

**Roundtable of Civil Society Organisations
in the Framework of the Regional Anti-corruption Conference for South America and
Mexico contributing to fast tracking the UNCAC implementation in Latin America**

Cartagena, 7 May 2019

We, the civil society organisations from ten countries present at the Regional Anticorruption Conference for South America and Mexico, which was co-organized by the UNODC and the UNCAC Coalition, based on a debate initiated by concerns about the impact of corruption on the development of the peoples and respect for Human Rights, allow ourselves to make the following recommendations to the states for the progress of the fight against corruption in the region.

We want to emphasize the need to work on common efforts. In addition to the role that everyone plays in society, efforts are also important where different sectors work together: the general public, indigenous communities, afro-descendants, civil society organisations, the private sector, academia, religious institutions and the institutions of the different state powers, among others. All must have a place, co-responsibility, space and voice in the fight against corruption. We also believe that the efforts need to be complementary, and that it is not only the public sector, but also the private sector and the citizenry that contribute to the integrity of their own actions, even more so when we pursue common objectives.

The region needs serious and coordinated work to implement structural and sustained changes in the field of anti-corruption that result in a clear and noticeable improvement of citizens' living conditions in all countries. We recognise that although there is progress and efforts promoted by the states to implement the Convention, the lack of a coordinated implementation together with the citizens, and in a systematic way with deep commitments on integrity and anti-corruption – one that goes beyond the changes of government in our countries – threatens its accomplishment and the achievement of those objectives in the region, whilst delegitimizing the exercise of power and politics and deepening the social and economic inequality that afflicts it.

There are four cross-cutting issues that require special attention from governments, businesses and civil society alike:

1. The states have not effectively guaranteed the exercise of the right of **access to public information**, arguing reservations beyond those established in the inter-American and universal standards, not enforcing the principle of active publication of information or denying access to information – information that legitimately has a public nature. Likewise, the **effective exercise of the right to free expression** requires that states promote **effective protection for journalists, activists and informants**.

2. It is necessary for the region to implement **open and interconnected information management models of beneficial ownership, sworn interest declarations, sworn asset declarations, trajectory of public servants and, on the other hand, records of public suppliers and contractors, beneficiaries of bidding processes or direct invitation such as contracts**. The publication of these records is a minimum element to guarantee the effective enjoyment of the right of citizens to access public information. In addition to open and reusable information, the interconnectivity/interoperability of the data is required in order for this right to be exercised in an integral manner.
3. **The independence and integrity of the judiciary and control bodies** is the basis of the rule of law and effective protection of the environment for the exercise of fundamental freedoms. They are also necessary to take any effort against corruption forward. We observe with concern that in many countries there are signs of corruption and authorities that should prosecute or sanction corruption cases lack independence, such as: comptrollers, prosecutors, judges, prosecutors and police.
4. **The commitment of the states to the fight against corruption** cannot remain in declarative acts. It is necessary that their efforts in the framework of the fight against corruption and the application of the UNCAC are translated into concrete and measurable actions. In this sense, metrics should be developed to **record progress according to clearly defined categories and indicators**. The implementation of a system with these characteristics will allow the standardisation of information related to improvements and will enable better possibilities for the evaluation and monitoring of the processes.

In particular, and based on the issues causing the convocation of this conference, we call on states to move forward with more decision and impact in terms of

SYSTEMS OF PUBLIC INTEGRITY:

It is necessary for states to implement coherent integrity systems that, beyond meeting the requirements established by the UNCAC, are committed to developing a culture of probity in the exercise of public function. Therefore, inter alia, we consider necessary:

- That **clear and effective rules be implemented in terms of sworn declarations** and that they be complied with.
- States must **implement the highest standards** in terms of sworn declarations of assets, income and interests and, in particular, **ensure that these are public, open, and historical data**. They must also make sure that these standards are met.
- At a minimum, it is essential to **publish the declarations of assets, income and interests** of senior officials of the executive branch, of congressmen and judges of the high courts in digital format, complying with the principles of open data.
- It is also important to **differentiate the need for publishing information on ownership structures and interests according to the risks of corruption and responsibility** in each case. Likewise, it is necessary to establish clear parameters on which **public data** are considered and which **personal data of a sensitive nature are subject to reservation**. These definitions must be

made in accordance with the inter-American and universal standards, where, given that public servants have voluntarily placed themselves in their positions, the threshold of public scrutiny towards information does not have the same level as with any other citizen, but a greater one, given the public interest it involves.

