

Regional Conference on Fast-Tracking UNCAC Implementation Southern Africa, 14-18 October 2019

Statement

High-level officials from Angola, Botswana, Malawi, Mozambique, Namibia, South Africa, Zambia and Zimbabwe, together with representatives of civil society, private sector and development partners, met in Livingstone, Zambia from the 14th to 18th October 2019, to study and analyse the substantive aspects of the United Nations Convention against Corruption (UNCAC) and to promote the creation of partnerships in the region to accelerate its implementation to support the realization of Sustainable Development Goal 16 in Southern Africa. 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: inter-agency cooperation on investigation and prosecution of anti-corruption cases, including asset recovery, with a focus on policy development; whistleblowing protection and the protection of witnesses; asset disclosure, including asset declaration, detection of illicit enrichment, beneficial ownership and how to undertake increased scrutiny of Politically Exposed Persons (PEPs); identifying and managing conflict of interest in the context of public procurement. They were identified based on the analysis of the recommendations made in the context of the UNCAC Implementation Review Mechanism, technical assistance work provided in the region as well as consultations conducted with the countries involved.

The Conference recognized the importance of ensuring effective coordination and cooperation in the implementation of other existing regional mechanisms and instruments, such as the African Union Convention and the SADC protocol.

It also underlined the importance of supporting the achievement of the Sustainable Development Goals (SDG), especially SDG 16, in line with the 2030 Agenda for Sustainable Development.

The following commitments are the result of unanimous acceptance between the all participants of the regional conference on fast-tracking UNCAC implementation that was held in Livingstone, Zambia from 14 to 18 October and brought together governmental technical experts, decision and policy makers, civil society organizations, private sector and development partners of the all the countries involved in the regional platform.

Overall Commitment

Participants affirmed the need for States to encourage the implementation of the recommendations emanating from their country reports under the UNCAC Implementation Review Mechanism (IRM).

Participants committed to integrate, where relevant, gender dimensions in the implementation of the recommendations which are as follows:

I. Inter-agency cooperation on investigation and prosecution of anti-corruption cases, with a focus on policy development.

Proposed action #1: Domestic cooperation among law enforcement agencies, public and private sector institutions, and civil society

- *Strengthen cooperation between law enforcement bodies and prosecution services at the national level, drawing on regional and international good practices;*

- *Foster and strengthen trust, cooperation and partnership between the public, civil society and private organizations, and law enforcement bodies and prosecution services designated for the investigation and prosecution of corruption;*
 - *Create mechanisms to share information, where appropriate, with respect to cases and investigations;*
 - *Strengthen effectiveness of law enforcement bodies and prosecution services to investigate and prosecute corruption.*
- ✓ Develop a guidance/good practice note on how to:
- Establish national mechanisms to foster coordination between the various law enforcement bodies drawing on existing similar mechanisms (e.g. National Economic Crime Centre of United Kingdom, Anti-Corruption Task Team of South Africa);
 - Establish policies and procedures on the exchange of information between law enforcement bodies;
 - Establish case management systems on case tracking and monitoring by law enforcement bodies;
 - Monitor progress on the implementation of specific technical recommendations made in the context of the UNCAC Implementation Review Mechanism;
 - Design policies and procedures to:
 - (1) Increase the transparency process relating to investigations;
 - (2) Create/improve systems and protocols for providing feedback to the public regarding progress on anti-corruption cases, including through a web-based platform;
 - Create national policies to promote the pro-active sharing of information and intelligence on corruption among law enforcement and other bodies;
 - Identify and remove hurdles to sharing intelligence and evidence between law enforcement bodies at national levels, inter alia, by simplifying, streamlining and expediting the exchange of information (including through confidential networks);
- ✓ Convene follow-up workshops to share experiences, to launch and identify methods to follow up on the recommendations in the above bullet points. Such workshops should also allow the participation of individuals and groups outside the public sector;
- ✓ Raise public awareness and develop public education, including parliamentarians, on the powers and the roles of anti-corruption and law enforcement bodies.

