

# ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

## OVERVIEW OF CORRUPTION IN MAURITIUS

### QUERY

Please provide an overview of corruption and anti-corruption in Mauritius with a special focus on public procurement in the electricity sector.

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### SUMMARY

Mauritius is frequently lauded as sub-Saharan Africa's shining example of democracy, good governance and economic success. In the last 15 years, successive Mauritian governments have placed a real emphasis on anti-corruption measures and achieved some notable results, particularly the passing of a series of laws and the establishment of the Independent Commission Against Corruption (ICAC) in 2002.

Nonetheless, while it is true that Mauritius performs well in comparative regional studies and indices, all too often this obscures a problem with corruption referred to as "pervasive and ingrained" in cables leaked from the US embassy. The role of the island state as a centre for offshore financial services continues to be a driver of high-level corruption. Petty corruption in law enforcement and customs is also rampant.

At the legislative level, there are enduring weaknesses in the integrity framework, particularly with regards to the lack of a right to information act and regulations dealing both with private sector corruption and the funding of political parties.

## 1. OVERVIEW OF CORRUPTION IN MAURITIUS

### Background

Upon gaining independence from the United Kingdom in 1968, Mauritius's transition was challenged by a legacy of slavery and indentured labour, the lingering dominance of a small business elite, high population growth, unemployment and a mono-crop economy reliant on sugar.

Despite this, since the 1970s Mauritius has developed an open and stable electoral democracy, and in the last two decades has managed impressive progress, establishing itself as a sustainable and diversified economy (Overseas Development Institute 2011). Particularly since the start of the millennium, Mauritian governments have been aggressively pursuing free market policies, seeking to position Mauritius as a central destination for financial and business services in the larger south-eastern African region (The Heritage Foundation 2014).

On one hand, the emergence of the island as an important centre for offshore banking and financial services has contributed to the fact that since the late 2000s Mauritius has been consistently ranked as one of Africa's top performers in human development, democracy and economic freedom (United States Department of State 2014; Bertelsmann Foundation 2014).<sup>1</sup> These policies have, however, brought associated problems of financial corruption, as well as allegations that Mauritius functions as a tax haven for companies investing in both India and Africa (The Wall Street Journal India 2012; The Guardian 2013).

Many international observers continue to champion the island as an unmitigated success story, but since 2011 it has emerged that these achievements have partially obscured a darker side to domestic

Mauritian politics, as a series of high-level corruption scandals rocked the island.

### Extent of corruption

Transparency International's 2013 Corruption Perceptions Index (CPI) listed Mauritius as 52nd out of 177 countries assessed (Transparency International 2013). When viewed comparatively, Mauritius fares well; it topped the Mo Ibrahim Index of African Governance for the seventh consecutive year in 2013 with a score of 82.9 out of 100 (Mo Ibrahim Foundation 2014). Reported incidences of corruption remain relatively low. Only 3.9 per cent of firms in Mauritius report encountering demands for bribes (the sub-Saharan average is 22.9 per cent), and just 6 per cent of citizens interviewed during the 2012 Afrobarometer survey believed that corruption was the country's most pressing problem (World Bank Group 2009; Afrobarometer 2012a: 34). When asked about democracy's most essential characteristic, the largest section of Mauritians (39 per cent) identified corruption-free politics (Afrobarometer 2012a: 28).

Indeed, public sentiment about the need for probity is very strong, with 50.7 per cent of companies and 63 per cent of citizens reporting dissatisfaction with government efforts to curb corruption (World Bank Group 2009; Afrobarometer 2012a: 38). Perceived corruption in the country has been on a steady increase since 2011 following a series of high-profile corruption scandals. The "accountability" component of the Mo Ibrahim score has been in gradual decline since a peak performance of 79.3 in 2009, and Mauritius has slipped down the CPI rankings since 2009, when it was judged to be the 39th least corrupt country worldwide (Transparency International 2010). Likewise, Mauritius's global percentile rank in the World Bank's Governance Indicators for control of corruption fell from 73 in 2011 to 67 in 2012, its lowest score since the index started in 1996 (World Bank 2013a).

Even before these corruption cases erupted into the public domain, leaked diplomatic cables from the US embassy in 2008 referred to corruption in Mauritius as "pervasive and ingrained" (US Embassy in Port Louis 2008).

