

ALBANIA
**Handbook on Transparency
and Citizen Participation**

Council of Europe

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FOREWORD

Governments can only function effectively if they enjoy the trust of their citizens. Local governments, municipalities and their civil servants have a crucial role in trust-building and participatory decision-making, since they have a certain degree of autonomy over the distribution of resources, play an intermediary role with regard to national governments, and represent the first interface between citizens and elected representatives. The professionalism and integrity of these governments and local administrations and their ability to function in a transparent, responsive and accountable manner will doubtlessly lead to enhanced, fair and equitable services to citizens. Local and regional elected representatives therefore must act as role models in the areas of public ethics, transparency and participatory decision-making.

However, we cannot ignore the fact that local authorities, as any public authority, are susceptible to corruption, which poses a major threat to the legitimacy of democratic institutions, as well as to the degree of trust that citizens place in their representatives. Threats such as the lack of transparency and poor public ethics are problems faced by all levels of government, including the local and regional levels. They affect citizens, governments and businesses alike and pose a threat to the universal access to basic services and local development. The fight against corruption needs to remain a long-term priority for local and regional governments and their associations. Concerted preventive action is paramount in order to foster economic growth, improve living conditions and develop citizens' trust.

As the decentralisation of power advances, the quality of local governance becomes even more decisive. Therefore, along with the introduction of criminal law provisions against corruption, it is essential to promote public ethics, transparency and participatory decision-making in order to reduce the risk of corruption and boost the citizen confidence in local and regional authorities. The Congress of Local and Regional Authorities of the Council of Europe took a firm step in the promotion of ethical governance by adopting, in 1999, the European Code of Conduct for the political integrity of local and regional elected representatives. An advisory group revised this Code, which has been adopted as the European Code of Conduct for all persons involved in local and regional governance in November 2018. The updated text addresses the new challenges, including new forms of communication, the impact of digital technology, the respect for the privacy of data, and enlarges the scope of its application to all actors involved in local and regional governance, and not just elected officials.

The Congress is committed to promote ethics and transparency at local and regional levels as an essential component of enhancing the quality of local and regional democracy, one of the key priorities for the period 2017-2020. With that aim it set "Ethics and Transparency at local and regional level" as the theme for its two plenary sessions in 2016, and in October 2016 adopted a "Roadmap of activities for preventing corruption and promoting public ethics at local and regional levels". One of the objectives of this

roadmap is to deepen our understanding of the various risks and forms of corruption that exist at the local and regional levels. In that perspective the Congress recently adopted reports on the abuse of administrative resources in election campaigns as well as on preventing corruption in public procurement, and is currently preparing reports on conflicts of interests, the protection of whistle-blowers, nepotism in the recruitment of staff, and transparency and open government.

As a sign of its political determination to tackle this issue, the Congress has appointed a spokesperson on promoting public ethics and preventing corruption at the local and regional levels. In 2017, during the 33rd session of the Congress, it also brought to the fore the important perspective of young people and open government in the fight against corruption. This is a comprehensive and long-term approach to corruption prevention, including through the co-operation activities of the Congress of which this Handbook and those prepared for Armenia, Georgia, the Republic of Moldova and Ukraine are just a few examples, which sends a clear signal of our intention to make this a priority activity for the years to come.

The attitudes and expectations of our citizens with regard to public governance are changing. We are witnessing a growing mistrust toward public institutions and their representatives. In this regard, effective mechanisms for the implementation and compliance with standards of conduct are essential to renew the confidence in public administration. Preventing corruption, reducing its risks, and developing effective, accountable and transparent institutions at all levels are key components of just and inclusive societies.

With this in mind, this *Handbook on Transparency and Citizen Participation in Albania* is aimed at local authorities, mayors, local councillors and civil servants, to support them in their efforts to improve the quality of local governance in their villages, towns and cities. The Handbook will provide local authorities with practical guidelines on transparency and citizen participation, identifying the relevant international standards and national legislation, and providing case-law examples and best practices which it recommends be applied and promoted by all Albanian local authorities.



Andreas Kiefer
Secretary General

Congress of Local and Regional Authorities

FOREWORD

Local governments play a crucial role affecting the development of the social and economic life of their communities by providing local solutions for citizens. Albania has undertaken a series of local self-government reforms, aiming to create an enabling framework with the principle of decentralisation in the core of the establishment and operation of local government.

This process has led to larger administrative units equipped with greater authority and responsibility, along with increased finances, with the aim to strengthen the efficiency of services and improve the distribution of investments. These transformational changes contribute to the consolidation of local democracy and greater opportunities for citizens to participate in local matters.


With the decentralisation of powers, the quality of local governance becomes even more decisive. The European Commission has highlighted the progress that Albania has made on policy co-ordination through the establishment of inter-institutional working groups and the adoption of the new Law on the Organisation and Functioning of Local Government. In addition, several complementary laws and cross-sectorial strategies related to the fight against corruption have been approved with the purpose of addressing the lack of transparency, accountability and responsiveness in local government. Despite the great progress made in the legal and regulatory framework, the financial and administrative consolidation of newly created local government units is still weak and poses an additional threat to the integrity and legitimacy of democratic institutions.

Transparency, integrity and accountability in local government are key priorities of Partners Albania's agenda, particularly during the reformative changes at the local level. In addition, Partners Albania combines a top-down and bottom-up approach to foster local democracy to integrate and support all drivers of change.

Strengthening the capacities of local officials to meet citizens' needs, monitoring the efficiency of local public services and the effective implementation of relevant legislation at the local level, constitute significant interventions from Partners Albania. In order to prevent and fight corruption, Partners Albania assists municipalities to design and implement comprehensive strategies to tackle this scourge of democracy, in particular by applying the renowned *Islands of Integrity* methodology.

Acknowledging the importance of public participation for good local governance, Partners Albania assists communities, civil society organisations and other local stakeholders to implement participatory processes and effectively advocate for enhanced accountability at local decision-making. 'LevizAlbania' is one of the flagship initiatives in that regard.

In the same line with other interventions, the *Handbook on Transparency and Citizen Participation in Albania* aims to provide local authorities and relevant stakeholders a practical guidance to drive out corruption and improve the quality of local governance.



Juliana Hoxha

Director
Partners Albania

PURPOSE AND STRUCTURE OF THE HANDBOOK

Transparency and citizen participation are key tools in the development of good governance. Both help to create the conditions for citizens to understand and evaluate the decisions which the government is taking on their behalf, as well as to ensure that their own needs and views are taken into account in the decision-making process.

Effective transparency and participation can help to drive out corruption and government malpractice. They are also more positive tools as they help produce the conditions for increased trust. Finally, they also help governments to draw on the skills and experience of citizens to enable better decision making and the delivery of more effective public services.

This *Handbook on Transparency and Citizen Participation in Albania* aims to support local authorities in their efforts to improve the quality of local governance in line with the principles of the European Charter of Local Self-Government (ETS No. 122) and its Additional Protocol on the right to participate in the affairs of a local authority (CETS No. 207). It provides them with practical guidance on transparency and citizen participation, based on the Council of Europe principles and with reference to the general international standards and particular national legislation.

To fulfil its purpose as a practical reference guide to support local authorities in their daily work, the *Handbook on Transparency and Citizen Participation in Albania* includes country-specific information about anti-corruption legislation, transparency policies and citizen participation mechanisms. In particular, the user of this *Handbook* is provided with a straightforward look at relevant national legislation, a concise assessment of the most prevalent corruption risks, and a set of best practices to introduce and implement transparency and citizen participation mechanisms.

Furthermore, the implementation of the mechanisms included in this *Handbook* will help local authorities contribute to the Sustainable Development Goals (SDGs)¹ of the 2030 Agenda for Sustainable Development,² namely the goals 5 (gender equality), 11 (sustainable cities and communities), 16 (peace, justice and strong institutions) and 17 (partnerships for the goals).

The *Handbook* is structured in four main chapters:

■ CHAPTER 2 – Ethics and Public Accountability

This chapter highlights the importance and challenges of ethics and public accountability in Albania. Moreover, it is emphasised how essential they are for an effective, transparent and participatory governance.

■ **CHAPTER 3 – Corruption Risks**

This chapter introduces the most common corruption risks identified in Albania and outlines relevant international anti-corruption standards, along with the national legal framework for each form of corruption. In addition, this chapter is supported with examples of case law related to each corruption risk.

■ **CHAPTER 4 – Transparency**

This chapter introduces five transparency mechanisms, which have been selected to represent the diversity of approaches to transparency. Each mechanism includes an introductory description and an outline of international standards. This is followed by four sections summarising key national laws and presenting practical guidelines and best practices which may serve as examples for local authorities in their efforts to enhance transparency.

■ **CHAPTER 5 – Citizen Participation**

This chapter introduces five citizen participation mechanisms, which have been selected to represent the diversity of approaches to citizen participation. Following the same structure as in the previous chapter, it includes an introductory description for each mechanism and outlines relevant international standards. This is followed by four sections summarising key national laws and presenting practical guidelines and best practices which may serve as examples for local authorities in their efforts to foster and improve inclusive citizen participation.

