See, e.g., MESICIC *Brazil Report 1*, *supra* note 13, at 26 n.119 (indicating that familial relationships can also cause conflicts of interest).

<sup>21</sup> See, e.g., Comm. of Experts of the MESICIC, *Final Report on Implementation in Republic of Bolivia of the Convention Provisions Selected for Review in the Framework of the First Round*, at 4, SG/MESICIC/doc.119/04 Rev. 4 (July 29, 2004) [hereinafter *MESICIC Bolivia Report 1*].

<sup>22</sup> See MESICIC *Dominican Republic Report 1*, *supra* note 14, at 6; MESICIC *Honduras Report 1*, *supra* note 14, at 9.

<sup>23</sup> See Comm. of Experts of the MESICIC, *Final Report on Implementation in the Republic of Costa Rica of the Convention Provisions Selected for Review in the Second Round, and on Follow-Up to the Recommendations Formulated to that Country in the First Round*, at 11–12, SG/MESICIC/doc.192/07 Rev. 4 (June 28, 2007) [hereinafter *MESICIC Costa Rica Report 2*]; MESICIC *Ecuador Report 1*, *supra* note 15, at 20.

<sup>24</sup> See, e.g., Comm. of Experts of the MESICIC, *Report on Implementation in the Commonwealth of the Bahamas of the Convention Provisions Selected for Review in the Framework of the First Round*, at 23, SG/MESICIC/doc.139/04 Rev. 4 (Mar. 12, 2005) [hereinafter *MESICIC Bahamas Report 1*]; MESICIC *Guatemala Report 1*, *supra* note 18, at 39; Comm. of Experts of the MESICIC, *Final Report on Implementation in Guyana of the Convention Provisions Selected for Review in the Framework of the First Round*, at 15, SG/MESICIC/doc.165/05 Rev. 4 (Mar. 31, 2006) [hereinafter *MESICIC Guyana Report 1*]; Comm. of Experts of the MESICIC, *Report on Implementation in Mexico of the Provisions of the Convention Selected for Review in the First Round*, at 38, SG/MESICIC/doc.137/04 Rev. 4 (Mar. 11, 2005) [hereinafter *MESICIC Mexico Report 1*]; Comm. of Experts of the MESICIC, *Report on Implementation in Saint Vincent and the Grenadines of the Convention Provisions Selected for Review in the Framework of the First Round*, at 19, SG/MESICIC/doc.156/05 Rev. 4 (Sept. 30, 2005) [hereinafter *MESICIC St. Vincent Report 1*].

<sup>25</sup> See MESICIC *Belize Report 1*, *supra* note 13, at 5; MESICIC *Guatemala Report 1*, *supra* note 18, at 7. See also Comm. of Experts of the MESICIC, *Report on Implementation in Jamaica of the Convention Provisions Selected for Review in the Framework of the First Round*, at 23, SG/MESICIC/doc.139/04 Rev. 4 (Mar. 12, 2005) [hereinafter *MESICIC Jamaica Report 1*] (noting

rounds have also identified issues arising from the implementation of penalties for conflicts of interest violations<sup>26</sup> and informed the calculation of the costs of monitoring the application of conflict of interest laws.<sup>27</sup>

## 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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> Similarly, in Suriname, codes of conduct are only used in the military, and even in that context the scope of such codes is limited.<sup>31</sup>

In terms of procurement, certain states, including the United States and Canada, have explicit rules and regulations governing the conduct of procuring

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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).

<sup>26</sup> See MESICIC *Bahamas Report 1*, *supra* note 24, at 9–10; Comm. of Experts of the MESICIC, *Report on Implementation in Panama of the Convention Provisions Selected for Review in the Second Round, and on Follow-Up to the Recommendations Formulated to that Country in the First Round*, at 29, SG/MESICIC/doc.203/07 Rev. 4 (Dec. 7, 2007) [hereinafter MESICIC *Panama Report 2*]; Comm. of Experts of the MESICIC, *Report on Implementation in Paraguay of the Convention Provisions Selected for Review in the Framework of the First Round*, at 4–5 [hereinafter MESICIC *Paraguay Report 1*]; MESICIC *Peru Report 1*, *supra* note 14, at 6–7; Comm. of Experts of the MESICIC, *Final Report on Implementation in Suriname of the Convention Provisions Selected for Review in the Framework of the First Round*, at 17, SG/MESICIC/doc.167/05 Rev. 4 (Mar. 31, 2006) [hereinafter MESICIC *Suriname Report 1*].

<sup>27</sup> See Comm. of Experts of the MESICIC, *Report on Implementation in the Federative Republic of Brazil of the Convention Provisions Selected for Review in the Third Round, and on Follow-Up to the Recommendations Formulated to that Country in Previous Rounds*, at 6–7, SG/MESICIC/doc.285/11 Rev. 4 (Sept. 16, 2011); MESICIC *Costa Rica Report 2*, *supra* note 23, at 37.

<sup>28</sup> See Comm. of Experts of the MESICIC, *First Progress Report on Implementation of the Inter-American Convention Against Corruption*, at 15–24, SG/MESICIC/doc.285/11 Rev. 4 (Sept. 16, 2011) (indicating such practices in the following countries: Argentina, Bolivia, Brazil, Canada, Columbia, Costa Rica, Ecuador, Guatemala, Guyana, Mexico, Nicaragua, Panama, Peru, and the United States); MESICIC *Bahamas Report 1*, *supra* note 24, at 5–6; MESICIC *Belize Report 1*, *supra* note 13, at 3; MESICIC *Dominican Republic Report 1*, *supra* note 14, at 4; MESICIC *Jamaica Report 1*, *supra* note 25, at 3–4; MESICIC *Suriname Report 1*, *supra* note 26, at 3–5; MESICIC *St. Vincent Report 1*, *supra* note 24, at 3–5; Comm. of Experts of the MESICIC, *Report on the Implementation in the Republic of Trinidad and Tobago of the Provisions of the Convention Selected for Review Within the Framework of the First Round*, at 4–10, SG/MESICIC/doc.136/04 Rev. 4 (Mar. 11, 2005) [hereinafter MESICIC *Trinidad and Tobago Report 1*].

<sup>29</sup> See sources cited *supra* note 28.

<sup>30</sup> See MESICIC *Bahamas Report 1*, *supra* note 24, at 10.

<sup>31</sup> See MESICIC *Suriname Report 1*, *supra* note 26, at 4.

entities and those who obtain procurement agreements with the state.<sup>32</sup> As a federal system, many of the states within the US also use codes of conduct to regulate procurement activities.<sup>33</sup>

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.<sup>34</sup> Further, Guatemala has created a guidebook that explains how supervisors within governmental departments must handle real or potential conflicts of interest,<sup>35</sup> and Trinidad has established a requirement that departmental heads report violations of its codes of conduct to their superiors.<sup>36</sup>

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.<sup>37</sup> 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.<sup>38</sup>

### 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.<sup>39</sup> Some of these requirements are targeted at certain groups, such as public servants and high-level members of the executive or the judiciary.<sup>40</sup> Other requirements are

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<sup>32</sup> See Comm. of Experts of the MESICIC, *Report on Implementation in Canada of the Convention Provisions Selected for Review in the Second Round of the Framework*, at 14–32, SG/MESICIC/doc.212/08 Rev. 4 (June 27, 2008) [hereinafter *MESICIC Canada Report 2*]; Comm. of Experts of the MESICIC, *Report on Implementation in the United States of the Convention Provisions Selected for Review in the Second Round, and on Follow-Up to the Recommendations Formulated to that Country in the First Round*, at 13–23, SG/MESICIC/doc.213/08 Rev. 4 (June 27, 2008) [hereinafter *MESICIC USA Report 2*].

<sup>33</sup> See *MESICIC USA Report 2*, *supra* note 32, 13–23.

<sup>34</sup> See *MESICIC Argentina Report 1*, *supra* note 13, at 11; *MESICIC Canada Report 2*, *supra* note 32, at 41; Comm. of Experts of the MESICIC, *Report on Implementation in the Republic of Columbia of the Convention Provisions Selected for Review in the Third Round, and on Follow-Up to the Recommendations Formulated to that Country in Previous Rounds*, at 6–7, SG/MESICIC/doc.252/09 Rev. 4 (Mar. 25, 2010) [hereinafter *MESICIC Columbia Report 3*]; Comm. of Experts of the MESICIC, *Report on Implementation in the Republic of Guatemala of the Convention Provisions Selected for Review in the Third Round, and on Follow-Up to the Recommendations Formulated to that Country in Previous Rounds*, at 24, SG/MESICIC/doc.275/10 Rev. 4 (Mar. 25, 2011) [hereinafter *MESICIC Guatemala Report 3*].

<sup>35</sup> See *MESICIC Guatemala Report 3*, *supra* note 34, at 24.

<sup>36</sup> See *MESICIC Trinidad and Tobago Report 1*, *supra* note 28, at 19.

