

Making UNCAC Work

UNCAC Coalition Statement to the first resumed 11th Session of the UNCAC Implementation Review Group

21 August 2020

As many countries are mobilising massive resources to respond to the COVID-19 crisis, States Parties must make progress in advancing the prevention of corruption through increased transparency and accountability measures, enhanced enforcement, as well as by increasing efforts to recover and return stolen assets to ensure that public resources reach those in need.

The UNCAC Coalition calls on States Parties to take action – on the national level, in international cooperation and in the context of preparing the next UNCAC CoSP and the UN General Assembly Special Session against Corruption – to achieve the following:

Prevention

The pandemic must not be used as a pretext to unduly restrict civil liberties and access to information, or to limit transparency and accountability in regards to how decisions are made and how public funds are used and allocated through public procurement, grants, and state aid.

Access to Information

- All States Parties should adopt and implement comprehensive constitutional, statutory and/or policy guarantees for public access to information, granting all persons the right to demand information from public bodies. The legal framework should ensure the availability of information and data held by public bodies, including on anti-corruption efforts, the functioning and activities of state entities, and the use of public funds and resources (UNCAC Articles 10 and 13).
- States Parties should commit to:
 - (i) adopting comprehensive laws on access to government-held information with a presumption of openness and limited restrictions;
 - (ii) creating independent and autonomous institutional mechanisms to supervise the correct implementation and application of access to information laws and transparency provisions;
 - (iii) ensuring the proactive publication of information, documents and data, including on anti-corruption efforts, and that information is published in a timely, comprehensive, freely accessible and easily (re-)usable way, fit for the respective local contexts.

Public Procurement and Transparency of Public Finances

- States Parties should commit to implementing open, transparent, competitive and objective procurement and contracting approaches to ensure full public access to information and to all documents and agreements throughout the lifetime of a contract (UNCAC Article 9).
- To facilitate further use and analysis, including the identification of corruption red flags, States Parties should strive to make contracting information easily accessible to the public in standardised open formats, such as the global best practice scheme Open Contracting Data Standard, and establish access to information mechanisms throughout the procurement process, enabling public participation and monitoring of public contracting.

Company Registries

- To promote transparency in the private sector (UNCAC Article 12), States Parties should commit to ensuring that adequate, accurate and current information on corporations and other legal entities, including on officers, directors and direct owners, is accessible in a standardised open data format, utilising free, searchable, public online platforms in order to facilitate access for law enforcement agencies, financial institutions and obliged entities, as well as the general public.

Beneficial Ownership Transparency

- States Parties should make a firm commitment to creating national-level online public registers of the beneficial owners of companies, foundations, trusts and all other legal entities and arrangements. Timely and accurate information should be freely accessible online to law enforcement, competent authorities, the private sector and the public (UNCAC Articles 12.2(c) and 14). In line with best practice, they should also publish beneficial ownership information of all entities that are parties to contracts with the public sector (public procurement, grants and other State aid, licenses, etc.).
- States Parties should put in place mechanisms for data verification, as well as effective, proportionate and dissuasive measures or sanctions for non-compliance.

Political Financing

- To strengthen public trust in government, electoral campaigns and political parties, States Parties should agree on and implement norms and measures to ensure adequate transparency and accountability in the financing of political parties, candidates for public office and electoral campaigns; they should ensure independent, adequately-resourced oversight of the finances of political parties, candidates and campaigns (UNCAC Article 7.3), building on the principles developed by the Expert Group Meeting on Transparency in Political Finance in May 2019.

Conflicts of Interest

- To ensure a clear separation of public position and private interests, States Parties should adopt, implement and enforce adequate and comprehensive frameworks to address conflicts of interest for decision-makers in the public sector (UNCAC Articles 7.4, 8 and 12.2(e)), including cases of the “revolving door”.

Asset Disclosure

- To promote integrity in the public sector, all States Parties should require civil servants and public officials in decision-making positions and prominent public functions, as well as politically exposed persons, to regularly and comprehensively disclose assets and other relevant interests. This information should be made public, including in open data formats, through a freely accessible central online registry. Furthermore, States Parties should establish an independent monitoring mechanism as well as sanctions for non-compliance. To facilitate data verification, States Parties should discuss a framework for the international exchange of this information (UNCAC Articles 8, 14, 43 and 52).

