Tackling Conflict of Interest: Policy Instruments in Different Settings

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Abstract

Corruption affects, and even shapes public policy in both developing and developed countries. Within this, the prevention of conflict of interest has been pointed out as one of the most challenging tasks for governments and the international community. This theory-driven article provides a framework of policy instruments and explores mechanisms from two areas of the world where this is an important issue, Asia and Latin America. The authors argue that the creation of effective conflict of interest prevention and prosecution mechanisms depends on the adequate operationalization of governance and social control instruments which can regulate conflict of interest.

Keywords: corruption, conflict of interest, governance, Asia, Latin America, Mexico, Thailand

Short title: Conflict Of Interest: Policy Instruments
1. Introduction

Corruption is widely identified as a key challenge for governments and international governance structures. Every day and in just about every country, media stories regarding high level corruption are published, see for example Transparency International Daily Corruption News. At the national and local levels corrupt exchanges occur on a regular basis, their intensity and extent are determined by local contexts and these smaller exchanges do not receive much attention. However, these corrupt actions add up to substantial losses for public- and private-enterprises.

A key component in the sphere of corruption is conflict of interest (COI here forth), generally understood as a situation in which the public function of an official is unduly influenced by their personal interests. A legislator in an Energy Commission has a stake in an energy firm; a regulator is married to the CEO of a major corporation he tries to regulate; a person in charge of awarding infrastructure projects is related to the construction industry; an ombudsman is a member of the organisation or industry they are overseeing. These are all examples of situations where conflict of interest is evident and clearly in need of regulation. However, COI can take many shapes in different contexts. Instances that can be determined as COI in certain places may not necessarily be so in others. There exist examples of COI which are murkier and more difficult to pinpoint. Networks of political patronage may be fraught with COI, unclear political campaign donations structures could also constitute conflict of interest as well as many instances of lobbying yet these activities all happen and are generally accepted.

Thus COI can be seen as a very challenging hurdle for democratic governance. In this paper we attempt to approach COI in the following ways: First we try to define conflict of interest based on existing literature, second we produce a framework to understand the policy instruments
currently being used in this field as well as the mechanisms through which they are actioned and finally we illustrate throughout with examples and case studies. We conclude with a potential research agenda and further avenues of inquiry.


The challenges of defining conflict of interest

Definitions of corruption and the activities it includes abound (Graycar and Villa 2011). Corruption may take place at every level of government or private activity and has been studied from many different perspectives, from Rose-Ackerman’s original work on the economics of corruption (1975), to more recent studies in culture (Uslaner 2008) and historical analyses of corruption (Friederich 1972). Within most definitions of corruption we find conflict of interest as an important element on transparency structures and governance. Conflict of interest is also an area where private and public interests often intersect and as such it is a particularly difficult arena to regulate. Governments and international organizations have over the years designed and implemented a wide range of mechanisms to prevent potential conflicts of interest in their everyday dealings. Asia and Latin America have made interesting advances with regards to this and such policies are the central unit of analysis of this paper. This paper is based on information gathered through the creation of a database that documents corruption prevention initiatives and programmes worldwide. Based on the structure of the United Nations Convention Against Corruption (UNCAC), we identify a number of initiatives specific to conflict of interest which present promising characteristics.

In many parts of the world, transparency in public affairs and conflict of interest in the everyday running of governments present enormous challenges. Globalisation and economic development
have placed a new focus on these issues (Bernard-Auby, Breen and Perroud 2014) as they have the capacity to seep into the international arena as well. The United Nations Convention Against Corruption (UNCAC), ratified by 159 states in 2012 (Joutsen and Graycar 2012), includes in section four of Article Seven a provision which encourages signatory states to design and implement policies and laws that enhance public sector “transparency and prevent conflicts of interest” (UNCAC 2012). A simple definition of conflict of interest would entail a conflict between the official obligations and the private interests of a person in a position of trust. Morreim (2011) defines conflict of interest thus:

“A conflict of interest is a structure that carries an invitation. The structure is comprised of (1) a relationship featuring a strong obligation based on trust—for professions, a loyalty in which the provider places the beneficiary’s interests above his or her own interests, and (2) an opportunity to act contrary to that obligation. The invitation arises when such an opportunity is sufficiently attractive that it poses a significant temptation to override the obligation”.

