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Anti-Corruption Priorities in Sub-Saharan Africa

UNCAC Coalition Regional Submission to CoSP10

24 November 2023

The UNCAC Coalition civil society organizations from Sub-Saharan Africa welcome the holding of the tenth UNCAC Conference of the States Parties (CoSP) in the United States, which provides an exceptional opportunity to recognize global, key anti-corruption advocacy issues. This written statement reflects our concerns and intends to inform the Conference, particularly the States Parties, about UNCAC-related priorities and provide recommendations to advance anti-corruption measures in Sub-Saharan Africa.

Civil society organizations and the public play a crucial role in fighting corruption and promoting good governance by advancing transparency and accountability, monitoring the implementation of anti-corruption measures, raising awareness, providing expertise and technical assistance, and furthering international cooperation. Therefore, the active involvement of and collaboration with civil society organizations by States is urgently needed. We call on States Parties to:

- Establish inclusive and participatory mechanisms for public participation in designing, implementing, monitoring and evaluating anti-corruption policies and measures. Participation can take various forms, such as consultations, surveys, petitions, hearings, forums, dialogues, working groups, coalitions and partnerships.
- Promote transparency and access to information, ensuring that the public has the rights and means to access relevant information on government activities, budgets, contracts, procurements, audits, asset declarations of public officials, political financing data, investigations and enforcement actions, alongside other information relevant to help prevent and detect corruption, and hold officials accountable.
- Promote public participation and civic engagement in the fight against corruption by creating appropriate legal frameworks, protecting civic space and supporting civil society organizations and initiatives.

Upon this foundation, our joint anti-corruption priorities relate to:

1. Whistle-blower Protection
2. Public Procurement
3. Beneficial Ownership Transparency
4. Compensation for Victims of Corruption
5. Asset Recovery

1) Whistle-blower Protection

The Panama, Pandora and Paradise Papers and the inquiries that they generated around the world are examples of the power of whistleblowing to ensure accountability.¹ Fighting corruption very often begins with spotting the corrupt act and reporting it. Those who report corruption, however, are often attacked viciously, sometimes to their peril. In some countries in the region, whistle-blowers have faced threats, intimidation, violence, legal suits and even the death penalty.²

While we acknowledge that States Parties are slowly embracing the necessity for whistle-blower protection laws globally, whistle-blower protection laws for many Sub-Saharan African countries are currently only applicable as part of other instruments. Few in the region have a dedicated whistle-blower protection law.³ States should therefore promote regional and international cooperation and exchange on best practices to protect whistle-blowers. Additionally, we urge States to:

- Enact and enforce stand-alone whistle-blower protection laws that provide clear definitions, procedures, gender-sensitive whistle-blower mechanisms, incentives for reporting (such as Whistle-blower Protection Funds) and protocols for invoking protection and providing comprehensive protection for whistle-blowers.
- Establish independent and specialized agencies or mechanisms to receive, investigate and respond to whistle-blower disclosures and to monitor and evaluate the effectiveness of whistle-blower protection.
- Sensitize and strengthen independent state institutions that have a role to play in providing effective whistle-blower protection, ensuring that they have adequate human and financial resources to process reports in a gender-sensitive way that furthermore ensures anonymity of the reporting person.
- Set up a complete anti-corruption ecosystem for whistle-blowers facing reprisals that includes legal support, psycho-social support, and safe houses to allow for adequate safeguards for those brave enough to blow the whistle.
- Develop and implement nationwide education campaigns directed at citizens on whistle-blower protection legislation and how to access platforms for reporting, as well as on the value and rights of whistle-blowers, and create a culture of integrity and accountability.

¹ International Consortium of Investigative Journalists (ICIJ) (2021), Pandora Papers reporting from across Africa, <https://www.icij.org/investigations/pandora-papers/pandora-papers-reporting-from-across-africa/>.

² Human Rights Watch (2021), DR Congo: Quash Whistleblowers' Death Sentences, <https://www.hrw.org/news/2021/03/09/dr-congo-quash-whistleblowers-death-sentences>.

³ iSpeak, African countries with whistleblower protection laws, <https://ispeak.africa/whistleblower-protection-laws/>; PPLAAF, Country reports, <https://www.pplAAF.org/country-reports.html>.

2) Public Procurement

Public procurement is a fundamental pillar of strategic governance and service delivery. Making public procurement systems more efficient, cost-effective, and transparent will avail public services to more citizens across the world at a cheaper cost to governments. It will also enable civil society to play a significant role in monitoring the correct usage of public funds, which will save them from being misappropriated, and in holding those involved in corrupt practices to account.

