

SUMMARY WORKSHOP REPORT ON THE AFRICAN LEGAL FRAMEWORKS FOR PREVENTING, COMBATING, INVESTIGATING, PROSECUTING AND PUNISHING THE CORRUPT.

HELD IN ENTEBBE, UGANDA, 17- 20 OCTOBER 2018



Corruption in all its manifestations and forms presents a threat to the rule of law and undermines the democratic and social values of any society. It also fuels maladministration and public fraudulence and imperils the capacity of the state to fulfill its obligations to respect, protect, promote and fulfill all the rights enshrined in the Bill of Rights; which ultimately hinders sustainable development and economic growth thereby placing the society's stability at risk.

It is a fact that corruption has retarded the development of many countries, especially the under-developed states of Africa. In Africa, corruption still flourishes with impunity and oftentimes, any punishment the offenders have had to suffer, is in itself viewed as a business expense or an acceptable risk of doing business. One of the major catalysts for widespread corruption in Africa is the clear failure in the existing legal frameworks to effectively combat corruption giving an impression that corruption pays and those who reap big from it, are above the law, if not the law itself!

It is against this backdrop that KAS' Rule of Law Program for Sub-Saharan Africa in collaboration with Accountability Now (IFAISA), a South Africa NGO, convened a stakeholders' workshop with legal expertise from Botswana, Cameroon, the Gambia, Ghana, Kenya, Malawi, Nigeria, Rwanda, South Africa, Tanzania, Uganda, Zambia and Zimbabwe to review the existing anti-corruption legal frameworks in their respective countries and regions. The delegates highlighted the gaps that exist, the challenges and the successes in the implementation of the various frameworks. They also made proposals and gave recommendations on how the existing gaps and weaknesses could be fixed at the national, regional and continental level particularly during this year that the Africa Union (AU) is devoted to anti-corruption efforts.

From the discussions, it was clear that there are sufficient written laws in majority of the represented countries but the biggest challenges were their applicability and full implementation. Whereas it was evident that most of the countries believed in the supremacy of their constitutions, there was a great extent of interference of this supremacy from the political and economic elite.

As part of the way forward, the delegates affirmed their commitment to the rule of law and to good governance with strong institutions which uphold democratic values and promotes openness and accountability under the stewardship of men and women of integrity.

In addition to the need for coherent and effective legal frameworks, the delegates underscored *inter alia*,

- a. the urgent need to promote a culture of integrity that makes corruption inimical to the values of the nation through sustained formal and civic education;
- b. the urgent need for governments to augment and strengthen the protections for whistleblowers and anti-corruption human rights defenders in order to reinforce a culture of accountability;
- c. the need for strong, legally, structurally and operationally independent institutions that are adequately equipped and resourced to hold everyone accountable;

- d. the need for governments in Africa to adopt and implement coherent National Anti-Corruption Strategies that give effect to their legislative and policy obligations and responsibilities. As far as is possible, governments were urged to harmonise their domestic legislation for internal coherence and harmonise their practices with the best practices of their regions;
- e. the need for adoption of multi-disciplinary approaches and strategies to foster greater participation in understanding and responding effectively to the complex nature of corruption and its causes;
- f. the need for appropriate sanctions against those found culpable which include but not limited to;-
 - i. Long-term custodial sentences;
 - ii. The forfeiture to the State of the proceeds of corrupt acts;
 - iii. Restrictions on standing for public office;
 - iv. Restrictions on doing business with the state; and
 - v. Publication in a National Corruption Register that is publicly available.

The workshop was addressed by special speakers including H.E. Dr. Albrecht Conze, the German Ambassador to Uganda; Justice Richard Goldstone, a retired member of the South African Constitutional Court, a former international prosecutor and current board member of Integrity Initiatives International (III), and Mr. John Githongo, the Founder and CEO of Inuka Kenya Trust and renowned anti-corruption crusader.

ANNEXTURE:



WORKSHOP RESOLUTIONS ON THE AFRICAN LEGAL FRAMEWORKS FOR PREVENTING, COMBATING, INVESTIGATING, PROSECUTING AND PUNISHING THE CORRUPT

THE DELEGATES GATHERED IN ENTEBBE:

- a) **NOTED** the resolution taken at the Pan African Conference on Combating Corruption held in Cape Town on 5 November 2015;

- b) **FURTHER NOTED** the Boksburg Declaration of 24 November 2016 (both of which are attached marked "A" and "B" respectively)
- c) **IDENTIFIED** the ongoing lack of political will to tackle grand corruption adequately in Africa and elsewhere on the planet;
- d) **ACKNOWLEDGED** the increasingly international character of grand corruption;
- e) **ACKNOWLEDGED** the serious and debilitating impact on ordinary people of petty corruption;
- f) **RECOGNIZED** that adequately independent effective anti-corruption machinery of state that is "STIRS" criteria compliant, as set out in Paragraph 5 of the Cape Town Declaration, is the primary tool in the combating of corruption;
- g) **STRESSED** that a legislative and regulatory framework that embodies regional and international best practice is vital to the successful combating of corruption;
- h) **NOTED** that it is in the effective and efficient implementation of laws designed to combat corruption that there is the greatest deficit, even in countries which have state of the art legislative and regulatory regimes;
- i) **REAFFIRMED** the substance of the work done in Cape Town and Boksburg as set out in the documents attached marked "A" and "B".