<sup>1</sup> Indeed, the World Bank's 2014 Doing Business report ranks Mauritius as the most business-friendly country in Africa for the sixth year running, and the 2014 Index of Economic Freedom listed Mauritius as the world's eighth freest economy. Mauritius was listed as the second most developed country in sub-Saharan Africa in the 2011 UN Human Development Index, and the only African state ranked as a "full democracy" in the Economist Intelligence Unit Democracy Index.

## 2. NATURE OF CORRUPTION CHALLENGES

The main drivers of corruption in Mauritius include the complicated relationship between business interests and politics, an opaque party financing system, lack of citizen oversight and the occasionally partisan nature of investigative bodies. While it is difficult to assess whether and the extent to which Mauritius's offshore services industry is a driver of domestic corruption, observers note that the country's corruption challenges have developed in the context of its increasing role as an offshore banking and financial service centre (Bertelsmann Foundation 2012).

In Mauritius, as elsewhere, corruption in the public sphere is often the result of bribery originating in the private sector. Nonetheless, Mauritius's business-friendly environment has ensured that regulation and oversight of the private sector has a "light-touch", leaving it up to individual companies to adopt good governance codes rather than "constrain" them with regulation (Transparency International 2007: 43).

### The offshore industry

Mauritius's aggressive attempts to establish itself as a regional centre offering business services for companies operating in East Africa and India have occasionally drawn ire from other countries (notably India) and allegations that its offshore industry functions as a tax haven (Business Insider 2012; The Africa Report 2013). There is no capital gains tax, partly as a result of bilateral agreements (Business Insider 2012). The offshore sector provides for two categories of companies, namely global business company (GBC) 1 and 2. While the island has a corporation tax of 15 per cent, tax credits bring the effective corporation tax to just 3 per cent (The Africa Report 2013). Global Business Companies 2 function as purely offshore entities, with no tax due on such enterprises. Even though, according to experts consulted within the framework of this query, fewer companies seem to be registering as Global Business Companies 2 than previously, the legislation still provides for such a set up. The Offshore Leaks investigation by the International Consortium of Investigative Journalists identified that just six foreign directors based in

Mauritius represented more than 3,000 companies (Mauritius Business Mega 2013; The Guardian 2012). This is indicative of a wider malaise permeating the country's finance industry.

The offshore industry is governed by the Financial Services Act that established the Financial Services Commission. The commission has put in place a number of rules, guidelines and transparency requirements to regulate the sector. Through its membership of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), Mauritius has also ratified 40 recommendations made by the Financial Action Task Force (FATF). Since legislation passed in 2002, Mauritius is equipped with anti-money laundering (AML) and counter terrorist financing (CTF). While Mauritius is credited with taking significant steps in recent years to enhance the AML/CTF framework, there are still some areas of deficiencies that have been identified by the ESAAMLG 2008 mutual evaluation report (International Monetary Fund 2008).

Moreover, in spite of these reforms, in the 2013 Financial Secrecy Index, Mauritius was judged to be the 19th most secretive tax jurisdiction, with a score of 80 secrecy points out of a potential 100 (Tax Justice Network 2013). The report noted that Mauritius neither maintains company ownership details in official records nor complies with international anti-money laundering standards or the Automatic Information Exchange (Financial Secrecy Index 2013). Mauritius's regulations are alleged to facilitate suspect financial practices such as tax evasion, round-tripping foreign direct investments to third countries and money laundering (Le Mauricien 2013). A notable example was the 2011 2G scandal in India, in which the corrupt Indian telecommunications minister placed 3 million rupees (US\$50,000) of bribes in his wife's offshore accounts in Mauritius and the Seychelles (The Hindu 2011). While there is no suggestion of domestic corruption in this instance, it is illustrative of the role Mauritius's financial industry occasionally plays in facilitating the concealment of proceeds of foreign corruption.

Indeed, it is the level of secrecy in the sector which makes it difficult to judge how significant Mauritius's offshore services industry is as a driver of *domestic* corruption in the country. Nonetheless, there is

some anecdotal evidence that the high incentives for shady businesses to trade out of Mauritius breeds lower-level corruption within the country. For example, in 2012 a criminal racket within Mauritius's Board of Investment was broken up and several people arrested, accused of bribe-taking and forging residence permits for foreigners keen to operate illicit businesses based on the island (Mauritius Business Mega 2012a).