- It is essential for civil society that the information related to the declarations of assets and interests must be published, respecting the **principle of active transparency and maximum disclosure**, in the logic of open data, in reusable formats and references, that is open and allows for cross-referencing of information with other data sources, and in a **centralised** platform, updated **periodically**, that incorporates the trajectory of the officials and the historical data of the evolution of their heritage.
- In addition to its publicity, the effectiveness of sworn declarations is only possible if there are **mechanisms to verify and oversee the truthfulness of information** on the declarations of assets, income and interests, especially with public agencies that effectively monitor and analyse the reported information. Likewise, there have to be real consequences (such as sanctions) against the breach of obligations in the presentation of sworn declarations, when officials do not publish the information (or publish it in non-open or non-reusable formats), or when they report information that lacks truth.
- **Central, public and interoperable registries of real beneficiaries of legal persons** are still absent, and essential, with clear rules on the concept of beneficial ownership and with the provision of penalties for non-compliance.
- States must be able to implement clear policies on 'revolving doors', which, among others, should be especially careful in preserving the **integrity of public offices** within the different state powers and they should play a fundamental role within the system of balance and independence of powers; they should monitor not only the interests and functions prior to the exercise of a position, but also reasonably limit future positions and they should allow the monitoring of uninterrupted transfer of people between the public and private sector in order to avoid the generation of conflicts of interest.
- **Institutionalise social control and proactive public monitoring processes at all levels of the state**, developing and implementing tools that involve the effective participation of civil society in the control of government actions.

PROTECTION OF WHISTLEBLOWERS, WITNESSES AND INFORMANTS:

It is essential to develop public policies, legal frameworks and independent mechanisms that implement and provide active and effective protection to whistleblowers, witnesses and informants, in order to avoid the possibility of reprisals, independently and in addition to witness protection mechanisms that already exist in accordance with the provisions of the Convention. We consider it essential to include civil society in the process of creating and implementing these mechanisms to contribute to their effectiveness.

- For this, we consider the following principles and criteria important:

- **Effectiveness:** Systems must work, guaranteeing effective protection that is measured, not by the existence of institutions and laws, but by the absence of reprisals and the volume of complaints and reports.
- It is imperative to establish **criteria for the anonymity and the identity protection** of the whistleblowers and informants as one of the fundamental mechanisms for the protection of their safety. Unity in the handling of the information, both of the individuals and of the information provided is fundamental, in order to not violate the confidentiality of the people involved.
- **Proportionality:** There must be a system that evaluates and assigns the level of protection that a person needs, based on the level of risk in which they find themselves.
- **Integrity:** The protection must be comprehensive and include different aspects such as physical, psychological, personal and economic safety, as well as judicial defence if necessary.
- **Transparency, Responsibility and Good Faith:** To preserve the strength and legitimacy of reporting and reporting mechanisms, tools must be incorporated to avoid malicious, malevolent or abusive denunciations.
- **Guarantees:** Protection must be effective and permanent while the risk lasts. For this reason, procedures must be established that allow the rendering of accounts and monitoring of their application. Sufficient and effective guarantees must also be given to the fact that the reported events are duly investigated, for which there must be appropriate mechanisms for rendering accounts.
- States must **guarantee the publishing and opening of open public on the statistics of complaints** at a sufficient level to guarantee the use, interpretation and free disclosure of said records by the citizens. Therefore, it is important to develop information management models, focused on the needs of users, allowing the empowerment and use of the data to clearly identify the critical route for the development of reports, competent public instances and alternative organisms for the free choice of the reporting person, which must proceed in an autonomous and impartial manner.
- Both, legislation and procedures, must differentiate the figure of witness informants from collaborators, establishing the necessary incentives and procedures. In the same line, differences must be established in relation to the role of citizens and public employees, in relation to the rights, functions and duties that are different for each one. In this sense:
 - The protection of informants must also be ensured when they are public officials.
 - It is necessary that the mechanisms, regulations and policies for the protection of informants also involve officials of the private sector and of public companies.
- Hand in hand with efficient protection mechanisms, ways should be found to **educate and sensitise the public** on the issues of public denunciations and on the importance of reporting cases of irregularities within the different levels of the state. Civil society and the private sector can play an important role in this regard as well.
- It is crucial that protection **mechanisms exist against all types of reprisals**, such as disciplinary sanctions, dismissals, demands or prosecutions, in line with international standards.