<sup>37</sup> See generally *MESICIC reports*, *supra* note 28.

<sup>38</sup> See Comm. of Experts of the MESICIC, *Report on Implementation in the Republic of Ecuador of the Convention Provisions Selected for Review in the Third Round, and on Follow-Up to the Recommendations Formulated to that Country in Previous Rounds*, at 23, SG/MESICIC/doc.249/09 Rev. 4 (Mar. 25, 2010) [hereinafter *MESICIC Ecuador Report 3*].

<sup>39</sup> See, e.g., *MESICIC USA Report 1*, *supra* note 13, at 25–27.

<sup>40</sup> See, e.g., *id.* at 25.

the result of specific constitutional provisions that mandate them.<sup>41</sup> Additionally, some states require that those seeking an office make asset disclosures as well.<sup>42</sup> States such as Bolivia and Guatemala go even further by requiring specific registration of property held by certain public officials.<sup>43</sup>

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.<sup>44</sup> 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.<sup>45</sup> Chile and Mexico, on the other hand, noted that they had increased auditing requirements for disclosures during the MESICIC review rounds.<sup>46</sup> Both Chile and Ecuador, however, expressly noted that there were issues with societal acceptance of the disclosure requirements and their implementation.<sup>47</sup> Further, during the MESICIC review rounds, particularly the second and third rounds, a number of states noted that they had implemented increased disclosure requirements.<sup>48</sup>

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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<sup>41</sup> See MESICIC *Ecuador Report 1*, *supra* note 15, at 13–14; MESICIC *Nicaragua Report 1*, *supra* note 14, at 8–9.

<sup>42</sup> See, e.g., MESICIC *Bahamas Report 1*, *supra* note 24, at 14–16; MESICIC *Brazil Report 1*, *supra* note 13, at 25–26.

<sup>43</sup> See MESICIC *Bolivia Report 1*, *supra* note 21, at 17; MESICIC *Guatemala Report 1*, *supra* note 18, at 18.

<sup>44</sup> 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).

<sup>45</sup> MESICIC *Brazil Report 1*, *supra* note 13, at 30–31.

<sup>46</sup> See Comm. of Experts of the MESICIC, *Final Report on Implementation in the Republic of Chile of the Convention Provisions Selected for Analysis Within the Framework of the First Round*, at 12, SG/MESICIC/doc.89/03 Rev. 4 (Feb. 6, 2004) [hereinafter *MESICIC Chile Report 1*]; MESICIC *Mexico Report 1*, *supra* note 24, at 16.

<sup>47</sup> See MESICIC *Chile Report 1*, *supra* note 46, at 50; Comm. of Experts of the MESICIC, *Final Report on Implementation in the Republic of Ecuador of the Convention Provisions Selected for Review in the Second Round, and on Follow-Up to the Recommendations Formulated to that Country in the First Round*, at 13–23, SG/MESICIC/doc.185/06 Rev. 4 (Dec. 15, 2006) [hereinafter *MESICIC Ecuador Report 2*].

<sup>48</sup> See, e.g., Comm. of Experts of the MESICIC, *Report on Implementation in the Republic of Chile of the Convention Provisions Selected for Review in the Second Round, and on Follow-Up to the Recommendations Formulated to that Country in the First Round*, at 49, SG/MESICIC/doc.204/07 Rev. 4 (Dec. 7, 2007) [hereinafter *MESICIC Chile Report 2*]; MESICIC *Columbia Report 3*, *supra* note 34, at 30; MESICIC *Costa Rica Report 1*, *supra* note 23, at 41–42; MESICIC *Ecuador Report 3*, *supra* note 38, at 26–27; MESICIC *Guatemala Report 3*, *supra* note 34, at 29–30.



and processes more transparent.<sup>49</sup> The majority of states received recommendations to increase their reporting requirements in general,<sup>50</sup> and some were subject to specific recommendations to increase their income reporting requirements,<sup>51</sup> as well as the oversight mechanisms used in the disclosure reporting process.<sup>52</sup>

#### 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.<sup>53</sup> A majority of applicable states have otherwise coalesced by including express constitutional prohibitions regarding conflicts of interest,<sup>54</sup> thus constitutionally requiring that public servants act only for the

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<sup>49</sup> See, e.g., MESICIC *Bahamas Report 1*, *supra* note 24, at 25; Comm. of Experts of the MESICIC, Report on Implementation in Canada of the Convention Provisions Selected for Review in the Framework of the First Round, at 47, SG/MESICIC/doc.152/05 Rev. 4 (Sept. 30, 2005) [hereinafter MESICIC *Canada Report 1*]; MESICIC *Colombia Report 1*, *supra* note 13, at 32.

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

<sup>51</sup> See MESICIC *Dominican Republic Report 1*, *supra* note 14, at 43; Comm. of Experts of the MESICIC, Report on the Implementation in the Republic of El Salvador of the Convention Provisions Selected for Review in the Framework of the First Round, at 34, SG/MESICIC/doc.104/04 Rev. 4 (Mar. 12, 2005) [hereinafter MESICIC *El Salvador Report 1*].

<sup>52</sup> See MESICIC *Belize Report 1*, *supra* note 13, at 22; MESICIC *Dominican Republic Report 1*, *supra* note 14, at 44.

<sup>53</sup> See, e.g., MESICIC *Bahamas Report 1*, *supra* note 24, at 3–4; MESICIC *Jamaica Report 1*, *supra* note 25, at 3; Comm. of Experts of the MESICIC, Final Report on Implementation in the Republic of Panama of the Convention Provisions Selected for Review in the Framework of the First Round, at 4, SG/MESICIC/doc.88/03 Rev. 4 (Feb. 6, 2004) [hereinafter MESICIC *Panama Report 1*]; MESICIC *Paraguay Report 1*, *supra* note 26, at 3; MESICIC *Peru Report 1*, *supra* note 14, at 4.

<sup>54</sup> See, e.g., MESICIC *Colombia Report 1*, *supra* note 13, at 3 (prohibiting appointments based on kinship); MESICIC *Ecuador Report 1*, *supra* note 15, at 4 (prohibiting nepotism); Committee of Experts of the MESICIC, Report on Implementation in Grenada of the Convention Provisions Selected for Review in the First Round of the Framework, at 3, SG/MESICIC/doc.166/05 Rev. 4 (Mar. 31, 2006) [hereinafter MESICIC *Grenada Report 1*] (prohibiting certain appointments); MESICIC *Honduras Report 1*, *supra* note 14, at 4 (prohibiting most public servants from holding two offices); MESICIC *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<sup>55</sup> and constitutionally mandating that public officials register assets with a designated entity upon taking public office.<sup>56</sup>

Additional relevant constitutional provisions in some MESICIC states include overall governmental transparency requirements,<sup>57</sup> required codes of conduct for public officials,<sup>58</sup> the creation of a state duty to combat corruption,<sup>59</sup> and the requirement that the state create a corruption oversight body.<sup>60</sup>

## 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.<sup>61</sup> Other entities that have been established include anti-corruption offices,<sup>62</sup> police service commissions,<sup>63</sup> judicial and legal service commissions,<sup>64</sup> and oversight bodies for government contracting and related contractors.<sup>65</sup> Additionally, several state parties have created programs, which assist state employees in seeking guidance regarding the potential existence of conflicts of interest.<sup>66</sup>

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

<sup>55</sup> See, e.g., MESICIC *Bolivia Report 1*, *supra* note 21, at 4; MESICIC *Guatemala Report 1*, *supra* note 18, at 3; MESICIC *Peru Report 1*, *supra* note 14, at 4; MESICIC *Uruguay Report 1*, *supra* note 15, at 3.

<sup>56</sup> See, e.g., MESICIC *Bolivia Report 1*, *supra* note 21, at 17; MESICIC *Costa Rica Report 1*, *supra* note 14, at 19 (applying only certain public servants); MESICIC *Paraguay Report 1*, *supra* note 26, at 9; MESICIC *Peru Report 1*, *supra* note 14, at 18–19 (applying only to certain public officials); MESICIC *Trinidad and Tobago Report 1*, *supra* note 28, at 21.

<sup>57</sup> See, e.g., MESICIC *Chile Report 1*, *supra* note 46, at 22.

<sup>58</sup> See MESICIC *Belize Report 1*, *supra* note 13, at 3.

<sup>59</sup> See MESICIC *Ecuador Report 1*, *supra* note 15, at 5.

<sup>60</sup> See, e.g., MESICIC *Ecuador Report 1*, *supra* note 15, at 5; MESICIC *Peru Report 1*, *supra* note 14, at 6; MESICIC *Trinidad and Tobago Report 1*, *supra* note 28, at 5 (applying only to judges and other limited officials).

<sup>61</sup> See, e.g., MESICIC *Belize Report 1*, *supra* note 15, at 5; MESICIC *Costa Rica Report 1*, *supra* note 14, at 6; MESICIC *Dominican Republic Report 1*, *supra* note 14, at 2; MESICIC *Ecuador Report 1*, *supra* note 15, at 3; MESICIC *Trinidad and Tobago Report 1*, *supra* note 28, at 5.