Effective Institutions

- States Parties should strengthen institutions that play a crucial role in national integrity systems (such as election commissions, oversight bodies, law enforcement agencies and the judiciary as well as the oversight role of parliaments) and strengthen the independence of anti-corruption bodies by providing them with sufficient funding, powers and resources in law and in practice, in line with the Jakarta Principles, so that they can carry out their functions effectively and operate free from any undue influence (UNCAC Articles 6 and 36).

Criminalisation and Enforcement

- To enable informed and transparent information on a country’s enforcement system, States Parties should regularly publish detailed statistics on criminal, civil and administrative investigations, charges, proceedings, outcomes and mutual legal assistance activity.
- States Parties should fully criminalise all corruption offences covered by the UNCAC, address weaknesses in their legal frameworks and enforcement systems, ensure effective investigations and enforcement of all domestic and foreign corruption offences as well as money laundering offences and tax violations, recognise gendered forms of corruption and the need to ensure that sextortion is criminalised to the same extent as monetary forms of bribery under national laws.

Protection of Whistleblowers and Corruption Fighters

- Recognising the importance of whistleblower protection in the public and private sector, all States Parties should adopt and implement comprehensive legislation on whistleblower protection in line with best practice and international standards,

providing for confidential and secure reporting mechanisms within entities and anti-corruption authorities and robust legal protection from retribution to all whistleblowers, including those reporting to CSOs and the media.

Grand Corruption

- States Parties should explicitly recognise grand corruption as a threat to the Agenda 2030, initiate discussions on a definition of grand corruption, agree on a common understanding of the term and on legal and institutional mechanisms and procedures to combat it, including the introduction of a criminal offence of grand corruption, and encourage the exercise of extraterritorial jurisdiction for the prosecution of the same on a national, regional and international level, in line with UNCAC Article 16.2.
- States Parties also need to ensure that domestic immunities for public officials are strictly limited, with transparent and effective procedures for suspending them, and are not abused to shield individuals from accountability for corruption offences or to provide safe havens for their ill-gotten gains (UNCAC Article 30.2).

Settlements

- States Parties should make settlement agreements public, including their terms of justification, the facts of the case and the resulting offences. They should be subject to judicial review and provide for effective sanctions. States Parties should ensure that settlement procedures involve countries and groups affected by the foreign bribery, and, as far as possible, include compensation as part of the agreement.

Remedies for Corruption

- States Parties should take effective measures to address the consequences of corruption and to ensure compensation for victims, both individual and collective (UNCAC Articles 32, 34, 35, 53 and 57), by advancing efforts to develop guidelines on the identification and compensation of victims in corruption cases and establishing legal frameworks that allow communities, public interest groups, CSOs and individuals who have suffered damages from corruption to initiate legal action and request compensation or become parties to civil and criminal proceedings.

Asset Recovery

- States Parties should take decisive action to ensure that SDG 16.4 on significantly improving asset recovery and return by 2030 is fulfilled, in particular by:
 - (i) enacting and implementing comprehensive laws providing for the confiscation and freezing of any assets obtained through or derived from an offence under the UNCAC;
 - (ii) enhancing proactive and timely information sharing by pursuing corrupt officials domestically;
 - (iii) implementing adequate laws on legal standing (UNCAC Articles 53 and 56); and
 - (iv) ensuring that returned assets are managed in line with the Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases (“GFAR Principles”) and in a manner contributing to fulfilling the SDGs, and

repairing the damage caused to victims and society. Civil society has to play an important role in asset recovery – a role that should also be properly and formally recognised.

Contact:

Mathias Huter,
Managing Director

UNCAC Coalition – Association for the Implementation of the UN Convention against
Corruption
ZVR 450149560

Widerhofergasse 8/2/4
1090 Vienna, Austria

Email: info@uncaccoalition.org
Web: <https://uncaccoalition.org/>