Proposed action #2: Regional cooperation between law enforcement bodies and prosecution authorities

- *Strengthen cooperation between law enforcement bodies and prosecution services at the regional level through the exchange of regional and international good practices;*
- *Strengthen the effectiveness of law enforcement and prosecution services to investigate and prosecute cross-border corruption and engage in joint investigations.*

- *Strengthen the informal and pro-active sharing of information and intelligence on corruption investigations among regional and international law enforcement bodies.*
- *Strengthen the formal sharing of evidence on corruption investigations among regional and international law enforcement bodies.*
 - ✓ Develop best practices notes/guidelines on:
 - Formal and informal domestic cooperation in judicial matters;
 - Standards for the processing of mutual legal assistance requests;
 - How to nominate focal points (where required) at national levels to foster informal/direct cooperation and information sharing, including through international and regional networks (e.g. The International Anti-Corruption Coordination Centre (IACCC) and The Asset Recovery Inter-Agency Network for Southern Africa (ARINSA));
 - How to foster direct communication between focal points, including through technologically secured discussion applications;
 - Regional approaches to develop policies for the classification of documents, information and intelligence relevant to corruption investigations;
 - ✓ Convene regional workshops to:
 - Exchange experiences and best practices on pro-active sharing of information and intelligence on corruption among law enforcement bodies and other agencies;
 - Identify common typologies of committing corruption offences.

Proposed action #3: Independence of specialized bodies to investigate and prosecute corruption offences

- *Strengthen operational independence of specialized bodies to investigate and prosecute corruption offences;*
- *Raise public awareness of the importance of the legal and operational independence of specialized bodies to investigate and prosecute corruption offences.*
 - ✓ Develop a guidance/good practice note on how to:
 - Establish mechanisms to ensure the transparent and objective appointment of heads and members of anti-corruption and law enforcement bodies that investigate and prosecute corruption, including through independent, transparent and merit-based recruitment processes;
 - Take necessary legal and administrative measures to ensure the security of tenure for anti-corruption bodies' members and heads, including procedures governing grounds for removal of anti-corruption officers from their position;
 - Take necessary measures to ensure the financial and budgetary independence of law enforcement bodies mandated to investigate and prosecute corruption (including, *inter alia*, considering a mechanism for anti-corruption bodies to report directly to parliament instead of the executive);
 - ✓ Develop a framework set of policies and procedures on:
 - Internal mechanisms to protect the independence of anti-corruption bodies;
 - Conducting continuous/regular reviews and submissions on the performance of the anti-corruption bodies;

- ✓ Develop citizen scorecards to assess trust and independence of the anti-corruption bodies leaders.

Proposed action #4: Capacity-building of specialized bodies to investigate and prosecute corruption offences

- *Further strengthen and streamline efforts to build capacities of specialized bodies to more effectively investigate and prosecute corruption offences;*
- *Ensure that law enforcement bodies and prosecution services have the necessary training and sufficient resources to carry out their operational mandate.*
- ✓ Conduct research/needs assessment activities on how:
 - Law enforcement bodies conduct forensic analysis in corruption investigations;
 - To facilitate the exchange of information on emerging trends and risks of corruption offences;
 - To identify technology gaps that law enforcement bodies mandated to investigate corruption face;
- ✓ Develop capacity building/training programs on:
 - Special investigative techniques for law enforcement bodies tasked with investigating and prosecuting corruption;
 - How to conduct forensic analysis and improve the use of technology in corruption investigations;
 - To identify, manage, forfeit and return assets recovered in trans-national corruption cases;
- ✓ Develop regional level joint-training programmes between law enforcement officials and prosecutors to build effective relationships and foster cooperation in corruption cases;
- ✓ Develop a study of good practices on financing of law enforcement bodies including, *inter alia*:
 - Audits to determine their financial needs;
 - Adequate budget allocation;
 - How to access additional/alternative sources of funding (e.g. International development funds).

II. Whistleblowing protection vs. protection of reporting persons in the context of criminal proceedings.

WHISTLEBLOWING PROTECTION

Proposed action #1: Raise awareness on whistleblowing protection systems

- *Take steps to raise awareness on the value of whistleblowers in fighting corruption and the existing safeguards to protect them.*
 - ✓ Conduct research on the international standards, and share best practices among different countries;
 - ✓ Conduct awareness raising campaigns on whistleblowing protection including, *inter alia*, the value of whistleblowers (changing work culture), available reporting mechanisms, applicable protection and its corresponding responsibilities (such as bad faith reporting);
 - ✓ Conduct capacity building on the nature of wrongdoings that are (likely to be) reported according to different sectors.