ETHICS AND PUBLIC ACCOUNTABILITY

2.1. INTERNATIONAL CONTEXT

Ethics and public accountability are essential features of an effective local or regional authority. They refer to the culture, processes, structures and rules that ensure those in public office act in the wider public interest, rather than their own self-interest. They are an essential feature of good governance, and apply equally to organisations in the private and civil society sectors, as well as public authorities.

Ethics are the rules that define the conduct of public officials³ in order to ensure that the public is treated fairly and with equality. Ethics can help officials make better decisions in the public interest, as well as help people evaluate the decisions taken on their behalf by public officials.

Public accountability ensures that officials are openly answerable for the decisions they are taking on behalf of the public.

In the absence of ethics and public accountability, corruption and malpractice is able to thrive. As outlined in the following section, corruption is damaging to individuals, society, the economy and government in a number of respects. Ethics and public accountability can help curb the worst excesses of power, and encourage more responsible and fairer decision making by local authorities.

Even where corruption is not endemic, the absence of ethics and public accountability can be corrosive to public trust in government, public institutions and officials. While the relationship between both ethics and public accountability is complex, when done well, they can help to build and strengthen trust between the public and government.

On the other hand, ethics and public accountability can also play a much more positive role. They recognise that citizens and other stakeholders have much value to offer in decision making. They can help to ensure that their personal experiences, expertise, knowledge and scrutiny add value to, and strengthen, decisions taken by government and public officials.

Finally, effective ethics and public accountability are also key elements of improving public services. This is based on the idea that public services that are more responsive and accountable to people - and benefit from their insights, ideas, energy and scrutiny - will work better for people.

Taken together, ethics and public accountability help to ensure that decision making and resource allocation are fair, efficient and effective, which in turn helps to enable a flourishing democracy, economy and society.

Transparency and citizen participation are important mechanisms for promoting ethics and public accountability in national and local government. A recent report for the European Committee of the Regions on "Preventing Corruption and Promoting Public

Ethics at the Local and Regional Level in Eastern Partnership Countries” found that lack of transparency was the main vulnerability in all of the cases assessed.⁴ This handbook outlines a range of transparency and citizen participation mechanisms that can be adopted by local and regional authorities.

2.2. NATIONAL CONTEXT

Albania has undergone transformational changes regarding the local government system. One of the major changes was the administrative and territorial reform of 2014,⁵ reducing the number of Local Government Units (LGUs) from 373 “urban municipalities” and “communes” to 61 new Municipalities (the “communes” were abolished as an administrative division of Albania). In this regard, the National Crosscutting Strategy for Decentralisation and Local Governance 2015-2020⁶ fits the new context of local government organisation and puts forward a comprehensive approach to decentralisation and strengthening of local governance, in line with the principles of the European Charter of Local Self-Government.

According to the European Commission’s 2016 progress report for Albania, the financial and administrative consolidation of the newly created municipalities has been slow, posing an additional challenge in the fight against corruption (European Commission, 2016). Albania has recently adopted some measures that aim to tackle corruption, such as the Inter-Sectoral Strategy against Corruption 2015-2020,⁷ and its Action Plan for 2015-2017,⁸ and the Law No. 9508 “On Public Co-operation in Combating Corruption”⁹ In addition, the new Law No. 60/2016 “On Whistle-Blowing and Whistle-Blowers’ Protection”,¹⁰ which aims to protect and prevent corruption in the public and private sectors, is also applicable to local governments.¹¹

Despite the measures taken, Albania remains vulnerable to corruption because of political interference and lack of independence at key oversight institutions (Transparency International, 2016). Almost 89% of the general public thinks corruption is either “widespread” or “somewhat widespread” among public officials (IDRA, 2016). In terms of levels of corruption, the citizens’ perception of corruption at the local government level is rated as average (IDRA, 2017a).

Regarding transparency and citizen participation, Albania has adopted the Law No. 119/2014 “On the Right to Information”¹² and the Law No. 146/2014 “On Notification and Public Consultation”.¹³ However, there is a high discrepancy between the standards of the laws and strategies and their actual implementation. Only 43% of the citizens perceive that local government is transparent and 33% of them perceive that municipalities are accountable. Moreover, citizen participation is the weakest in the governance dimensions of Albanian municipalities (IDRA, 2017a). This is evidenced by the 67% of citizens, who perceive not to have sufficient opportunities to participate in decision-making and consultation processes at local level (IDM, 2016b).

With regard to ethics, the Albanian public administration has failed to implement fully effective anti-corruption mechanisms and the level of implementation of codes of ethics and their adoption are generally poor (IDM, 2016a).

CORRUPTION RISKS

In the absence of ethics and public accountability, corruption and malpractice is allowed to thrive, which undermines the foundations of a peaceful, prosperous and just society.

Corruption is a major challenge to democracy and the rule of law. It results in decisions and resource allocation that do not reflect the interests of the public and concentrates political power in the hands of the few. It in turn causes political leaders and institutions to lose legitimacy and public trust, which reduces their ability to govern.

Corruption also causes local and regional authorities to be inefficient and ineffective in exercising their duties. It results in decisions being made not on the basis of what is in the interests of society at large, but what is in the self-interests of the decision maker and their associates. It leads to public money being misspent, with contracts being awarded to inferior providers and budgets being misallocated. At its worst, it enables public officials to misappropriate money and resources, using their position to get rich to the cost of those they have a duty to serve.

Corruption can also result in public officials being appointed on the basis of favouritism rather than merit, meaning that local and regional authorities do not have access to the brightest and best talent. This in turn creates a fertile environment for further corruption and reduces even more the efficiency and effectiveness of the administration.

Inefficient and ineffective organisations, staffed by individuals who gained their position on the basis of something other than merit, result in poor quality public services and infrastructure, thereby eroding public trust and the legitimacy of public institutions. More importantly, however, it results in significant human costs, including poverty, deaths, illness, and restricted life chances.

Finally, corruption harms economic development. It leads to public money being directed to uncompetitive businesses, rather than those that offer more innovative or cheaper products and services. Uncompetitive markets, coupled with the negative impact of corruption on the quality of local public services and infrastructure, means that businesses do not have a solid foundation (of staff, security, investment, etc.) on which to build. In the end, this may cause private and international investors to avoid investing in an area.

3.1. BRIBERY

Bribery is the promise, offer, acceptance or solicitation of a personal advantage (e.g. gift, loan, reward, favour, etc.) in exchange for an unethical or illegal action. Bribery results in decisions not being taken in the public interest, which reduces public trust in institutions and leads to poor public services.

International standards

The following international conventions and standards relate to bribery:

- The **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**¹⁴ establishes legally-binding standards to criminalise bribery of foreign public officials in international business transactions. It is the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction.
- The **International Anti-Bribery Standard 37001**¹⁵ specifies a series of measures to help organisations prevent, detect and address bribery.
- The **OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance**¹⁶ which supports the convention on combating bribery.

National context

Less than half of Albanian citizens (44%) claim to have had experience with bribery in 2015 (IDRA, 2016). Bribery is more prevalent in rural areas than in urban areas and bribes are exclusively given in the form of cash. Mostly, bribes are paid to facilitate bureaucratic procedures, deficiencies and bottlenecks in the public sector (UNODC & INSTAT, 2011). The Government has launched several online portals to report bribery and other forms of corruption.

National legislation

Based on Article 244 of the Criminal Code,¹⁷ the active corruption of persons exercising public function is defined as *«promising, direct or indirect proposal, offer, or giving, to a person, who exercises public functions, of any irregular benefit for himself or a third person in order to act or not act in relation to his duty, is punished by imprisonment from six months up to three years»*.

As per Article 245 of the Criminal Code, the commission of this same offence by high state officials and local elected representatives is considered an aggravating circumstance, and thus the penalty in this case is imprisonment from one up to five years.

As regards passive corruption committed by persons that exercise public functions, it is defined in Article 259 as follows: *«Soliciting or taking, directly or indirectly, by a person who exercises public functions, of any irregular benefit or of any such promise for himself or for a third person, or accepting an offer or promise deriving from an irregular benefit, in order to act or not act in the exercise of his duty, is punishable by imprisonment of from two up to eight years»*. As with active corruption, and as stipulated in Article 260, the penalty for passive corruption by high state officials or local elected officials increases from four up to twelve years.

Examples of case law

In 2016, the police announced the arrest of the mayor of Bërzhitë. He was found guilty of passive corruption for accepting a bribe of €4 500 for the issuance of a parking permit to one of the hotels of the area. An arrest warrant was issued for him, who was later on found guilty in absence and sentenced to 5.4 years in prison.¹⁸ under original jurisdiction.¹⁸

3.2. CONFLICT OF INTEREST

A conflict of interest is where an individual is in a position to derive personal benefits from the actions or decisions they take in an official capacity. Conflicts of interest –either if they are actual, perceived or potential–¹⁹ result in decisions that are, or are considered to be, unfair and self-interested. This reduces public trust in institutions and results in worse outcomes for the public.