<sup>62</sup> See MESICIC *Argentina Report 1*, *supra* note 13, at 9; MESICIC *Bolivia Report 1*, *supra* note 21, at 37.

<sup>63</sup> See MESICIC *Bahamas Report 1*, *supra* note 24, at 7; MESICIC *St. Vincent Report 1*, *supra* note 24, at 4; MESICIC *Trinidad and Tobago Report 1*, *supra* note 28, at 7.

<sup>64</sup> See, e.g., MESICIC *Bahamas Report 1*, *supra* note 24, at 7; MESICIC *Grenada Report 1*, *supra* note 2454, at 5; MESICIC *Jamaica Report 1*, *supra* note 25, at 8; MESICIC *St. Vincent Report 1*, *supra* note 24, at 5; MESICIC *Trinidad and Tobago Report 1*, *supra* note 28, at 3.

<sup>65</sup> See MESICIC *Belize Report 1*, *supra* note 13, at 5; MESICIC *Dominican Republic Report 1*, *supra* note 14, at 10; MESICIC *Jamaica Report 1*, *supra* note 25, at 12.

<sup>66</sup> See, e.g., MESICIC *Honduras 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.<sup>67</sup> In response, some state parties have taken measures to establish a coordinating body<sup>68</sup> or to generally facilitate such coordination efforts.<sup>69</sup> 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.<sup>70</sup>

## 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.<sup>71</sup> In addition, some state parties have created position-

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<sup>67</sup> See, e.g., MESICIC *Panama Report 1*, *supra* note 53, at 8; MESICIC *Paraguay Report 1*, *supra* note 26, at 18; MESICIC *Peru Report 1*, *supra* note 14, at 23; MESICIC *St. Vincent Report 1*, *supra* note 24, at 21; MESICIC *Uruguay Report 1*, *supra* note 15, at 16–17.

<sup>68</sup> See, e.g., Comm. of Experts of the MESICIC, *Final Report on Implementation in the Republic of Argentina of the Convention Provisions Selected for Review in the Second Round, and on Follow-Up to the Recommendations Formulated to that Country in the First Round*, at 45, SG/MESICIC/doc.181/06 Rev. 4 (Dec. 15, 2006) [hereinafter *MESICIC Argentina Report 2*].

<sup>69</sup> See e.g., Comm. of Experts of the MESICIC, *Report on Implementation in the Republic of Columbia of the Convention Provisions Selected for Review in the Second Round, and on Follow-Up to the Recommendations Formulated to that Country in the First Round*, at 51, SG/MESICIC/doc.202/07 Rev. 4 (Dec. 7, 2007); Comm. of Experts of the MESICIC, *Report on Implementation in the Republic of Guatemala of the Convention Provisions Selected for Review in the Second Round, and on Follow-Up to the Recommendations Formulated to that Country in the First Round*, at 47–48, SG/MESICIC/doc.217/08 Rev. 4 (June 27, 2008); Comm. of Experts of the MESICIC, *Final Report on Implementation in the Republic of Honduras of the Convention Provisions Selected for Review in the Second Round, and on Follow-Up to the Recommendations Formulated to that Country in the First Round*, at 33, SG/MESICIC/doc.186/06 Rev. 4 (Dec. 15, 2006) [hereinafter *MESICIC Honduras Report 2*]; Comm. of Experts of the MESICIC, *Final Report on Implementation in the Republic of Nicaragua of the Convention Provisions Selected for Review in the Second Round, and on Follow-Up to the Recommendations Formulated to that Country in the First Round*, at 30–31, SG/MESICIC/doc.183/06 Rev. 4 (Dec. 15, 2006) [hereinafter *MESICIC Nicaragua Report 2*]; Comm. of Experts of the MESICIC, *Final Report on Implementation in the Republic of Paraguay of the Convention Provisions Selected for Review in the Second Round, and on Follow-Up to the Recommendations Formulated to that Country in the First Round*, at 26–27, SG/MESICIC/doc.182/06 Rev. 4 (Dec. 15, 2006) [hereinafter *MESICIC Paraguay Report 2*].

<sup>70</sup> See, e.g., MESICIC *Argentina Report 2*, *supra* note 68, at 45; MESICIC *Brazil Report 2*, *supra* note 18, at 51–52; MESICIC *Colombia Report 3*, *supra* note 34, at 51; MESICIC *Nicaragua Report 2*, *supra* note 69, at 30–31; MESICIC *Paraguay Report 2*, *supra* note 69, at 26–27; Comm. of Experts of the MESICIC, *Final Report on Implementation in the Oriental Republic of Uruguay of the Convention Provisions Selected for Review in the Second Round, and on Follow-Up to the Recommendations Formulated to that Country in the First Round*, at 27, SG/MESICIC/doc.184/06 Rev. 4 (Dec. 15, 2006).

<sup>71</sup> 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,<sup>72</sup> legislative servants,<sup>73</sup> judicial officials,<sup>74</sup> senior members of the government,<sup>75</sup> other officials in general,<sup>76</sup> labor-related positions,<sup>77</sup> and certain individuals involved in the procurement process.<sup>78</sup> Several state parties have also extended their regulations to address incompatibilities at the local government level.<sup>79</sup>

## 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.<sup>80</sup> The MESICIC review rounds, however, have continually stressed the need for training in conflicts of interest and ethics requirements in the state party system.<sup>81</sup>

## 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

<sup>72</sup> 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.

<sup>73</sup> See, e.g., MESICIC *Bahamas Report 1*, *supra* note 24, at 9.

<sup>74</sup> 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.

<sup>75</sup> 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.

<sup>76</sup> See, e.g., MESICIC *Bolivia Report 1*, *supra* note 21, at 4.

<sup>77</sup> See, e.g., MESICIC *Chile Report 1*, *supra* note 46, at 7.

<sup>78</sup> See, e.g., MESICIC *El Salvador Report 1*, *supra* note 51, at 5; MESICIC *Nicaragua Report 1*, *supra* note 14, at 3.

<sup>79</sup> See MESICIC *Panama Report 1*, *supra* note 53, at 7–8; MESICIC *Paraguay Report 1*, *supra* note 26, at 1–2.

<sup>80</sup> 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.

<sup>81</sup> See MESICIC *Colombia Report 2*, *supra* note 69, at 45–46; MESICIC *Ecuador Report 2*, *supra* note 48, at 34; Comm. of Experts of the MESICIC, *Report on Implementation in El Salvador of the Convention Provisions Selected for Review in the Second Round, and on Follow-Up to the Recommendations Formulated to that Country in the First Round*, at 31, SG/MESICIC/doc.205/07 Rev. 4 (Dec. 7, 2007); MESICIC *Honduras Report 2*, *supra* note 69, at 27; Comm. of Experts of the MESICIC, *Final Report on Implementation in the Republic of Trinidad and Tobago of the Convention Provisions Selected for Review in the Second Round, and on Follow-Up to the Recommendations Formulated to that Country in the First Round*, at 23, SG/MESICIC/doc.195/07 Rev. 4 (June 29, 2007).

least temporarily—the ability of these former public officials to enter into negotiations or contracts with governmental entities.<sup>82</sup>

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.<sup>83</sup> Other state parties have created restrictions that bar former state officials and employees from the contracting process,<sup>84</sup> and El Salvador has created a specific procurement oversight body to handle the issue.<sup>85</sup>

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

#### 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.<sup>88</sup> 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.<sup>89</sup> 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.<sup>90</sup>

Overall, while the MESICIC 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 MESICIC 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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<sup>82</sup> 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.

<sup>83</sup> See, e.g., MESICIC *Colombia Report 1*, *supra* note 13, at 3.

<sup>84</sup> See, e.g., MESICIC *Panama Report 2*, *supra* note 26, at 12.

<sup>85</sup> See MESICIC *El Salvador Report 1*, *supra* note 51, at 5.

<sup>86</sup> MESICIC *Chile Report 2*, *supra* note 48, at 46–48.

<sup>87</sup> 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.

<sup>88</sup> 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.

<sup>89</sup> See MESICIC *Argentina Report 1*, *supra* note 13, at 4.

<sup>90</sup> 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.<sup>91</sup> 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.<sup>92</sup> Notably, all EU member states are also members of GRECO, along with several non-EU member states, such as Switzerland and the United States.<sup>93</sup> 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.<sup>94</sup> As discussed below, it is expected that an EU-specific anti-corruption reporting mechanism will be in effect in 2013.<sup>95</sup> 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.<sup>96</sup>

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.<sup>97</sup> 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.<sup>98</sup> The requirements that review reports be generated for all GRECO states—

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<sup>91</sup> See Comm. of Ministers, *Agreement Establishing the Group of States Against Corruption - GRECO-*, 102d Sess., Res. 98(7), at 5 (1998), Res. 99(5), at 6–7 (1999).

