

Regional Conference on Fast-Tracking UNCAC Implementation

South America and Mexico, 6 to 10 May

Statement

High-level officials from Argentina, Bolivia, Brazil, Chile, Colombia, Mexico, Paraguay, Peru and Uruguay, together with representatives of civil society and development partners, met in Cartagena de Indias, Colombia from the 6th to 10th of May 2019 to study and to analyse the substantive aspects of the United Nations Convention against Corruption (UNCAC) and to promote the creation of partnerships to accelerate its implementation to support the achievement and realization of Sustainable Development Goal 16 in South America and Mexico. This platform is built on the momentum generated by the UK anti-corruption summit held in London on the 12th of May 2016.

The conference focused on four thematic areas, which were identified based on various international instruments such as the Lima Commitment, discussions with different national authorities, as well as the analysis of the recommendations made during the first cycle of the UNCAC Implementation Review Mechanism.

We are grateful for the attendance and participation of civil society at this conference and appreciate their valuable contribution on the various topics. The participants from the countries welcome the document prepared by civil society which includes recommendations on each of the 4 topics discussed during the conference¹.

The participants, especially members from civil society, recognized the importance of addressing other issues relevant to the fight against corruption, such as the separation of powers, the fight against impunity, and judicial independence among others. These issues demonstrate a pertinence to democracy and the rule of law².

The Conference recognized the importance of taking into account the mechanisms, studies and model laws of international and regional anti-corruption bodies, such as the OECD Working Group on Bribery in International Business Transactions, the OAS follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC), the Financial Action Task Force (FATF), the Financial Action Task Force of Latin America (GAFILAT), among others.

The following recommendations were agreed upon:

Overall Commitment

Participants affirmed the need for States to encourage the implementation of the recommendations emanating from the reports of their UNCAC Implementation Review Group (IRG).

¹ Final document of the Civil Society Roundtable in the framework of the Regional Conference for South America and Mexico to fast-track UNCAC implementation in Latin America.

² <https://www.datasketch.co/p/recomendaciones-de-la-sociedad-civil-a-los-estados-para-el-avance-de-la-lucha-contra-la-corrupcion-en-la-region>

Recommendations per thematic area

I. Integrity systems with a focus on conflict of interest and income and asset declaration.

Proposed action #1: Implement a risk-based approach.

- *Establish a risk identification and management methodology that focuses on the classification of risks and that allows a rational and efficient use of resources, in order to focus on where the main integrity gaps and the most sensitive areas are concentrated in, with respect to the commission of corrupt acts.*
- *Ensure the necessary resources (human, economic and material) for the development and implementation of public integrity policies.*

Proposed action #2: Conflicts of interest.

- *Identify and manage conflicts of interest by considering the implementation of a risk management methodology.*
- *Accompany the general framework of identification and management of conflicts of interest of each country with specific policies that allow its application at the operational level.*
- *Ensure that, internally, public entities have an integrity system that can be adjusted to their own needs and cultural characteristics. Ensuring the proper compliance of the same, through the presentation of public information of the compliance percentages and implementation of the same.*
- *Reform the relevant regulatory framework and make the necessary adjustments to the management of corruption risks.*

Support offered:

Chile pointed out that as Office of Comptroller General of Chile they would be able to share their experience in the creation of the institutional integrity system.

Proposed action #3: Conflicts of interest.

- *Establish structures, controls, tools guidelines and procedures to identify and prevent conflicts of interest and/or improve existing ones.*
- *Recognize the need to strengthen conflict of interest systems, through the establishment of:*
 - ✓ *Clear and unequivocal concepts; for example, through the implementation of a non-exhaustive guide to known typologies;*
 - ✓ *Clear solutions on how to manage them;*
 - ✓ *Clear directions to officials who are required to declare conflicts of interest;*

- ✓ Clear channels through which officials can obtain advice and support regarding potential conflicts of interest;
- ✓ Publicized reporting channels;
- ✓ Comprehensive training programs for officials needing to declare conflicts of interest;
- ✓ Sanctions in case of non-compliance with obligations stemming from conflict of interest regulations.

Proposed action #4: Declarations of assets and conflict of interest.