### Clientelism

While Mauritius has emerged as a multi-ethnic democracy since independence, politically dominated by the Hindu elite, Franco-Mauritian preponderance in economic affairs – a legacy of the colonial past – has been left largely intact (Salverda 2013: 508). Even today, a few large economic enterprises operating in a range of sectors, from textiles and tourism to agriculture and finance, dominate the economy (Bertelsmann Foundation 2014). Typically, these large companies have a limited number of shareholders and governing boards packed with family members who own most of the stock. As a result, these firms often operate in opaque ways (Transparency International 2007: 43).

A particular concern has been the allocation of state land businesses, which has often been the subject of criticism. While there have been some measures to restrict the ability to transfer leasehold rights (such as the creation of a computerised land registry) it remains a potential source of corrupt exchanges (Mauritius Business Mega 2012b).

Despite occasionally fiery rhetoric directed against the wealth of the Franco-Mauritian elite during elections, the relationship between politicians and businesspeople is rather ambiguous with many businesspeople making roughly equal donations to all major political parties to protect their own position. There is some evidence to suggest that, in private, strong informal networks exist between leading Franco-Mauritian businesspeople and top politicians (Salverda 2013: 511), although this by no means applies only to Franco-Mauritian firms any longer. The close relationships between businesspeople and politicians is doubtless exacerbated by the island's small size and

population (1.3 million citizens) which ensures many know each other on a personal basis.

All this has fostered the development of an unaccountable public procurement system, compounded by the fact that until the mid-2000s, SMEs were prohibited from competing for public tenders and contracts (Transparency International 2007: 43). Since 2003 there has been a notable attempt to "democratise" the economy by breaking the hold of the Franco-Mauritian elite with legislation, such as the 2006 Business Facilitation Act designed to facilitate the growth of SMEs (DEFI Media 2014a).

Nonetheless, progress on establishing a clear distinction between the public and private sectors has been limited; in 2011 for example, the finance minister (also the president's son) was implicated in paying a vastly inflated price during the state's acquisition of a private hospital owned by his brother-in-law (Freedom House 2014). The case is currently being heard before the courts.

### Political corruption

Political party financing is a serious problem in Mauritius as there is no legal framework governing the activities of political parties. There are no regulations governing funding sources, capping donations or enforcing public disclosure (Electoral Institute for Sustainable Democracy in Africa 2010).

Despite external recommendations, public funding for political parties has never been implemented, making political campaigning dependent on private donations (Mauritian Commission on Constitutional and Electoral Reform 2002: 67). The lack of audited and public accounts for political parties or oversight on donations ensures a deeply unaccountable system in which money laundering is a real risk (DEFI Media 2014b). Evidence suggests that political parties often mobilise funds through corrupt practices while in office or via unofficial and anonymous donations (Darga 2004: 6). Particularly worrying is that many of the companies "sponsoring" political parties are also competing for public contracts, which essentially amounts to a legalised form of bribery (Transparency International 2007: 22).



### 3. CORRUPTION IN PUBLIC PROCUREMENT AND THE ENERGY SECTOR

The results of 2012 Afrobarometer survey reveal that Mauritians view the judiciary as the cleanest public institution, followed by the president, then the prime minister and then tax officials. The most corrupt public sectors were judged to be, in descending order, government officials, the police, local councillors and parliamentarians (Afrobarometer 2012b: 20).

Interestingly, these findings were borne out by actual experiences of corruption: the World Bank's 2009 Enterprise Survey found that only 0.3 per cent of companies had been required to give tax officials gifts, but 9.1 per cent reported that they believed that it was necessary to bribe public officials to secure state contracts (World Bank Group 2009). Moreover, 39 per cent of Mauritians reported having had to bribe the police at least once, while 43 per cent reported giving a gift to secure a place for their child at a primary school. In contrast, only 2 per cent said that political parties had offered them bribes or gifts in return for their vote (Afrobarometer 2012b: 26).

