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Item 3 of the provisional agenda*

Consideration of the draft United Nations Convention against Corruption

Proposals and contributions received from Governments

Morocco: amendments to articles 8 and 12**

Article 8: Public procurement and public financial management

1. The principles and rules set forth in article 8 are an integral part of the basic elements of Moroccan legislation governing public procurement and the financial management of legal persons under public law.
2. Moroccan regulations governing public procurement are based on the general principles of equal access to public procurement, free competition, transparency of procurement and implementation procedures and the application of ethical standards to the management of procurement and to relations between the administration and its contracting parties, as enshrined in international instruments.
3. The same applies to public financial management, the regulations on which aim to safeguard the interests and guarantee the rights of the administration's debtors and creditors, to provide for transparency and regularity in implementation and accounting procedures, to ensure the accountability of officials and to impose penalties for failure.
4. Thus, in order to improve the draft text, a number of amendments or additions to certain provisions of article 8 are proposed, along the lines described below.

Paragraph 1

5. In article 8, it would be preferable to apply the same rules to public service subcontracting agreements (such as concessions, leasing, contracting-out of

* A/AC.261/17.

** The proposals made by Morocco are based on the text contained in document A/AC.261/3/Rev.1 and Corr.1 and Add.1.

sanitation services, water and electricity distribution, urban transport and motorway management). The first sentence of the paragraph could thus be amended to read as follows:

“1. Each State Party shall take the necessary steps to establish rules for public procurement and public service subcontracting agreements, based on transparency, openness and competition.”

The rest of the paragraph would remain unchanged.

6. Exceptions to the rules contained in paragraph 1, as proposed by some delegations in cases of public procurement involving small amounts (see document A/AC.261/3/Rev.1, footnote 80), should also apply to certain bodies involved in national defence or public security.

Paragraph 2

7. The scrutiny of public finances covered in subparagraph (b) should be undertaken not only by higher administrative and financial oversight bodies but also by independent judicial bodies. The subparagraph could thus be amended to read as follows:

“(b) Timely reporting on expenditure and timely submission of accounts to ensure effective and objective scrutiny of public finances, in particular by higher administrative and financial oversight bodies and by specialized courts;”

Paragraph 5

8. The penalties provided for under paragraph 5, to which the perpetrators of the offences listed in paragraph 4 are liable, should be extended to persons outside the administration (such as suppliers, contractors and service providers) who have participated in any way in the commission of acts constituting such offences.

9. It should also be specified that such penalties could be of a financial nature, involving either the return of misappropriated money, for example, or the payment to the public body concerned of damages in an amount set by the competent courts. The following sentence could thus be added at the end of paragraph 5:

“These penalties, which may take a financial form, may also be imposed on any person outside the administration or public body who may have taken part in the commission of acts constituting the offences listed in paragraph 4 above.”

Article 12: Accounting

10. It should be noted that Moroccan legislation contains regulations relating to the maintenance of business accountability and scrutiny. Trade law, company law and tax law, in particular, provide for penalties in cases of accounting irregularities.