International standards

As one type of corruption, extortion is covered by the following international standards and guidelines:

- The **Committee of Ministers of the Council of Europe’s Recommendation on Codes of Conduct for Public Officials**²⁰ and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**²¹ cover the general issues normally thought to be necessary for avoiding such conflicts.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Conflicts of interest at local and regional level**²² propose a set of measures to mitigate the risks of conflict of interest and ensure that it is identified at an early stage.
- The **OECD Guidelines for Managing Conflict of Interest in the Public Service**²³ identify principles and standards for developing policies.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Making public procurement transparent at local and regional levels**²⁴ and the **OECD Checklist for Enhancing Integrity in Public Procurement**²⁵ provide guidance for enhancing transparency and promoting integrity in procurement.

Conflict of interest is also covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**²⁶ is the only legally-binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.²⁷

- The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**²⁸ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe’s Civil Law Convention on Corruption (ETS No. 174)**²⁹ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union’s Convention against Corruption Involving Officials**³⁰ aims to fight corruption involving officials from the EU or its Member States.

National context

Study findings suggest that the management and prevention of conflict of interest in Albania has been deficient due to the frequent amendments of the regulatory framework. The reported cases of conflict of interest focus almost exclusively on the conflicts of interest of financial or economic nature. Local governments, as a result of the decentralisation process and their increased interactions with the public, have been increasingly exposed to the risk of conflict of interest. The cases of conflict of interest are mostly related to building permits, procurement, and use of public spaces (IDM, 2014). One of the efforts to address this issue is the Inter-Sectoral Strategy against Corruption 2015-2020.³¹ In 2014, legislative amendments in laws³¹ related to the declaration of assets and the conflict of interest were approved, increasing the number and frequency of audits from the High Inspectorate of Declaration and Audit of Assets and Conflict of Interest (HIDAACI).

National legislation

According to Article 3 of the Law No. 9367 “On the Prevention of Conflicts of Interest in the Exercise of Public Functions”,³² conflict of interest is a *«situation of conflict between the public duty and the private interests of an official, in which he has direct or indirect private interests that affect, might affect or seem to affect the performance, in an incorrect way of his public responsibilities and duties»*.

Article 29 of the above law places restrictions on mayors and chairmen of regional councils, who cannot be chairmen of NGOs, conduct economic activities, be members in managerial organs of private or civil society sectors, and possess shares or capital in a commercial company. The central authority responsible for the implementation of this law is the HIDAACI. In its Article 44, the Law provides a range of administrative penalties. Based on the type of conflict of interest, the fines range from 30 000 to 500 000 Albanian lek (ALL), equivalent to €225 to €3 740 respectively. The Law also stipulates disciplinary measures in Article 45.

Conflict of interest is mentioned also in Article 4 of the Law No. 9131 “On the Rules of Ethics in the Public Administration”,³³ Article 46 of the Law No. 152/2013 “On the Civil Servant”,³⁴ and Article 26 of the Law No. 9643 “On Public Procurement”.³

Reported case

The municipality of Lezhë is accused of a conflict of interest for granting a bid of ALL 100 million (€750 000) to the family of the administrator of Balldren, an administrative unit of Lezhë. The investigative media that reported this case revealed that the contract, the aim of which was the rehabilitation of the road connecting Kunë and Shëngjin, was granted without an open procurement process.³⁶ However, there is no information about any legal proceedings being instituted, or about any criminal prosecution being raised against the municipality.

3.3. EMBEZZLEMENT

Embezzlement is the illegal appropriation of money, goods or other resources by an official to whom they have been entrusted. This results in the loss of public money, which reduces the capacity of authorities to act in the interests of the public, resulting in worse services and outcomes for people. It also undermines public trust in government.

International standards

As one type of corruption, embezzlement is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**³⁷ is the only legally-binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.³⁸
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**³⁹ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**⁴⁰ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**⁴¹ aims to fight corruption involving officials from the EU or its Member States.

National context

Only 8.2% of civil servants perceive embezzlement as very prevalent. In addition, according to public servants, embezzlement is one of the less witnessed corrupt practices (UNDP, 2014). Despite of this perception given by public officials in the study, the practice shows that there are many cases of embezzlement reported by Supreme

State Audit⁴². Moreover, there are some cases reported which have been successfully prosecuted by the judiciary.

National legislation

As defined in Article 248 of the Criminal Code,⁴³ abuse of office is understood as the «*deliberate accomplishment or non-accomplishment of actions or failures to act, in violation to the law and constituting the failure of a person, who carries out public functions, to do his duties regularly, in cases when it has led to bringing him or other persons unjust material or non-material benefits or when it has brought damages to the legitimate interests of the state, citizens, and other legal entities, when it does not constitute another criminal offence, is punishable with imprisonment up to seven years*».

In addition, based on article 246, «*appropriating a public title or office accompanied with the actions pertinent to the holder of the title or office, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment. If the act is committed for embezzlement purposes or has encroached the freedom, dignity or other fundamental rights of the citizen, it is punishable by a fine or up to five years of imprisonment*».

Embezzlement is mentioned also in Article 57 of the Law No. 152/2013 "On the Civil Servant",⁴⁴ and in Article 13 of the Law No. 9131 "On the Rules of Ethics in the Public Administration".⁴⁵

Example of case law

A former chief of the Municipal Police of Tirana and of the Local Urban Construction Inspectorate was accused of abuse of office, because he had allowed the illegal construction of a multi-storey building, being aware that granting such construction permit was against the law. As stated in the decision No. 837 of 18 March 2016, the District Court of Tirana declared him guilty of abuse of office and sentenced him to one year in prison.

3.4. FRAUD

Fraud is the use of deceit in order to gain an unfair or illegal advantage. Fraud erodes public trust in government and reduces the capacity of government to act. It often results in the loss of public money, which harms public services and the ability of governments to address the public's needs and aspirations.

International standards

As one type of corruption, fraud is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**⁴⁶ is the only legally-binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.⁴⁷
- The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**⁴⁸ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe’s Civil Law Convention on Corruption (ETS No. 174)**⁴⁹ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union’s Convention against Corruption Involving Officials**⁵⁰ aims to fight corruption involving officials from the EU or its Member States.

National context

Based on study results, 36.7% of civil servants perceive fraud as a more or less prevalent corrupt practice in the Albanian civil service. Men dominate among those having witnessed embezzlement, fraud and influencing of unfair decisions (UNDP, 2014). Measures to stamp out fraud are contained in the New Customs Code⁵¹, which as regards Customs offenses and penalties, is based on the proposal of the European Commission and on best practices of EU member states. The new tax administration IT-system allows a simplification of processes and reduces the opportunities for fraud and corruption (Ministry of Finance, 2014). As per the Law No. 112/2015 “On Public Financial Inspection”,⁵² the Anti-Fraud Coordination Service (AFCOS) is appointed in Albania to facilitate the co-operation with relevant institutions in the EU.

National legislation

Based on Article 143 of the Criminal Code⁵³ fraud is defined as *«stealing property through lies or abuse of trust is punishable by a fine or up to five years of imprisonment. This very act, when committed in complicity in the detriment of several persons, or more than once, is punished by imprisonment from two to six years and, when it brings about serious consequences, it is sentenced by imprisonment from five to ten years»*.

Example of case law

In 2016, the Krujë Prosecutor’s Office indicted a former mayor of Krujë municipality and four other local public officials for theft through abuse of office. The defendants had allegedly misused emergency funds allocated by the Ministry of the Interior, amounting to ALL 20.5 million (€153 500), for the channelisation of a stream to avoid flooding. As a result of the investigation, the prosecutor informed that the real value of the project is much lower, thereby concluding that the former mayor and the private company which won the procurement process have stolen over

ALL 8 million.⁵⁴ No sentences have been imposed on the defendants yet, since the case is still ongoing in the District Court of Krujë.

3.5. NEPOTISM

Nepotism is the exploitation of an official position to unfairly benefit a family member or friend (e.g. through giving a job or favour). Nepotism, and other forms of favouritism, results in local and regional authorities not having access to the brightest and best talent. This in turn creates a fertile environment for further corruption and reduces the efficiency and effectiveness of the administration.

International standards

As one type of corruption, nepotism is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**⁵⁵ is the only legally-binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.⁵⁶
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**⁵⁷ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**⁵⁸ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**⁵⁹ aims to fight corruption involving officials from the EU or its Member States.
- The **Congress of the Council of Europe's Governance Committee report on Fighting nepotism within local and regional authorities**⁶⁰ sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of European local and regional governments.

National context

Data show that recruitment procedures in Albania's public sector suffer from some lack of transparency. More than 36% of applicants who did not get a job think that somebody else was employed due to cronyism or nepotism, while an additional 25% believe that somebody else was hired due to bribery (UNODC & INSTAT, 2011). Nepotism prevails among the most witnessed corrupt practices at the workplace, which may be due to the fact that Albania is a country where social networks are still prevalent (UNDP, 2014).

