

Anti-corruption priorities in Latin America

UNCAC Coalition Regional Submission to CoSP10

24 November 2023

We welcome the 10th Session of the Conference of the States Parties (CoSP) to the United Nations Convention against Corruption (UNCAC), an important occasion to advance international efforts in the fight against corruption. This submission is the product of a consultation process among representatives of Latin American civil society organizations (CSOs) that are part of the UNCAC Coalition. We seek to contribute to the discussions that will take place at the CoSP and provide concrete recommendations to strengthen anti-corruption measures in Latin America.

We understand that corruption is a complex, transnational and, above all, persistent problem. We note that corruption affects people in vulnerable situations even more severely, and that it undermines the democratic integrity of all citizens.

Despite recent advances such as the signing of the Lima Commitment of 2018¹ and the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America,² it is essential to continue advancing the effective implementation of outstanding provisions of the UNCAC, which have not been implemented since its signing 20 years ago. Such pending issues relate to international legal cooperation and cooperation in civil and administrative matters related to corruption, effective implementation of corruption sanctions, reparation of damage to victims and asset recovery.

The fight against impunity is crucial for the regaining of trust in the institutions and in the public discourse of the fight against corruption. To this end, we must guarantee and undertake initiatives to promote and ensure the independence of preventive bodies, oversight bodies and law enforcement agencies, and to prevent political interference for the proper and effective functioning of anti-corruption regimes. As long as the sanctions established by law are applied, investigation, monitoring and sanctions mechanisms will fulfill their function of dissuading corruption offenses. Coordinated inter-institutional action on transparency, accountability, integrity, ethics and corruption prevention is key.

¹ OAS (2018), Compromiso de Lima, http://www.summit-americas.org/LIMA_COMMITMENT/LimaCommitment_es.pdf.

² CEPAL, Acuerdo Regional sobre el Acceso a la Información, la Participación Pública y el Acceso a la Justicia en Asuntos Ambientales en América Latina y el Caribe, <https://www.cepal.org/es/acuerdodeescazu>.

A cross-cutting principle in all the recommendations we present is a human rights perspective in anti-corruption public policies and their priorities in order to promote, protect and guarantee human rights, a gender perspective and interculturality.

We implore States Parties from Latin America to recognize and **guarantee transparency, access to information and the effective and systematic participation of civil society in the fight against corruption, as well as in the Convention's review process, and to make its results public**, both the self-assessment checklist and final country report, as well as to advance follow-up of the recommendations given. We call on States to fully reverse the secrecy policies adopted during the COVID-19 pandemic, making all relevant information, and guaranteeing the effective right of access to public information.

Access to information

States Parties should:

- Promote more robust policies on access to information, open data formats, open government, fiscal transparency, open budgets, public procurement and contracting that involve the direct participation of civil society and encourage continuous public dialogue.
- Guarantee stronger transparency and access to public information bodies, enhancing their financial and operational independence and respecting their decisions.
- Implement measures with special consideration for accessibility to vulnerable populations.

Management and oversight of state resources

States Parties should:

- Strengthen digital mechanisms and tools for tracking, supervision and oversight in public procurement processes and encourage the use of electronic public procurement systems by all state entities.
- Limit and regulate contracting through direct contract awards.
- Consider establishing a registry of natural and legal persons sentenced for acts of corruption to prevent them from contracting with the State.
- Strengthen the appointment of civil servants through open and merit-based processes, reducing the use of temporary positions and direct contracting mechanisms.
- Promote and ensure the independence of prevention bodies, monitoring bodies, oversight bodies and law enforcement agencies, ensuring the correct and effective functioning of anti-corruption regimes.

Integrity in finances and politics

States Parties should:

- Strengthen oversight mechanisms over political finances to enable the monitoring of financial records to determine whether transactions, operations and financial records are transparent, reliable, timely, justifiable and from legal sources.
- Promote the creation of oversight and monitoring mechanisms of the information reported by candidates and political parties by the respective electoral authorities and oversight authorities in order to increase sanctions for illicit financing of political campaigns.
- Ensure the existence of legal frameworks that make public and open registries of beneficial owners of legal entities mandatory, with special emphasis on those that provide public goods and services and those that contract with the State.
- Adopt clear definitions of conflicts of interest in the public sector in their legal frameworks and adopt appropriate management, prevention and sanction measures, including the promotion of codes of conduct for public servants.
- Ensure full compliance with the disclosure of asset and interest declarations for all public officials, especially in areas of high-risk and high-level decision-makers.

Civil society participation in public policies

States Parties should:

- Develop, in a participatory manner, mechanisms for the monitoring, implementation, and evaluation of anti-corruption public policies, so as to enable two-way accountability, follow-up and timely social control by citizens.
- Include as principles of anti-corruption strategies: the guarantee of equality and non-discrimination, participation and social inclusion, and the inclusion of gender and diversity perspectives.
- Refrain from stigmatizing and criminalizing civil society and the press by public officials and political leaders.
- Guarantee transparency and citizen participation in judicial processes for the prosecution of corruption through mechanisms such as class action lawsuits, legal standing for victims and independent civil society organization.

Corruption investigation, sanctioning and remedies

States Parties should:

- Promote international legal cooperation to investigate and prosecute transnational grand corruption cases.

- Provide protection, due process and a fair trial to persons accused of corruption offenses.
- Set penalties for grand corruption at levels comparable to those for serious, organized and aggravated crimes.
- Guarantee, promote and protect the transparency of judicial rulings and resolutions of administrative tribunals, enabling the public to know how justice is served and the reasons why a matter is decided in a certain way.

Protection of whistleblowers

States Parties should:

- Incorporate the legal term of "alertador" (translation of "whistleblower" in Portuguese and Spanish) in the procedural codes applicable to processes of investigation and punishment of corruption offenses to ensure they have adequate legal recognition.
- Design and implement mechanisms for reporting acts of corruption internally within institutions, which guarantee confidentiality and security for whistleblowers.
- Provide positive incentives for whistleblowers unveiling corruption.
- Publish statistics on the processing and follow-up of complaints related to administrative offenses and acts of corruption made by citizens, with indicators including a gender perspective.
- Protect journalists and media outlets that publish information from whistleblowers resulting in indictments for corruption offenses.

Asset recovery

States Parties should:

- Adopt measures to advance the recovery of assets derived from money laundering and corruption, through regulations and public policies, including the methodological recommendations of the Latin American Financial Action Task Force.³
- Adopt measures to ensure that recovered assets derived from corruption are used for the integral reparation of the victims of the crime and society as a whole.
- Encourage, make transparent and provide timely and accessible information on asset recovery on public platforms in open data format.
- Establish inter-institutional cooperation relationships that make it feasible to confiscate and preventively seize assets in judicial proceedings for corruption cases.

³ Financial Action Task Force of Latin America, <https://www.fatf-gafi.org/en/countries/global-network/financial-action-task-force-of-latin-america--gafilat-.html>.

- Ensure that the administration of assets subject to asset forfeiture proceedings for corruption offenses promotes due reparation for the victims of corruption.