By the same token, the Organisation for Economic Cooperation and Development (2005: 13) has developed the following definition:

“A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the public official’s private capacity interest could improperly influence the performance of his/her official duties and responsibilities”

Esadze (2013) defines COI as having three general characteristics, namely:

- “Actual, where there is a direct conflict between a public official’s current duties and responsibilities and existing private interests.
• *Perceived*, …where it …appears that a public official’s private interests could improperly influence the performance of their duties – whether or not this is in fact the case.

• *Potential*, …which arises where a public official has private interests that could conflict with their official duties in the future”

The above classification means that there is a significant range of COI and this makes addressing this issue a complex undertaking. Central to the argument of this article is the fact that strategies to face COI need to be matched to the appropriate type of COI. Conflict of interest therefore presents an obstacle for the fair and impartial development of public policy and other forms of government activities. When the private interests - be they monetary, of status et cetera – are at odds with their public functions, conflict of interest arises. It is important to state that COI is very common; most people at some point in their life will face a situation where some form of COI is foreseeable. It may be something as simple as whether or not to recommend a family member for a job, or to use an employer’s resources to carry out non-related tasks. The truly negative aspect of it begins when, fuelled by private interests, actors fail to carry out their duties or attempt to profit from them, thus harming the communal good. This is particularly true of government agents. It is also important to underscore the fact that conflict of interest exists in all levels of society and in every social group or nation. It is an important issue in developing as well as developed countries. Unlike some other clearer acts of corruption such as bribery or cronyism, conflict of interest remains a grey area which is difficult to pinpoint. Cultural and contextual variables must be taken into account when analysing this phenomenon as interpretations of what constitutes conflict of interest may vary. It is clear that, at certain levels COI must be regulated, it is up to every stakeholder to establish the limits of such regulatory framework and the extent to which it manages the behaviour of public (and private) officials.
COI is found in both the public sphere and private enterprises. It is not rare for such entities to explicitly regulate COI within their jurisdiction. An example of this would be when a member of the Executive Board in a company has a stake or interests in a direct competitor. The same applies to regulations regarding insider trading in the stock exchange. In many instances COI involves private and public entities and this is the type of conflict of interests that drives this article. This happens, for example, in the granting of infrastructure contracts or in some relations between politicians and private firms. Conflict of interest permeates the political arena. It underscores much of political action as it is by definition the management of group and individual interests. Regulation of such interests is generally in the interest of policymakers. However it does not follow that all COI will be perceived as such, or will generate a desire for regulation in all places all the time. In simple terms there is no universal forms of COI, rather, a set of behaviours that at different times and places undermine the political process.

For the purposes of this research project, we worked with a collection of policy material from national and international agencies and various regulatory frameworks which address some or all of the prevention Articles in the UNCAC. The main driver behind this was to create a qualitative source of modern day regulations for the purpose of comparison and analysis. This database allows us to have a pointed look into the “state of the art” in terms of corruption control and, centrally, prevention. The material includes policy briefs, documents sourced from within international organizations, reports, national regulatory frameworks and laws, as well as other governmental reports at the international level. One of the sub-themes within the database is conflict of interest. In total there are 27 references to COI in the aforementioned database, mostly in conjunction with other articles in the UNCAC, but at times on its own. We cannot claim that this database is either exhaustive or representative of the totality of policies on
corruption. However, it is a large collection (306 documents) which gives us an approximation to what instruments are being utilized in the policy arena to tackle corruption and for the purposes of this paper, conflict of interest. Clearly, much deeper research is required in order to make any statistical approximation to this issue, and this is why at this stage we remain in a qualitative, but nonetheless rigorous, level.

Examples of conflict of interest using Esadze's Classification (2013) These examples here are illustrative and used for the analysis which follows.