National legislation

In Albania, there is no specific law on nepotism. However, in Article 5 (“Private Interests”) of the Law No. 9367 “On the Prevention of Conflicts of Interest in the Exercise of Public Functions” is mentioned that the private interests of an official are those interests that conform with, contain, are based on or come from relationships of family or cohabitation, of friendship, and any other juridical civil relationship, among others.⁶¹

On 27 January 2006, two decisions of the Council of Ministers were approved: the decision No. 43 “On avoiding nepotism and influence of power on the hiring and career of personnel of the public administration” and the decision No. 44 “On avoiding nepotism in the public administration”. However, the Constitutional Court invalidated the above decisions as incompatible with the Constitution.⁶²

Example of case law

The municipality of Shkodra has been repeatedly accused of its extreme nepotism in public institutions, regardless of the mayor holding office. The list of public employees in the municipality of Shkodra is composed by public officials who have family relationships among each other.⁶³ Since there is no law against nepotism, no institution can investigate further on the cases reported by media.

3.6. MISUSE OF ADMINISTRATIVE RESOURCES IN ELECTION CAMPAIGNS

The misuse of administrative resources⁶⁴ during the electoral processes involves unlawful or abusive behaviour on the part of politicians and civil servants, who use human, financial, material, in natura and other immaterial resources to influence the outcome of elections, and thus undermine the fairness of the election itself.

International standards

Albania has ratified the following treaties and is therewith committed to abide by the following treaties and hard law instruments:

- The **United Nations International Covenant on Civil and Political Rights**⁶⁵ (Articles 19, 21, 22 and 25), further elaborated in paragraph 25 of the Human Rights Committee’s General Comment No. 25.⁶⁶
- The **Council of Europe’s European Convention on Human Rights (ETS No. 5)**, in particular Articles 10 and 11, and Article 3 of the **Protocol No. 1** to the Convention (**ETS No. 9**).⁶⁷
- The **United Nations Convention against Corruption**,⁶⁸ in particular Articles 7, 17 and 19.

■ The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**.⁶⁹

■ The **Council of Europe’s Civil Law Convention on Corruption (ETS No. 174)**.⁷⁰

The misuse of administrative resources during electoral processes is covered by the following international standards and guidelines:

■ The **Council of Europe’s Venice Commission report on the Misuse of Administrative Resources during Electoral Processes**.⁷¹

■ The **Council of Europe’s Venice Commission and the OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes**⁷² specify a series of measures and laws to be adopted in that regard.

■ The **Congress of the Council of Europe’s Resolution on Preventing corruption and promoting public ethics at local and regional levels** and its Explanatory Memorandum.⁷³

■ The **Congress of the Council of Europe’s Resolution on The misuse of administrative resources during electoral processes: the role of local and regional elected representatives and public officials** and its Explanatory Memorandum.⁷⁴

■ The **Congress of the Council of Europe’s Checklist** for compliance with international standards and good practices preventing misuse of administrative resources during electoral processes at local and regional level.⁷⁵

■ The **Congress of the Council of Europe’s booklet on Administrative Resources and Fair Elections** provides practical examples and guidance.⁷⁶

National context

The misuse or abuse of administrative resources (sometimes referred to as “public resources” or “state resources”) during parliamentary⁷⁷ and local⁷⁸ election campaigns in Albania has been one of the most recurrent concerns over the last two decades, as reported by international election observers. In the context of the parliamentary elections of 2017, the Parliament convened an extraordinary session on 22 May 2017 to take substantive actions related to the electoral process.⁷⁹ Among other measures, a political agreement between the two main parties led to the establishment of an inter-ministerial structure in the form of a Task Force to prevent the abuse of public officials in the electoral process.⁸⁰ Also, in order to prevent the risks of the misuse of administrative resources, harsh penalties were introduced for public servants who might be involved in campaigning.⁸¹

Although significant steps have been made at national, local and regional level, elections have their own distinguishing characteristics, which make them especially vulnerable to

the misuse of administrative resources. Therefore, specific actions may be required for local and regional elections.

At the local and regional level, elected representatives usually have personal ties to the territorial community in which the election takes place. Likewise, their relation to public employees and civil servants working for the municipality is often particularly close.

Moreover, local elected representatives and/or employees frequently have particular functions which are relevant during the electoral campaign, such as the allocation of places for campaigning. Municipal employees may also have tasks related to the preparation of the elections, for instance, as members of polling station commissions. Such functions may give them certain possibilities of interference in favour of the incumbent or the party/parties in power, which may be particularly problematic in local and regional elections.⁸²

National legislation

On 22 May 2017, in the above-mentioned context of reforms, the Parliament of Albania approved amendments to the election legal framework. These amendments were adopted to the Law No. 8580 “On Political Parties”,⁸³ the Law No. 97/2013 “On Audiovisual Media”,⁸⁴ and the Criminal Code.⁸⁵ The amendments introduced new requirements to campaigning, campaign finance, and advertising in broadcast media, as well as established new electoral offences and increased sanctions for existing ones. However, this reform process lacked transparency and consultation with stakeholders, and the late timing created significant difficulties in the implementation of key aspects of the election administration.⁸⁶

The amendments to the Law No. 8580 “On Political Parties” aimed to limit campaign spending.⁸⁷ They largely constrained the use of electoral promotion materials at urban level and prohibited paid political advertising in media outlets, television and radio channels.⁸⁸ Furthermore, Article 88 of the Electoral Code of Albania⁸⁹ prohibits the use of public resources for the support of electoral subjects.

In line with the amendments to the Law No. 8580 “On Political Parties”, the revision of the Law No. 97/2013 “On Audiovisual Media” determined the prohibition of paid political advertising in media outlets during the electoral period. However, the legal framework still fails to regulate political advertising, paid or not, hidden or direct, beyond the electoral period, as well as in written and online media within or beyond the electoral campaign.⁹⁰

As regards the Criminal Code, Articles 325-332 (Chapter X) provide for 15 criminal offences which threaten the freedom and integrity of free elections.⁹¹ The new criminal offenses introduced in 2017 include the abuse of public function for electoral activities, the use of other peoples’ identification documents, and more detailed prohibitions on vote-buying and vote-selling. Article 328/a (Using the public function for public electoral activities) is of particular relevance:

«The use of the public goods, the function or the state activity or of the financial or

human resources by an employee, who carries out a state duty, to favour a political party or a candidate in the elections [...] constitutes a criminal offence and is punishable by imprisonment of one year to three years».

Reported cases

During last year's pre-electoral period (January-February 2017), there were some municipal councils' decisions that raised suspicions of abuse of state resources, due to a sharp rise in the number of persons receiving social assistance benefits, which are intended for families with very low incomes, visually impaired people, para- and tetraplegic persons, disabled persons, etc.⁹²

The Central Election Commission (CEC) released the mobile phone application 'Vote 2017' as an instrument for reporting corruptive cases. In total, there were 22 abusive cases reported that affected vote integrity and freedom, of which 19 were submitted on the parliamentary Election Day (25 June 2017). In addition, on the telephone line also established by the CEC, the official reports confirmed that in the period from 25 to 28 June a total of 240 cases were reported. None of these reported cases was sent to the prosecution, and the CEC explained that the reported cases were incomplete.⁹³

Moreover, the majority of ministries offered alternative opportunities of reporting, such as phone lines and public officials assigned for the specific purpose of receiving reported cases of corruption in the electoral campaign and voting. In general, the number of reported cases was low, but the Ministry of the Interior was an exception, with 484 cases reported for penal offences related to electoral processes.⁹⁴ Based on official communications with the prosecution offices of the district courts of justice, there was a low number of procedural materials submitted for criminal offences that threatened the freedom and the integrity of the election, and there is no information about the phase of the investigations or any penalties imposed.⁹⁵

With regard to administrative penalties for the participation of employees of local government units in electoral activities, only 45 municipalities responded to the Task Force established for the 2017 election. According to the summary report prepared by the Task Force, the municipality of Skrapar dismissed two employees and suspended one for participating in electoral activities during working hours.⁹⁶ Other municipalities did not specify the reasons for dismissal. The Deputy Prime Minister's Office reported 10 cases to the prosecution, which mainly were criminal offences against free elections. Only some of these cases were related to local officials, such as the mayor of Vlorë municipality, who was reported for «*obstructing electoral subjects*».⁹⁷ Still, there is no information about further investigations and penalties imposed by the responsible authorities.

TRANSPARENCY

4.1. ACCESS TO INFORMATION

Access to information is the legal right for citizens to request and receive information from public authorities. It is often enacted by Freedom of Information legislation.

Access to information supports accountability along with informed public participation in decisions, and is therefore fundamental for the effective functioning of democracies.

International standards

Access to information is a fundamental component of a number of the conventions and standards against corruption listed elsewhere in this handbook. It also underpins a number of key UN human rights documents. The following specifically relate to Access to Information:

- The **Council of Europe's Convention on Access to Official Documents (CETS No. 205)**⁹⁸ affirms an enforceable right to information.
- The **Congress of the Council of Europe's Resolution and Recommendation on Transparency and open government**⁹⁹ call upon local and regional authorities to increase the use of open data and records management by their administrations, and to publish these in comprehensive, accessible and reusable ways.
- The **Aarhus Convention**¹⁰⁰ grants rights, including access to information, in decisions concerning the environment.

