

East African Association of Anti-Corruption Authorities

Workshop on Fast-Tracking the Implementation of the United Nations Convention Against Corruption, Nairobi, Kenya 13-17 February 2017

OUTCOME STATEMENT

High-level government representatives from Burundi, Djibouti, Ethiopia, Kenya, Rwanda, South Sudan, Tanzania, and Uganda, together with civil society representatives and development partners, met in Nairobi, Kenya from 13 to 17 February 2017 to build and foster partnerships and create a **Regional Platform to Fast-track the Implementation of the United Nations Convention against Corruption (UNCAC)** in support of the achievement of Sustainable Development Goal 16 in Eastern Africa. This platform builds on the momentum generated by the **UK Anti-Corruption Summit** that took place in London on 12 May 2016.

The workshop focused on four thematic areas, which were identified on the basis of an analysis of recommendations from the first cycle UNCAC reviews and ongoing technical assistance requests emanating from the region.

The following actions were agreed to:

GENERAL COMMITMENT

Each State re-affirmed its commitment to implement the recommendations emanating from its UNCAC implementation review group (IRG) reports.

RECOMMENDATIONS IN SPECIFIC THEMATIC AREAS

I. FINANCIAL INVESTIGATIONS

The recommendations are organized into two themes: financial crime investigation training solutions (primarily investigators and prosecutors) and priority policy and procedure solutions.

Proposed Action #1: Professional Training Solution

- *Seek support for certified training from credible providers such as the Association of Certified Fraud Examiners (ACFE) Certified Fraud Examiner (CFE) credential for investigators. Agencies¹ should consider developing a short list of regional learning institutes that are well suited to perform the role of regional proctor or facilitator for this training in the event there is interest in collaborating on a regional training solution.*

¹ In this document the term authorities or agencies will be used. It should not be understood as limitation. Depending on national terminology and scope of actors involved, it should be interpreted broadly to include institutions, organisations etc.

To help fast track and streamline the implementation of the IRG recommendations, participants identified and recommended an existing certified training program specifically designed for financial investigators.

The following criteria were considered:

- Breadth and depth of ongoing training opportunities and courses,
- Delivery methods,
- Certification requirements,
- Requirements for continuing professional education credits,
- Cost,
- International recognition of credential and training, and
- Mentorship and support (national, regional, and international across disciplines).

The way forward on this recommendation would consist of each participating agency making a commitment or recommendation on the number of its investigators it would be willing to train.

Proposed Action #2: Training Solution - Policy and Procedure Gap Analysis.

- *Consider extending the Commonwealth Africa/UNODC policy and procedure research project (administer the questionnaire, analyze the results, and identify gaps) to the remaining EAAACA Members, specifically Burundi, Ethiopia, Djibouti, Zanzibar, and South Sudan.*

Only four of the EAAACA Members participating in this conference had an opportunity to join the Commonwealth Africa/UNODC policy and procedure benchmarking and gap analysis research project (2015-2016). This project assessed the organizational policies and procedures of 17 of the 20 Commonwealth Africa anti-corruption agencies to identify gaps in written policies and procedures, prioritize risk, contribute to a shared policy library, develop capacity-building solutions, and make specific recommendations. This recommendation involves extending an already proven and reliable successful research project and the financial commitment would be modest.

Proposed Action #3: Training Solution - Embedded Long-Term Subject Matter Expert (SME).

- *Consider hosting long-term SMEs to mentor investigators and participating agencies. Considerations would include the mandate, duration, capacities and core competencies of the SME, desired outcomes, and assessment tools.*

Training is most valuable when it is supplemented by a long-term SME to mentor agencies and investigators. This was cited as a recommendation emanating from the first cycle UNCAC implementation reviews.

Proposed Action #4: Policy and Procedure Solution - Periodic File Review.