Proposed Action #2: Adopt a comprehensive legal framework on whistleblowing protection

- *Consider adopting or reviewing legislation for the protection of whistleblowers (with a focus on workplace related protection) to conform with international good practices and to extend protection to public and private sector whistleblowers.*
 - ✓ Legislative gap analysis/benchmarking via:
 - Supporting stakeholder consultations at the national level;
 - Benchmarking against international best practices and international standards;
 - ✓ Consider draft domestic legislation to establish a whistleblowing protection unit with sufficient independence and resources;
 - ✓ Drafting support upon request to UNODC
 - Legislative drafting support;
 - Comments on existing draft laws;
 - ✓ Periodic reviews of the whistleblowers protection legislations by governments, in consultation with civil society and the private sector.

Civil society organizations and private sector strongly supported the consideration to create whistleblowing protection units.

Proposed action #3: Improving the regulatory framework

- *Adopt relevant and robust regulations/policies to implement corresponding laws and ensure their concrete application.*
 - ✓ Review regulatory frameworks to ensure that they include:
 - An indication of whistleblower protection to be applied on a “risk-based approach” and not on an “upon request” basis;
 - Proper reporting channels;
 - Guidance on responsibilities and administrative procedures for recipients of reports to ensure that reports are lodged and treated in a secure and independent manner;
 - Timelines in the regulations/policies and stress importance to report back to the whistleblower and to make her/him aware of her/his rights of recourse if disclosures are not acted upon;

- Considering the extension of protection even when the whistleblower chooses to make a disclosure through external channels, such as through CSOs after the exhaustion of the other available channels;
 - Extension of whistleblower protection to all relevant related persons;
 - Protection for whistleblowers that is not limited to the duration of the case.
- *Conduct monitoring and evaluation of the implementation of whistleblowing protection regulations/policies.*
- ✓ A repository of data to be created (number of disclosures made, how many of those were investigated, the outcomes of the investigations and occupational or other detriments experienced);
 - ✓ Analyse and interpret data and make policy, **regulatory and/or legislative** recommendations.

Proposed action #4: Improve the effectiveness of protection mechanisms applicable to whistleblowers

- *Consider strengthening the protection mechanisms applicable to whistleblowers, including through the creation of whistleblowing protection units.*
- ✓ Develop training packages in order to provide “first responders” training and training to the recipients who handle reports within concerned institutions and aim to improve coordination between them;
 - ✓ Establish measures to control damages when prevention measures have failed and the whistleblower faces potential retaliation, including by considering the possibility of a reverse burden of proof in the procedure;
 - ✓ Conduct research on best practices with respect to compensation mechanisms for damages suffered by whistleblowers;
 - ✓ Conduct research on best practices with respect to the creation of funds to support the protection and reparation of whistleblowers.

Proposed action #5: How to better handle anonymous reports

- *Adopt an effective and efficient system to be able to handle all reports, including when they are made in an anonymous manner.*
- ✓ Explore possible technical solutions for two-way communication whilst maintaining anonymity;
 - ✓ Explore ways and encourage the exchange and sharing of best practices in order to promote confidential reporting as a preferred option to anonymous reporting;
 - ✓ Offer different ways of reporting (inter alia in-person, phones, internet, secure and encrypted apps etc.) through secured channels;
 - ✓ Develop guidance material to the persons who receive reports on how to handle reports, including when anonymous, including how to build trust in a way to promote confidential rather than anonymous reports.

Proposed action #6: Advice (legal)

- *Offer possibilities to provide independent advice to persons who consider making a report (blowing the whistle).*

- ✓ Provide guidance to all persons who blow the whistle, or are considering doing so;
- ✓ Encourage collaboration with other individuals and groups outside the public sector, including civil society and private sector, to develop consistent whistleblower legal assistance programmes including both advice and legal representation;
- ✓ Capacity building of lawyers, with clear implementation guidelines at the national level;
- ✓ Provide professional counselling to whistleblowers when required, including emotional and mental health support.