- **Actual COI: Tobacco regulation in China.** In 2009, the Chinese government signed the Framework Convention on Tobacco Control (FCTC) which outlines protocols and processes that signatories must follow to control and stem out the consumption of tobacco products. Among its many guidelines the FCTC promotes in Article 11 the use of Pictorial Health Warnings – the shockingly familiar and sometimes gruesome warnings that have become common in cigarette boxes in many countries – for their proven effectiveness in reducing consumption. Wan et. al. (2011) found that conflict of interest has prevented the successful implementation of the FCTC, especially of Article 11. The State Tobacco Monopoly Administration (STMA, a branch of the Chinese Ministry of Industry and Information Technology) was given the task of implementing the FCTC. However the STMA is also in charge of managing the China National Tobacco Corporation, which produces cigarettes and is the single largest cigarette producer in the world. Wan and colleagues argue that this very evident conflict of interest has prevented the successful implementation of the FCTC since the STMA is both trying to implement smoking prevention programmes while at the same time caring for the interests of the significant tobacco industry in China. Thus the successful implementation of a policy designed to have significant public health benefits is found to be compromised. This
example illustrates a conflict of interest which is internal to a government organisation which may not necessarily include any private actors. By virtue of its dual role as regulator and enforcer the STMA inhabits a zone of conflicting interests.

- **Actual COI: Public and Private Interests in Australia.** Since 1989 The Independent Commission Against Corruption (ICAC) in New South Wales, Australia has been investigating corruption and related issues in that Australian state. One of the ICAC’s key instances in the past years has been the uncovering of a widespread network of conflict of interest, illegal political donations and influence peddling. The case involves a notable former Member of Parliament and powerbroker for the Australian Labour party, Edie Obeid. With regards to this particular case the ICAC argued, and proved that Mr. Obeid and members of his family held undisclosed interest in a company called Australian Water Holdings, a company which was awarded important water treatment and services contracts by the New South Wales government. During ICAC hearings and investigations, it transpired that Mr. Obeid had used his substantial connections to both Liberal and Labor parties to secure and profit from contracts worth millions of dollars. The ICAC argued that Mr. Obeid never disclosed and in fact hid his connections and financial interest to AWH, thereby profiting massively from contracts awarded to such a company. The ICAC has ruled that Mr. Obeid is guilty of corruption and has referred the case to prosecutors. The complex web of interests of the Obeid family as well as the eventual successful investigation into their operations showcases some of the important impacts of COI as well as the need for effective mechanisms of control (see: Coultan 2014)

- **Perceived and Potential COI: Regulating telecommunications in Mexico.** In 2013 the Mexican federal government proposed to the Legislative a new Telecommunications Law. This initiative would redesign federal regulation around the internet, television and mobile technologies among others. One of the main areas of the proposed legislation pertains to
television. Mexico’s television market is dominated by two main actors, one of which (Televisa) is Latin America’s largest TV network. Since its inception, social actors and opposition figures in and outside government have criticized many of the proposals in the Telecom Law (as it is known locally). They argued that it gave too many privileges to Televisa, and that it gave the government too much power to censor social media to boot. It emerged that one of the main supporters of the Telecom Law, Senator Javier Lozano, is married and has four children with a high-ranking Televisa executive. This has led to a protracted discussion in the Congress regarding conflict of interest in the Telecom Law. Opposition representatives have called for Lozano, and any other representative with conflict of interests in the Law to recuse themselves from the legislative process. Today the law remains to be passed, or fully discussed in the chambers as the mechanisms to do so remain locked. The Telecom Law remains unpopular in Mexico and has led to widespread social protest. This particular example sets out many of the inherent conflicts of interest between private enterprise and government where firms may unduly influence the political process by “capturing” key legislative actors or public representatives who have a say in their industries’ regulatory mechanisms. (see: Red Politica 2014)

- **Perceived COI: Transiting from the public to the private spheres in the EU.** Within the European Union there is an ongoing debate at this time regarding the role of former senior EU figures as they become involved with the private sector after their tenure in Brussels ends. Former senior officials in the EU – for example in the area of trade- can be an invaluable asset to private firms due to their extensive knowledge and contacts within the EU’s governance structure. According to an article in Der Spiegel (2013) these former officials are actively courted by companies seeking “advisors” on EU policy. A case in point is that of Serge Abou; the French official served in the EU structure for the better part of three decades. He was “director-general for External Relations and director for Trade Defence Policy, then spent the last six years of his career as the EU ambassador in
Beijing” (Der Spiegel 2013). Upon his retirement he was recruited as a consultant by Huawei, the Chinese telecomm giant. No undue behaviour has been proven and Mr. Abou has complied with EU regulations, however it is not difficult to see how his new employment with Huawei can present a conflict of interest given his extensive insider knowledge of the EU as well as his equally significant access to the inner policy workings of that body. This could at times give Huawei unfair access to privileged information in a situation which would be very difficult to monitor and exemplifies the difficulty in regulating COI. This again illustrates the very grey area between public administration and private enterprise, areas that many times share the same actors. This is one of the reasons why COI is sometimes difficult to regulate, identify and uncover.