<sup>92</sup> Comm. of Ministers, *Agreement Establishing the Group of States Against Corruption*, 102d Sess., Res. 98(7), at 5 (1998).

<sup>93</sup> See *GRECO: Members and Observers*, GRP. OF STATES AGAINST CORRUPTION, COUNCIL OF EUR., [http://www.coe.int/t/dghl/monitoring/greco/general/members\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/general/members_en.asp) (last visited Mar. 15, 2013).

<sup>94</sup> Commission Decision 1999/352, of 28 April 1999 establishing the European Anti-Fraud Office (OLAF), *pmbi.*, art. 1, 1999 O.J. (L 136) 20 (EC).

<sup>95</sup> See Commission Decision, of 6.6.2011 Establishing an EU Anti-corruption reporting mechanism for periodic assessment ("EU Anti-Corruption Report"), arts. 1–2(a), 4, C (2011) 3673 final [hereinafter Commission Decision *EU Anti-Corruption Report*].

<sup>96</sup> *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, Fighting Corruption in the EU*, at 8, COM (2011) 308 final (June 6, 2011); see *Corruption*, DIRECTORATE GEN., EUROPEAN COMMISSION, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/index_en.htm) (last updated Oct. 26, 2012).

<sup>97</sup> See Comm. of Ministers, *Agreement Establishing the Group of States Against Corruption - GRECO-*, 102d Sess., Res. (99)5, at 6 (1999).

<sup>98</sup> *Id.* at 9.

similar to the MESICIC review reports<sup>99</sup>—and that GRECO monitor the overall activities of member states in areas that effect anti-corruption efforts are essential aspects of this function.<sup>100</sup> 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.<sup>101</sup> 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.<sup>102</sup>

A significant number of member states were identified as having passable laws, rules and regulations at the federal or national level,<sup>103</sup> while a far smaller number of member states were identified as having passable laws, rules and regulations at the local or municipal level.<sup>104</sup> Some member states were identified as having limited or weak conflict of interest laws, rules and regulations,<sup>105</sup> and a handful were identified as having limited or weak conflict of interest laws, rules and regulations at the local or municipal level.<sup>106</sup>

<sup>99</sup> *Id.* at 10, 13–14.

<sup>100</sup> *Id.* at 6.

<sup>101</sup> GRECO *Evaluations*, GRP. OF STATES AGAINST CORRUPTION, COUNCIL OF EUR., [http://www.coe.int/t/dghl/monitoring/greco/evaluations/index\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp) (last visited Mar. 15, 2013).

<sup>102</sup> *See id.* (containing links to electronic copies of all rounds of evaluation reports).

<sup>103</sup> *See, e.g.*, GRECO, *First Evaluation Round, Evaluation Report on Belgium*, at 3, Greco Eval I Rep (2000) 1E Final (Dec. 15, 2000); GRECO, *First Evaluation Round, Evaluation Report on the Czech Republic*, at 4–5, Greco Eval I Rep (2002) 11E Final (Mar. 28, 2003); GRECO, *First Evaluation Round, Evaluation Report on Denmark*, at 21, Greco Eval I Rep (2002) 6E Final (July 11, 2002) [hereinafter GRECO *Denmark Report 1*]; GRECO, *First Evaluation Round, Evaluation Report on France*, at 5, Greco Eval I Rep (2001) 4E Final (Sept. 14, 2001) [hereinafter GRECO *France Report 1*]; GRECO, *First Evaluation Round, Evaluation Report on Georgia*, at 3, Greco Eval I Rep (2001) 5E Final (June 15, 2001) [GRECO *Georgia Report 1*]. The countries identified also include: Greece, Hungary, Iceland, Italy, Latvia, Monaco, Poland, Serbia, Slovakia, Spain, Switzerland, the Ukraine, the United Kingdom, and the United States.

<sup>104</sup> *See* GRECO, *Second Evaluation Round, Evaluation Report on the Czech Republic*, at 14, 18, Greco Eval II Rep (2005) 7E (May 12, 2006) [hereinafter GRECO *Czech Republic Report 2*]; GRECO, *Third Evaluation Round, Evaluation Report on Georgia on Incriminations*, at 21, Greco Eval III Rep (2010) 12E (May 27, 2011); GRECO, *Second Evaluation Round, Evaluation Report on Hungary*, at 15, Greco Eval II Rep (2005) 5E (Mar. 10, 2006) [hereinafter GRECO *Hungary Report 2*]; GRECO, *Second Evaluation Round, Evaluation Report on Spain*, at 14, Greco Eval II Rep (2004) 7E (May 20, 2005) [hereinafter GRECO *Spain Report 2*].

<sup>105</sup> *See, e.g.*, GRECO, *Joint First and Second Evaluation Rounds, Evaluation Report on Andorra*, at 31, Greco Eval I-II Rep (2006) 1E (Dec. 8, 2006) [hereinafter GRECO *Andorra Report 1/2*]; GRECO, *Joint First and Second Round, Evaluation Report on Armenia*, at 30, Greco Eval I-II Rep (2005) 2E (Mar. 10, 2006) [hereinafter GRECO *Armenia Report 1/2*]; GRECO, *Joint First and*

During the periods of GRECO review evaluations, the GRECO review body consistently recommended that states strengthen their conflict of interest laws, rules and regulations.<sup>107</sup> At the same time, several member states also enacted new conflict of interest laws that were intended to further compliance with the GRECO standards,<sup>108</sup> and several other member states were considering draft laws that would strengthen the conflicts of interest protections in these states.<sup>109</sup>

## 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.<sup>110</sup> Interestingly, most of these states had defined “conflict of interest” through relatively new laws and rules.<sup>111</sup> Several member states, however, were

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*Second Evaluation Rounds, Evaluation Report on Azerbaijan*, at 32–33, Greco Eval I-II Rep (2005) 5E (June 23, 2006) [hereinafter *GRECO Azerbaijan Report 1/2*]; GRECO, *First Evaluation Round, Evaluation Report on Bosnia and Herzegovina*, at 25, Greco Eval I Rep (2002) 10E (July 11, 2003); GRECO, *First Evaluation Round, Evaluation Report on Croatia*, at 32, Greco Eval I Rep (2002) 4E Final (May 17, 2002) [hereinafter *GRECO Croatia Report 1*]. The countries identified also include Georgia, Luxembourg, Monaco, Poland, Romania, and Russia. See *GRECO Evaluations, supra* note 101 for the remaining reports.

<sup>106</sup> See, e.g., GRECO, *Joint First and Second Evaluation Round, Evaluation Report on Austria*, at 37, Greco Eval I-II Rep (2007) 2E (June 13, 2008) [hereinafter *GRECO Austria Report 1/2*]; GRECO, *Joint First and Second Evaluation Rounds, Evaluation Report on Switzerland*, at 33–34, Greco Eval I-II Rep (2007) 1E (Apr. 4, 2008) [hereinafter *GRECO Switzerland Report 1/2*].

<sup>107</sup> See, e.g., GRECO *Andorra Report 1/2, supra* note 105, at 32, 39; GRECO *Croatia Report 1, supra* note 105, at 26, 32; GRECO, *First Evaluation Round, Evaluation Report on Romania*, at 19–20, 26, Greco Eval I Rep (2001) 13E Final (Mar. 8, 2002); GRECO, *Joint First and Second Evaluation Rounds, Evaluation Report on the Russian Federation*, at 64, 78, Greco Eval I-II (2008) 2E (Dec. 5, 2008) [hereinafter *GRECO Russia Report 1/2*]; GRECO *Switzerland Report 1/2, supra* note 106, at 43.

<sup>108</sup> See, e.g., GRECO, *First Evaluation Round, Evaluation Report on Bulgaria*, at 5, 18, Greco Eval I Rep (2001) 14E Final (May 17, 2002) [hereinafter *GRECO Bulgaria Report 1*]; GRECO *Georgia Report 1, supra* note 103, at 3; GRECO, *Second Evaluation Round, Evaluation Report on Greece*, at 12–13, 17, Greco Eval II Rep (2005) 6E (Dec. 9, 2005) [hereinafter *GRECO Greece Report 2*]; GRECO *Hungary Report 2, supra* note 104, at 13–15; GRECO, *Joint First and Second Round, Evaluation Report on Italy*, at 33–36, Greco Eval I/II Rep (2008) 2E (July 2, 2009) [hereinafter *GRECO Italy Report 1/2*].

<sup>109</sup> See GRECO *Azerbaijan Report 1/2, supra* note 105, at 31, 33–34; GRECO *Croatia Report 1, supra* note 105, at 30; GRECO, *Second Evaluation Round, Evaluation Report on Luxembourg*, at 23, Greco Eval II Rep (2003) 5E (May 14, 2004) [hereinafter *GRECO Luxembourg Report 2*]; GRECO, *Joint First and Second Evaluation Rounds, Evaluation Report on Ukraine*, at 35, Greco Eval I-II Rep (2006) 2E (Mar. 21, 2007) [hereinafter *GRECO Ukraine Report 1*].

