



Monrovia Statement on Whistle-blower and Witness Protection in West Africa

Adopted in Monrovia, on 21 September 2016

From 19 to 21 September 2016, national stakeholders from 12 countries from West Africa gathered in Monrovia (Liberia) for the Regional Workshop on Whistle-blower and Witness protection in the Fight against Corruption. The Minister of Justice and the Acting Minister of Foreign Affairs from Liberia attended the opening ceremony, as well as high-level representatives from the UN Mission in Liberia, among others. Representatives from national parliaments, anti-corruption bodies, ministries of justice, the national police and civil society organisations took part in the proceedings, as well as international experts and technical experts from ECOWAS.

The workshop aimed to increase knowledge about the systems to protect whistle-blowers and witnesses, share experiences and lessons learned from other countries within the region and beyond on whistle-blower and witness protection, and identify practical priority actions for West African countries in relation to whistle-blower and witness protection.

The workshop was organised by the United Nations Office on Drugs and Crime (UNODC) in partnership with the Liberian Anti-Corruption Commission (LACC) and the Network of National Anti-Corruption Institutions in West Africa (NACIWA) and sought to contribute to ECOWAS Regional Strategy on Whistle-blower Protection.

Although all countries in West Africa have adopted the United Nations Convention against Corruption (UNCAC), most countries still need to adopt comprehensive whistle-blower and witness protection legislation. Following three days of intensive discussions, sharing experiences and best practices, the participants agreed to the following:

Acknowledging the diversity of whistle-blowing and witness protection systems currently in place across West Africa;

Acknowledging the existence of various provisions in national laws that provide for a legal basis for whistle-blower and witness protection, even in the absence of comprehensive laws;

Recalling the international obligations and commitments at global and regional levels concerning whistle-blower protection and witness protection;

Recalling in particular Articles 32 and 33 of the United Nations Convention against Corruption (UNCAC) encouraging States Parties to adopt appropriate measures to protect whistle-blowers, witnesses, experts and victims;

Recalling also Article 5 of the African Union Convention on Preventing and Combating Corruption, whereby State Parties undertake to “adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities”;

Recalling also the ECOWAS Protocol on the Fight against Corruption, which entered into force in 2015, whereby States Parties have to establish and consolidate laws and other measures “to ensure effective and adequate protection of persons who, acting in good faith, provide information on acts of corruption” (Article 5), as well as witnesses and victims (Article 8-9);

Acknowledging the UNODC guidance developed to assist practitioners, notably a Resource Guide on Good Practices in the Protection of Reporting Persons and Good practices for the protection of witnesses in criminal proceedings involving organized crime;

Recognizing good practices in the region and around the world, including the Ghanaian Whistle-blower Act, the South African Protected Disclosure Act, the Irish legal framework on Whistle-blowing and the Council of Europe Recommendation on the Protection of Whistle-blowers (CM/Rec(2014)7);

Acknowledging the existence of ECOWAS’ Strategy on Whistle-blower Protection for West Africa adopted in 2016;

Recognizing the role of investigative journalists in blowing the whistle on corruption and protecting whistle-blowers from reprisals;

Recognizing the difference between whistle-blowers who report or disclose information about suspected wrongdoing versus witnesses who testify in legal proceedings, while clarifying that whistle-blowers may become witnesses under certain circumstances and depending on the available body of evidence;

1. **Recommend** to ECOWAS Member States to adhere to international standards and to apply good practices, in particular the following guidelines to encourage whistle-blowing and to protect whistle-blowers:

- **LEGAL FRAMEWORK:** *Whistle-blower protection systems and their implementation should be based on comprehensive, clear and appropriate legislative and regulatory provisions;*
- **PARTICIPATION:** *All national stakeholders should be consulted in the preparation and development of whistle-blower protection legislation and procedures;*
- **COVERAGE:** *Whistle-blower protection systems should protect all individuals who disclose information in the public interest on corruption or other wrongdoing, both in the public and private sector;*
- **IMPLEMENTATION:** *Whistle-blower protection legislation should require all employers in the public and private sectors to have a whistle-blowing policy. The policy should provide guidance to employees on where to report wrongdoing, including*

through safe alternative reporting channels other than the line managers, and explain that they will not be reprimanded or punished for doing so;

