

Anti-Corruption Priorities in the Sub-Saharan Africa Region

UNCAC Coalition Submission to the
9th Session of the UNCAC Conference of the States Parties

26 November 2021

The UNCAC Coalition welcomes the holding of the ninth session of the UNCAC Conference of the States Parties (CoSP) which provides an important opportunity to advance anti-corruption efforts globally as well as regionally. This written statement is a product of consultations among the member civil society organizations (CSOs) of the UNCAC Coalition's Sub-Saharan Africa (SSA) group. It intends to inform the Conference and particularly the States Parties about UNCAC-related priorities and to set recommendations to advance anti-corruption measures in the Sub-Saharan Africa region and its countries. Emphasis is drawn to five broad areas of concern:

1. Public procurement
2. Whistleblowing and protection of whistleblowers
3. Access to information
4. Public sector employment
5. Financial support to civil society for UNCAC implementation

On Public Procurement

According to UNCAC Article 9.1 on public procurement and the management of public finances: *"Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption."* Civil society groups in SSA observe that countries fail to promote and ensure the transparency of public contracts as required by the UNCAC. In responding to the COVID-19 crisis, governments have often used emergency procurement procedures without ensuring an adequate level of oversight and transparency. As a result, public procurement and funding is at high risk of misuse, fraud and corruption. Some areas of concern observed during pandemic times include:

- Emergency measures leading to relaxed oversight and an increased disregard for accountability;
- The classification of contracts as secret and confidential;
- Limitations on tracking the beneficial owners of companies which are awarded public procurement contracts;
- Beneficial ownership registers, where they have been established, only being accessible to select authorities, and not the general public.

SSA UNCAC Coalition Members therefore urge State Parties to:

- Empower citizens to demand transparency and accountability by educating them on the UNCAC, to demand the full implementation of Article 9 of the Convention. This is premised on the observation that the biggest organ for accountability and oversight is the people, the citizenry;
- Establish safeguards for fighting corruption in public procurement, especially in extraordinary times such as pandemics, to ensure continued accountability;
- Establish provisions authorizing public access to beneficial ownership registers, with independent bodies being mandated to verify data for oversight purposes.

On Whistleblowing and the protection of whistleblowers

Article 33 of the Convention requires that States Parties consider adopting measures to provide protection against unjustified treatment for persons who reported corruption offenses in good faith and on reasonable grounds. While the Convention does not use the specific term ‘whistleblowers’, leaving the Article open to interpretation, it is considered as the international basis for the protection of whistleblowers, even though this provision is not binding for states.

It is concerning that as civil society increases efforts to promote integrity, transparency and accountability, citizens may not be sufficiently protected. The norm is to have a ‘vener’ of a protective law for whistleblowers. On a deeper level, however, these laws are still not fully implemented, with civil society even cautioning individuals against blowing the whistle in some cases, because protective measures as provided in legislation are not comprehensive enough and may not be enforced in practice. Given the social, mental and financial sacrifices whistleblowers who do step forward are forced to make, the current system is not encouraging them.

It is therefore recommended that:

- Whistleblowing be recognized as an act in the name of human rights and therefore duly protected and/or defended, as the single most critical role any citizen can play in their country. States Parties of the UNCAC must fully implement Article 33 to ensure protection for their citizens who report wrongdoing, and consider tabling resolutions on effective whistleblower protection at the 9th CoSP and beyond;
- A Whistleblower Fund be created, offering sufficient protection to whistleblowers, such as political asylum in safe countries, to address the personal consequences whistleblowers face, coupled with robust legal and institutional frameworks necessary to ensure the protection of whistleblowers globally;
- An Anti-Corruption Court at the African Union level be advocated and negotiated for, so that when local remedies have been exhausted, citizens have spaces for further recourse;
- Robust public education campaigns communicating the importance of whistleblowing for public good, highlighting how urgently whistleblower protection is needed, be supported as part of UNCAC implementation by States Parties.

On Access to information (ATI)

As a core element of fighting corruption, the UNCAC requires States to make information available about their activities and to engage with civil society. Article 10 requires States to take measures to enhance the transparency of their public administration including adopting procedures facilitating public access to information *“on the organization, functioning and decision-making processes of its public administration.”* States also have to publish information on corruption in the public administration. Article 13 commits states to guarantee public participation by *“Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption”* and *“ensuring that the public has effective access to information.”* However, the following issues of concern have been raised:

- There is low awareness by citizens of ATI laws in most countries, as well as among the State bodies who are supposed to (mandatorily) provide information;
- Public education on the right of access to information is a challenge coupled with a lack of capacity in public agencies, which plays a critical role in determining whether or not the agencies respond to requests;
- There is a lack of provisions on independent oversight mechanisms and the capacitation of officers within government agencies;
- Most national ATI legislation does not provide for information commissions, Ombudspersons or appeal courts.
- Ordinary citizens, youth, women and individuals with disabilities may find it expensive or difficult to access ATI mechanisms;
- Some of the information requested is refused by authorities without legal justification. This breeds a culture of impunity, with people keeping quiet and not fighting for their rights.

It is therefore recommended that the following be considered:

- The adoption and implementation of national legislation on ATI is heavily dependent on civil society raising awareness about and promoting the importance of ATI. It is therefore crucial for civil society to be informed about ATI and its benefits, so that these key messages can be transmitted to civilians. There is a need for collective action and greater awareness campaigns to inform citizens and the general public. Building the capacity of civil society and a country's citizenry in making requests and engaging with the data requested is important in ensuring implementation of the UNCAC.

On Public sector employment

UNCAC Article 7 (4) speaks to public sector systems. States Parties are required *“to endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.”* Public sector employment is a concern as the following have been observed as devaluing the public service and its capacity of bringing public good to citizens:

- Favouritism based on whom you know during the selection of candidates. Public officials may create job opportunities and allocate them to a select few, usually top administrators within a ministry.
- Public servants not being adequately positioned within government bodies, making them more prone to corrupt practice. For instance, political campaign funding being managed either by the office of the vice president or the permanent secretaries. In some countries in this region, funding for youth and female empowerment being managed by public officials without any background in banking constitutes a bad practice.

It is recommended that State Parties fully implement the following UNCAC Articles on:

- Employment of public officials (Article 7 (1)): Transparency with respect to the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials;
- Public administration (Article 10): States Parties are required to enhance transparency in the public administration with regard to its organization, functioning, and decision-making processes; and
- Decision-making processes in government (Article 13 (1a)): States Parties are required to enhance the transparency of and promote the contribution of the public to decision-making processes.

Financial support to civil society for UNCAC implementation

Civil society – the broad reach of NGOs, journalists and academics, among others – can empower citizens to detect corruption and mobilize against it. Article 13 of the UNCAC contains a clear description of how civil society should be involved in the fight against corruption. Civil society in the Sub-Saharan African region struggles to undertake its mandate to complement the efforts of State Parties in effective UNCAC implementation.

Concerted efforts are required to support civil society and its role in the fight against corruption. Recognizing these efforts, it is recommended that an Anti-Corruption Fund be considered, competitively granted to support civil society organizations around the world to prevent corruption and expose perpetrators of corrupt practices.