National context

Access to information is an important mechanism to address transparency and accountability. Recent studies show that the average level of transparency with regard to access to information by local governments in Albania is 57% (BIRN, 2017) and approximately half of the 61 municipalities have adopted a transparency programme (IDRA, 2017a).

National legislation

Article 15 of the Law No. 139/2015 "On Local Self-Government"¹⁰¹ and Law No. 119/2014 "On the Right to Information"¹⁰² stipulate that local self-government bodies are obliged to make all their acts and information accessible to citizens. They should be published on their official website and displayed in particular places for public announcements within the municipality. Each municipality shall adopt a transparency programme and appoint a co-ordinator for the right to information ensuring access for all to information.

Furthermore, Article 18 of the Law No. 119/2014 “On the Right to Information” establishes administrative offenses for those who fail to comply with the provisions of this Law and imposes pecuniary sanctions according to the degree of violation. The Commissioner for the Right to Information and Protection of Personal Data has the right to supervise and monitor the implementation of the Law, to conduct administrative investigations and to propose disciplinary measures against offenders.

National guidelines

To increase access to information at local level, especially for the poorest communities, local authorities shall adopt and keep updated the Transparency Programme, which shall be created in accordance with the standard format approved by the Commissioner for the Right to Information and Protection of Personal Data.¹⁰³ By means of the Transparency Programme, local authorities should take into consideration the highest interest of the community, especially to ensure maximum access to public information and to make publicly available as much information as possible in order to reduce the need for individual requests for information.

In addition, local authorities shall create, keep and make public a register, which keeps track of the requests for information and includes the information made available in response. The register should be created in accordance with Article 8 of the Law No. 119/2014 “On the Right to Information” and as set forth in the Transparency Programme, and following the standard format of the register issued by the Commissioner for the Right to Information and Protection of Personal Data.¹⁰

Examples of best practice

The municipality of Korçë¹⁰⁵ stands out for its good implementation of the legal regulations on access to information. According to a report by the Centre for Public Information Issues (INFOÇIP by its Albanian acronym), Korçë is the most transparent municipality in Albania based on five indicators (INFOÇIP, 2017):

- Having an official website;
- Register of questions and answers;
- Co-ordinator for the right to information;
- Publication of the decisions of the municipal council;
- Drafting and publishing the transparency programme.

In addition, according to an online monitoring process of the Albanian municipal websites carried out by the Balkan Investigative Reporting Network, the municipality of Korçë is ranked first among all municipalities in 2017, with a level of online transparency of 69% (BIRN, 2017). The most transparent categories in the municipality of Korçë are financial transparency, implementation of the right to information and publication of municipal council meetings and decisions.

4.2. OPEN DATA

Open data is the publication of data and information in a format that may be freely used, modified and shared. The OECD states that open data is «*a set of policies that promote transparency, accountability and value creation by making government data available to all*». By making data generated through the activities of public bodies available, government becomes more transparent and accountable to citizens. It also supports business growth and the development of services centred on citizens.

International standards

Open data is a relatively new phenomenon without officially endorsed standards. However, a number of useful guidelines exist:

- The **Congress of the Council of Europe's Resolution and Recommendation on Open data for better public services**¹⁰⁶ explain its importance for improving local democracy.
- The **Congress of the Council of Europe's Resolution and Recommendation on Transparency and open government**¹⁰⁷ call upon local and regional authorities to increase the use of open data and records management by their administrations.
- The **United Nations Guidelines on Open Government Data for Citizen Engagement**¹⁰⁸ introduce policy guidelines and good practice recommendations.
- This **World Bank Toolkit**¹⁰⁹ starts from the basics, through to planning and implement, as well as avoiding common pitfalls.
- The **Five Star Open Data Deployment Scheme**¹¹⁰ provides five steps to fully opening data, explaining the costs and benefits of each.
- The **International Open Data Charter**¹¹¹ sets out six principles for open, timely and interoperable government data.

National context

As regards the state of open government data, Albania is ranked 37th in the 2015 Global Open Data Index.¹¹² With regard to the legal framework, laws, published acts and updated legislation are available online through the Albanian Official Publishing Centre.¹¹³ Nevertheless, 59% of surveyed civil society organisations do not fully agree that draft laws, policies and laws are available to the public, and 54% of them do not fully agree that draft laws, policies and laws are published in a timely manner (Partners Albania, 2017).

Lack of awareness and understanding of open data persists both in government institutions and public officials and among citizens (IDM, 2013). That said, there are initiatives in place to address this situation, such as the promotion of Open Government Partnership (OGP) values among local authorities, which was one of the partially achieved commitments of the OGP Second Open Government National Action Plan for Albania 2014 -2016.¹¹⁴

National legislation

On 18 February 2015, the Council of Ministers approved the decision No. 147 “On the Approval of the Document on the Open Data Policy and the Establishment of the Open Data Portal”.¹¹⁵ The OGP Third Open Government National Action Plan for Albania 2016 – 2018¹¹⁶ foresees four major actions and 17 commitments to promote transparency and open data. Increasing the access to information and the modernisation of the public service are the two main actions that should be addressed by local authorities. A platform for transparency and innovation named OpenAlb¹¹⁷ has been established to ensure the successful implementation of the OGP commitments in the country.

National guidelines

In order to increase openness and transparency at local level, local authorities in Albania should engage substantially in developing open data tools in accordance with the Technical Standards for Publication of Open Data,¹¹⁸ which will improve public access to information and lead to greater levels of citizen participation. Co-ordination between local authorities and civil society organisations, businesses, think tanks and other actors is important to raise awareness and understanding of open data as a transparency mechanism for strengthening local governance.

Examples of best practice

Conceived in 2013 as an online one-stop shop, e-Albania¹¹⁹ is the governmental portal where citizens can obtain detailed information on public services and official documents electronically. The portal is administrated by the National Agency for Information Society¹²⁰ and aims to improve service delivery, reduce service delivery time, avoid bureaucracies and reduce corruption of public institutions, including local self-government bodies. All of the 500 e-services offered on the portal are dedicated to a wide range of users, from unemployed citizens, business, property owners, businesses, students, elderly, Albanians living abroad, civic employees, etc. These services are classified by categories and institutions. According to the information available on the portal, the certificate services, which are administrated by local self-government bodies, are the most used electronic services on the e-Albania portal.

4.3. DISCLOSURE: DECLARATION OF ASSETS AND CONFLICT OF INTEREST

Disclosure is the act of routinely publishing certain information, sometimes required by law. It can support anti-corruption measures by requiring the routine publication of assets and declarations of conflict of interest, for example. It can also be for more positive reasons, such as to support policy making, or by ensuring that the public are better informed and therefore able to contribute more effectively.

International standards

Disclosure is an important element in the conventions and standards against corruption listed elsewhere in this handbook. Of particular relevance are:

- The **Committee of Ministers of the Council of Europe's Recommendation on Codes of Conduct for Public Officials**¹²¹ and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**¹²² require private interests to be declared, made public and monitored.
- The **Congress of the Council of Europe's Resolution and Recommendation on Conflicts of interest at local and regional level**¹²³ call on local and regional authorities to promote the proactive disclosure of declarations of interest prior to public request and to ensure that disclosure policies are accompanied by appropriate measures for resolving conflicts of interest.
- The **OECD's Managing Conflict of Interest in Public Service: Guidelines and Country Experiences**¹²⁴ provides practical instruments for modernising conflict-of-interest policies.
- The **OECD's Asset Declarations for Public Officials: A Tool to Prevent Corruption**¹²⁵ identifies the key elements of asset declaration systems.

National context

The system of declaration of assets and financial obligations has been one of the most important legislative steps in Albania, reflecting the key requirements of the UN Convention against Corruption. However, the legislation on the conflict of interest and its implementation has been hampered by a number of factors and, therefore, its application has been partial and fragmented. One of the main obstacles is the gap between the broad scope of the law and the inadequate capabilities to ensure its effective implementation (IDM, 2014).

National legislation

The Law No. 9049 "On the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials"¹²⁶ defines the rules for the declaration and audit of assets, the legitimacy of their sources, and the financial obligations for public

officials, their relatives and persons close to them. As per Article 40, any violation of the obligations set forth in this Law may constitute a criminal offense or an administrative infraction, which is punished by fines based on the nature and degree of such violation.

