

Anti-Corruption Priorities for Latin America

UNCAC Coalition Statement to the 9th session of the Conference of the States Parties to the UNCAC

26 November 2021

We welcome 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 Latin American group. It intends to contribute to the discussions of the CoSP and to set recommendation to advance anti-corruption measures in the Latin American region and its countries.

First and foremost, we believe that **effective monitoring of corruption in the region must take place in a joint and collaborative manner between national and subnational governments, in an effort that is fundamentally borderless.** We therefore call on States Parties to move forward with tools to facilitate joint investigations into corruption offences.

UNCAC review process

The UNCAC implementation review process must be an exercise in transparency and accountability that incorporates all people regardless of race, gender, class, ethnicity, geographic location, language. States Parties have not yet sufficiently engaged civil society, academia, and citizens in consultation and accountability processes regarding local implementation of the UNCAC.

States Parties should:

- Inform the public about assessment schedules, focal points, and stakeholders to be consulted in a timely manner, and commit to **comply with the requirements of the UNCAC implementation review process;**
- Proactively consult **civil society at different stages of the review process;**
- Publish **in a timely, appropriate and accessible manner all documents related to the review process,** including all completed reports and self-assessment checklists.

Right of Access to Information

Although the region has taken important steps in incorporating access to information standards, this right continues to be violated by actions and omissions of public actors throughout the region.

States Parties should:

- **Strengthen existing mechanisms for access to information**, taking effective steps to eradicate the culture of secrecy in public administration, promoting proactive transparency policies at all levels of government;
- **Ensure the accessibility of public information**, expressed in clear language, in formats and means that facilitate participation, giving preference to an open data format for better analysis;
- **Empower the oversight institutions of access to information and transparency**, increasing their powers and independence.

Public Procurement

We believe that there is a regional problem surrounding public procurement and contracting systems: arbitrary, uncontrolled and non-transparent allocation of contracts over the years has caused irreparable damage to the economies and institutions of the region.

States Parties should:

- **Implement the Open Contracting Data Standard¹** in all areas of the public sector, as well as electronic platforms for public procurement and contracting and mechanisms for citizen participation;
- Establish the **obligation of publicity of all contracts signed by the State**, with explicitly defined exceptions and with appropriate justification, limiting the subscription of confidentiality clauses incorporated in public contracts;
- Establish **award systems that provide information on the criteria applied for the selection of bids**, limiting and controlling the use of arbitrary awards of contracts, seeking to ensure that non-competitive contract awards become an exception.

Integrity and transparency in the private sector

A culture of intolerance of corruption in the private sector is needed to discourage corrupt tactics to gain market advantage, and to demand transparency from state-owned enterprises in order to actively monitor this sector which is particularly vulnerable to corruption.

States Parties should:

- **Require private companies to have compliance, anti-corruption and anti-money laundering programs, as well as to comply with accounting standards;**
- Legislate on the attribution of **criminal liability to companies** for acts of corruption;
- **Digitize public business registries, providing a free information service in an open, accessible and easily reusable format;**
- **Create an accessible Public Register of Beneficial Owners**, understood as individuals or natural persons who directly or indirectly and ultimately own, influence, control or benefit;
- Cooperate with other States Parties in the region to **establish a minimum standard of public registry data** that allows for cross-referencing of information between countries.

¹ <https://standard.open-contracting.org/latest/es/>.

Management of conflicts of interest and assets of public servants

States in the region have chosen to keep the intersections between the public and private spheres of public officials hidden from the public. It is important to make potential conflicts of interest transparent to allow for greater citizen oversight of public affairs.

States Parties should:

- **Require public servants of all three branches of government to publish their declarations of assets, including spouses and minor children, conflicts of interest, and professional background;**
- **Implement effective control mechanisms** that allow for timely verification of the sworn statements, and real sanctioning for non-compliance with these obligations;
- **Establish measures to prevent "revolving doors"** (persons moving between positions in the public and private sector that relate to the same sector, thus possibly resulting in conflicts of interest) **and regulate influence peddling in public decisions through political lobbying;**
- Collaborate with States Parties in the region to **develop protocols and procedures for consultation and cross-checking of sworn declarations data between countries to verify data on assets located in another jurisdiction.**

Criminalization, investigation and sanctioning of corruption offences

We consider that the quality and implementation of anti-corruption laws are not uniform in the region, and that many suffer from legal loopholes that undermine them. States should regularly update their legal frameworks by incorporating new corruption phenomena as they emerge.

States Parties should:

- **Implement, regulate, and enforce the anti-corruption standards in force in a timely manner and respecting the procedures and legal guarantees provided by each State Party,** ensuring that certain acts classified as minor offenses are prosecuted and punished with greater severity;
- **Incorporate a human rights-based approach in which the gender perspective is mainstreamed in the implementation of anti-corruption policies and standards;**
- **Adopt effective mechanisms to prevent, identify, and sanction crimes such as "sextortion," and judicial and police corruption** that facilitate impunity for violators of the rights of women, LGBTQI+, and other vulnerable groups.
- **Criminalize private sector corruption** and create instruments to criminally prosecute natural and legal persons involved in private sector corruption;
- **Guarantee the existence of independent and autonomous oversight bodies** with periodic and transparent assignment and rotation of their management. They **should have effective oversight and sanctioning powers, with adequate human, financial and training resources to carry out their tasks.**

Reparation of the damage caused by corruption and recovery of assets

Punishment of corruption offences, especially cases of grand corruption, should invariably result in the recovery of the stolen money, irrespective of custodial sentences or any additional measures that may be contemplated. Moreover, the proceeds of corruption should be returned to the states from where they originated.

States Parties should:

- **Implement mechanisms for the recovery of assets derived from corruption**, providing for the possibility of social use of the assets until the time of the sentence that establishes the confiscation;
- **Develop processes of reparation for the victims of acts of corruption** that guarantee adequate compensation and reparation for the damage caused, identifying the persons or communities affected by these corrupt acts and the rights impacted;
- **Establish mechanisms that allow victims of corruption offences to join criminal proceedings as civil parties and allow for class actions** in relevant corruption cases;
- **Establish new multilateral agreements to facilitate the exchange of information, freezing or seizure of proceeds of corruption, and the transfer of recovered funds to the countries of origin with as much publicity as possible.**

Protection of whistleblowers, reporting persons and witnesses of corruption

Latin America is one of the worst regions in the world in terms of violent reprisals against journalists², environmental³ and human rights⁴ activists. This situation translates to the fight against corruption, with problematic situations throughout the region related to the treatment of whistleblowers, reporting persons and witnesses of corruption.

States Parties should:

- **Develop legal and institutional mechanisms for the effective protection of whistleblowers of corruption**, taking special consideration of female whistleblowers and whistleblowers from vulnerable groups;
- **Establish protection measures for persons who have reported corrupt, criminal or unethical practices or acts, both in the public and private sectors;**
- **Ensure an enabling environment for civil society and freedom of the media, protecting journalists and civil society organizations from reprisals** for their investigation, publication and dissemination of corruption cases.

² <https://rsf.org/en/rsf-2021-index-nearly-all-indicators-flashing-red-latin-america>.

³ <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>.

⁴ <https://freedomhouse.org/programs/latin-america>.