- Actual conflict of interest in Queensland, Australia. In 2013 a Queensland Parliament ethics committee ruled to have local MP Scott Driscoll removed from his position and have his seat declared vacant. The Committee found that Mr. Driscoll had failed to report to the Parliament some 14 interests he held as a member of the board of a retail lobby group. He was also found guilty of contempt and misleading the Parliament regarding these interests when questioned about them. The ethics committee found that both him and his wife received income form a retail lobby group (and a community organisation), which they then failed to declare to the local Parliament. He has been fined AU$90,000 and has since resigned citing health issues. This case is very illustrative of how clear COI rules and regulations can work alongside functioning ethics structures. One of the main arguments made by the committee was that thorough his actions Mr. Driscoll had damaged the reputation and integrity of the Parliament and was thus entitled to severe penalties. This underscores the importance of solid and effective regulations, which when successful may yield recognizable results (see: Legislative Assembly of Queensland 2013)
As the above examples illustrate, COI takes many different shapes and can be at times difficult to separate from the everyday running of government and policy. Countries with a strong Rule of Law may be in a better position to tackle this issue as their legal frameworks may be more enforceable. In countries with a weaker Rule of Law this presents a problem. COI regulations are easily circumvented when enforceability problems arise. In a country such as Mexico, for example, where the impunity rate for violent crime is close to 95% (Magaloni and Zepeda 2004) it is not difficult to imagine how COI regulations may lack the power of an effective enforcing apparatus. The evidence of the current impasse regarding the Telecom Law seems to indicate a lack of effective mechanisms to remove COI from the policy equation. So, how to go about creating enforceable, transparent COI regulations in such a context? We find some potential answers in the form of recent initiatives, some of which are presented below.

*Why is conflict of interest a problem?*

If we understand COI as a deviation from policy paths that have as their ultimate goal the greater good, or at the very least the effective provision of a public good, it is easy to see why it should be addressed by policymakers. Widespread conflict of interest, much like acts of corruption, can have a direct cost to the taxpayer and to the effective delivery of public goods. Pervasive corruption (Varese 2001) can have a very long lasting effect on the functioning of government institutions. The impacts of COI may have different effects depending on the policy sector in which it happens. In the health sector it may lead to poor emergency services or lack of availability of quality drugs and medical treatment, in the infrastructure sector it may lead to poorly engineered or over-budget works which may well require extra investment later on. Moreover COI may also have non-tangible but detrimental effects when it is present during regulatory processes, for example in unduly influencing legislators in granting telecommunications licences, designing tax reform and changing other regulatory frameworks or granting government
contracts. Conflict of interest can also have a detrimental effect on public confidence in institutions and general trust in government. When cases of COI make headlines it has a direct impact on people’s confidence in their institutions and this in turn can negatively affect the democratic process.

As we stated before, conflict of interest may take many shapes and forms. It is a subject which is especially dependent on local contexts, cultures and institutional norms. As such it is difficult to establish when it is actually happening and when what seems like COI may be otherwise interpreted. Thus it is feasible to question the idea of generating large international frameworks instead of focusing on local –national- level regulation. Is an overarching definition of COI really needed? Is the design of COI regulation at the international level an effective way to go about tackling COI? Or, is local level action a more effective strategy? These are all questions in need of answers and it is our hope that the analysis herein may be a step in this direction.

Policy Instruments used to tackle conflict of interest.