The High Inspectorate of Declaration and Audit of Assets and Conflict of Interest (HIDAACI) administers the declaration of assets and financial obligations, and the audit of this declaration, according to the specifications outlined in the laws of declaration and conflict of interests.¹²⁷ Moreover, based on the Law No. 9367 “On the Prevention of Conflict of Interest in the Exercise of Public Functions”,¹²⁸ the HIDAACI, in the quality of central authority responsible for the implementation of the said Law, manages and improves the policies and mechanisms regarding the prevention of conflict of interest; offers technical assistance and advice on legal initiatives undertaken by public institutions for the prevention of conflict of interest; and monitors, audits and evaluates the exercise of this Law, among its main functions.¹²⁹

National guidelines

In support of local government anti-corruption efforts, the HIDAACI has developed and made available the Guide for Prevention of Conflicts of Interest in Local Governance¹³⁰ together with its Explanatory Manual.¹³¹ The Guide gives information on:

- What is conflict of interest in local governance (definition, types of conflict of interest, who is involved in conflicts of interest);
- Prevention of conflict of interest;
- Limitations on local government officials for the prevention of conflicts of interest;
- Basic measures for treating and solving conflicts of interest;
- Sanctions;
- Illustrative examples of administering and solving cases of conflict of interest.

The Explanatory Manual for the Prevention of Conflicts of Interest in Local Governance aims at creating standards and unification of practices in administering and solving conflicts of interest at local level. In order to enhance disclosure and prevent conflict of interest, public authorities should act in accordance with the abovementioned Guide adopted by the HIDAACI and its Explanatory Manual.

Examples of best practice

The Municipal Council of Tirana has published its internal regulation,¹³² which lays down the rules and procedures of the Municipal Council. Article 12 of the regulation stipulates that councillors do not take part in the consideration and approval of the council's draft acts when they or their spouse, parents, children, siblings, parents-in-law, or partners have a conflict of interest in the matter being discussed in the Municipal Council.

4.4. EXTERNAL AUDIT

External audit is the regular, independent scrutiny of accounts and financial information to ensure that public money is used appropriately and effectively. External audits are undertaken in accordance with the relevant laws and rules of the country to support those external to government to hold it to account. External audit can also look beyond finances to assessing the performance of government against its own objectives, or in providing programmes and services.

International standards

- The **International Public Sector Accounting Standards**¹³³ focus on the accounting, auditing, and financial reporting needs of national, regional, and local governments, related governmental agencies, and the constituencies they serve.
- The **International Standards of Supreme Audit Institutions**¹³⁴ website contains a complete collection of professional standards and best practice guidelines for public sector auditors.
- A number of the conventions and standards for combatting corruption include provisions and clauses relating to external audit.

National context

The external audit coverage in Albania is limited. As a matter of example, in 2013, only an 8% of public entities (accounting for 40% of budget spending) were audited. The independent State Supreme Audit publishes an annual report on the implementation of the budget. However, there is currently no certification or audit opinion on the individual financial statements of central or local budget institutions or on the consolidated fiscal statement (IMF, 2015).

National legislation

Article 13 of the Law No. 139/2015 "On Local Self-Government"¹³⁵ stipulates that «local self-government units shall be subject to external audit by central government bodies with regard to the use of conditional and/or delegated funds provided by the State budget and/or funds of foreign aid, allocated to them according to the agreements signed by the central government». Moreover, as per Article 43 of the same Law, each local self-government unit is subject to external audit by the State Supreme Audit, and any audit report should be made available to the public. In exceptional circumstances, local executive bodies may be subject to audits conducted by specialised auditing companies.

The State Supreme Audit (SAI) is the highest external audit institution in Albania.¹³⁶ In accordance with its functions, rights and duties, apart from the audit role, the SAI can address criminal prosecution bodies when further tracking of audit findings are part of their competence and address the highest state bodies in case of noncompliance with its recommendations, as set forth in Article 15 of the Law No. 154/2014 “On the Organisation and Functioning of the State Supreme Audit Institution”.¹³⁷

National guidelines

In order to increase transparency on account standards and financial statements, public authorities should establish a sound internal budgetary control regime, produce publicly-released annual reports and perform an external audit of those annual reports. Local authorities are advised to disclose and publish the external audit reports, and to adopt the Audit Reporting Guidelines¹³⁸ published by the State Supreme Audit.

Examples of best practice

Fier is one of the largest municipalities in Albania.¹³⁹ In 2016, with the support of the USAID Planning and Local Governance Project, the municipality has undergone an external assessment on public expenditure and financial accountability based on the Public Expenditure and Financial Accountability (PEFA) methodology, aiming to provide an analysis of the strengths and weaknesses of municipal public financial management systems.¹⁴⁰

4.5. CODE OF CONDUCT

A code of conduct sets out specific standards of professional behaviour expected in a host of situations and provides public officials with guidance for handling them. In addition, codes of conduct bring in transparency and public accountability in governmental operations.

Codes of conduct are often confused with codes of ethics, which establish basic principles to which public servants must abide, such as integrity, selflessness and openness, among others. A code of conduct applies and implements the code of ethics to the particular circumstances of an institution.

Well-designed codes of conduct and ethics will help meet the growing expectations from the public, business leaders and civil society, and places an onus on governments to ensure high ethical standards amongst public officials and elected representatives. As such, they can support the development of trust between the public and government institutions and officials.

International standards

- The **Committee of Ministers of the Council of Europe’s Recommendation on Codes of Conduct for Public Officials**¹⁴¹ and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**¹⁴² are the reference texts for local and regional authorities in Europe for ensuring political integrity.
- The **Council of Europe’s Abridged Handbook on Public Ethics at Local Level**¹⁴³ provides a high-level overview of good practice in public ethics.
- This **Transparency International paper on Implementing Effective Ethics Standards in Government and the Civil Service**¹⁴⁴ provides practical mechanisms for institutionalising high standards of ethical integrity for elected officials and civil servants.

National context

Ethics and integrity in public administration is a precondition for a democratic, transparent and effective government, and greater responsiveness to citizens. In Albania, there is a lack of data as regards the implementation of codes of conduct at local level, and most norms affecting codes of conduct are regulated through codes of ethics, creating confusion between them. On the other hand, the practice shows that many public institutions, like the SAI and local governments have adopted their own codes of conduct and codes of ethics. With regard to the latest, there is confusion about the hierarchy of the legislation regulating ethics and the codes of ethics themselves –that often duplicate legal instruments and therefore are redundant or fail to address specific local concerns–. Besides, the lack of data on the implementation of codes of ethics demonstrates that their implementation has been limited in Albania (IDM, 2016a).

National legislation

Norms of conduct of public officials are regulated by the Law No. 9131 “On the Rules of Ethics in the Public Administration”.¹⁴⁵ As established in its Article 1, «the purpose of this law is to set rules of conduct of employees of the public administration, according to the required standards, to help them achieve these standards and to make the public aware of the conduct that an employee of the public administration should have».

In addition, the Law No. 152/2013 “On the Civil Servant”¹⁴⁶ serves as a basis for adopting more specific and detailed regulations on ethics by the different segments of the public administration. Public institutions are obliged to establish a human resource department responsible for the management of the public officials of the institution. Disciplinary measures and sanctions are set for noncompliance with the law.

National guidelines

Despite the lack of specific guidelines regarding codes of conduct, ethics and conduct of public officials are regulated in different articles of the normative framework aiming to increase transparency, impartiality and non-discrimination in the actions and conduct of Albanian public servants (IDM, 2016a). The following instruments contain provisions on the conduct of public officials:¹⁴⁷

- Law No. 7961 on the “Labour Code of the Republic of Albania” of 12 July 1995;
- Law No. 9049 “On the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials” of 10 April 2003;
- Law No. 9367 “On the Prevention of Conflicts of Interest in the Exercise of Public Functions” of 7 April 2005;
- Law No. 9643 “On Public Procurement” of 20 November 2006;
- Law No. 9887 “On the Protection of Personal Data” of 10 March 2008;
- Law No. 90/2012 “On the Organisation and Functioning of Government Administration” of 27 September 2012;
- Law No. 152/2013 “On the Civil Servant” of 30 May 2013;
- Law No. 119/2014 “On the Right to Information” of 18 September 2014;
- Law No. 44/2015 on “The Code of Administrative Procedures of the Republic of Albania” of 30 April 2015;
- Crosscutting Public Administration Reform Strategy 2015-2020.

Having a code of conduct is important not only to highlight, transmit and protect the internal value of the institution, but also to communicate these values to external stakeholders. In this regard, local authorities should adopt their code of conduct to act accountable and with desirable behaviours, and to function as a central guide to handle ethical dilemmas.

Examples of best practice

The Municipal Council of Shkodra¹⁴⁸ has published a Code of Ethics¹⁴⁹ which includes ethical principles in its first chapter, but also regulates the conduct of public officials. Based on it, the employees of the Municipal Council should behave in accordance with the ethical principles set forth in the first chapter of the Code, which in the subsequent chapters regulates the conduct of public officials as regards human resources; conflict of interest; access to information; prohibitions of abuse of public expenditure, working time and position; gifts and bribery; and the protection of citizens who report unlawful conduct of public officials. Finally, the Code lists a range of disciplinary measures for public officials that violate the articles of the Code when their actions do not constitute a criminal offence.

CITIZEN PARTICIPATION

5.1. COMPLAINTS MECHANISMS

Complaints mechanisms allow citizens to provide feedback to public authorities on the standards of services they receive. They provide an important accountability mechanism which allow civil servants and elected officials to identify where public services are being delivered ineffectively or inefficiently. When such mechanisms deal with complaints quickly, they can help to create the conditions for increased trust. If used proactively, complaints mechanisms can also help governments to identify new ideas and increase citizen participation.