#### Public procurement

Corruption in procurement is perceived to be vulnerable to corruption in Mauritius due to the large size, volume and complexity of transactions (Mauritian ICAC 2014a: 5). The 2007 National Integrity System Report stated that the awarding of public contracts to the private sector was the "most likely occasion for corruption transactions" in Mauritius's public financial management (Transparency International 2007: 9). This is corroborated by the World Bank's 2009 findings, which indicate a real problem with probity during public procurement, particularly in the construction industry where 16 per cent of firms reported that they expected to have to make illicit payments to obtain a construction permit (World Bank Group 2009). The United Nations Office on Drugs and Crime (UNODC) estimates that public procurement losses in Mauritius (partially due to corruption) have been rising steadily since the 1990s and by 2011 had reached around US\$500 million (United Nations Office on Drugs and Crime 2014). In a

country where GDP is only around US\$10 billion, this is a sizeable sum<sup>2</sup>.

The government has taken a number of steps to mitigate corruption risks in procurement in recent years, reforming or abolishing many "bureaucratic hurdles" and thereby reducing the possibility of rent-seeking by public officials dealing with the private sector (United States Department of State 2012). In addition, over the last decade Mauritius has gone through a major overhaul of its public procurement system, codified in the 2006 Public Procurement Act, which provides a comprehensive legal framework and fulfils 14 out of 17 mandatory requirements of the OECD/DAC Assessment Methodology Tool (Mauritian Procurement Policy Office 2011: 3).

As well as legislating, the government has established a capacity development programme at the University of Technology, Mauritius for procurement officers, and professionalised their career paths to better reflect merit (United Nations Procurement Capacity Development Centre 2011: 42). Public officials involved in procurement are also required to undergo a two year cooling off period before joining a company with whom they had previously had official dealings (Government of Mauritius 2009).

In spite of these reforms, weaknesses remain. A September 2014 report from Mauritius's ICAC aggregated a number of its corruption prevention reviews of different public bodies' procurement systems from the period 2008-2014. It concluded that in many public bodies' tenders were not given a "strategic and professional consideration", therefore providing scope for corrupt practices (Mauritian ICAC 2014a: 5).

Particular weaknesses included the complete absence of a dedicated procurement unit or even official policies and procedures in many public bodies, the common lack of mechanisms to address conflicts of interest and inadequate supervision of bid progression (Ibid). Moreover, transparency and accountability during bidding was often lacking: certain contractors were clearly favoured and past

<sup>2</sup> Note: Transparency International takes "billion" to refer to one thousand million (1,000,000,000).

performance was frequently not taken into account during the tendering process (Mauritian ICAC 2011). While efforts have been made to raise ethical standards of public procurement officials, the ICAC's code of conduct for public officials involved in public procurement does not apply to technical advisers (L'Express Mauritius 2006).

More worrying is the fact that the decisions of the Independent Review Panel (IRP) are not binding on the public body, meaning potentially corrupt officials can often act with impunity. The Procurement Policy Office noted that in 2011 there were at least 13 occasions when the public body chose to ignore the IRP's recommendations (Mauritian Procurement Policy Office 2011: 16).

### Public procurement in the electricity sector

The energy sector is perceived to be relatively clean; the World Bank's 2009 Enterprise Survey found that just 0.6 per cent of firms expected to have to make gifts or informal payments in order to obtain an electrical connection, much lower than in other sectors, such as customs or construction (World Bank Group 2009).

However, when it comes to public procurement for energy projects and services, Mauritius has a rather chequered record on controlling corruption. A notable failure was the 1994 scandal in which the minister of energy was forced to resign after irregularities in relation to a large contract to purchase turbines for a power station. Despite an official report blaming the minister, no legal action was taken (Selvon 2012: 281).

In April 2014, probity in public tenders in Mauritius's energy sector was brought back into the spotlight when Hyundai Heavy Industries alleged that the bid criteria for a US\$100 million tender had been "tailored" to suit a rival company, Burmeister & Wain Scandinavian (Mauritius Business Mega 2014a).

This problem of contentious decisions and procedures during procurement was given new urgency by the announcement in June 2014 that the African Development Bank would be funding a power plant upgrade project to the tune of US\$117

million (Mauritius Business Mega 2014b). With a further US\$62.5 million worth of investment in the electricity network already planned for the construction of a new heavy oil reservoir and the enhancement of existing power plants, there is a need to ensure that bids for these contracts achieve the highest standards of transparency and compliance (Mauritius Business Mega 2014c).