- *Review and update the agency's policies and procedures, and provide recommendations to agency heads in the area of periodic file review.*

It is important that the anti-corruption authorities continually assess the quality of their investigations to identify structural and systemic areas of strength and gaps. Periodic file review is intended to supplement the file review done by supervisors during the course of their daily duties. This standard requires a higher level of review and analysis to assess the quality of the investigation and reports, identify trends, and make recommendations to the head of the anti-corruption authority. There are a number of ways to conduct file reviews. Agencies should select methods most appropriate to their circumstances including:

- Annual review and analysis of a random sample of completed investigations,
- Review and analysis of all cases that were rejected by the prosecutor,
- Review and analysis of all cases that resulted in an acquittal or were otherwise dismissed by the court, and
- Review and analysis of all cases that have been before the courts for a considerable time in order to assess their continued viability and likelihood of conviction.

Proposed Action #5: Policy and Procedure Solution - Management of Exhibits and Proceeds of Crime.

- *Review and update the agency's policies and procedures in relation to the management of exhibits and proceeds of crime **and** consider implementing the solutions recommended in the final report of the Commonwealth/UNODC policy and procedure gap analysis and benchmarking research project. Agencies should consider sharing policy and procedural best practices, especially as they relate to managing proceeds of crime and contribute to a shared policy library.*

An anti-corruption authority must establish a reliable system for maintaining the integrity of all evidence and other property that comes under its control. This system is not only crucial for successful investigations and prosecutions but it is also an excellent way to establish and maintain public confidence. The threshold for evaluating the effectiveness of the system can be measured by documentary proof of forensic continuity over property and evidence from the moment it first comes into the control of an authority member until the moment it is presented as evidence before the court.

The way forward on this recommendation will involve each agency reviewing the final report and recommendations of the Commonwealth Africa/UNODC policy and procedure benchmarking and gap analysis research project (2015-2016). Those recommendations explain in detail the way forward. This recommendation likely involves capital expenses.

II. WHISTLEBLOWER PROTECTION

Participating delegations identified multiple challenges in the effective protection of whistleblowers. The delegations agreed that the majority of work would need to take place at the national level, but that additional regional knowledge exchange and joint capacity building would be beneficial to support this process. Also, depending on the legislative framework of each State, it would require involvement from different stakeholders, as most whistleblower protection laws do not only focus on corruption, but on a broader reporting of matters of public concern. Participating delegations recommended a few concrete and practical steps towards strengthening reporting systems and whistleblower protection, with support from the international community, as needed:

WHISITLEBLOWER PROTECTION

Proposed Action #1: Legislation.

- *Review and revise legislation, as appropriate, where no comprehensive legislation or gaps exist.*

Due consideration will be given to good practices from States in the region and beyond with regard to the protection of whistleblowers who report information, which they believe in good faith and on reasonable grounds to be true, irrespective of their motive. Also, in regard to the protection of witnesses (including experts and victims), good practices within the region and beyond will be considered. Both topics are distinctly different in terms of tasks, powers, and expertise required, but might have overlaps.

- Hold stakeholder consultations to assess existing laws and/or during the process of drafting laws. (Would require some limited support.)
- Consider sharing draft laws/bills with countries in the region to receive input and liaise with the East African Legislative Assembly, which is currently also developing whistleblower legislation (model law).
- Explore whether incentives could be provided to whistleblowers, such as a percentage of recovered assets upon recovery.

Civil society organisations² welcomed these recommendations and proposed the consideration of a matrix of rewards that could incentivize individuals to blow the whistle and ensure a risk/award ration which will constitute an incentive to report.

Proposed Action #2: Policies and Procedures.

- *Review relevant national or institutional policies and procedures which facilitate reporting of corruption and other conduct as specified in the relevant legislation.*

This includes the engagement in dialogue with agencies in the public and private sector to raise awareness about their obligations and the protection available for whistleblowers. It also includes the provision of guidance/directives for agencies on how to inform their staff where to report (internal and outside to designated agencies or focal points), how to create internal reporting processes which are harmonized with existing systems, codes of conduct etc., and which qualifications the designated focal points/recipients of reports should have.