INTERNATIONAL JUDICIAL COOPERATION:

- It is important to find mechanisms that, respecting the confidentiality of the processes, allow the **involvement of citizens and civil society organisations** to help implement cases of reparation, provide evidence and exercise an adequate social control over international judicial cooperation processes in cases of corruption.
- International cooperation requires **real independence and strength of the judicial powers as well as of control and judicial investigation bodies**. In the same way, it is essential to make concrete progress in improving the integrity and accountability of the judicial branch and to sanction cases of abuse in an exemplary manner.
- It is important to promote the **adherence and/or ratification to the international instruments on this subject** as well as to facilitate its implementation and to promote the necessary institutional mechanisms for its effective action, whilst identifying the existing obstacles for its full development, in order to reduce them. Topics such as joint research teams can advance with said adherences and/or ratifications.
- A **central authority** with technical, personnel and budgetary resources, capable of giving effectiveness to the exchange of information between different countries, must be defined. In criminal matters, the central authority must be the body responsible for the criminal action, with attention to the previous point of integrity and accountability.
- It is crucial to **promote spontaneous information mechanisms**, based on the principle of reciprocity, considering seriousness and relevance.
- Work must be carried out for the **effective implementation of cooperation agreements that do not depend on the people in charge**. For this reason, effective access to public information must be guaranteed to monitor compliance.
- **At the national level, greater coordination and effective cooperation between various control entities at the national level** is required to guarantee that the collected evidence can be shared and used by the different countries that might be affected by the acts of corruption.
- **Encourage the Judicial Powers and Public Ministries of the Region to promote cooperation commitments with their peers** at regional summits in the area of transparency, fight against corruption and citizen participation.

RESPONSIBILITY OF LEGAL PERSONS:

- The existence of mandatory compliance programmes is necessary for legal entities, especially companies that contract with the state. In turn, there must be **integrity programmes for legal entities of special public interest**, such as political parties and public companies or with majority state participation.
- States should **establish differentiated mechanisms that respond to the reality and operational logic of different legal entities**, in proportion to the size and risks of corruption, so that compliance with the standards does not become an obstacle to effective compliance.

- Universal practices of reporting and transparency of corporate information on compliance programmes as well as the preparation of risk analysis must also be complied with and must be an integral part of these programmes.
- The **standards for evaluating the effectiveness of compliance programmes by public control bodies** must be clear so that legal entities have predictability on what elements and standards to adopt. Clarity about these factors is essential for in order for private sector organisations to adopt compliance programmes proactively.
- There should be **coordination of work between the different control bodies** responsible for evaluating the effectiveness of compliance programmes so that legal entities do not have to sign multiple cooperation agreements or be judged by different methodologies.
- In particular, **differentiated criteria and mechanisms** must be established to guarantee compliance with the **obligations of civil society organisations**, which allow the adoption of integrity plans, but at the same time do neither jeopardise their sustainability, nor produce a situation of vulnerability to the risks of corruption.
- Compliance systems must lead to concrete results. This implies that the **private sector must take proactive actions** to disseminate the results of the compliance systems, which allow establishing the true scope of the same.
- **Special measures must be adopted for recidivistic companies**, such as the impossibility of entering into cooperation agreements and the reduction of penalties or even considering closure in serious cases. There should also be clear actions, limitations and sanctions for legal persons that have ongoing investigations or legal proceedings, but who are still active and reoffend as operators in corruption under other names or legal representatives. It is necessary to take concrete actions to avoid the contracting of private companies accused of recidivism in corruption cases in public tenders.
- Mechanisms should be sought to **hold those accountable and to associate those with one another who are partners, owners and members of companies that are investigated and sanctioned for acts of corruption**.
- **State contractors and other organisations of special public interest** must submit to special reporting and transparency rules also in relation to their compliance programmes.
- **The information on the contracts of legal persons must be published in open and reusable data**. In the same way, central, public and interoperable records of real beneficiaries of the companies are required.
- It is necessary to compose an **interoperability system** also for the information that the private sector must publish that allows connecting with the bases of the public sector.
- In addition, **mechanisms for international cooperation** should be established so that states can proactively share information on the legal status of companies operating in the different states of the region that have been accused of committing acts of corruption. It is not uncommon for these companies to operate in different markets without widespread consequences on the effects that their behaviours have in different countries.