Mauritius's electricity supply (and public procurement procedures related to it) are directed and managed by the Central Electricity Board (CEB), a parastatal body owned entirely by the Government of Mauritius (CEB 2014a). Like other state-controlled corporations, seats on the board of directors are allocated to senior government officials, with the chairperson appointed by the government (United States Department of State 2013a).

Evaluating the CEB's capacity to successfully implement the US\$117 million upgrade project, the African Development Bank rated the governance risk as "very low" and noted that the CEB's procurement and audit framework is "sound and efficient" (African Development Bank 2014: 17).

The CEB is generally perceived to operate transparently. All the CEB's tenders are published and regularly updated on their website (CEB 2014b), and annual procurement plans for the coming year (along with the expected date of bid launches) are published in December of the previous year (CEB 2014c).<sup>3</sup> Annual procurement expenditure for the previous year is also published, although no breakdown is provided (CEB 2014d). Bidding documents are fairly exhaustive and clearly contain clauses relating to fraud and corruption (CEB 2014e). However, despite the legal obligations to publish an annual report, the last CEB report available appears to be from 2010 (CEB 2014f).

In terms of accountability, prospective vendors are required to register with the CEB online, and the eligibility requirements are clearly stated: vendors must not be bankrupt, debarred by the Procurement

<sup>3</sup> For the 2014 Procurement Plan, see: [http://ceb.intnet.mu/procurement\\_plan/CEB%20Procurement%20Plan%202014.pdf](http://ceb.intnet.mu/procurement_plan/CEB%20Procurement%20Plan%202014.pdf)

Policy Office or World Bank, or have any convictions for fraud or corruption. When registering as a vendor, interested business are required to supply detailed information (CEB 2014d).

In the period 2008-2014 the Independent Review Panel (IRP) investigated five applications for review from aggrieved bidders relating to CEB tenders (Mauritian Procurement Policy Office 2014a), which in light of the number of tenders (on average around 25 a year [CEB 2014c]) is a reasonably good record. However, on several occasions the IRP did find fault with the CEB for both the composition of the evaluation committees which on occasion led to "serious deficiencies in the evaluation process"<sup>4</sup>, and the awarding of contracts to non-responsive bidders.<sup>5</sup>

Finally, it is important to note that the state ombudsman has no jurisdiction over employees of quasi-governmental organisations, including the Central Electricity Board (Transparency International 2007: 31).

#### 4. LEGAL AND INSTITUTIONAL ANTI-CORRUPTION FRAMEWORK

##### Legal framework

###### *International conventions*

Mauritius was one of the first states to sign the United Nations Convention against Corruption in 2003, and commemorates this event annually on the 9 December with its Anti-Corruption Day (Bertelsmann Foundation 2012). The country has also ratified the United Nations Convention against Transnational Organized Crime (United Nations 2000). In 2012, Mauritius was assessed on Chapters 3 and 4 of the UNCAC treaty, and the evaluators found that, while Mauritius generally performs well, it has not yet adopted legislative measures to establish the bribing of foreign public officials or representatives of international organisations as a criminal offence (UNCAC Coalition 2013).

Finally, Mauritius is a member of both the OECD Network on Corporate Governance of State-Owned

Enterprises in Southern Africa, and the Eastern and Southern Africa Anti-Money Laundering Group (United States Department of State 2014; International Monetary Fund 2008: 26).

###### *National legislation*

Mauritius's criminal code has certain provisions pertaining to corruption, and in the last decade Mauritius has introduced a raft of new legislation specifically designed to counter corruption. The government programme for 2012-2015 refers explicitly to the country's desire to fully implement the UNCAC treaty (UNCAC Coalition 2013). The current legal framework is provided by:

- The 1972 Finance and Audit Act outlines and strengthens the powers of the Director of Audit in the task of carrying out an annual inspection of public expenditures.
- The 2002 Prevention of Corruption Act (POCA) remains the main legal instrument in efforts to tackle corruption in Mauritius. It applies to all civil servants and public officials and criminalises attempted and actual bribery, whether active or passive, as well as the failure to declare conflicts of interest. It establishes channels for whistleblowers and witness protection (United Nations Office on Drugs and Crime 2011: 21).
- The 2002 Financial Intelligence and Anti-Money Laundering Act defines and outlaws money laundering, providing for the reporting of suspicious transactions and the exchange of information with overseas bodies (United Nations Office on Drugs and Crime 2012a: 2).
- The 2004 Financial Reporting Act established the Financial Reporting Council, an independent regulator responsible for monitoring compliance with auditing, financial reporting and corporate governance standards in the private sector (United Nations Office on Drugs and Crime 2012b: 2).
- The 2006 Public Procurement Act is based on the United Nations Commission on International Trade Law's Model Law on Procurement, the Common Market for Eastern and Southern Africa Directive and the World Bank's Procurement Guidelines. It sets out clear procedures for a transparent, accountable and competitive bidding process.