International standards

There are no specific international standards for complaints mechanisms relating to public services. However, there are a number of civil society guidelines and handbooks which are helpful. See for example:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**¹⁵⁰ provides an international legal guarantee to this right, including the establishment of mechanisms and procedures for dealing with and responding to citizen complaints and suggestions.
- The **Danish Refugee Council's handbook**¹⁵¹ describes how to setup and manage a complaints mechanism.
- The **World Vision** overview of the tools and mechanisms used by development agencies to receive complaints.¹⁵²
- The **Transparency International** note on good practice in establishing community complaints mechanisms.¹⁵³

National context

Complaints mechanisms at local level are important to address citizens' concerns and problems. Citizens can submit complaints through one-stop shops at local government units and address their concerns and problems through complaint letters or a dedicated phone number created for this purpose. Local government units have internal regulations that stipulate the procedures for addressing and resolving complaints, and should

provide complaint form templates to facilitate citizens' feedback and documenting their complaints. In addition, there are online tools in place to file complaints, such as Stop Corruption (www.stopkorrupsionit.al), Ask the State (www.pyetshtetin.al) and Improve Your City (www.permiresoqytetin.al), among others. Nevertheless, there is a lack of data on citizens' concerns towards public institution in most of those online platforms, especially towards local government units. This is due to a general lack of citizens' trust at local level, especially in the fight against corruption (IDM, 2017).

National legislation

Article 19 of the Law No. 139/2015 "On Local Self-Government"¹⁵⁴ stipulates that any citizen or group representing communities has the right to address requests, complaints or objections to local self-government bodies on matters pertaining to functions and competences within the jurisdiction of the local self-government unit. Local self-government bodies are obliged to consider claims, appeals or remarks, and to reply within the deadlines set by the law. The Law No. 44/2015 "On the Code of Administrative Procedures"¹⁵⁵ regulates the procedure for administrative appeal in cases when the complaint is not taken into consideration. The Office of the Commissioner for the Right to Information and Protection of Personal Data also assesses complaints in cases when the mechanism of the right to information is applied.

National guidelines

Apart from internal procedures from local government units, the Office of the Commissioner for the Right to Information and Protection of Personal Data has created a procedure for complaints¹⁵⁶ and has designed a standardised letter for complaints¹⁵⁷ for those cases where the right to information is not yet exercised by local government units. In order to improve their efficiency at local level, public authorities should develop and implement a clear process of complaints procedures where each citizen's problem and concern is considered and resolved quickly.

Example of best practice

'Improve your City' (www.permiresoqytetin.al) is an online platform that allows citizens to submit complaints to the local authorities of any of the municipalities in Albania and participate directly in local government affairs of their concern. It can be accessed online or through its mobile app, resulting in an easy-to-use tool for citizens to have a say about municipal issues such as city cleaning, infrastructure, education, public transport, public spaces, construction, and animals, among others.

Another example is the mobile application *Tirana Ime*, Albanian for 'My Tirana' (www.tirana.al/aplikacioni-tirana-ime), launched by the municipality of Tirana in 2015. Available for download free of charge from Apple's App Store and Google Play Store, the application includes six main categories: traffic, transportation, pollution,

information, reports, and tourism. Under the “Report” section, the citizens of Tirana are enabled to submit online complaints and other reports on various municipal services.

5.2. OPEN POLICY MAKING

Open policy making is a broad term describing policy development which is transparent and participatory. It describes a way of making policy and decisions which draw on the latest analytical tools and are interactive in nature. There is no one-way to do open policy making: different policy decisions will need different approaches.

International standards

Although there are no specific open policy making standards, the following provide a useful starting point:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**¹⁵⁸ provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation.
- The **Council of Europe’s Guidelines for civil participation in political decision making**¹⁵⁹ sets out standards for engaging with citizens and civil society.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Transparency and open government**¹⁶⁰ provide standards and mechanisms to enhance transparency and promote the involvement and participation of citizens in the local public life.
- The **OECD’s Guiding Principles**¹⁶¹ support the development of a culture of openness.
- The **OECD’s Focus on Citizens: Public Engagement for Better Policy and Services**¹⁶² explores how to put open policy making into practice.
- The **OECD’s Observatory of Public Sector Innovation**¹⁶³ lists useful toolkits and resources.
- The **Open Government Partnerships Guide**¹⁶⁴ and **Toolkit**¹⁶⁵ provide an extensive range of support.
- Both **Australia**¹⁶⁶ and the **UK**¹⁶⁷ have both produced useful **toolkits**.

National context

In general, Albania has an adequate and modern legislation in most fields, but the policy-making process is conducted through closed-door policies and limited to a narrow set of actors (Bogdani & Loughlin, 2007). The process of digitalisation of services in order to improve transparency and accountability, and to bring citizens closer to government, is unfortunately associated to missing figures and scarce documentation. Regarding open policy making at local level, the relationship between citizens and public officials is almost inexistent.

National legislation

Citizens' initiative is a legal right foreseen in Article 20 of the Law No. 139/2015 "On Local Self-Government".¹⁶⁸ Based on it, each community, through its authorised representatives, or not less than 1% of the inhabitants of the municipality, has the right to propose citizens' initiatives to the municipal council on issues under the jurisdiction of the local self-government unit. In cases where proposals presented to the municipal council as citizens' initiatives have a financial impact on the municipal budget, they shall be considered by the council according to the agenda and shall not be approved without taking the opinion of the head of the local self-government unit.

National guidelines

Article 20, paragraph 1, of the Law No. 139/2015 "On Local Self-Government" stipulates that ways and forms of presentation of citizens' initiatives, their deliberation, and approval procedures shall be laid down in the statutes for the organisation and operation of the municipal council. In order to improve policymaking, local authorities should design and implement local action plans in order to bring new insights, perspectives, and expertise from local actors (citizens, civil society organisations, businesses, etc.). This will allow local governments to better link policymaking with the current needs and concerns of the population, and thus to better implementation of local action plans and policies.

Examples of best practice

A very successful local initiative was the establishment in 2012 of the Local Citizens Advisory Commission in the municipality of Durrës, which consists of members of local civil society organisations, businesses, youth, women and underrepresented groups. It serves as an independent advisory body for the municipality of Durrës, strengthening citizen participation and supporting the municipality's work towards decentralisation.¹⁶⁹ The Local Citizens Advisory Commission meets on a regular basis to discuss issues related with budgeting, the annual fiscal package, the quality and delivery of local services, territorial planning and municipal priorities and projects.¹⁷⁰

5.3. PARTICIPATORY BUDGETING

Participatory budgeting began in Porto Alegre, Brazil in the late 1980s and has spread worldwide. It provides a way for community members to have a direct say in how public money should be spent. It creates opportunities for engaging, educating, and empowering citizens. It can also promote transparency, which in turn can help reduce inefficiency and corruption.

International standards

Although there are no specific standards for implementing participatory budgeting, the following provide a useful starting point:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**¹⁷¹ provides an international legal guarantee to this right, including the implementation of measures that would facilitate its exercise.
- The **Congress of the Council of Europe's Resolution on Gender budgeting**¹⁷² recommends introducing gender budgeting methods in the annual budgets at local and regional levels.
- The **OECD Policy Brief No. 22**¹⁷³ provides a series of policy recommendations for how key stakeholders can contribute to successful participatory budgeting.
- The **World Bank's book *Participatory Budgeting***¹⁷⁴ provides an overview of the underlying principles, analyses current practice and includes seven in-depth case studies.
- The **UN Habitat's 72 Frequently Asked Questions about Participatory Budgeting**¹⁷⁵ explores how to implement participatory budgeting.
- The **UK's Participatory Budgeting Unit has a useful list of resources and toolkits.**¹⁷⁶
- The **Subnational Open Budget Survey Questionnaire**¹⁷⁷ of the International Budget Partnership sets out a range of metrics for measuring the openness of local government budgets.
- The **Principles of Public Participation in Fiscal Policy**¹⁷⁸ of the Global Initiative for Fiscal Transparency.

National context

Participatory budgeting is a process that brings local communities closer to decision making on the allocation of the municipal or public budget. In recent years, one of the

most effective mechanisms implemented by municipalities is participatory budgeting (IDRA, 2017b). According to the Open Budget Survey 2017 index,¹⁷⁹ the Government of Albania made seven out of eight key budget documents available to the public online, including the year-end report and citizen budget (a less technical version of the Government's budget designed for the public). Barring a few exceptions, local public officials are either not very used to engaging with people on technical planning and budgeting, or find them ill-equipped to do so, or simply do not see the importance of the voice of the people (IDRA, 2017a).

National legislation

Articles 155 to 160 of the Constitution of the Republic of Albania¹⁸⁰ and the Article 20, paragraph 2, of the Law No. 139/2015 "On Local Self-Government" state that proposals coming to the council as civic initiatives when they have a financial impact on the budget of the local self-government unit are reviewed by the council in the agenda and cannot be approved without the opinion of the mayor of the local self-government unit. Local government units are responsible to ensure that participatory budgeting is executed in accordance with the law.