<sup>110</sup> See, e.g., GRECO *Austria Report 1/2, supra* note 106, at 32, 37; GRECO *Croatia Report 1, supra* note 105, at 26; GRECO *Czech Republic Report 2, supra* note 104, at 14–17; GRECO, *Second Evaluation Round, Evaluation Report on Georgia*, at 15–16, 18, Greco Eval II Rep (2006) 2E (Dec. 8, 2008) [hereinafter *GRECO Georgia Report 2*]; GRECO *Greece Report 2*, at 12–13, 17.

<sup>111</sup> See, e.g., GRECO *Austria Report 1/2, supra* note 106, at 32; GRECO *Czech Republic Report 2, supra* note 104, at 14; GRECO *Greece Report 2, supra* note 108, at 12–13.



identified as having weak or insufficient conflict of interest definitions.<sup>112</sup> 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.<sup>113</sup>

### 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.<sup>114</sup> 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.<sup>115</sup> Several codes were identified as being generally weak,<sup>116</sup> and others have been created but are not yet fully implemented.<sup>117</sup>

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<sup>112</sup> See GRECO *Armenia Report 1/2*, *supra* note 105, at 13–14; GRECO, *Second Evaluation Round, Evaluation Report on Belgium*, at 15–16, Greco Eval II Rep (2004) 1E (Dec. 2, 2004) [hereinafter GRECO *Belgium Report 2*]; GRECO, *Second Evaluation Round, Compliance Report on Bosnia and Herzegovina*, at 7–8, Greco RC-II (2008) 7E (Feb. 19, 2009) [hereinafter GRECO *Bosnia and Herzegovina Report 2*]; GRECO, *Joint First and Second Evaluation Rounds, Compliance Report on Monaco*, at 24, Greco RC-I/II (2010) 3E (Oct. 1, 2010) [hereinafter GRECO *Monaco Report 1/2*]; GRECO, *Joint First and Second Evaluation Rounds, Compliance Report on Montenegro*, at 13–14, Greco RC-I/II (2008) SE (Dec. 5, 2008) [hereinafter GRECO *Montenegro Report 1/2*].

<sup>113</sup> See GRECO *Hungary Report 2*, *supra* note 104, at 7–8; GRECO *Montenegro Report 1/2*, *supra* note 102, at 13–15; GRECO, *Joint First and Second Evaluation Rounds, Compliance Report on the Republic of Serbia*, at 14, Greco RC-I/II (2008) 1E (June 13, 2008).

<sup>114</sup> See, e.g., GRECO *Austria Report 1/2*, *supra* note 106, at 16; GRECO, *First Evaluation Round, Evaluation Report on “the Former Yugoslav Republic of Macedonia,”* at 23, Greco Eval I Rep (2002) 7E Final (Dec. 10, 2002) [GRECO *Macedonia Report 1*]; GRECO, *First Evaluation Round, Evaluation Report on Malta*, at 4, Greco Eval I Rep (2002) 8E Final (Dec. 13, 2002) [hereinafter GRECO *Malta Report 1*]; GRECO, *Second Evaluation Round, Compliance Report on Romania*, at 9–10, Greco RC-II (2007) 9E (Dec. 7, 2007) [hereinafter GRECO *Romania Report 2*]; GRECO, *First Evaluation Round, Evaluation Report on the United Kingdom*, at 6–7, Greco Eval I Rep (2001) 8E Final (Sept. 14, 2001) [hereinafter GRECO *UK Report 1*].

<sup>115</sup> 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).

<sup>116</sup> See, e.g., GRECO *Second Evaluation Round, Evaluation Report on Finland*, at 14, Greco Eval II Rep (2003) 3E (July 2, 2004) [hereinafter GRECO *Finland Report 2*]; GRECO *Second Evaluation Round, Evaluation Report on Slovenia*, at 12, Greco Eval II Rep (2003) 1E (Dec. 12, 2003).

<sup>117</sup> See, e.g., GRECO *Italy Report 1/2*, *supra* note 108, at 33; GRECO *Second Evaluation Round, Compliance Report on Portugal*, at 9–10, Greco RC-II (2008) 2E (Oct. 10, 2008) [hereinafter GRECO *Portugal Report 2*].

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<sup>118</sup> and quasi-governmental entities.<sup>119</sup>

#### 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.<sup>120</sup> Other member states were found to have limited reporting requirements with identified flaws,<sup>121</sup> and Iceland was found not to have an express reporting requirement.<sup>122</sup> Further, the Czech Republic was found to have problems applying the reporting requirements at both the local and national levels.<sup>123</sup>

#### 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.<sup>124</sup> For example, France reported using an ethics committee,<sup>125</sup> and Estonia reported using a parliamentary committee for

<sup>118</sup> See GRECO *Bulgaria Report 1*, *supra* note 108, at 8; GRECO *Ukraine Report 1*, *supra* note 109, at 18.

<sup>119</sup> See GRECO, *First Evaluation Round, Evaluation Report on Iceland*, at 11, Greco Eval I Rep (2001) 10E Final (Sept. 14, 2001) [hereinafter GRECO *Iceland Report 1*].

<sup>120</sup> 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.

<sup>121</sup> 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).

<sup>122</sup> See GRECO, *Second Evaluation Round, Evaluation Report on Iceland*, at 10, Greco Eval II Rep (2003) 7E (July 2, 2004) [hereinafter GRECO *Iceland Report 2*].

<sup>123</sup> See GRECO *Czech Republic Report 2*, *supra* note 104, at 17.

<sup>124</sup> See GRECO, *First Evaluation Round, Evaluation Report on Greece*, at 13, Greco Eval I Rep (2001) 15E (May 17, 2002) [hereinafter *Greece Report 1*]; GRECO, *First Evaluation Round, Evaluation Report on Latvia*, at 4–5, Greco Eval I Rep (2002) 2E (May 17, 2002) [hereinafter GRECO *Latvia Report 1*]; GRECO *Montenegro Report 1/2*, *supra* note 112, at 11–12; GRECO *Romania Report 2*, *supra* note 107, at 8.

<sup>125</sup> See GRECO, *Second Evaluation Round, Evaluation Report on France*, at 10, Greco Eval II Rep (2004) 5E (Dec. 2, 2004) [hereinafter GRECO *France Report 2*].

oversight issues.<sup>126</sup> Bosnia and Herzegovina, on the other hand, has created an oversight body mechanism.<sup>127</sup>

## 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.<sup>128</sup> GRECO review reports, on the other hand, have identified several member states with weak incompatibilities laws.<sup>129</sup> Some of the specialized restrictions that have been enacted target incompatibilities that arise in contract solicitations and negotiations,<sup>130</sup> in the concurrent holding of multiple offices,<sup>131</sup> in potentially conflicting business interests,<sup>132</sup> in judicial situations,<sup>133</sup> and in relation to membership of and certain activities in political parties and associations.<sup>134</sup> France was found to have established a committee to determine whether an incompatibility might exist prior to it actually occurring.<sup>135</sup>

## 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<sup>136</sup> and that

<sup>126</sup> See GRECO, *First Evaluation Round, Evaluation Report on Estonia*, at 14–15, Greco Eval I Rep (2001) 7E (Sept. 14, 2001).

<sup>127</sup> See GRECO *Bosnia and Herzegovina Report 2*, *supra* note 112, at 8.

<sup>128</sup> See, e.g., GRECO *Austria Report 1/2*, *supra* note 106, at 118; GRECO *Second Evaluation Round, Evaluation Report on Denmark*, at 7, Greco Eval II Rep (2004) 6E (Mar. 18, 2005) [hereinafter GRECO *Denmark Report 2*]; GRECO *Estonia Report 2*, *supra* note 115, at 10–11; GRECO *France Report 1*, *supra* note 103, at 17; GRECO *Italy Report 1/2*, *supra* note 108, at 45.

<sup>129</sup> See GRECO *Luxembourg Report 2*, *supra* note 109, at 12; GRECO *Monaco Report 1/2*, *supra* note 112, at 22.

<sup>130</sup> See GRECO *Austria Report 1/2*, *supra* note 106, at 30–31.

<sup>131</sup> See GRECO *Czech Republic Report 2*, *supra* note 104, at 14; GRECO *Monaco Report 1/2*, *supra* note 112, at 22.

<sup>132</sup> See GRECO *Czech Republic Report 2*, *supra* note 104, at 14; GRECO *Estonia Report 2*, *supra* note 115, at 10–11; GRECO *Monaco Report 1/2*, *supra* note 112.

<sup>133</sup> See GRECO *Monaco Report 1/2*, *supra* note 112, at 22; GRECO *Switzerland Report 1*, *supra* note 106, at 28; GRECO, *First Evaluation Round, Evaluation Report on the United States of America*, at 7, Greco Eval I Rep (2003) 2E (Mar. 25, 2004) [hereinafter GRECO *United States Report 1*].