For the purposes of this paper we utilised the above mentioned database to identify common policy instruments used in the regulation and tackling of COI. These can be found within two main areas, namely Governance and Social Control. Governance refers to areas which are regulated almost exclusively by the state such as administrative regulations of government agencies, the creation and enforcement of laws, as well as the management of financial resources. Social control refers to areas which may involve other actors as well as the government. These include creating networks of social actors to monitor and tackle COI, as well as advocacy and education efforts taken into action by the state in league with other social actors. This classification comes from a review of COI practices, legislation and other documents contained in our database (N=11 countries). While not exhaustive, this review gives an indication of where efforts to tackle
COI have been placed. Thus we find a two tier structure which hosts COI control and
pvention. On the macro level we find Governance and Social Control as instruments for
policymakers, at the micro level we find specific mechanisms through which the mentioned
instruments are actually implemented and actioned. As illustrated in Figure 1 there are three main
Governance mechanisms which are used to tackle COI; actual COI can be regulated via these
instruments:

1. **Laws.** All of the cases reviewed have some form of legislation which tackles corruption
   and also contain specific mentions of COI. Laws are the central structure which supports
efforts to stem conflict of interest. Some countries like Guatemala have included
mentions of corruption in their Constitution, giving special relevance to the issue. These
may be used to tackle all forms of COI, actual, perceived or potential, such as the tobacco
regulation, parliamentary ethics and telecommunications regulations mentioned before.

2. **Administrative regulations.** These include initiatives such as codes of ethics, internal agency
   regulations and transparency and access to information structures. These may regulate
potential and perceived COI. As an example these mechanisms may be used to tackle
actual cases of COI such as the Australian cases mentioned, where the public-private
spheres come into conflict.

3. **Money.** Control of resources and financial matters is also a tool for the state to control
   COI. A system of financial penalties which punishes incidences of COI can be classified
   as falling within this sector which may aid in the regulation of all forms of COI, from
   government ethics to resource regulation and the behaviour of government agents.

In terms of Social Control we find that there exist two main mechanisms for delivery of this
instrument:

1. **Networks.** The state or some of its agencies and officials can create and participate in
   networks of stakeholders. These networks would have the ultimate goal of providing
oversight and accountability to government officials with regards to conflict of interest. These mechanisms can be especially beneficial since they enhance multi-sectorial approaches to preventing COI. Sectors to be included in these networks can include NGOs, advocacy groups, international organisations and government agencies. Networks can be used to regulate most instances of conflict of interest. This mechanism can be used to tackle cases of perceived COI such as the case of public-to-private transitions mentioned above.

2. **Advocacy.** We understand advocacy in terms of activities taken by institutions or individuals which pursue a certain goal and influence a decision-making process. In this sense, advocacy can be of assistance in dealing with conflict of interest by creating an environment of awareness and knowledge of COI and its causes, costs and consequences. Advocacy can be central to prevention efforts, as it helps educate and transmit information so different stakeholders can take action to tackle COI. Advocacy can be used to regulate and prevent perceived conflict of interest as well. Advocacy can serve many purposes and at its best is an important incentive for enterprises and public figures to avoid instances of conflict of interest. It is particularly effective in monitoring the behaviour of politicians and other public servants in order to prevent situations such as those described as happening in the Queensland, Australia provincial parliament in 2013.

**Figure 1 about here.**

As previously mentioned, we found in our database 11 countries which explicitly apply conflict of interest regulation. Within these we found that laws (because of their structural necessity) and administrative mechanisms are very common. These include specific sections of penal codes
related to corruption and COI, as well as other specially designed laws to monitor and assert COI in different government agencies. Guatemala has inserted corruption and COI provisions in their Constitution. On the administrative front codes of conduct and disclosure regulations are the most common forms of COI control. Social control mechanisms are rarer and seem to be somewhat unused. The creation of networks is favoured to advocacy in a slight majority of these cases. Below we outline some of the most common mechanisms by using specific cases from the database.

The issue of policy evaluation

The instruments and mechanisms mentioned above have been designed into regulatory frameworks – both locally and internationally- in an attempt to control the incidence of conflict of interest in most areas of governance. This generates a need for successful evaluation of COI prevention programmes and other initiatives. Evaluation in prevention poses a significant challenge. Information is not readily available; measurement of success poses challenges as well. Quantifying the instances of successful COI prevention is not easy. Prosecuted cases on the other hand may provide some information on success rates. However, the challenge to create effective evaluation mechanisms remains, not only for COI but also for other forms of corruption.