National guidelines

Even though there is a positive trend in Albanian municipalities towards implementing participatory budgeting at local level, better implementation and harmonisation with the *Participatory Budgeting Toolkit for Local Governments in Albania*¹⁸¹ would enable more transparent and accountable local governments. In addition, this toolkit, which builds on international practices and tested participatory budgeting methodologies, provides tailored mechanisms to fit Albanian local government budget law and practices.

Examples of best practice

The municipality of Elbasan is one of the pioneer municipalities that have implemented participatory budgeting since 2004. Being aware of the low level of women's participation in the participatory budgeting process of 2012, the municipality started to introduce gender-sensitive participatory budgeting in collaboration with two local civil society organisations.¹⁸² Considering the gender imbalance in the participatory budgeting process, the municipality collaborated closely with the media and local civil society organisations to discuss and stress the importance of equal participation of women and men in the process. In addition, training courses on facilitation skills were organised with municipal public officials in order to improve and elicit better feedback from women. Currently, the budgeting process works through consultation meetings organised in boroughs and villages under the jurisdiction of Elbasan, taking into account the views of women and men.

5.4. PUBLIC CONSULTATION

Public consultation is a formal, often legally required, process for citizens and other stakeholders to give their views at key stages of the policy process. It can be both online and offline, or a mixture of both. Its main goals are to improve efficiency, transparency and public involvement in important decisions. Done in a timely and effective way, public consultation will increase the quality of decision making, improve compliance, reduce enforcement costs and support greater public trust in decision making.

International standards

Although there are no specific standards for implementing public consultations, the following provide a useful starting point:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**¹⁸³ provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation, such as consultative processes and local referendums.
- The **OECD Background Document on Public Consultation**¹⁸⁴ defines consultation and provides a summary of consultation tools.
- The **Council of Europe's Guidelines for civil participation in political decision making**¹⁸⁵ set out the different types of civil participation in decision making.
- The **Committee of Ministers of the Council of Europe's Recommendation on the participation of citizens in local public life**.¹⁸⁶

National context

A recent study by the centre "Res Publica" on public consultation shows that there is a very limited number of draft acts published on the official webpage of public institutions (Qendra "Res Publica", 2016). In the report, it is also stated that only 18% of the monitored institutions have a register for the publication of draft acts, in compliance with the Law No. 146/2014 "On Notification and Public Consultation".¹⁸⁷ This is reinforced by civil society organisations' experience, where more than half of them do not fully agree that draft and approved laws and policies are publicly available (59%) and that draft laws, policies and laws are published in a timely manner (54%) (Partners Albania, 2017). Two main concerns raised by civil society organisations relate to the quality of the consultation processes themselves. Firstly, the institutions do not take into consideration the recommendations provided by civil society organisations, and secondly, there is a lack of argumentation regarding this issue. In addition, the latter is in violation with the Law No. 146/2014 "On Notification and Public Consultation".

National legislation

The National Crosscutting Strategy for Decentralisation and Local Governance 2015-2020¹⁸⁸ stipulates that all decisions at the local level will be aimed to be taken with the participation of citizens and following equal, inclusive and transparent principles. In addition, the Law No. 146/2014 “On Notification and Public Consultation” specifies that local authorities should take all necessary measures to facilitate public consultation, including:

- Publication of the draft act, the notification of consultation and the information related to the consultation on the draft act on the electronic register;
- Publication in the transparency programme of the annual planning related to policy making , pursuant to the Law No. 119/014 “On the Right to Information”;
- Provision of information related to all stages of the notification and public consultation process, beginning with the publication of the draft act, and continuing with the review of the comments and recommendations for its improvement, the organisation of public debates and the adoption of the act.

The same law obligates public institutions to publish all draft and adopted laws and policy documents. To this effect, an electronic register (www.konsultimipublik.gov.al) permits citizens and experts to consult draft laws and give their recommendations. The law’s requirements guarantee sufficient time (20 days) for civil society organisations to provide their opinion on the draft laws and policies. Also, the law stipulates that a summary of collected opinions should be made public and be part of the draft law package for approval. On the contrary, if the recommendations are not accepted, a summary of the reasons for non-acceptance should be made public.

Moreover, this law provides options for complaints in cases where the provisions for consultations are not respected, based on the claims by interest groups. However, the law does not foresee any administrative sanction against the public institution or the responsible person for notification and public consultation; and it does not foresee any procedure for appealing the decision of the public authority either.

National guidelines

In order to meaningfully increase citizen participation at local level, local authorities should develop a clear process of notification and public consultation in compliance with the Law No. 146/2014 “On Notification and Public Consultation”, including the review and consideration of recommendations provided by citizens and the reasons why any of the recommendations have been dismissed.

Example of best practice

In regard to public notification and consultation, the municipality of Vau i Dejës is one of the municipalities that have considerably improved this mechanism. Evidence

shows that public consultation for draft acts in the municipality of Vau i Dejës has increased considerably from 9% in 2016 to 86% in 2017 (BIRN, 2017), being one of the first municipalities to implement this citizen participation mechanism in an efficient way.

5.5. PUBLIC PETITIONS

Public petitions enable citizens to raise issues with public authorities. The number of signatures collected can indicate the level of support for the issues being raised. They aim either to raise the profile of the issue, or also to demand that specific actions are taken. Petitions are often inspired by civil society activity, but they are increasingly submitted through official, often online, platforms whereby petitions with a defined number of signatures will receive an official response.

International standards

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**¹⁸⁹ provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation, such as public petitions.
- The **OECD's Promise and Problems of e-Democracy**¹⁹⁰ provides a section on the value and challenges of establishing an online petitioning platform.

National context

Public petitions are an important mechanism for public authorities to engage with the people they serve and to protect the public interest, and for citizens to participate in the democratic process and influence the political debate and decisions. However, while public petitions are prevalent at central level, there is no official data about public petitions at the local level.

National legislation

Article 104 of the Regulation of the Parliament¹⁹¹ stipulates the right of both individuals and groups to petition the government. No later than 45 days from the date of reception of the petition, the committee chairman of the public authorities presents the petition to the commission, also proposing legal alternatives and ways for its solution, or its rejection. The petition senders are notified for the steps taken and the solution of petition issues'.

National guidelines

In order to enhance and support local reforms at local level but and at the same time meet

citizens' concerns, local authorities should develop and implement a comprehensive process on how to submit, handle and respond to public petitions in compliance with the Law No. 44/2015 "On the Code of Administrative Procedures".¹⁹² The petition procedure shall be accessible for the public.

Example of best practice

On 3 December 2016, on the International Day of Persons with Disabilities, a group of civil society organisations organised a demonstration and signed a petition to the municipality of Tirana. They required the local authority to respect the human rights and well-being of people with disabilities and to better implement social services for this group of people.¹⁹³ The then deputy mayor of Tirana stressed that the municipality will support their requests.

CONCLUSION

Local government plays a critical role for the well-being of citizens, delivering services, and providing the first point of contact between people and public administration. The proximity with citizens can help ensure that public authorities and services are truly responsive and accountable, improving people's lives and their trust and confidence in local institutions. However, the very qualities that make local and regional governments so important to citizens can also make it more prone to corruption.

Local governments in Albania are taking important strides in improving the legal framework towards more open and inclusive decision-making. However, on a practical level, local government units should translate laws and policies into practice and increase their efforts to ensure transparency, accountability and meaningful participation of citizens in policy- and decision-making. As well as being important qualities of local democracy, transparency and civic participation can help deliver effective public services, combat and prevent corruption, and build citizens' trust in government.

The mechanisms outlined in this handbook present a variety of ways in which local and regional authorities can prevent corruption, reduce its risks, and develop effective and accountable institutions at all levels. Other reforms, such as protection of whistle-blowers and support for independent media and civil society, are also critical to building open government, public ethics and accountability. An effective approach to rooting out corruption could be through reporting by public officials, the media and civil society, who need to feel confident that they will be listened to and protected.

The Congress of Local and Regional Authorities of the Council of Europe and Partners Albania are committed to supporting local governments in their efforts to improve the quality of local democracy, prevent corruption, increase ethics and public accountability, and promote transparency and citizen participation.

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Transparency and citizen participation are key tools in the development of good local governance. Both help create the conditions for citizens to understand and evaluate the decisions which the government is taking on their behalf, as well as make their own needs and views known to government as it takes those decisions.

Effective transparency and participation can help to drive out corruption and government malpractice. They are also more positive tools as they help produce the conditions for increased trust. Finally, they also help governments to draw on the skills and experience of citizens to enable better decision-making and the delivery of more effective public services.

To that effect, this handbook aims to support local and regional authorities in Albania in their efforts to make communities more open, ethical and citizen-oriented. It provides practical guidance on transparency policies and citizen participation mechanisms, includes a concise assessment of the most prevalent corruption risks in the country and incorporates actual examples of best practices.



GOVERNMENT
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