<sup>134</sup> See GRECO *Estonia Report 2*, *supra* note 115, at 7–8; GRECO, *Joint First and Second Evaluation Round, Evaluation Report on the Republic of Serbia*, at 10, Greco Eval I-II Rep (2005) 1E Revised (June 23, 2006).

<sup>135</sup> See GRECO *France Report 1*, *supra* note 103, at 17.

<sup>136</sup> See GRECO, *Second Round Evaluation, Evaluation Report on “the former Yugoslav Republic of Macedonia”*, at 10, Greco Eval II Rep (2004) 11E (Oct. 14, 2005) [hereinafter GRECO *Macedonia Report 2*]; GRECO, *Second Evaluation Report, Evaluation of the United States*, at 32–33, Greco Eval II Rep (2005) 10E (Oct. 13, 2006).

other states need to rework their laws in this area.<sup>137</sup> Some states, however, were identified as having effective conflict of interest provisions for procurement in certain agencies<sup>138</sup> and the ability to annul contracts when there are issues with the procurement process.<sup>139</sup>

## 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.<sup>140</sup> Other states, however, have weak laws on this topic.<sup>141</sup>

## 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,<sup>142</sup> some states had limited or weak conflict of interest election laws,<sup>143</sup> and a few states had no conflict of interest election laws.<sup>144</sup>

<sup>137</sup> See GRECO *Latvia Report 1*, *supra* note 124, at 16–18; GRECO *Romania Report 2*, *supra* note 114, at 16–17; GRECO, *First Evaluation Round, Evaluation Report on Sweden*, at 16–17, Greco Eval I Rep (2001) 3E Final (June 15, 2001).

<sup>138</sup> See GRECO, *First Evaluation Round, Evaluation Report on Germany*, at 14, Greco Eval I Rep (2001) 12E Final (Mar. 8, 2002) (relating to the Defense Ministry).

<sup>139</sup> See GRECO *Croatia Report 1*, *supra* note 105, at 22.

<sup>140</sup> See, e.g., GRECO *Czech Republic Report 2*, *supra* note 104, at 15; GRECO *Georgia Report 2*, *supra* note 110, at 16–17; GRECO *Third Evaluation Round, Evaluation Report on Iceland, Incriminations (ETS 173 and 191, GPC 2)*, at 3–9, Greco Eval III Rep (2007) 7E (Apr. 4, 2008); GRECO *Portugal Report 2*, *supra* note 117, at 12; GRECO *Third Evaluation Round, Evaluation Report on “the former Yugoslav Republic of Macedonia,” Incriminations (ETS 173 and 191, GPC 2)*, at 3–8, Greco Eval III Rep (2009) 6E (Mar. 26, 2010).

<sup>141</sup> See GRECO *Montenegro Report 1/2*, *supra* note 112, at 23.

<sup>142</sup> See GRECO *Third Evaluation Round, Evaluation Report on Hungary, Transparency of Party Funding*, at 13, Greco Eval III Rep (2009) 8E (June 11, 2010); GRECO *Third Evaluation Round, Evaluation Report on Iceland, Transparency of Party Funding*, at 4, Greco Eval III Rep (2007) 7E (Apr. 4, 2008); GRECO *Third Evaluation Round, Evaluation Report on Portugal, Transparency of Party Funding*, at 14, Greco Eval III (2010) 6E (Dec. 3, 2010); GRECO *Third Evaluation Round, Evaluation Report on Slovenia on Transparency of Party Funding*, at 17, Greco Eval III Rep (2007) 1E (Dec. 7, 2007).

<sup>143</sup> See, e.g., GRECO, *Third Evaluation Round, Evaluation report on Andorra, Transparency of Political Party Funding*, at 18, Greco Eval III Rep (2010) 11E (May 27, 2011); GRECO, *Third Evaluation Round, Evaluation Report on Georgia on Transparency of party funding*, at 23, Greco Eval III Rep (2010) 12E (May 27, 2011); GRECO, *Third Evaluation Round, Evaluation Report on Latvia on Transparency of Party Funding*, at 20–21, Greco Eval III Rep (2008) 1E (Oct. 10, 2008); GRECO, *Third Evaluation Round, Evaluation Report on Montenegro, Transparency of Party Funding*, at 25, Greco Eval III Rep (2010) 7E (Dec. 3, 2010); GRECO, *Third Evaluation Round, Evaluation Report on the Netherlands on “Transparency of Party Funding,”* at 25, Greco Eval III Rep (2007) 8E (June 13, 2008).

## 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,<sup>145</sup> while others use guidelines and pamphlets,<sup>146</sup> public awareness campaigns,<sup>147</sup> and/or programs to educate administrators on how to identify and handle conflicts of interest.<sup>148</sup> Still, GRECO review reports have suggested that some state parties could improve their training systems for addressing conflicts of interests.<sup>149</sup>

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.<sup>150</sup>

## 11. Pantouflage Issues<sup>151</sup>

Several state parties were identified in GRECO review reports as having decent or passable pantouflage laws.<sup>152</sup> Almost as many state parties, however, have no pantouflage laws at all.<sup>153</sup> Between these extremes, the GRECO review

<sup>144</sup> See GRECO, *Third Evaluation Round, Evaluation Report on Armenia on Transparency of party funding*, at 12, 18, Greco Eval III Rep (2010) 4E (Dec. 3, 2010); GRECO, *Third Evaluation Round, Evaluation Report on Denmark on Transparency of Party Funding*, at 10, 15, Greco Eval III Rep (2008) 9E (July 2, 2009).

<sup>145</sup> See GRECO *Azerbaijan Report 1/2*, *supra* note 105, at 8; GRECO, *Second Evaluation Round, Evaluation Report on Bulgaria*, at 11, GrecoEval II Rep (2004) 13E (July 1, 2005) [hereinafter GRECO *Bulgaria Report 2*]; GRECO *Hungary Report 2*, *supra* note 104, at 12; GRECO *Romania Report 2*, *supra* note 107, at 10–15; GRECO *Ukraine Report 1*, *supra* note 109, at 20.

<sup>146</sup> See GRECO *Belgium Report 2*, *supra* note 112, at 11; GRECO, *Second Evaluation Round, Evaluation Report on Sweden*, at 11, Greco Eval II Rep (2004) 9E (Mar. 18, 2005) [hereinafter GRECO *Sweden Report 2*].

<sup>147</sup> See GRECO *Latvia Report 1*, *supra* note 124, at 26.

<sup>148</sup> See GRECO *Sweden Report 2*, *supra* note 146, at 11.

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

<sup>150</sup> See GRECO *Belgium Report 2*, *supra* note 112, at 23–24; GRECO *Denmark Report 1*, *supra* note 103, at 19–20; GRECO *Iceland Report 1*, *supra* note 119, at 11; GRECO *Luxembourg Report 2*, *supra* note 109, at 22; GRECO *Macedonia Report 2*, *supra* note 136, at 20–21.

<sup>151</sup> 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.

<sup>152</sup> See, e.g., GRECO *Bulgaria Report 2*, *supra* note 145, at 12; GRECO *France Report 2*, *supra* note 125, at 11–12; GRECO, *Second Evaluation Round, Evaluation Report on Malta*, at 9–10, Greco Eval II Rep (2004) 14E (July 1, 2005); GRECO, *Second Evaluation Round, Evaluation Report on Moldova*, at 15–16, Greco Eval II Rep (2006) [hereinafter GRECO *Moldova Report 2*].

<sup>153</sup> See GRECO *Belgium Report 2*, *supra* note 112, at 12–13; GRECO *Finland Report 2*, *supra* note 114, at 11; GRECO, *Second Evaluation Round, Evaluation Report on Germany*, at 11, Greco

reports have identified other states with limited pantouflage laws.<sup>154</sup> 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.<sup>155</sup>

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.<sup>156</sup> Despite this view, the GRECO review reports have continually offered suggestions on how these states, and other states, might strengthen their pantouflage laws.<sup>157</sup>

The GRECO review reports have also found that there are related issues regarding privatization and conflicts of interest that often implicate pantouflage.<sup>158</sup> 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.<sup>159</sup>

## 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,<sup>160</sup> although there have been some issues with implementation.<sup>161</sup> Other

Eval II Rep (2004) 10E (July 1, 2005); GRECO *Iceland Report 2*, *supra* note 122, at 9; GRECO *Switzerland Report 1/2*, *supra* note 106, at 28.

<sup>154</sup> See, e.g., GRECO *Austria Report 1/2*, *supra* note 106, at 31–32; GRECO *Bosnia & Herzegovina Report 2*, *supra* note 112, at 14; GRECO *Czech Republic Report 2*, *supra* note 104, at 15; GRECO *Hungary Report 2*, *supra* note 104, at 12; GRECO *Luxembourg Report 2*, *supra* note 109, at 11.