- *Manage and utilise declarations of assets and interests to identify conflicts of interest and illicit enrichment.*
 - ✓ Promote the presentation of declarations by electronic means, avoiding, as far as possible, the use of paper.
 - ✓ Design the declaration form to include clear instructions to facilitate their completion and subsequent management and verification.
 - ✓ Define the range of persons subject to the risk-based approach and the frequency with which such entities must make their declarations.
 - ✓ Promote the regulation of the content of the declarations through an intensive use of technology and using a risk approach.
 - ✓ Monitor declarations to identify possible acts of illicit enrichment in time, through unjustified growth of assets.
 - ✓ As far as is possible ensure the interoperability of databases, by means of a normative framework (whether legal or regulatory) that ensures the access of the authority in charge of the declaration system to access other databases.
 - ✓ Promote active transparency in the broadest possible way (safeguarding sensitive data) of information provided by declarants.
 - ✓ Define, apply, socialize and disseminate sanctions in case of non-compliance with obligations derived from the declaration system.

Support offered:

Chile pointed out that as Office of Comptroller General of Chile they would be able to share their experience in creating a system of affidavits using their own resources, they would also be able to share their experience in database cross-referencing and the creation of a website (www.infoprobidad.cl) whose purpose is to deliver linked open data in accordance with the standards set forth by W3C for the Semantic Web.

Proposed action #5: Capacity building.

- *Recognize the importance of promoting specific and tailored capacity building for those charged with regulatory activities on the one hand and for those who perform other more general public functions.*

Proposed Action #6: Regulatory Reform.

- *Emphasize the importance of the legislative powers and identify the necessary legal modifications to implement the other recommendations proposed here, and to ensure compliance with the international commitments assumed by the States.*
- *Work with the executive branch, when such modifications depend on their own regulatory power.*

Proposed action #7: Promote probity in the private sector, political parties and non-profit organizations.

- *Recognize the importance of promoting probity in the private sector, political parties and non-profit organizations especially in their relationships with the public sector.*
- *Reiterate that preventing and fighting corruption requires joint efforts between the public, private and civil society sectors.*
- *Encourage the promotion of a culture of integrity from the initial level, gradually increasing the participation of students in the following educational levels.*

Support offered:

Chile pointed out that as Office of Comptroller General of Chile they would be able to share their working experiences of the UNCAC-Chile Anti-Corruption Alliance, as a platform for inter-institutional coordination.

Proposed action #8: Guarantee the means to inform the competent authorities of acts of corruption and the procedures for them to take action.

- *Ensuring that individuals can report acts of corruption to the competent authorities, as well as defining procedures by which those authorities must take action, either to investigate or to dismiss an investigation.*
- *In these cases, guarantee the protection of the reporting person, both physically and labour protection.*

Proposed action #9: cooperation with other countries.

- *To share experiences and data to improve national capacities and facilitate joint work in the fight against corruption.*

II. Liability of Legal Entities with Emphasis on the Adequacy of Corporate Compliance Systems.

Proposed action #1: Studies and knowledge.

- *To carry out studies on the liability regimes of legal persons to better understand the context of each jurisdiction as well as the places and situations the most exposed to corruption by legal persons.*
 - ✓ Focus the fight against corruption in the private sphere, not only on individuals but also on legal persons;
 - ✓ Develop adequate diagnostics and studies on the liability regimes of legal persons applicable in the region and plan activities based on known challenges and good practices;
 - ✓ Develop a proposal for model legal provisions on liability of legal persons with an administrative and criminal focus based on analysis of other model legal provisions and studies from international organizations;
 - ✓ Establish a commission of experts from countries to offer legislation support so that countries can share good practices in relation to their national regulations;
 - ✓ Develop guidelines for prosecutors, judges and administrative authorities that establish criteria for attributing or discarding the liability of legal persons (including criteria on the adequacy or otherwise of the integrity programme);
 - ✓ Develop guidelines for the implementation of Integrity programmes (for companies and other legal entities, both to prevent and report corruption, and to raise awareness of the advantages of doing so);
 - ✓ Organize meetings that culminate in unique commitments that must be adapted on a pre-established date in the short, medium and long term in relation to company integrity programs and the unification of criteria for these programs.

Proposed Action #2: Awareness raising and training on investigations of legal persons (Case Clinic).

- Training of investigators and prosecutors on special investigation techniques with an emphasis on investigations of legal persons on corruption crimes (such as specialized accounting techniques and selective searches in databases). Training of auditors, tax authorities and other relevant authorities on the detection of possible indicators of corruption.
- Study successful models in the region and the world to analyse exchanges and technical cooperation among countries (Argentina, Brazil, Chile and Colombia).

Proposed action #3: Create an information exchange system.

- *Establish an informal internal and regional information exchange network among law enforcement agencies on investigations of legal persons in corruption cases in collaboration with other existing cooperation networks in the region in order to avoid duplication of efforts.*

- *Analyse exchanges and technical cooperation between countries (Argentina, Brazil, Chile and Colombia)*

Proposed action #4: Make integrity programmes effective.