- Require agencies to designate (initial) whistleblower focal points.
- Organize meetings for those focal points for awareness raising/dialogue.
- Draft guidance material.
- Designate an authority to coordinate and monitor the above-mentioned tasks. The authority would require all concerned agencies to report on an annual basis the measures they have been taken to establish reporting systems and implementation of protection measures.

Civil society organisations welcomed these recommendations and additionally recommended to:

- Consider the development of Memoranda of Understanding to detail the modalities of partnerships between CSOs, Government and the Private Sector.
- Create or strengthen multi-stakeholder forums for CSOs, Government and the Private Sector on the whistleblower agenda (look at existing forums such as with the African Union Advisory Board on Corruption).
- Ensure coordination, collaboration, and communication among public institutions dealing with whistle-blower protection with a clear agreement on the roles and responsibilities of each institution.

Proposed Action #3: Awareness Raising.

- *Undertake sensitization/awareness raising programmes and explore possibilities to cooperate with civil society organizations and other relevant organizations on reporting channels and protection to encourage citizens to report matters of concern such as*

² In this document civil society organisation is understood broadly, to include NGOs, trade unions, faith-based organizations, indigenous peoples movements, foundations and many other organizations.

corruption to agencies who can investigate such cases. Such initiatives should also include unions, lawyers, media etc.

- Organise a joint meeting with CSOs at national level to exchange ideas.
- Share good practices of such initiatives which have taken place in the region.
- Carry out awareness raising campaigns.

Civil society organisations welcomed these recommendations and underlined the need to focus on communities and tribes to ensure that whistleblowers will not be stigmatized, but rather recognized, as necessary actors bringing positive value in the fight against corruption.

Proposed Action #4: (Legal) Advice.

- *Consider options to provide independent (legal) advice to persons who consider blowing the whistle and consider ways of cooperating with civil society organizations/paralegals, etc.*
 - Hold meetings to consider options and funding.
 - Establish the necessary processes and implement legal advice.
 - Provide information to the public about where to receive legal advice.

Civil society organisations welcomed these recommendations to encourage CSOs' collaboration at the regional and national level to participate in and develop consistent whistleblower legal assistance programmes, in particular regarding the capacity building of lawyers, with clear implementation guidelines at the national level.

Proposed Action #5: Streamlining.

- *Explore how to include whistleblower reporting systems and protection at a national or institutional level as a core part of relevant strategies and plans (integrity plans, national anti-corruption strategies, etc.) and to monitor their implementation.*

Proposed Action #6: Capacity Building (Regional).

- *Develop a pool of experts in the region that can support management teams in institutions that wish to strengthen their reporting systems and upon request support national level capacity building initiatives.*
 - Organise a regional training event (ToT).

- Share information and experiences contributing to joint regional learning and also in view of cross-border cases.
- Organise regional follow-up meetings every 1-2 years.

WITNESS PROTECTION

The participating delegations underlined that in the East African region, people who blow the whistle on alleged corruption, organized crime, or other matters of public concern they come across in the workplace, may face threats and physical danger of a level which may make them eligible for admission into a witness protection programme. In addition, many whistleblowers may be asked to testify in court as witnesses. It would thus be important to strengthen (financial) investigative skills in order to build, whenever feasible, cases based on other evidence. In addition, States recommended taking the following measures:

Proposed Action #7: Legislation and Establishment of Units.

➤ *Develop witness protection legislation and witness protection programmes/units.*

Those programmes require enormous financial resources and can only be made available under very specific circumstances. Therefore, States would also need to strengthen less costly and less intrusive procedural measures to protect the identity of the witness or to provide temporary protection (closed hearings, video-conferencing, shielding, and reduction of identifying information in court documents).

Proposed Action #8: Capacity Building.

➤ *Provide specialist capacity building including for witness protection units.*

Witness protection, in case of high-risk situations, requires qualified staff as it entails a combination of tasks and skills (mixed teams) all operating in a highly confidential environment (judiciary, investigators, experts in high-risk armed reaction, high-risk armed personal protection, forensic and social workers, and covert operatives).

