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IMPLEMENTING EFFECTIVE MEASURES TO PREVENT CORRUPTION

UNCAC Coalition submission to the 7th UNCAC Conference of States Parties

Introduction

The United Nations Convention against Corruption expresses that States should “establish and promote effective practices aimed at the prevention of corruption” as well as “endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.”

While many States have taken steps forward in the implementation of comprehensive measures to prevent corruption since the establishment of UNCAC, substantial work remains to be done. In addition, due to an ever-changing social and political landscape and to technological advances, preventive measures need to be permanently checked on and updated.

Within this framework, the organizations presenting this submission have identified three key areas where prevention measures could have big impacts in fighting corruption. We call the UNCAC States Parties to consider the following recommendations in the drafting of the resolutions to be adopted during the 7th session of the CoSP.

Access to public information

According to UNCAC Chapter II, especially Articles 5 (1), 9, 10 and 13, access to information is essential for corruption prevention. Access to public information promotes accountability and transparency, and allows better control of state action by citizens. Currently, 119 countries have adopted Right to Information laws or policies, and 90 of these have Right to Information explicitly in their national constitution.¹ While the implementation of these legal frameworks is an important advance, it is not sufficient to ensure an effective and comprehensive policy of access to public information. We thus present the following recommendations to States Parties:

- *Adopt and implement comprehensive legislation:* countries that have not adopted access to information legislation should prioritize the adoption of such laws.
- *Create institutional mechanisms to supervise the correct implementation of the law:* all countries should create independent and autonomous institutional mechanisms to supervise the implementation and application of the law. These institutions should comply with international standards as established in the United Nations Human Rights Committee in General Comment No. 34 adopted in 2011.²
- *Publish information and data proactively:* States Parties should ensure proactive publication of information and data, including on anti-corruption efforts. There should be no limits on the reuse of the information.
- *Adopt Open Data standards and usable means of communication:* where appropriate, States should make sure that any data that they publish are in Open Data formats. Publication of data should be timely, comprehensive, accessible, freely sharable and usable in ways that are fit for the local contexts. States Parties should also promote open data initiatives to raise awareness and increase data literacy and capacity-building among key actors like civil society, journalists, and interested citizens.

¹ See Article 19 Report: <https://www.article19.org/data/files/medialibrary/38832/Open-Development--Access-to-Information-and-the-SDGs-2017.pdf>.

² See General Comment 34 CCPR/C/GC/34, 12 September 2011, <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

Public procurement

In accordance with UNCAC Chapter II Article 9 (1), states should take the “necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption.”

Public procurement is particularly vulnerable to corruption, and has a direct impact on ensuring human rights. We call on States to put new efforts towards ensuring transparency of their procurement processes, and present the following recommendations to achieve this:

- *Ensure transparency and accessibility:* States should facilitate public oversight and promote fair and equitable treatment for potential suppliers by providing an adequate and timely degree of transparency in each phase of the public procurement cycle. Coherent and stable institutional, legal, and regulatory frameworks should be in place to make the procurement process as transparent, navigable and accessible to citizens as possible. In addition, states should use competitive tendering and limit the use of exceptions and single-source procurement, while ensuring these are also subject to high standards of transparency and accountability.
- *Make use of new technologies:* CoSP Resolution 6/6 “Encourages States parties to promote the implementation of article 9, paragraph 1, of the Convention by establishing, inter alia, online platforms based on open data formats for the distribution of information relating to public procurement and tenders as a way to prevent corruption, enhance transparency and ensure competition and objective criteria in procurement decision-making.” States should employ digital technology developments such as integrated e-procurement platforms in ways that also promote transparency, accountability and procurement effectiveness. States Parties should also make use of tools like Open Contracting,³ which offers data standards that can be used as models and replicated across countries.
- *Implement appropriate sanctioning mechanisms:* Governments should implement reliable mechanisms that sanction contractors that have taken part of corrupt practices, and exclude them from any future contracting opportunities.
- *Implement beneficial ownership registers:* only companies with clear and disclosed ownership should have access to public contracts. This would strengthen procurement’s legitimacy, accountability and effectiveness. Anonymous companies have been used to abuse procurement systems and to hide conflicts of interest and corrupt practices that derail proper contracting’s goals.

Public financial management

As established in UNCAC Chapter II Article 9 (2), States should take “appropriate measures to promote transparency and accountability in the management of public finances.” A weak public finance management system leaves the door open for corruption. Corruption, in turn, can damage public finances, public confidence in the government and delivery of services to the citizens. Through resolution 67/218,⁴ the UNGA recognized the Global Initiative for Fiscal Transparency and its high-level principles,⁵ and encouraged States to intensify efforts to meet these principles. Transparency, public participation and effective formal oversight represent the three pillars of a robust budget accountability ecosystem. Thus, we call on States Parties to adopt measures to strengthen their public financial management on the following areas:

³ See <https://www.open-contracting.org/>.

⁴ <http://undocs.org/en/A/RES/67/218>.

⁵ http://www.fiscaltransparency.net/ft_principles/.

- *Ensure budget transparency:* according to international good practices, governments should publish budget information at all stages of the budget process, including the formulation, approval, execution, and auditing and legislative evaluation.⁶ States Parties should make sure this information is published in a timely and accessible manner. States should also make sure to meet demand from civil society for organized budget data. In order to do this, governments should improve the level of detail of the budget information that they publish — for example by releasing more local-level and sector-specific, facility-level information, and information on investment projects — but also to review disclosure practices in terms of data formats, the quality of online portals/websites, and the ability of cross-referencing different types of data.⁷
- *Encourage public participation:* States should encourage citizen participation in all phases of the budget cycle by opening opportunities for citizen feedback and input.
- *Strengthen oversight institutions:* States should provide formal oversight institutions adequate authority, scope, and resources to effectively carry out their mandates and ensure that public funds are collected and spent in the manner that was intended.⁸ These institutions should have statutory independence from the executive, and should operate in an accountable and transparent manner.

A key element to ensure the successful implementation of the above recommendations is the involvement of civil society. UNCAC Article 13 explicitly recognizes the importance of civil society in tackling corruption, stating that State Parties should “promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.” Only inclusive efforts will be successful and sustainable over time. For this reason, we call for involvement not only in the preventive efforts but also in UNCAC’s second-phase review and its follow-up.

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⁶ See International Budget Partnership Report <https://www.internationalbudget.org/wp-content/uploads/Guide-to-Transparency-in-Government-Budget-Reports-Why-are-Budget-Reports-Important-and-What-Should-They-Include-English.pdf>.

⁷ See International Budget Partnership Report on civil society and the use of open budget data <https://www.internationalbudget.org/wp-content/uploads/ibp-paper-how-civil-society-uses-budget-information-12-2016.pdf>.

⁸ See <https://www.internationalbudget.org/wp-content/uploads/OBS2015-Report-English.pdf>.