

2015年廉能學術研討會-- 防貪策略的聚焦與創變

與談 「東西方貪腐型態與防治策略之比較研究」

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貪腐 (corruption)

濫用公職，圖謀私利

“the abuse of public office for private gain” (USAID, UNCAC, World Bank)

濫用職權，圖謀私利

“the abuse of entrusted power for private gain”
(Transparency International, TI)

為什麼會有「貪腐」？

- Lack of transparency
- Over regulation
- Poverty
- Lack of enforcement
- Lack of check & balance
- Greed

缺乏透明

過度管制

貧窮

欠缺執法

欠缺制衡

貪婪

為什麼會有「貪腐」？

- Inequality
- Lack of democracy
- Low salary
- Weak judiciary
- Weak press

不公平

欠缺民主

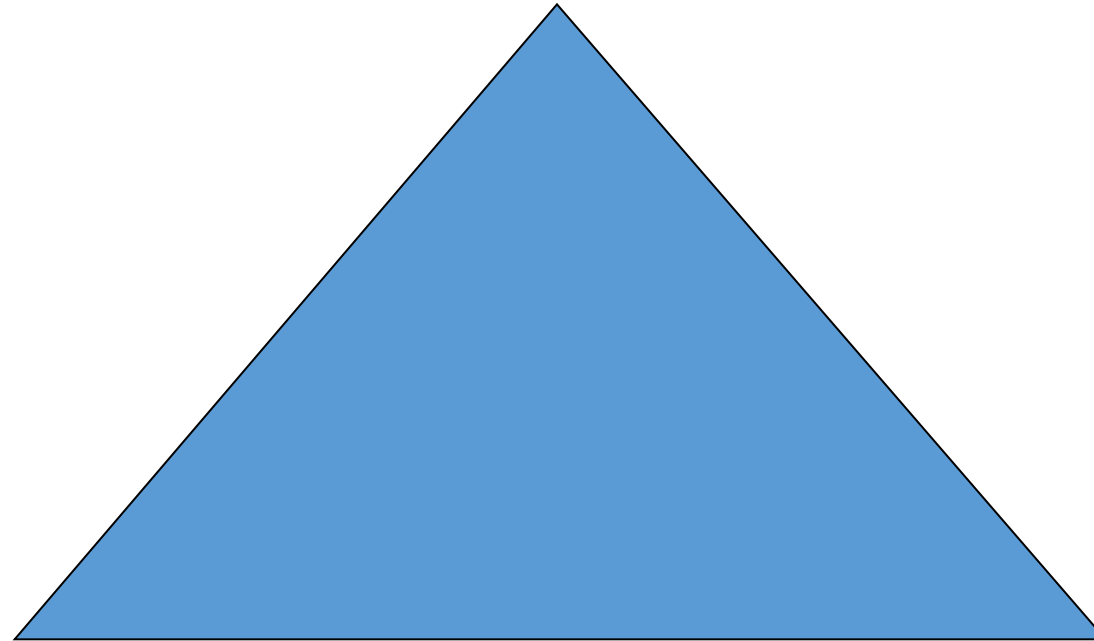
薪水低

弱勢司法

弱勢媒體

廉政治理

政府



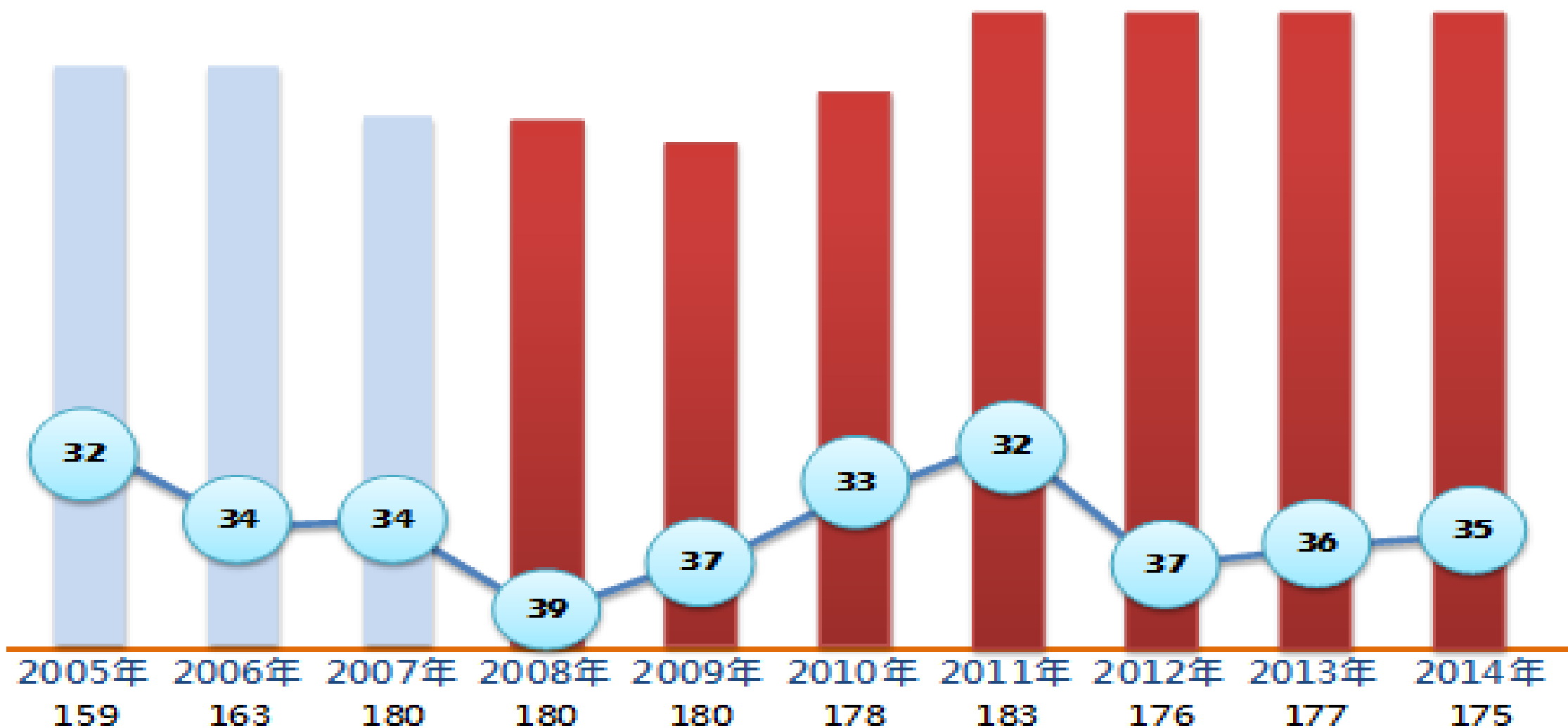
企業

公民社會
(非政府組織)

2005-2014年「清廉印象指數」(CPI)排名及分數

分 數 5.9 5.9 5.7 5.7 5.6 5.8 6.1 6.1 6.1 6.1

排 名



評比國家數

159

163

180

180

180

178

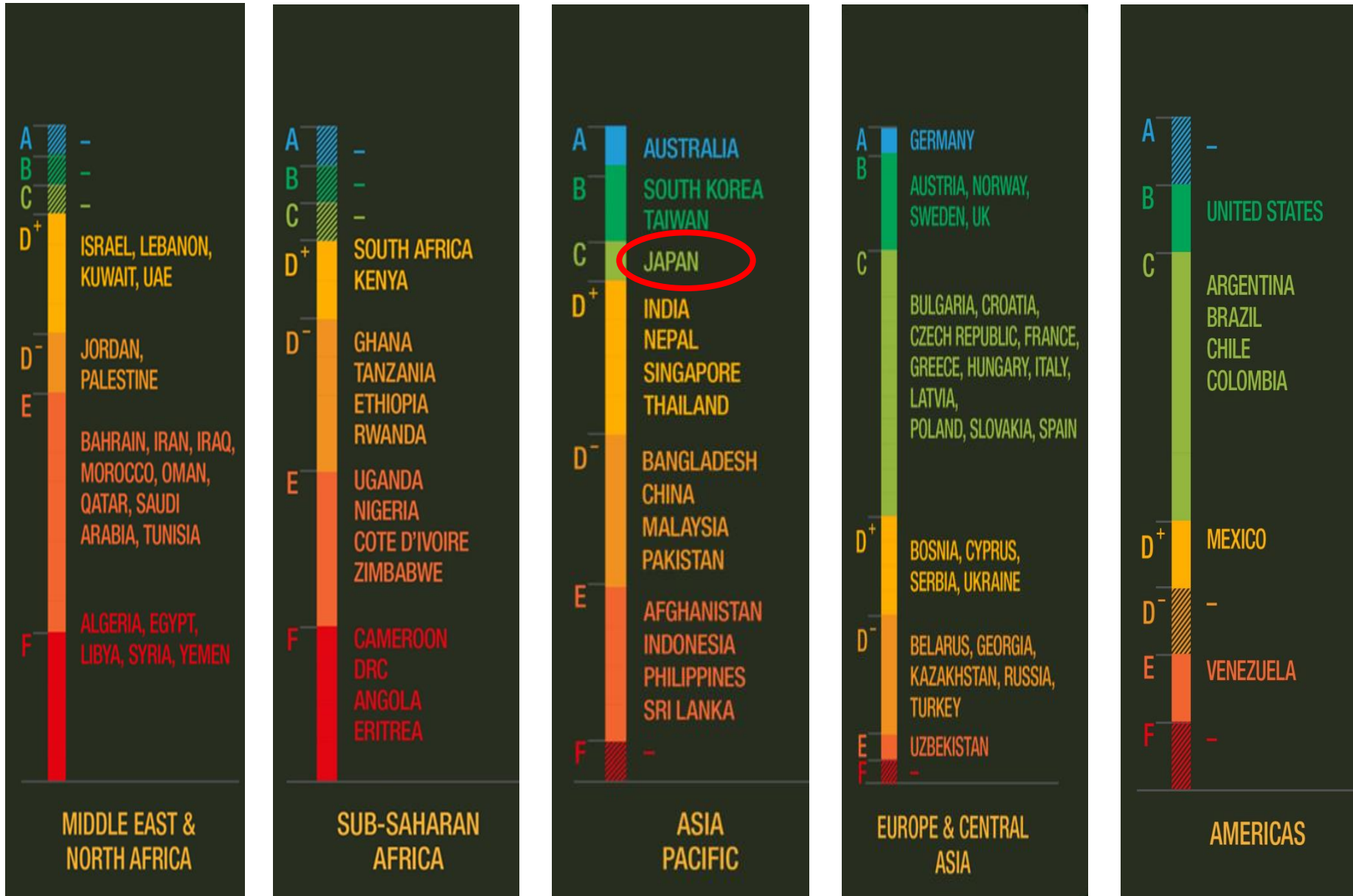
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176