Training for those mixed teams should include the design of appropriate systems/processes that enable witnesses to apply for admission into the witness protection programmes; training for the staff of the relevant witness protection units/programmes to carry out threat/risk assessments to decide upon the admission into the programme and the appropriate measures, to provide protection, and to decide at what time and for which duration protection would be required.

Proposed Action #9: Regional / International Cooperation.

- *Develop mechanisms for cooperation, involving exchange or benchmarking of witness protection good practices and on (temporary) relocation of protected witnesses across borders to ensure their safety.*

Civil society organisations welcomed these recommendations on witness protection. They underlined the need to design and implement mechanisms providing “safe places” for whistle blowers that are not considered as witness, but still under severe threat and to clarify how to enable them to be admitted into witness protection programmes under exceptional circumstances (looking at existing good practices in case of gender-based violence and witness protection whilst considering cost effectiveness).

III. INTERNATIONAL COOPERATION

Participating delegations identified three general categories of challenges to the facilitation of international cooperation in the prevention and investigation of corruption cases: legislative, capacity, and regional networks. The delegations agreed that at both the national and regional levels, they would take concrete and practical steps towards strengthening international cooperation and mutual legal assistance, with support from the international community as needed, to make progress towards the achievement of the following recommendations:

Proposed Action #1: Formal Measures.

- *Ensure that central authorities and relevant national institutions are adequately resourced and trained, as well as appropriately structured and empowered, to prepare and respond to requests for mutual legal assistance, including with respect to translation and interpretation, when required.*
- *Support the preparation of a practical guide for practitioners in the region, including States’ legal requirements, templates, and other relevant information.*
- *Support measures to establish or strengthen national registration systems for the ownership of assets and other properties, with a view to facilitating effective asset tracing and recovery, and the identification of beneficial ownership.*
- *Develop mechanisms for meeting legal requirements to gather, store, process, and present evidence delivered via electronic or technological means in a manner that is permissible across jurisdictions.*
- *Establish or revise legislation governing mutual legal assistance and extradition to meet the requirements of UNCAC.*

- *Encourage the use of UNCAC as well as other existing multilateral treaties, including the IGAD Conventions on Mutual Legal Assistance and Extradition, the draft East African Community Protocol on Preventing and Combating Corruption (encouraging its completion), and the SADC Protocol Against Corruption, as a legal basis for mutual legal assistance and extradition, and encourage those States that have not yet ratified and domesticated those agreements and protocols to consider doing so.*
- *Support capacity-building activities at the national and regional levels for practitioners engaged in mutual legal assistance related to corruption investigations and prosecutions.*
- *Support efforts to raise the political profile of mutual legal assistance in corruption cases at the regional level as a critical component to the achievement of the Sustainable Development Goals and Agenda 2030.*
- *Design and implement measures and activities to raise public awareness and sensitization of national institutions to the concept, practice, and benefits of mutual legal assistance as a regional and global component of international cooperation.*

Proposed Action #2: Informal Measures.

- *Develop and implement internal policies, mechanisms and procedures to facilitate coordination of institutions at the national level in preparing and responding to requests for mutual legal assistance.*
- *Take measures to establish a regional forum to facilitate regular meetings of central authorities to discuss challenges, priorities and good practices.*
- *Organize regular regional networking meetings of investigators and prosecutors to facilitate contacts, share experiences, and build trust.*
- *Seek opportunities to engage in joint or parallel investigations across jurisdictions, on a case-by-case basis, emphasizing the importance of confidentiality and the integrity of the investigation process.*
- *Take measures to promote informal cooperation and intelligence sharing, including spontaneously, between law enforcement bodies across jurisdictions, such as through the EAAACA.*

Participating delegations agreed to take forward the recommendations above as a matter of priority in order to fast-track implementation of Chapter IV of the UNCAC, particularly with regard to measures that would require little or no additional resources. Such measures would seek to leverage existing networks and peer-to-peer learning and sharing of experiences and

good practices, including through EAAACA, the East African Community, Intergovernmental Agency for Development, the Asset Recovery Inter-Agency Network for Eastern Africa, and other regional and international networks and associations of investigators and prosecutors.