Proposed action #7: Clarifying the concept of bad faith reporting

- *Ensure that the interpretation of “bad faith”, when included in the legal framework, is not based on bad motivation but based on the fact that people know that the information they provide is not true.*
 - ✓ Identify and share legislative practices in different jurisdictions;
 - ✓ Provide sensitization and training to people who receive reports on identifying/managing bad faith reporting;
 - ✓ Training to ensure that the same level of protection is provided regardless of the motivation when it is incontestable that the person who reported has reasonable grounds to believe that the information they provide is true;
 - ✓ Provide penalties for bad faith reporting.

Civil society/private sector specific recommendations on whistleblowing protection:

- To create a legal obligation that private institutions must have a whistleblowing policy in place and make it known to the employees;
- Progressively provide technical assistance to small businesses (as defined by the legislation) regarding development and implementation of whistleblowing policies;
- Encourage passing a law that provides that private institutions are ineligible to tender for government contracts without a functioning whistleblowing policy;
- To create a public-private forum to enhance understanding about the nexus between business and corruption;
- Encourage the private sector to commit to the UN Global Compact.
- Provide recognition to whistleblowers when disclosures result in conviction and/or recovery of funds;
- Regionalizing the global coalition on the implementation of UNCAC for Southern Africa.

WITNESS PROTECTION

Proposed action #8: Improve protective measures applicable to witnesses, including reporting persons in the context of criminal proceedings

- *Consider providing or strengthening measures to protect witnesses, including reporting persons, against physical and other threats that may arise consequent upon their involvement in criminal proceedings.*
 - ✓ Conduct a gap analysis;
 - ✓ Develop a comprehensive legal framework on the protection of witnesses;
 - ✓ Develop witness protection measures/programs, starting with no cost measures. Grant the protection during the time necessary for the threat to disappear;

- ✓ Consider the establishment of witness protection units/programs, grant those units the necessary independence and resources, and properly train its members;
- ✓ Grant the possibility for those programs or units to provide such physical protective measures to whistleblowers as well as to relevant related persons when they are known and facing such threat, even outside the context of criminal proceedings.

Support offered: South Africa offered to share their laws and experiences in witness protection programs as well as the functioning of their unit*.

Proposed Action #9: Regional and international cooperation

- *Develop mechanisms for cooperation to improve the protection of witnesses, including reporting persons, in the context of criminal proceedings.*
 - ✓ Exchange or benchmarking of witness protection good practices;
 - ✓ Consider allowing (temporary or permanent) relocation of protected witnesses across borders to ensure their safety (at regional level);
 - ✓ Consider entering (more) Memoranda of Understanding (MoUs) with neighbouring countries to foster regional and international cooperation in the context of witness protection.

Support offered: South Africa offered to share their experience with regard to their witness protection system*.

Civil society organizations specific recommendations on witness protection:

- Governments, in consultation with civil society organizations should conduct periodic reviews of the witness protection legislation;
- Consider the legal assistance needs of witnesses.

III. Asset disclosure, including asset declaration, detection of illicit enrichment, beneficial ownership and how to undertake increased scrutiny of Politically Exposed Persons (PEPs)

Proposed Action #1: Use assets and interest disclosure systems to both prevent corruption, and facilitate the detection, investigation and prosecution of corruption crimes.

- *Collaborate to design a legal and policy framework which would facilitate management of conflicts of interest and the detection of illicit enrichment or other forms of corruption. The framework should take into account the practices and experiences in the region and internationally, with special emphasis on transparency.*

- ✓ Provide drafting support for the adoption of asset and interest disclosure legislation. The legislation should include *inter alia*:
 - A definition on the assets and interests to be declared in a way which would ensure that all business interests, cash, immovables and movables, loans and other liabilities are declared;
 - A clear definition of public officials based on art. 2(a) of the Convention;
 - The adoption of a risk-based approach (officials assigned higher levels of risk always submit declarations and are subject to verification), to clarify the personal scope of the asset and interest disclosure regime, and verification of asset and interest declarations;
 - A clear definition of “individuals who are, or have been, entrusted with prominent public functions and their family members and close associates” to strengthen the enforcement of the asset and interest declaration regime and the beneficial ownership provisions in the legislation.