2. Approaches to Conflict of Interest

Thailand

Thailand is a country of close to 70 million people in the centre of South East Asia. It is a constitutional monarchy and a medium income country. Its HDI is also in the medium range (UNDP 2013). It has a strong high-tech manufacturing sector as well as an export driven natural resources industry among other production sectors. In terms of corruption Transparency International ranks Thailand 102 out of 177 countries (TI 2013). This represents an increase in
the perception of corruption in Thailand according to this organisation, which means that corruption is more visible in this country than it was before, thus having a greater impact on the provision of public goods and the functioning of government affairs. The same organisation argues that there is a certain degree of “capture” of government action by elites and other non-governmental actors; in this metric Thailand sits around the 50 percentile (TI 2013). The historical development in terms of corruption points to a worsening of the situation (Krongkaew 2011). Thus we see a country in which there is a risk that corruption and the use of the public sphere for private gain may become entrenched. This risk applies as well to conflict of interest¹. The indication that non-government groups may have undue influence in government decisions points towards a clear risk of COI.

It has become necessary in recent times to tackle this issue, and the Thai government, with cooperation from some international partners has been devising new legislation and strategies to tackle corruption for a considerable amount of time. As part of their effort the government established the National Counter Corruption Commission (NACC) in 1999, although this organism – or some form thereof – has existed there since the mid ’90s. This Commission’s name changed to the National Anti-Corruption Commission in 2008 as efforts to re-energise the anti-corruption agenda became more widespread. This commission deals with all matters related to corruption. Within this organisation there has been a “heightened interest in conflict of interest as a form of corruption” and as a response to this there has been a spate of laws passed that deal; with this issue (Krongkaew 20011: 98). These, argues Krongkaew fall into three categories:

¹ At the time of writing Thailand is in the middle of a sensitive political situation. The Prime Minister Yingluck Shinawatra has been ousted in part by the NACC’s accusation of corruption and malfeasance in the national rice subsidy policies. It is unclear what the result of this situation will be but it will doubtless have a significant impact on anti-corruption policies.
• Within the Penal Code of Thailand.

• Sector and position-specific regulations and sanctions.

• Newer anti-conflict of interest regulations under NACC.

Within the framework we propose in this paper we find that many of the Thai efforts to stem COI are focused on the legal architecture of the country, that it uses mostly governance instruments. For example we find the following:

**Laws**

• *The Organic Law on Counter Corruption*. This is the central “pillar of the NACC” (Krongkaew 2011: 99) as it describes its scope and powers. COI is dealt under Chapter 9 of this law and with regard to this it outlines four banned activities for public officials:

1. Having interest in a contract which involves his/her role as a public official.
2. Having any form of interest in an enterprise which has contracts with public entities in which the official performs his/her duties.
3. Having interest in any enterprise which has concessions with the state or is involved in providing similar services.
4. Having any position or interest in a private firm which may be under the supervision of the state.

These are four very explicit scenarios in which the NACC may act and which expressly forbid a public official from becoming involved in a private enterprise. These four regulations fit within the discussion of COI presented in the initial sections of this article as they broadly tackle the grey area between public and private interest. Laws can be used to regulate all forms of COI be it actual, perceived or potential although their main goal may be to stem actual conflict of interest. The examples below illustrate this:
• *The Act regulating bids to State agencies.* This Act represents another arm of the NACC and a mechanism to regulate COI in public tenders. Its main goal is to prevent public officials from incurring in COI by having private interests in forms that enter bids for public contracts. This Act sets out harsh penalties for infringements which go from five to twenty years in prison as well as fines of up to Bhat$400,000 (about US$12,000).

• *Act on managing Partnership stakes and shares of Ministers.* As its name implies this Act regulates the form in which government ministers may acquire and keep shares in companies which may result in COI. Broadly, it states that if a Minister wishes to have more than 5% share of any company it must inform the NACC and arrange to shift overall control of said shares to a third party.