IV. PROCUREMENT

Procurement corruption was considered from the viewpoints of procuring entities, procurement oversight bodies, and corruption investigation bodies. While the primary approach taken on procurement is preventative, there was also a strong emphasis of strengthening capacity to investigate and prosecute procurement corruption cases.

Proposed Action #1: Compliance review of legislation.

- *Undertake an analysis of the procurement legislation of each State in the region to determine compliance with article 9 (1) of UNCAC. Based on this analysis, develop action plans to bring legislation into compliance with UNCAC.*

Proposed Action #2: Committee & Forum.

- *Establish and mandate a committee to:*
 - Create and disseminate a document indicating key procurement corruption risk areas and warning signs related to these risks. This document will cover all aspects of procurement from the initial identification of the need to procure a good or service through development of bidding documents, requests for bids, adjudication of bids, award of bids, and contract management.
 - Develop a best practices guide on public transparency related to public procurement. This guide will again encompass all stages of the procurement process and include public information on how the process should work.
 - Develop an advisory note on how to develop systems to prevent external interventions in the identification of need for goods or services, development of bidding document, adjudication of bids, and contract management.

Develop options for a regional system to debar companies engaged in corrupt practices. As far as possible this should be done in consultation with the East African Procurement Forum (EAPF).

- *Explore placing corruption, including investigation and prosecution of corruption, on the agenda of the EAPF: explore whether EAAACA states who are not EAC members may attend.*

Proposed Action #3: Capacity building and experience-sharing measures.

- *Strengthen regional capacity to identify corruption risks in procurement processes and develop strategies to mitigate these risks, with particular emphasis on vetting suppliers (including identification of beneficial ownership, benchmarking, use of bulk contracts, and development of evaluation criteria together with bid evaluations themselves).*
 - Training on risk assessment and mitigation in procurement processes for staff of procuring entities, procurement oversight bodies, anti-corruption bodies, and the private sector.
 - Producing and disseminating guidance on good practices at identifying corruption risks in procurement processes and developing and implementing strategies to mitigate against those risks.
 - Support key procuring agencies and oversight agencies to develop and implement these strategies.
- *Provide opportunities for professionals engaged in procurement and the investigation and prosecution of procurement corruption to be placed with relevant agencies in the region to share experience.*

Civil society organizations welcomed these recommendations and made the following additional recommendations:

- Simplify existing procurement legislation(s) and procedure(s).
- Ensure practical political will and commitment toward compliance with, and implementation of, existing legislation.
- Include a disclosure process for procuring entities. Such a process may start with the ones funded through bi- or multilateral agreements with international organizations and development banks. Create or strengthen multi-stakeholder independent appeal committees at the national and regional level when appropriate and relevant.
- Promote the design of, and ensure compliance of the private sector with, ethical business principles.
- Create or strengthen a platform to share best practices regarding the private sector contribution to, and compliance with, anti-corruption policies and laws.
- Ensure the existence of skilled, competent, and sufficient human resources within public institutions dealing with public procurement.

- Ensure CSOs focus on the simple but effective intervention areas.

Participating agencies committed to undertake the review of compliance of chapter 9(1) of UNCAC as soon as possible. The other activities are regional in nature. Resources permitting, EAAACA heads will nominate a committee to coordinate these efforts including liaising with national procurement oversight bodies and UNODC will provide technical support to this committee.

IMPLEMENTATION MODALITIES

Representative delegations agreed to take forward the recommendations above as a matter of priority in order to fast-track implementation of UNCAC, particularly with regard to measures that would require little or no additional resources. Such measures would seek to leverage existing networks and peer-to-peer learning and sharing of experiences and good practices. UNODC and development partners present agreed to seek to mobilize resources to support the implementation of this action plan. It was further agreed that regional actions should be coordinated through the EAAACA.