<sup>4</sup> See: (Mauritian Independent Review Panel. 2010a: 12)

<sup>5</sup> See: (Mauritian Independent Review Panel. 2010b: 8)

- The 2007 Financial Services Act confirms the status of the Financial Services Commission as an independent regulator of non-banking financial institutions and financial services providers.
- The 2007 Competition Act seeks to prevent monopolistic pricing and restrict collusion in consumer markets. To oversee this process it established the Competition Commission (KMPG 2012: 10).
- The 2011 Asset Recovery Act is applicable to corruption cases and facilitates confiscation of suspect assets both on the basis of a conviction and simply on suspicion of unlawful activity. It strengthens existing legislation which did not permit income from the proceeds of crime to be confiscated (UNCAC Coalition 2013: 5).

### *Asset declaration*

The president is not required to declare assets, but members of parliament are legally obliged to do so upon entering office (World Bank 2013b). To avoid potential conflict of interest, any interests a member of parliament has in private enterprise are included in this declaration.

Civil servants generally do not have to declare their assets, although public officials at the ICAC, Central Procurement Board, Financial Intelligence Unit, Mauritius Revenue Authority and Gambling Regulatory Authority are required to do so (Ibid). If declarations are found to be falsified or inaccurate, there is a fine of MUR50,000 (US\$1,500) or a jail term of up to two years. While declarations of assets are passed to the ICAC, they are not publically accessible (World Bank 2013c).

### *Immunity*

Members of parliament enjoy immunity from prosecution from anything they say while in parliament. All other civil servants can be suspended or dismissed for just being accused of a corruption offence (UNCAC Coalition 2013: 4). The president and vice-president enjoy complete immunity from prosecution during their term of office (World Bank. 2013d).

### *Areas for Improvement*

Overall, Mauritius has a strong legal framework to curb corruption, and implementation is generally good (Mauritian Procurement Policy Office 2011: 42). There remain however, three main areas in which improvement is required: a right to information act, political party financing and adequate provision for corruption prevention in the private sector.

#### *Lack of open governance framework*

There is currently no Freedom of Information Act in Mauritius. Members of the public may request information from the permanent secretaries of government ministries, but these channels are not official and some have found that responses are not forthcoming (United States Department of State 2013b). The 2007 National Integrity System survey reported a "Mafia-esque vow of silence that pervades state activities" (Transparency International 2007: 47).

#### *Party financing*

The activities of political parties in Mauritius are currently not covered in the existing legal framework. The constitution and the National Assembly Elections Act simply state that parties must be registered with the Electoral Commission. Even these regulations only apply during elections; normally no specific rules apply to political parties. They are, for instance, under no legal obligation to provide audited accounts to an impartial public body (Transparency International 2007: 21). Election candidates, as they are not yet elected public officials, are also not subject to POCA (Ibid: 46).

Furthermore, the Electoral Supervisory Commission currently has no statutory power or means to investigate policy parties' finances or sanction them for malpractices such as overspending – which almost all candidates admit to as limits set on authorised expenses during electioneering are hopelessly outdated (Le Mauricien 2014; DEFI Media 2014b).

As of September 2014, Transparency Mauritius was in the process of finalising an updated code of conduct for elections. The code recommends



registering political parties as legal entities with published and audited accounts (DEFI Media 2014b).

### *Private sector coverage*

Section 16 of the Prevention of Corruption Act deals with the private sector and can be used to prosecute acts of corruption committed entirely within the private sector. However, the number of criminal acts is far more limited than for public officials and only acts carried out without the consent of one's hierarchical superior are illegal. Thus, if the hierarchical superior approves, it is no longer illegal to offer a bribe in return for a favour (Transparency International 2007: 43).

Likewise, POCA only applies to "public officers", and thus does not cover international consultants or experts who may be working for the government in sectors with acute risks of corruption, like construction or customs.