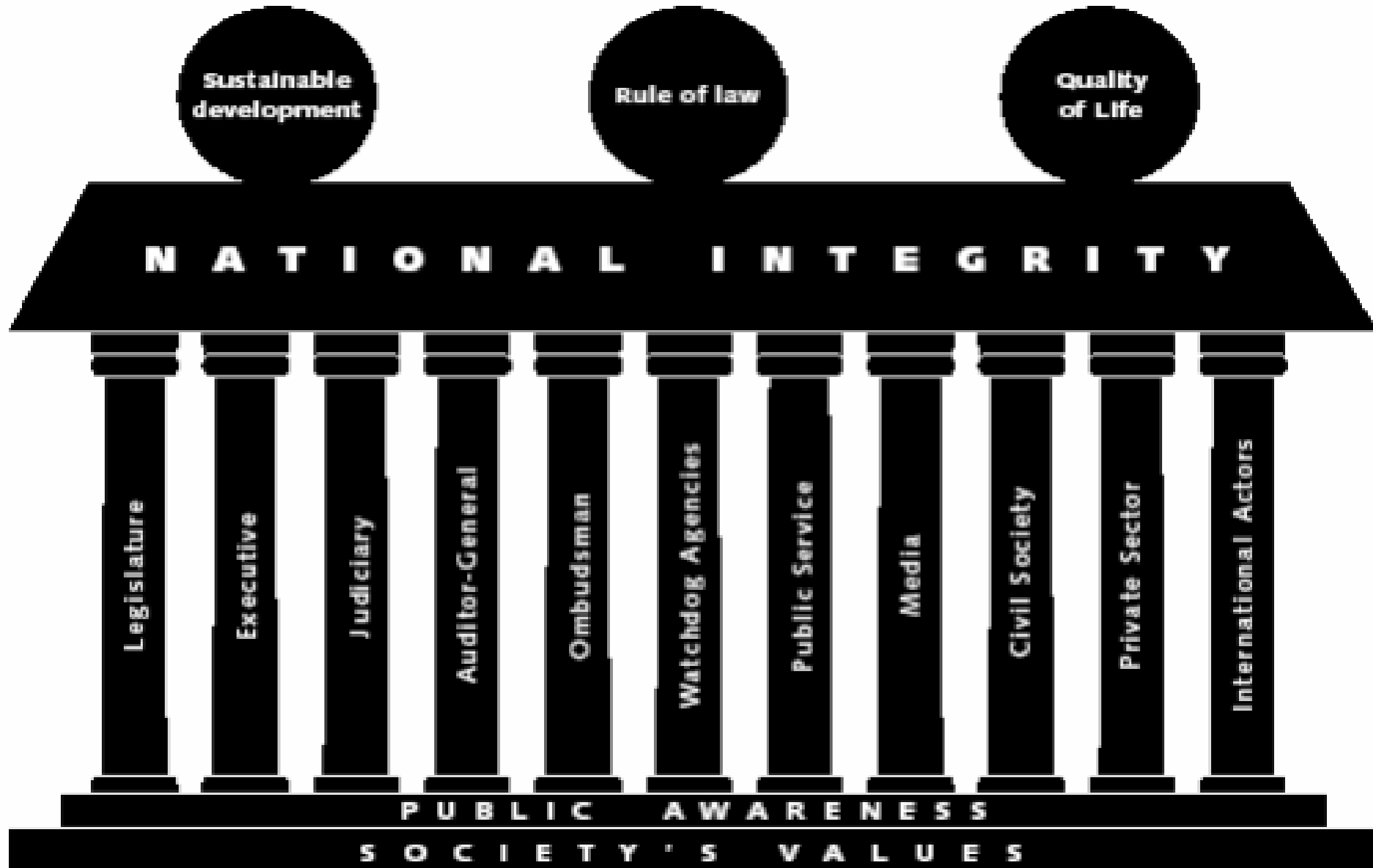
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2013全球國防採購清廉度評鑑