- *Provide periodic training to legal persons in their integrity programs and knowledge of the scope of the regulation of each country.*
- *Train compliance officers and auditors in legal persons to prevent cases of corruption and generate self-regulating mechanisms.*
- *Work with small and medium enterprises, as well as social organizations to develop compliance programs that are appropriate to the reality and need of each organization.*
- *Improve interactions between administrative bodies within governments and legal entities to advise them on the implementation of compliance programs.*
- *Train companies and other legal entities in the countries of the region on integrity programmes and policies to prevent corruption, which must be adapted to their circumstances and needs.*
- *Consider the interaction of legal entities with governing bodies so that they can advise them on the implementation of such integrity programmes.*

Comments from the Ministry of Justice and Institutional Transparency of the Plurinational State of Bolivia on this issue:

Companies and other legal entities in the countries of the region should be trained to implement integrity programs and policies to prevent corruption, which should be adapted to their realities and needs. In addition, consideration should be given to the interaction of legal persons with governing bodies so that they can advise them on the implementation of such integrity programmes.

With regard to the fight against corruption of legal persons, it is very important to implement administrative and criminal regulations taking as a reference international laws and successful models from countries in the region, such as Argentina, Brazil and Chile.

One proposal to achieve this end is to consolidate a commission of representatives of the different countries so that they can share good practices in relation to their applicable regulations and establish an informal network for the exchange of information at the internal and regional levels among agencies in charge of applying the Law in investigations of legal persons in corruption cases.

III. Whistleblowing protection.

Proposed action #1: Deepen the knowledge of the concept of whistleblower.

- *Improve knowledge of the concept of whistleblowing protection.*
 - ✓ Raise awareness to all the citizens on the value of whistleblowers in the fight against corruption (for instance, through conducting research or publishing and disseminating statistics on whistleblowers cases and their results - anonymised if necessary);
 - ✓ Train and increase awareness on, international standards and the experiences of different countries in this area;
 - ✓ Clarify the conceptual difference between whistleblowers and witnesses in criminal proceedings; as well as with other figures foreseen in the national legislation that could generate confusion;
 - ✓ Clarify the concept of whistleblowers of corruption in administrative, civil and disciplinary regimes;
 - ✓ Clarify the difference between whistleblowers and reports of labour conflicts for individuals (personal grievance);
 - ✓ Publish information on the different reporting channels, procedures, and protection measures available.

Proposed action #2: Normative instruments for adequate protection of whistleblowers

- *All States should consider reviewing their normative instruments for the protection of whistleblowers (with a focus on workplace protection, among others) to align them with international good practices and extend whistle-blower protection to the public and private sectors.*
 - ✓ Analysis of regulatory gaps through;
 - ✓ Support in the development of consultation instances with relevant/interest actors at the national level;
 - ✓ Comments on drafts of existing normative texts;
 - ✓ The regulations should clarify who should be protected (for instance employees, contractors, or fee service providers), which are the authorized reporting channels (internal channels, external channels ...) and provide for protective measures, including those that reduce the risk of retaliation and those that can be applied if they occur;
 - ✓ To support the development of the draft of this regulation.
 - ✓ Provide for exclusions from protection when the reporter has reported a fact that he or she knows to be false in order to harm a person;
 - ✓ Clarify the relationship between this regulation and other key regulations (including protection of personal data and access to public information.).

Proposed action #3: Provide guarantees of anonymity and confidentiality.

- *All States should adopt an efficient reporting system that ensures respect of confidentiality and contemplates the possibility to report anonymously.*

- ✓ Explore possible technical solutions to maintain a bilateral communication (between the reporter and the receiver of the report) maintaining anonymity or confidentiality, where appropriate;
- ✓ Promote confidential reporting as a preferred option to anonymous reporting;
- ✓ Provide guidance on the information to be reported (including types of matters and details required to establish the facts.);
- ✓ Provide training to the people who receive the reports on how to process them and on the importance of respecting confidentiality and the anonymity of the "need-to-know" principle;
- ✓ Try to offer different alternatives to facilitate reporting, particularly easy and efficient means, including electronically;
- ✓ Strengthen trust and the reporting system by providing anonymous data and statistics on its functioning and results.

Proposed action #4: Reporting policies and procedures.