- ✓ Develop relevant policy/training to:
 - Ensure compliance with the asset and interest disclosure provisions through targeted enforcement and sanctions;
 - Ensure that the government anti-corruption policies promote active participation of individuals and groups outside the public sector in the development and implementation of anti-corruption policies and measures;
 - Share information and exchange practices with a view to ensuring full implementation of art. 13 paragraph 1 (d) of the Convention.

- ✓ Develop relevant guidance material to promote transparency of the asset and interest declarations, preferably by utilizing information and communications technologies (in electronic format, digitized);

- *Establish an effective institutional framework on assets and interest declaration and verification.*
 - ✓ Using a normative framework (whether legal or regulatory) to ensure the interoperability of databases to maximise mutual access to other databases;
 - ✓ Develop and implement capacity building/training programmes for relevant stakeholders to effectively implement the asset and interest disclosure regime;
 - ✓ Develop draft guidelines on data security of income asset declaration systems;
 - ✓ Conduct relevant trainings/workshops in order to deepen knowledge and raise awareness on the concepts of:
 - Asset disclosure;
 - Beneficial ownership;
 - Illicit enrichment and politically exposed persons (PEPs) among all relevant stakeholders;
 - ✓ Put in place a task force to enhance cooperation and coordination mechanisms to exchange best practices, advocacy and campaigns at national and regional levels among the CSOs, private sector and with the governments;
 - ✓ Share best practices on mutual recognition and enforcement of court decisions, based on UNCAC, other instruments or the principle of reciprocity.

Proposed Action #2: Strengthen the beneficial ownership framework

- *Promote transparency of beneficial ownership to facilitate the implementation of the asset and interest disclosure regime and to support the anti-corruption efforts of the governments.*
 - ✓ Develop common regional criteria for identification of PEPs;
 - ✓ Based on common regional criteria, develop national beneficial ownership registers which would be accessible and based on open data principles;
 - ✓ Develop policies to undertake due diligence to identify the beneficial owners of legal persons within financial institutions and designated professionals, including real estate agents.

Support offered: The United Kingdom provided information on the operation of its beneficial ownership register and offered to share its experiences**.

IV. Identifying and managing conflict of interest in the context of public procurement

Proposed action #1: Ensure the country's conflict of interest approach in relation to public procurement is consistent with global best practices.

- *Formalize a working group with representation from each country to research, identify and share among the region (in report or conference), current global guidance, like that of the OECD, the UN, or any others, on a sound structure (i.e. best practices) when implementing, evaluating and/or managing conflict of interest in public procurement;*
- *Ensure each country's existing conflict of interest laws in relation to public procurement are consistent with those considered global best practices including potential criminalization for failure to disclose.*

Proposed action #2: Ensure in-country harmonization of conflict of interest laws related to public procurement and to the maximum extent possible in the region.

- *Review current conflict of interest laws in relation to public procurement or any other law related to conflict of interest to ensure consistency in their application and purpose;*
- *Research and share (in report or conference) each country's approach in addressing, educating (public and private) and managing conflict of interest in public procurement with the goal of promoting consistencies across the region.*

Proposed Action #3: Increase prevention efforts in conflict of interest within public procurement

- *Report either quarterly or annually, to the accounting officer or controlling officer, sufficient details on conflict of interest in public procurement disclosures for the purpose of identifying and therefore preventing any additional conflicts of those making disclosures;*
- *Ensure each country's supplier registration due diligence process is structured sufficiently to identify any conflict of interest with government contracts of the owners, shareholders and/or directors;*

- *Identify, track, and report conflict of interest in public procurement's tracking and reporting through a risk management methodology including areas of procurement traditionally considered as sensitive (i.e. national security procurements);*
- *Provide for transparency of conflict of interest disclosures, to the extent legally permitted, preferably by utilizing information and communications technology (in electronic format, digitized);*
- *Establish effective institutional frameworks and corrective action on conflict of interest declarations when necessary.*

Relevant contact details of agencies that are willing to provide the support as offered in the recommendations:

* South Africa: Adv. Brian Mdlalose, National Prosecuting Authority (Bmdlalose@npa.gov.za)

** United Kingdom: Ms. Catherine Rylance, Global Head Anti-Corruption, Prosperity Fund, Foreign Commonwealth Office (Cath.Rylance@fco.gov.uk)