Acknowledging the efforts of States Parties to improve the effectiveness and efficiency of public procurement and considering the many procurement reforms being undertaken, we wish to put forward electronic procurement as a particularly effective tool that has the potential to reduce corruption.⁴ Electronic procurement inherently reduces corruption through the side-stepping of the human-to-human interaction that births corruption and facilitates transparency, access to information and monitoring of the public at large. The COVID-19 pandemic and its concomitant effects on transparency in procurement have heightened the need for electronic procurement systems across the globe. We urge States Parties to:

- Establish comprehensive electronic procurement systems and ensure that public tenders throughout the entire procurement cycle are included in these systems and made publicly accessible in a timely manner, capturing data for all procurements, without exception.
- Institute beneficial ownership registers that are publicly accessible and included in the procurement process to reveal the ultimate owners and beneficiaries of corporate entities, enabling the identification of conflicts of interest in procurement.
- Make mandatory the declaration of conflicts of interest by officials involved in bidding evaluation. These officials should declare any conflicts of interest in written form, and false declarations should carry the equivalence of perjury in a court of law.

3) Beneficial Ownership Transparency

The unveiling of major corruption scandals involving powerful heads of state and leaders from around the world in the recent past have demonstrated the necessity for disclosing adequate, accurate and up-to-date information about the beneficial owners of corporate entities and legal arrangements, and, more importantly, offering this information to the public and supporting its use to foster accountability. Beneficial ownership transparency will reveal the actual owner of a corporate entity or arrangement, closing information gaps that allow corruption, transnational crime, and tax evasion to flourish. It is recognized that the use of beneficial ownership information holds great potential to unveil and deter all manners of fronting, illicit financial flows, money laundering, abuses of the contracting processes, and

⁴ Open Contracting Partnership, Open contracting in Africa, <https://www.open-contracting.org/worldwide/africa/>.

substantially reduce opportunities for rent-seeking and elite capture of the benefits of the resources that commonly belong to the people. We therefore urge States Parties to:

- Enact and enforce legislation on beneficial ownership transparency, particularly as part of the registration modalities for corporate entities.
- Integrate their beneficial ownership registers with databases of investigative, prosecutorial and other anti-corruption and accountability institutions, hence ensuring interoperability and increasing chances of detecting and investigating corruption.
- Make beneficial ownership registers accessible to accountability institutions, such as the media and civil society organizations; as well as to the general public, without a fee.

4) Compensation for Victims of Corruption

The UNCAC recognizes the importance of compensating victims of corruption. Sub-Saharan African countries can prioritize this by defining victims of corruption and creating legal frameworks for compensation, supporting victims and holding corrupt officials accountable for their actions. We recommend that States Parties:

- Take steps to empower victims of corruption to take action or participate in legal proceedings and provide access to information and representation.
- Determine legal mechanisms and framework conditions for the assertion and granting of damages, such as civil lawsuits, class actions or beneficiary clauses in public contracts.
- Use recovered assets in a manner that compensates the direct victims of corruption, including specific measures to analyse and respond to the gendered impacts of corruption within victim constituencies.
- Ensure that gender-disaggregated data is collected on the impact of corruption. Similarly, impacts on other minority and vulnerable groups must be collected so that compensation to victims of corruption is better targeted.

5) Asset Recovery

The Sub-Saharan Africa region, in particular, has been a victim of illicit financial flows leaving the countries to be hidden in overseas jurisdictions. The region, therefore, welcomes the asset recovery initiatives and the assistance offered by several governments across the world to recover assets and repatriate them to their countries of origin. We urge States Parties to:

- Establish a legal and institutional framework for the confiscation, seizure, forfeiture, recovery and management of assets or proceeds gained in unlawful activities as well as comprehensive anti-money laundering and mutual legal assistance laws, specialized units and courts, and promote effective enforcement.

- Allow for and apply non-conviction-based confiscation in cases where public officials have acquired unexplained wealth during their time in public office.
- Take specific steps to reduce the high costs and complexity of negotiating individual asset recovery cases. This could be done by improving regional and international cooperation and information exchange in asset recovery cases, for example through bilateral and multilateral agreements.
- Take steps to improve the capacity of relevant authorities and stakeholders involved in asset recovery, such as investigation and prosecutorial institutions, and the establishment of special courts.
- Increase transparency and accountability in the asset recovery process, for example, through the publication of data and reports, public engagements and ensuring the participation and oversight of affected communities and civil society.
- Promote responsible and sustainable use of recovered assets by developing clear policies and mechanisms for the return and management of assets, aligning them with national development priorities and objectives, and monitoring their impacts and outcomes.