- *All States should adopt/review relevant national or institutional integrity policies and procedures to facilitate reporting and provide accurate protection.*
 - ✓ Guidance on responsibilities (who does what) and administrative procedures for receiving reports to ensure that reports can be logged and processed quickly, securely and independently (national and intra-institutional level);
 - ✓ Make available resources to provide training on how to handle reports;
 - ✓ Guidance on how to communicate with the reporter and let him know the progress or conclusions of the process;
 - ✓ Training the people who receive the reports (first contacts/receivers) security protocols, battery of questions, checklists and soft skills;
 - ✓ Training in internal reporting policies and procedures;
 - ✓ Identify a lead agency to provide training as well other types of support and guidance;
 - ✓ Clarify the competency framework, as well as the responsibilities and roles among agencies and the resources needed to enable them to carry out their reporting protection functions;
 - ✓ Consider including rewards or other incentives for whistleblowers to encourage whistleblowing and reporting;
 - ✓ Establish minimum criteria for the protection of whistle-blowers addressed to the authorities in charge of providing it, considering the different types of protection (for instance, physical, labour, psychological).

Proposed Action #5: Interpreting good faith reporting.

- *Consider providing training or guidance to relevant agencies on how to distinguish good faith reporting and how to manage it to ensure that persons who they have reasonable grounds to believe have provided credible information are afforded protection, even if subsequent investigations cannot establish evidence of irregular acts/crime.*

Proposed action #6: Provide guidance, legal or otherwise.

- *Consider providing guidance, legal or otherwise (and how), to potential whistleblowers taking into account the resources and infrastructure available (it may involve the support of civil society organizations, academia and other public organizations).*

Proposed Action #7: Regional panel of experts.

- *Develop a regional pool of experts to strengthen reporting and monitoring systems.*
 - ✓ Regional training once a year.
 - ✓ Exchange of experiences.
 - ✓ Monitor the functioning of the different reporting channels through the exchange of experiences, good practices and successes.

IV. International cooperation.

Proposed action #1: Central Authority.

- *Consider designating as the central authority for requests for international cooperation in criminal matters the authority competent to prosecute offences (the holder of the criminal action).*
- *Recognise that there may be other central authorities to assist in investigations and proceedings concerning civil and administrative matters related to corruption.*
- *In this context, it is recommended to:*
 - *Guarantee the tenure of the public servants working at the central authorities to give continuity and sustainability to the processes;*
 - *Provide ongoing training to the staff of international cooperation units and other central authority officials, as well as to other external actors (judges, police, experts, among others);*
 - *Guarantee the adequacy of human resources.*

Proposed action #2: Transmission of information by e-mail.

- *Recognize the importance of electronic transmission of information for formal cooperation based on international conventions such as the United Nations Convention against Corruption.*
- *To explore the possibility of using this mechanism of informal cooperation, as well as to promote the adaptation of internal regulations that facilitates its use that would allow reducing response times, speeding up the processes, making the investigation more effective and reducing the expenses in the sending of documents by physical mail.*

Proposed action #3: Implementation of the UNCAC.

- *Implement international cooperation tools as foreseen in the United Nations Convention against Corruption.*
 - ✓ Elaborate a tool/guide that explains to the authorities in charge how to progress in the implementation of the UNCAC in international cooperation mechanisms proposed by the Convention: Spontaneous Transmission of Information, Joint Investigation Teams, Asset Recovery and Special Investigative Techniques;
 - ✓ Define criteria, parameters or guidelines for spontaneous transmission of information to competent authorities;

- ✓ Elaborate practical guidelines and protocols for the action of the investigation teams to guarantee their budgetary sufficiency and operability;
- ✓ Promote patrimonial and financial research through the development of tools such as maps or lists of open sources in patrimonial matters and specialized training in patrimonial and financial matters;
- ✓ Establish mechanisms for exchanging information with financial intelligence units, including the possibility of requesting the freezing of bank accounts from FIUs that have the power to do so;
- ✓ Promote mirror/parallel investigations to pursue money laundering and asset forfeiture (through action protocols);
- ✓ Adapt internal legislation to successfully face asset recovery processes.

Proposed Action #4: Non-Conviction based confiscation.

- *Include Non-conviction-based confiscation or asset forfeiture in the legal framework of the countries that do not yet have such mechanisms, in accordance with the definition provided by UNCAC.*
- *Promote effective cooperation strategies in asset recovery, irrespective of the name of the applicable legal entity in each country.*

Proposed action #5: Good practice.

- *Promote good practices in international cooperation matters.*
- ✓ Prepare a mapping of central authorities' management systems in the region to identify and share good practices and lessons learnt on extradition and other cooperation issues;
- ✓ Evaluate the impact of existing cooperation networks and propose an action plan to optimize them and promote their use;
- ✓ Promote extra-regional cooperation through spaces for dialogue to identify good practices and opportunities for improvement. Encourage and intensify informal cooperation through existing networks such as OECD, OAS and its monitoring mechanisms MESICIC and GAFILAT, among others.