Thus the NACC can be seen as an institution which, on paper, must deal directly with COI as well as other acts of corruption. It has the legal and administrative tools to achieve this goal; however, its effectiveness in dealing with COI has been put into question for a number of reasons. Chief among these is the fact that other acts of corruption which are more visible and of higher social impact have absorbed most if the resources of the NACC (Krongkaew 2011). Conflict of interest, as an intangible and at times abstract notion has taken a back seat in the face of more blatant corruption acts such as bribery. This points to one of the central issues which hamper efforts to deal with COI, namely the fact that it is a difficult activity to prove, harder to establish and define in practice and thus more difficult to punish and regulate.

The most common instrument for COI control and prevention in this case is through governance mechanisms such as the application of laws and regulations by a government agency. The creation of a specific Commission (the NACC) to deal with the issue of corruption is part of the architecture of corruption control in this case. While the goal of the NACC is to deal with
most types of COI, its emphasis on legislation tell us it mainly focused on tackling actual COI. It remains to be seen if, when Thailand’s current political situation is resolved there will be an effort to generate more diverse mechanisms to tackle this issue and integrate social control instruments into the anti-corruption structures.

**Mexico**

Mexico has a population of close to 110 million people. It is a middle income country with high human development indicators (UNDP 2013). It is the 16th largest economy in the world (World Bank 2013) and is established as an expanding economic power. Its GDP is close to US$1 trillion dollars. It is also a country that ranks very high on corruption. Transparency International ranks it as 106 out of 177 countries. Thus corruption is perceived as significant hindrance to the democratic development of the country. As exemplified by the Telecommunications Law above the design and implementation of public policy in Mexico is at times fraught with conflict of interest. Recently the Federal government has been mired in COI scandals involving the President himself and the awarding of infrastructure contracts to companies he has close ties with.

There are several policy instruments that are used in this country to tackle this issue and most are linked to regulations of corruption. In terms of governance instruments we find a host of diverse mechanisms coming into play.

*Law*
Since mid-2012 the Mexican government has passed a number of laws and regulations which tackle corruption and COI. Most importantly, the three main political parties there have in recent times proposed the creation of an independent body to oversee matters of corruption and in a way centralise the administrative structures designed to tackle it. The shape and specific functions of this organisation are yet to be defined as there is not yet a consensus among the different actors involved in its design. If passed, this would become the central actor in the fight against corruption in Mexico and this would include conflict of interest (Mexico Evalua 2013).

Recently, a series of corruption scandals have forced the government to act in this regard. The Secretary of Public Function (SFP in Spanish) was, since its creation in 2003, in charge of overseeing matters of corruption and COI in the federal government. However this organism had been largely dormant since 2008. After his election in 2012, President Peña Nieto did not appoint a Secretary to it. Scandals involving the awarding of large government contracts and the US$7 million home of the President’s wife – which was owned by one of the companies receiving said contracts – caused important social mobilisations. The President appointed a Secretary and the SFP became active again in 2014. It remains to be seen if the changes will have an effect. So far no ruling has come with regards to COI and the President.

In the meantime the laws in place to fight conflict of interest include²:

- A new Public Contracts Law which is designed to clean up the tender process for government contracts.
- A Public Audit Office which has been redesigned to be more efficient and more transparent.

² These are all Federal level laws and regulations. States may also have their own standards and regulations but we will not deal with them in this context.
Administrative

Unlike its Thai counterpart, Mexico has a large number of administrative mechanisms to tackle COI, this is perhaps related to the difficulty in passing laws in the Congress. These mechanisms include:

- **Professionalisation of the public service** has been undertaken since the mid-2000s and ultimately seeks to make the public service system based uniquely on merit and to close outside influences.
- **Codes of conduct and ethics** have also been created to govern Federal employees, and these include everyday governance and behaviour.
- **Asset declaration requirements** are a way to monitor the wealth of public servants and prevent illicit economic gain.

In terms of social control the Mexican government has been active in engaging the wider community in efforts to tackle this issue. In this sense the Mexican example is more diverse as the policy instruments it deploys are designed to address all forms of COI. The coexistence of mechanisms of social control such as codes of conduct can be seen as tailored to deal with perceived and potential conflicts of interest whereas laws tackle actual COI. Civil society has played a key role in pushing the government towards change in this respect. Indeed, throughout Mexico’s process of democratisation, civil society has played a key role in forcing the government towards transparency and accountability. The present rules and regulations are a result of this.