國際透明組織的國家廉政體系



聯合國反貪腐公約 第二章 預防措施

- 第五條 預防性反腐敗政策和做法
- 第六條 預防性反腐敗機構
- 第七條 公共部門
- 第八條 公職人員行為守則
- 第九條 公共採購和公共財政管理
- 第十條 公共報告
- 第十一條 與審判和檢察機關有關的措施
- 第十二條 私營部門
- 第十三條 社會參與
- 第十四條 預防洗錢的措施

反貪措施跨越國家主權與貪腐定義成為國際協定

- Although virtually all countries have, and have had, statutes on the books prohibiting domestic bribery, particularly of public sector officials, until the mid 1990s, anticorruption measures were not regarded as a suitable subject of international agreements, but rather a matter reserved to national sovereignty.
- what may be considered an improper transaction in one country may be acceptable in another. In order to successfully create a consensus among varying state opinions, international treaties must consider the many possible definitions of corruption.

聯合國反貪腐公約的目的和基礎所在

- (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- (c) To promote integrity, accountability and proper management of public affairs and public property.
- Four UNCAC's founding pillars: preventive measures, criminalization, international cooperation, and asset recovery.

貪腐包括賄絡但不僅止於賄絡

- **Bribery** has over time become almost **synonymous** with **corruption**. This unfortunate outcome restricts the scope and reach of anti-corruption tools, ignoring other activities enabling personal enrichment through the misuse of authority, which therefore fall under the breadth of corruption. The UNCAC innovates by criminalizing corruption in its wider meaning including bribery but also **other bribery-related offences** in the **public and private sectors**. These include **embezzlement**, **trading in influence**, **abuse of functions**, **illicit enrichment**, **money laundering**, and **obstruction of justice**.
- The UNCAC does not define the notion of “**undue advantage**.” It is however agreed that it covers any type of advantage, whether material or immaterial, monetary or non-pecuniary.

資產回復的革命性創舉

- The UNCAC is seen as revolutionizing the realm of asset recovery in the field of international law. Veering away from a penalty approach to criminal law, the UNCAC targets a more profit-oriented perspective in its attempt to create mechanisms to **recover stolen assets**.
- Asset recovery explicitly stated as a “fundamental principle” of the UNCAC, but Member States are required to “**afford one another the widest measure of cooperation and assistance** in this regard.”

同儕評鑑：價值分享、承諾、互信、信用

- Some of the main objectives of the mechanism under the UNCAC are **transparency, impartiality, the absence of ranking among states and the sharing of good practices**. The **effectiveness** of peer review mechanism depend on four factors: **Value sharing** implies that the participating countries share similar standards upon which to evaluate their respective performance. **Commitment**, refers to the use of an adequate level of financial and human resources by Member States in the fulfillment of their obligations. The **mutual trust** requirement includes transparency and openness in the sharing of information and data. Finally, **credibility** implies complete independence on the part of the evaluators.

公民參與監測有助評鑑公信

- Reports and recommendations are **made public** and **private sector and civil society** play an **active role** throughout each review phase of the convention's monitoring mechanism.
- The **participation of civil society** adds **public pressure** to the existing peer pressure.
- A review process limited to governments **reviewing governments behind closed doors** will have **far less public credibility** than a more broad-based process and will be less effective in achieving UNCAC's basic objective of overcoming corruption