## **Institutional framework**

### *The Independent Commission Against Corruption (ICAC)*

Mauritius's main instrument in the fight against corruption has been, since its foundation in 2002 under the aegis of the Prevention of Corruption Act, the Independent Commission Against Corruption (ICAC). The ICAC is legally an independent body and has three main functions: to investigate allegations of corrupt activity, to prevent opportunities for corruption arising and to educate the public about the problem of corruption. To help achieve these objectives, the ICAC conducts corruption prevention reviews of public bodies perceived to be prone to corruption. The ICAC also has the power to seize the proceeds of corrupt activities or money laundering (United States Department of State 2014).

As of August 2014, ICAC investigations had led to 149 convictions since its foundation, with its conviction rate gradually increasing (Mauritian ICAC 2014b). The ICAC's budget is approved annually by parliament; the budget for 2013 was approximately MUR250 million (US\$7.8 million) (Ministry of Finance 2011).

It is generally viewed as an active and competent body, and received first prize in the 2012 United Nations Public Service Awards in the category "Preventing and Combating Corruption in the Public Service" (United Nations 2012).

There have nonetheless been ongoing allegations of political bias at the ICAC, especially from the opposition who claim it serves as a political tool of the ruling party (Bertelsmann Foundation 2014). A leaked diplomatic cable from the US embassy from 2008 reported that it was widely felt that the ICAC was deeply partisan, as "ICAC officers are all appointed by and owe their career and loyalty to the Prime Minister's Office" (US Embassy in Port Louis. 2008). Critics also point to the fact that two of the three members of the ICAC's Executive Board are directly appointed by the prime minister.

Officially, the ICAC is accountable only to a parliamentary committee which monitors the administrative aspects of its work, although not ongoing cases (Mauritian ICAC 2014c). This arrangement is intended to safeguard the ICAC from excessive or partisan political interference. However, the lack of operational oversight means there is no easy way to ensure that investigations are not buried or used to target the government's political opponents (Transparency International 2007: 49).

### *National Audit Office (NAO)*

The constitution guarantees the existence of the National Audit Office as an independent public organisation, tasked with promoting good governance in the public sector and reporting to the National Assembly on how public funds have been managed by all public institutions, including the ICAC. Its findings are made public in an annual report and examined in detail by the Public Accounts Committee (Mauritian National Audit Office 2014).

NAO is not empowered to investigate cases of corruption. If the Director of Audit has reason to believe that money has been lost due to corruption, they can report to the Financial Intelligence Unit (FIU). The FIU will then investigate the incident and then refer the case to the ICAC (TI 2007: 25).

The NAO itself is not accountable to any other body (although its budget is controlled by parliament), but it has voluntarily decided to have its accounts proofed by an external auditor.

### *Financial Intelligence Unit (FIU)*

The Financial Intelligence Unit is an independent body established by the Financial Intelligence and Anti-Money Laundering Act. It is responsible for the collection, analysis and distribution of information on the proceeds of crime and money laundering to the relevant investigatory and supervisory bodies (International Monetary Fund 2008: 26). By law, all organisations, public or private who witness suspect financial transactions must report them to the FIU. The FIU then considers the case, and forwards this information to an investigative body; depending on the nature of the case either the ICAC, the Mauritius Revenue Authority or the police. In 2011, the FIU sent 168 reports to these three bodies, the vast majority of which came from the banking and offshore sector (Financial Intelligence Unit 2012a; Financial Intelligence Unit 2012b). The FIU is not responsible for following up on cases once it has forwarded them to these bodies (Transparency International 2007: 30).

### *Office of the Ombudsman*

The ombudsman is an independent figure who seeks to address maladministration in the public sector, appointed by consensus between the president and the heads of all parties sitting in parliament. The ombudsman has the power to launch an investigation based on complaints from the public or on his/her own initiative (Mauritian Ombudsman 2014a). The ombudsman can make recommendations to civil servants to resolve a problem; if they refuse the ombudsman is entitled by the constitution to refer the case to parliament or the prime minister (Transparency International 2007: 31). Approximately 350 cases are referred to the ombudsman each year (Mauritian Ombudsman 2014b).

Investigating alleged corruption does not fall within the mandate of the ombudsman. If a complaint is brought to the ombudsman about corrupt activity, it must be referred on to the ICAC or the police.