<sup>155</sup> See GRECO *Azerbaijan Report 1/2*, *supra* note 105, at 4; GRECO *Monaco Report 1/2*, *supra* note 112, at 26.

<sup>156</sup> See GRECO *Andorra Report 1/2*, *supra* note 105, at 3; GRECO *Denmark Report 2*, *supra* note 128, at 11; GRECO *Sweden Report 2*, *supra* note 146, at 12.

<sup>157</sup> See, e.g., GRECO *Austria Report 1/2*, *supra* note 106, at 45; GRECO *Belgium Report 2*, *supra* note 112, at 16; GRECO *Czech Republic Report 2*, *supra* note 104, at 27; GRECO *Italy Report 1/2*, *supra* note 108, at 57; GRECO *Switzerland Report 1/2*, *supra* note 106, at 43.

<sup>158</sup> See GRECO, *First Evaluation Round, Evaluation Report on Slovenia*, at 13, Greco Eval I Rep (2000) 3E Final (Dec. 15, 2000).

<sup>159</sup> See GRECO *Luxembourg Report 2*, *supra* note 109, at 6.

<sup>160</sup> See, e.g., GRECO *Finland Report 2*, *supra* note 116, at 11; GRECO *Georgia Report 2*, *supra* note 110, at 15; GRECO, *First Evaluation Round, Evaluation Report on Lithuania*, at 15, Greco Eval I Rep (2002) 1E Final (Mar. 8, 2002) (noting that Lithuania has developed special courts to determine whether there is a conflict in state officer serving at the local and national level); GRECO, *Second Evaluation Round, Evaluation Report on Norway*, at 9, Greco Eval II Rep (2004) 3E (Sept. 30, 2004); GRECO *United States Report 1*, *supra* note 133, at 31.

<sup>161</sup> See, e.g., GRECO *Austria Report 1/2*, *supra* note 106, at 37; GRECO *Bosnia and Herzegovina Report 2*, *supra* note 112, at 14.

state parties, however, only have conflict of interest laws at the national level.<sup>162</sup> The GRECO review reports have suggested that such state parties enact laws to strengthen their local-level conflict of interest regimes.<sup>163</sup>

### III. OECD

#### A. *OECD Conflicts of Interest Provisions*

The primary OECD legal instrument addressing corruption is the Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions (the "Convention").<sup>164</sup> While the text of the Convention itself does not directly regulate conflicts of interest,<sup>165</sup> 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.<sup>166</sup>

#### 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,<sup>167</sup> while others have limited or weak regimes. Within the regimes identified as limited or weak,<sup>168</sup> the OECD reviews have established

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<sup>162</sup> See GRECO *Belgium Report 2*, *supra* note 112, at 14; GRECO *Estonia Report 2*, *supra* note 115, at 13; GRECO *Russia Report 1/2*, *supra* note 107, at 59; GRECO *Spain Report 2*, *supra* note 104, at 17.

<sup>163</sup> See, e.g., GRECO *Austria Report 1/2*, *supra* note 106, at 37; GRECO *Czech Republic Report 2*, *supra* note 104, at 17-18; GRECO *Estonia Report 2*, *supra* note 115, at 13; GRECO *Spain Report 2*, *supra* note 104, at 14; GRECO *Switzerland Report 1/2*, *supra* note 106, at 42.

<sup>164</sup> The Organisation for Economic Co-operation and Development [OECD], Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997 (entered into force Feb. 15, 1999), available at <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>.

<sup>165</sup> See generally *id.*

<sup>166</sup> *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](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).

<sup>167</sup> See OECD, *Mexico: 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 8 (Sept. 2, 2004) [hereinafter *OECD Mexico Report 2*]; OECD, *Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Slovenia*, at 2 (Oct. 1, 2012).

<sup>168</sup> See, e.g., OECD, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Bulgaria*, at 6 (Mar. 18, 2011); OECD, *Luxembourg: Phase 2, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business*

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.<sup>169</sup> 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.<sup>170</sup>

## 2. Codes of Conduct and Guidelines

Many individual state parties subject to the OECD review and reporting system use national codes of conduct and/or guidelines to address issues related to conflicts of interest. For example, Argentina uses a nationwide set of general guidelines for addressing conflict of interest issues.<sup>171</sup> A majority of the other state parties, however, have reported that they use some form of guidance, such as a code of conduct or integrity, specifically created for public employees and/or officials.<sup>172</sup> Practical issues regarding the uneven and limited, agency-focused application of such codes,<sup>173</sup> however, have been identified.<sup>174</sup>

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*Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions*, at 38.

<sup>169</sup> See OECD, *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*].

<sup>170</sup> See OECD, *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*].

<sup>171</sup> See OECD, *Argentina: 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 (June 20, 2008) [hereinafter *OECD Argentina Report 2*].

<sup>172</sup> See, e.g., OECD, *Belgium: 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 43 (July 21, 2005); OECD, *Ireland: 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 14, 45 (Mar. 14, 2007); OECD, *Luxembourg: Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Luxembourg*, at 57 (June 23, 2011) [hereinafter *OECD Luxembourg Report 3*]; OECD, *New Zealand: 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 16 (Oct. 27, 2006) [hereinafter *OECD New Zealand Report 2*]; OECD, *Slovenia: 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 (June 21, 2007) [hereinafter *OECD Slovenia Report 2*].

<sup>173</sup> See *OECD Slovenia Report 2*, *supra* note 172, at 12.

<sup>174</sup> See OECD, *Sweden: 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 21 (Sept. 21, 2005) [hereinafter *OECD Sweden Report 2*].



### 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.<sup>175</sup> Several other state parties reported that they had established oversight bodies for specific portfolios,<sup>176</sup> primarily those involving some form of quasi-corporate entity, rather than a traditional governmental entity.<sup>177</sup> Additionally, New Zealand reported using multiple oversight commissions to handle conflict of interest issues, rather than using a consolidated oversight body.<sup>178</sup>

### 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.<sup>179</sup> At least one state, however, was found to have implemented only a weak or limited regime.<sup>180</sup>

### 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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<sup>175</sup> See *OECD Argentina Report 2*, *supra* note 171, at 12.

<sup>176</sup> See OECD, *Germany: 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 22 (June 4, 2003) (relating to the Ministry of Defense); OECD, *Poland: 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 17 (Jan. 18, 2007) (relating to the Foreign Ministry).

<sup>177</sup> See *OECD Argentina Report 2*, *supra* note 171, at 12 (relating to extractive industries & defense/weapons); OECD, *Austria: 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 14 (Feb. 16, 2006) (relating to the Austria Development Agency); OECD *Luxembourg Report 3*, *supra* note 172, at 53 (relating to the Lux-Development Agency); OECD, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Sweden*, at 42–43 (June 15, 2012) (relating to the Swedish International Development Cooperation Agency).

<sup>178</sup> OECD *New Zealand Report 2*, *supra* note 172, at 10–11.

<sup>179</sup> See, e.g., *id.* at 25; OECD, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the United States*, at 20 (Oct. 15, 2010) [hereinafter *OECD United States Report 3*].

<sup>180</sup> 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.<sup>181</sup> 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.<sup>182</sup>

## 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<sup>183</sup> or that they have made publications discussing how to deal with conflicts of interest available in some capacity.<sup>184</sup> 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.<sup>185</sup> 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.<sup>186</sup> The French regime should be highlighted as a positive example in

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<sup>181</sup> See OECD *Canada Report 2*, *supra* note 169, at 36–37 (relating to the Canadian International Development Agency).

<sup>182</sup> See OECD *Mexico Report 2*, *supra* note 167, at 32.

<sup>183</sup> See OECD, *Poland: Phase 2, Follow-Up Report on the Implementation of the Phase 2 Recommendations*, at 8–9 (relating to the Foreign Ministry); OECD, *Portugal: Phase 2, Follow-Up Report on the Implementation of the Phase 2 Recommendations of the Applications of the Convention and the 1997 Revised Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions*, at 4 (Oct. 6, 2009) (relating to the Foreign Ministry); OECD *Sweden Report 2*, *supra* note 174, at 25–26 (relating to the Foreign Ministry).

<sup>184</sup> See OECD, *Austria: Phase 2, Follow-up Report on the Implementation of the Phase 2 Recommendations*, at 7 (Mar. 20, 2008).

<sup>185</sup> See OECD, *Brazil: 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 27 (Dec. 7, 2007); OECD, *Bulgaria: 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 19 (June 6, 2003) [hereinafter *OECD Bulgaria Report 2*]; OECD, *France: 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 18 (Jan. 22, 2004) [hereinafter *OECD France Report 2*]; OECD *United States Report 3*, *supra* note 179, at 18.

<sup>186</sup> 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.<sup>187</sup> Furthermore, the OECD review reports found that Hungary and Switzerland were in the process of establishing a conflicts of interest regime for auditors.<sup>188</sup>

## 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.<sup>189</sup> 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.<sup>190</sup>

## 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.<sup>191</sup> 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.<sup>192</sup>

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

loopholes); OECD, *Phase 1 Report on Implementing the OECD Anti-Bribery Convention in the Russian Federation*, at 26 (Mar. 16, 2012).