- **DISCLOSURE PROCEDURES:** *Whistle-blower protection legislation should encourage internal disclosures (i.e., to their employer including at the highest level of senior management) wherever feasible and protect reporting to designated bodies, including anti-corruption bodies, civil society and the media;*
 - **INFORMATION HANDLING:** *Whistle-blower protection legislation should impose a duty on employers and law enforcement authorities to ensure that concerns about corruption and other wrongdoing are properly assessed and investigated whenever appropriate or forwarded in a safe manner to the appropriate investigative body;*
 - **FEEDBACK:** *Whistle-blower protection legislation should require all investigative bodies to establish processes for providing timely and clear feedback to the whistle-blower using reasonable means, either to explain why a concern will not be investigated or to provide an update on the status of the investigation to the fullest extent possible without jeopardizing the investigation;*
 - **ANONYMITY AND CONFIDENTIALITY:** *Whistle-blower protection legislation should require all investigative bodies to establish procedures to ensure that the information and the identity of the whistle-blower can remain confidential except by court order and that the disclosures can be made anonymously;*
 - **ADVISORY SERVICES:** *Whistle-blower protection legislation should require that independent and confidential legal and practical advisory services concerning the reporting of corruption be made available to citizens and potential whistle-blowers;*
 - **RETALIATION:** *Whistle-blower protection legislation should provide for remedies for whistle-blowers that become victims of retaliation and should ensure adequate sanctions, including criminal sanctions, if appropriate, for those who intimidate, threaten or (attempt to) bribe whistle-blowers to stop him/her from reporting alleged corruption or wrongdoing;*
 - **SCOPE:** *Whistle-blower protection should not extend to those who knowingly provide false information;*
 - **AWARENESS RAISING:** *Whistle-blower protection legislation should be widely disseminated among all segments of society;*
 - **MONITORING AND EVALUATION:** *Whistle-blower protection legislation should be monitored and reviewed at least every 3-5 years and these monitoring and evaluation reports should be shared with the parliament;*
2. **Recommend** to ECOWAS Member States to adhere to international standards and to apply good practices, in particular the following guidelines concerning witness protection:

- **LEGAL FRAMEWORK:** *Witness protection systems and their implementation should be based on comprehensive, clear and appropriate legislative and regulatory provisions;*
 - **PARTICIPATION:** *Appropriate law enforcement and judicial authorities should be consulted in the preparation and development of witness protection legislation and procedures;*
 - **COVERAGE:** *Any witness, victim, or expert who gives testimony in the course of legal proceedings concerning corruption offences or other wrongdoing should receive effective protection from potential retaliation or intimidation;*
 - **COVERT WITNESS PROGRAMMES:** *An independent witness protection authority should be established by law to coordinate and implement covert witness programmes, to the extent possible, while such programmes established by anti-corruption bodies should be strengthened;*
 - **APPLICATION OF COVERT WITNESS PROGRAMMES:** *Covert witness protection programmes should only be provided if a credible threat to the witness exists based on a threat assessment, if the crime is serious and of national importance, if evidence is not available by other means and if the witness agrees and is suitable to be included in such a programme.*
 - **LAST RESORT:** *Covert witness protection programmes should only be provided as a last resort measure to protect witnesses;*
 - **OTHER PHYSICAL WITNESS PROTECTION MEASURES:** *Other witness protection measures may include close physical protection, temporary change of residence or location in a safe house, enhancing security measures at the witness' home or workplace and minimization of contacts, among others;*
 - **PROCEDURAL WITNESS PROTECTION:** *Procedural witness protection may include testimony through video link, the use of screens and shields, voice distortion and facial disguise and non-disclosure of the name and address of the witness in accordance with the law.*
 - **PRIORITISATION:** *Ensure that serious judicial cases where witnesses are under threat are given priority in the criminal justice chain.*
3. **Encourage** the participants to promote these guidelines and to make the necessary efforts to develop and adopt new legislation in West African countries on these issues;
 4. **Encourage** ECOWAS to continue its efforts in raising awareness about the need for whistle-blower and witness protection in West Africa;
 5. **Express** their appreciation and gratitude to the Liberian authorities, in particular the Liberian Anti-Corruption Commission, for hosting this Regional Workshop on Whistle-

blower and Witness Protection in the Fight against Corruption in West Africa with support from UNODC and NACIWA.