Networks

The Federal government has created a number of initiatives, particularly with businesses and industry to create frameworks of action around corruption and conflict of interest. There have been incentives created for businesses to train and raise awareness among their employees about
COI and other such illicit acts such as bribery. Once again these initiatives may apply as preventive measures to identify and act pre-emptively where COI may exist.

Advocacy

The government has also taken a role in this matter with targeted educational campaigns as well as timed releases of key information about government policy in an effort to inform the public of relevant issues that concern the public accounts, contracts etc. Along these lines the government claims to engage with a host of social actors and organisations in order to make transparency more available and the public analysis of government actions much more open and widespread.

While the actions of the Mexican government seem to point in a positive direction there is without a doubt much that remains to be done if the country is to shake its reputation as one of the most corrupt countries in the world. The policy instruments it has deployed signal the desire of a comprehensive approach to COI by using both governance and social control mechanisms to tackle real, perceived or potential conflict of interest.

5. Conclusions, Lessons and Insights

Since before the signing of the UNCAC, and certainly afterwards, efforts have been made in many regions to bolster and design structures that control and prosecute these actions. There is widespread consensus on the negative impacts of corruption and conflict of interest in a country’s productivity, development and attractiveness for investors. Conflicting public and private interests do coincide and do so often, particularly at the intersections of public and private enterprise where monetary gain can be substantial and thus presents an incentive to ignore conflict of interest and give preference to private gain.
It is important to recognise that certain social structures, norms and practices will at times blur the boundaries between what is acceptable behaviour and what is not. What is considered a conflict of interest in one region or country may be an acceptable behaviour in another. Thus a fully normative approach to COI, as much as it may be necessary for the design of policy instruments and initiatives, can and should be put into question. What is not up for questioning is the need to tackle this issue and in so doing countries have been using both national and international frameworks to design policy instruments to tackle COI. This needs to be done, however, with a deep knowledge of local circumstances, histories and political arrangements.

During this research project we have found a number of instruments – and implementing mechanisms - that are being used in different contexts. While not exhaustive the findings do present a feasible avenue for both further research and theoretical construction.

Further to the point above, the analysis of policy instruments from two very diverse countries – Mexico and Thailand – point to the fact that governance and social control instruments seem to be, at least for the countries/policies surveyed, the main forms of control not only of corruption but specifically of conflict of interest. This two-pronged approach seeks to broaden the scope of action by involving a multi-sectorial response in the mechanisms used. Governance instruments tend to emanate from laws and regulations created to stem out COI. The State is the main actor in this area and control mechanisms may come from the legislative process or by the creation of administrative regulations as well as controls on flows of money. Added to this, social control instruments involve civil society and other actors willing to cooperate with the State in order to effectively oversee and control COI through networks and advocacy. It seems thus, that the control of COI may be best delivered by a holistic approach; one that includes all sectors of society. The creation of effective conflict of interest prevention and prosecution mechanisms depends on the adequate operationalization of governance and social control instruments.
Both Mexico and Thailand have had mixed results with COI policies, even though the institutional architecture is there. This leaves open the question of enforcement and the rule of law. A weak rule of law, as is found in Mexico for example, undermines the state’s efforts in the control of COI. This is evidenced by the scandals involving President Enrique Peña Nieto and his administration (2012-2018) due to his personal links to construction companies which were awarded large sums in government contracts, allegedly in the billions of US dollars. The weak rule of law found there means that the instruments and mechanisms outlined above have limited impact. As of yet no consequences have arisen from these cases of COI. By the same token Thailand’s Prime Minister, Yingluck Shinawatra was deposed in 2014 for abuse of power and potential COI. This on the surface signals instruments that work; however, local political situations and arrangements need to be understood in order to clarify this difference. Local politics play a part in these processes and this cannot be ignored. Thus, we can conclude that the necessary enforcement environment and a strong rule of law are necessary for any framework to have some form of success. Herein lies the challenge for developing, middle income nations.

Further research is encouraged in this area, both at the micro-level in order to understand how COI functions in specific locales, which norms and social structures sustain it, and at the macro level, exploring the national and international architectures further and, most importantly how they can help further enhance the control of COI.

Bibliography


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