<sup>187</sup> See OECD *France Report 2*, *supra* note 185, at 20.

<sup>188</sup> See OECD, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Hungary*, at 28–29 (Mar. 16, 2012); OECD, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Switzerland*, at 29–30 (Dec. 16, 2011).

<sup>189</sup> See OECD, *Hungary: 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 (May 6, 2005); OECD *Slovenia Report 2*, *supra* note 172, at 7–8.

<sup>190</sup> See OECD *Iceland Report 2*, *supra* note 180, at 7.

<sup>191</sup> See *ADB/OECD Anti-Corruption Initiative*, ASIAN DEV. BANK & ORG. FOR ECON. CO-OPERATION AND DEV.: ANTI-CORRUPTION INITIATIVE FOR ASIA AND THE PACIFIC, <http://www.oecd.org/site/adboecdanti-corruptioninitiative/> (last visited Mar. 15, 2013).

<sup>192</sup> *Member countries and economies*, ADB/OECD, [http://www.oecd.org/document/23/0,3746,en\\_34982156\\_35315367\\_35030743\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/23/0,3746,en_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.<sup>193</sup> Conflicts of interest and related areas, such as the use of codes of conduct and transparency and accountability for public officers and employees, form the first pillar of the alliance.<sup>194</sup> 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.<sup>195</sup>

## B. *Evaluation Trends*

The primary review reports issued under the joint ADB/OECD structure focus on procurement and related topics.<sup>196</sup> 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,<sup>197</sup> others have more limited frameworks that depend largely on a combination of other laws.<sup>198</sup> Still other

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<sup>193</sup> See generally ADB/OECD, *Anti-Corruption Initiative for Asia-Pacific* (Nov. 30, 2001), available at [http://www.oecd.org/site/adboecdanti-corruptioninitiative/meetings\\_andconferences/35021642.pdf](http://www.oecd.org/site/adboecdanti-corruptioninitiative/meetings_andconferences/35021642.pdf).

<sup>194</sup> *Id.* at 3.

<sup>195</sup> See *id.* at 9–11.

<sup>196</sup> See *Thematic Review on Curbing Corruption in Public Procurement*, ADB/OECD, <http://www.oecd.org/site/adboecdanti-corruptioninitiative/policyanalysis/thematicreviewoncurbingcorruptioninpublicprocurement.htm> (last visited Mar. 15, 2013) (containing links to electronic versions of each country's report).

<sup>197</sup> See, e.g., ADB/OECD, *Anti-corruption Policies in Asia and the Pacific: Self-Assessment Report Australia*, at 10–11 (2005) [hereinafter *ADB/OECD Australia Report*]; 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 Japan*, at 2 (2005) [hereinafter *ADB/OECD Japan Report*]; 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 Kazakhstan*, at 2 (2005) [hereinafter *ADB/OECD Kazakhstan Report*]; 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 Korea*, at 2–3 (2005) [hereinafter *ADB/OECD Korea Report*]; *Anti-corruption policies in Asia and the Pacific: Thematic review on provisions and practices to curb corruption in public procurement: Self-assessment report Kyrgyz Republic*, at 2–3 (2005) [hereinafter *ADB/OECD Kyrgyz Republic Report*].

<sup>198</sup> See, e.g., 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 Bangladesh*, at 2 (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 Cambodia*, at 2–3 (2005) [hereinafter *ADB/OECD Cambodia Report*]; 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 China*, at 2 (2005) [hereinafter *ADB/OECD China Report*]; 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 Cook Islands*, at 2 (2005) [hereinafter *ADB/OECD Cook Islands Report*]; ADB/OECD, *Anti-corruption*

state parties have procurement frameworks which either do not apply to some quasi-state actors<sup>199</sup> or do not apply at the local level.<sup>200</sup>

Similarly, there is a lot of variation in state party propensity to either include or exclude<sup>201</sup> 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,<sup>202</sup> while others place them within the applicable general<sup>203</sup> or procurement-specific codes of conduct.<sup>204</sup> 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<sup>205</sup> and whether culpability for conflicts of interest extend to public and private actors.<sup>206</sup> Training in dealing with procurement-

*policies in Asia and the Pacific: Thematic review on provisions and practices to curb corruption in public procurement: Self-assessment report Fiji Islands*, at 2 (2005) [hereinafter *ADB/OECD Fiji Report*].

<sup>199</sup> See 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 Malaysia*, at 3 (2005) [hereinafter *ADB/OECD Malaysia Report*]; 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 Palau*, at 3 (2005) [hereinafter *ADB/OECD Palau Report*].

<sup>200</sup> See 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 India*, at 5 (2005) [hereinafter *ADB/OECD India Report*]; 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 Pakistan*, at 2 (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 Thailand*, at 2 (2005) [hereinafter *ADB/OECD Thailand Report*].

<sup>201</sup> See, e.g., ADB/OECD *Cambodia Report*, *supra* note 198, at 8; ADB/OECD *Fiji Report*, *supra* note 198, at 6; ADB/OECD *India Report*, *supra* note 200, at 8; ADB/OECD *Kazakhstan Report*, *supra* note 197, at 10; 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 Vietnam*, at 9 (2005).

<sup>202</sup> See, e.g., ADB/OECD *Malaysia Report*, *supra* note 199, at 7; 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 Mongolia*, at 7–8 (2005); ADB/OECD *Palau Report*, *supra* note 199, at 5; 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 Philippines*, at 15 (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 Samoa*, at 8 (2005).

<sup>203</sup> See ADB/OECD *Japan Report*, *supra* note 197, at 7; ADB/OECD *Malaysia Report*, *supra* note 199, at 7; 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 Nepal*, at 5 (2005).

<sup>204</sup> 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.

<sup>205</sup> See generally ADB/OECD Reports, *supra* notes 197 and 198.

<sup>206</sup> See ADB/OECD *Korea Report*, *supra* note 197, at 7–8; ADB/OECD *Thailand Report*, *supra* note 200, at 7.

related conflicts of interest is another area in which states reviewed differ in dedication and strength of legal and/or regulatory frameworks.<sup>207</sup>

## 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.<sup>208</sup> Under the UNCAC, state parties are to “adopt, maintain and strengthen” their governmental systems in order to “prevent conflicts of interest.”<sup>209</sup> 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.<sup>210</sup> 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.<sup>211</sup>

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.<sup>212</sup> The initial goal of this evaluative mechanism was for state parties to first use self-assessments of UNCAC compliance,<sup>213</sup> followed by a more comprehensive assessment under the Mechanism for the Review of Implementation of the UNCAC (the “UNCAC Mechanism”).<sup>214</sup> 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.<sup>215</sup> Technical assistance will also be offered to state parties for identified issues and weaknesses in UNCAC implementation.<sup>216</sup> The UNCAC Mechanism is presently in its early stages of implementation.<sup>217</sup>

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<sup>207</sup> See ADB/OECD *Australia Report*, *supra* note 197, at 6-7, 23; ADB/OECD *Cambodia Report*, *supra* note 198, at 4; ADB/OECD *China Report*, *supra* note 198, at 9-10; ADB/OECD *Japan Report*, *supra* note 197, at 7.

<sup>208</sup> U.N. Convention against Corruption, Oct. 31, 2003), 2349 U.N.T.S. 41, *available at* <http://www.unodc.org/unodc/en/treaties/CAC/> (last visited Mar. 15, 2013) (entered into force on December 14, 2005 per Article 68(1)).

<sup>209</sup> *Id.* at art. 7.

<sup>210</sup> *Id.* at art. 8.

<sup>211</sup> *Id.* at art. 12.

<sup>212</sup> See Conference of the State Parties to the U.N Convention Against Corruption Res. 3/1, Mechanism for the Review of Implementation of the United Nations Convention against Corruption—Basic Documents, U.N. Doc. CAC/COSP/2009/15, at iii (Dec. 1, 2009).

<sup>213</sup> See *id.* at iv, ¶ 7.

<sup>214</sup> *Id.* at iv, ¶¶ 6-12.

<sup>215</sup> See *id.* at Annex I art. IV. A.

<sup>216</sup> *Id.* at iv, ¶ 10.

<sup>217</sup> 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").<sup>218</sup> 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.<sup>219</sup> 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.<sup>220</sup> The Assessment will be published every two years starting in 2013.<sup>221</sup>

## 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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<sup>218</sup> Commission Decision *EU Anti-Corruption Report*, *supra* note 95, at art. 1.

<sup>219</sup> See generally *id.* at pmb1.

<sup>220</sup> *Id.* at pmb1., ¶ 11.

<sup>221</sup> *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,<sup>222</sup> 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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<sup>222</sup> 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,<sup>223</sup> 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.

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<sup>223</sup> 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.