### *Director of Public Prosecutions*

The Director of Public Prosecutions is solely responsible for deciding whether to initiate court proceedings against those accused of a crime, including corruption. This decision is made on the basis of information presented to the director by either the ICAC or the police, who prepare the case files (Transparency International 2007: 34). The director is completely independent and not accountable to anyone.

### *The police*

The police are consistently reported to be one of the most corrupt institutions in Mauritius (Transparency International 2007: 13). Of Mauritians interviewed for the 2012 Afrobarometer survey, 88 per cent believed at least "some" of the police were corrupt (Afrobarometer 2012a: 32). In 2013, ICAC registered 84 complaints of corruption (mainly bribery) against police officers, although only six officers were suspended (United States Department of State 2013b). Cables leaked from the US embassy in 2008 alleged that the Major Crime Investigation Team, which has enjoyed close links with Prime Minister Ramgoolam, is deeply compromised by corruption (US Embassy in Port Louis 2008).

### *Other bodies:*

- Competition Commission: the commission has the power to investigate cases of bid rigging during public procurement (United Nations Procurement Capacity Development Centre 2011: 43).
- Financial Reporting Council: the council supervises the work of private auditors to ensure standards are observed in companies' financial reports. The council is empowered to investigate companies and sanction non-compliance (Mauritian Financial Reporting Council 2014).
- Internal Control Unit: an independent body, it carries out internal audit reviews for all ministries and departments based on the 1972 Finance and Audit Act (United Nations Procurement Capacity Development Centre. 2011: 43).

- Procurement Policy Office: oversees the bidding and awarding process in public contracts and acts as an advisory body. It is empowered to suspend or disqualify suppliers, consultants and contractors for up to five years.<sup>6</sup>
- Central Procurement Board: handles the technical evaluation of public procurement bids and has to approve the procurement of any works or goods contract exceeding MUR100 million (US\$3.1 million) (African Development Bank 2014: 17).
- Independent Review Panel: is the appeal body for contractors dissatisfied by public procurement process.

## Non-governmental anti-corruption watchdogs

### Civil society

The constitution guarantees freedom of association and assembly and these are respected by the government (Bertelsmann Foundation 2014). Mauritius has an open and vibrant civil society, with approximately 6,000 voluntary organisations listed by the Register of Associations. Of these, around 300 are NGOs (Ibid). The issue of corruption seems to be one of the main topics which can mobilise the population, as a demonstration of several thousand people in response to the 2011 corruption scandal showed (Reuters 2011).

### Media

The constitution and law of Mauritius provides for freedom of speech and freedom of the press, and individuals are free to criticise the government without fear of reprisal. However, the government has not always upheld the highest standards of press freedom and journalists have complained about censorship and harassment on political grounds. For example, officials have occasionally used libel law to suppress media criticism, and although the charges have usually been dropped, there seems sometimes to be an intent to intimidate

journalists (United States Department of State 2013b). Furthermore, the government owns the only domestic television network on the island (MBC TV), which opposition parties and media commentators often criticise for pro-government bias (United States Department of State 2013b).

The first ever case of a Mauritian journalist sentenced to prison occurred in 2011, after a reporter covered an ongoing fraud case. Tellingly, since being ranked 34th on the Reporters without Borders Press Freedom Index in 2005, Mauritius has slid down the rankings to 70th in 2014 (IFEX 2011 & Reporters without Borders 2014).

Given the lack of a Freedom of Information Act or even an official information outlet, investigative journalism is more difficult, a situation made worse by the lack of human and financial resources in Mauritian independent media, as well as strong defamation laws (Transparency International 2007: 41). This strongly curtails the media's ability to act as a strong anti-corruption watchdog. Finally, despite the fact that the 2012 Afrobarometer recorded that 81 per cent of Mauritians agreed that the media should constantly investigate and report on government corruption, with the exception of 2011 it is rare that corruption scandals uncovered by the press are taken up with any real vigour by civil society (Afrobarometer. 2012a: 18).

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<sup>6</sup> The PPO's 2013 annual report noted that two suppliers had been suspended (Mauritian Public Procurement Office 2013: 13), although the public list on the PPO's website did not list one single suspended firm as of September 2014 (Mauritian Public Procurement Office. 2014b)

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