FURTHER, THE DELEGATES:

- j) **REAFFIRMED** the principle that adherence to the Rule of Law as the best way to balance the need for sustainable development and the protection of fundamental human rights;
- k) **REAFFIRMED** the important role of a national Constitution as a social contract entrenching the national value of integrity, an orientation against corruption and the independence of Constitutional institutions;
- l) **STRONGLY ENCOURAGED** the promotion of a culture of integrity that makes corruption inimical to the values of the nation through sustained formal and civic education;
- m) **STRONGLY RECOMMENDED**, given the complex nature of corruption and its causes, the adoption of multi-disciplinary approaches and strategies to understand and respond to this scourge;
- n) **CALLED FOR** coherent legal framework; strong and independent institutions, adequately equipped to hold everyone accountable.

THEREFORE, THE DELEGATES RESOLVED:

- 1) That all political parties should affirm their commitment to the fight against corruption by including such commitment in their manifestos and constitutions – and their actions;

- 2) That governments of our countries adopt and implement a coherent National Anti-Corruption Strategy to give effect to their legislative and policy obligations and responsibilities. As far as is possible, we recommend that governments harmonise their domestic legislation for internal coherence and harmonise their practices with the best practices of their regions;
- 3) That procurement processes should be open and transparent at all levels and action should be taken against all parties found in violation. Any disqualification from the tendering process for reasons related to actual or attempted bribery (or related corrupt practices) must lead to disqualification from further contracting with government at all levels;
- 4) That the legal framework must ensure that Anti-Corruption entities adhere to the following criteria:
 - a. That they be specialised and focused on combating corruption;
 - b. That they have properly trained personnel;
 - c. That they are legally, structurally and operationally independent;
 - d. That they be adequately resourced (*as a guideline we recommend setting aside a minimum of 0,3% of the national budget*); and
 - e. That the members of the Entity have security of tenure.
 - 4.1 Notwithstanding appointment by the Executive, we insist that the structural and operational autonomy of the national Anti-Corruption entity must be guaranteed;
 - 4.2 Furthermore, we demand that the entity must be safeguarded, in law and in practice, from political interference and influence;
- 5) That specialised anti-corruption courts should be established and operationalised in each jurisdiction that are appropriately staffed by dedicated and qualified personnel;
- 6) That the following operating principles for investigations should be adopted:
 - a. All complaints of corruption **must** be investigated; and
 - b. Where there is the decision not to prosecute, **an automatic review** would lie to an oversight body comprising members with appropriate financial, legal and other skills drawn from multiple stakeholders to which the prosecuting authority must justify its decision
- 7) That countries should adopt minimum sentences to serve both as a guide to sentencing authorities and as a deterrent to those seeking to engage in corrupt activities;
- 8) That action must be taken against both corruptor and corruptee, given the transactional nature of corruption. Upon successful prosecution, the names of private persons and public officers and companies should be entered into a publicly available National Corruption Register.
- 9) That the sanction against those found culpable should be appropriate and commensurate to the nature and seriousness of the offence and should include, but not be limited to:
 - a. Long-term custodial sentences;
 - b. The forfeiture to the State of the proceeds of corrupt acts;
 - c. Restrictions on standing for public office;
 - d. Restrictions on doing business with the state; and
 - e. Publication in a National Corruption Register that is publicly available.

- 10) That governments should augment and strengthen the protections for whistleblowers and anti-corruption human rights defenders in order to reinforce a culture of accountability;
- 11) That governments should take steps at national level to emulate the sanctions system implemented by the World Bank as referred to in Cape Town Conference of 2015 Resolution No. (f). In the case of slow or delayed uptake of this recommendation, we propose to lobby for the amendment of the UNCAC to include those measures;
- 12) That membership of, and access to the benefits of international and regional organizations such as the UNO, AU, WTO, IMF, BRICS and World Bank should be contingent upon the creation and implementation of a national anti-corruption environment, in all countries, that is fully compliant with this resolution and the content of the documents attached marked "A" and "B".
- 13) That establishment of an International Anti-Corruption Court, compliant with the principle of complementarity should be considered as an alternative to end the culture of impunity for malfeasance that amounts to grand corruption or state capture;
- 14) That membership of and access to the benefits of the organizations mentioned in paragraph 11 above should be made dependent upon membership of the IACC whether or not its complementary jurisdiction is in fact exercised in any given country and without derogation from the thrust of the Cape Town Conference of 2015 Resolution No. (e).

ADOPTED ON THIS 19TH DAY OF OCTOBER 2018 IN ENTEBBE, UGANDA

APPENDIX 'A': THE CAPE TOWN DECLARATION OF 5 NOVEMBER 2015

1. **Noting** the corrosive and pervasive nature of corruption in the world today, both in the private and in the public sectors.
2. **Identifying** corruption as a symptom of moral depravity, inimical to respect for and promotion of human rights, especially those of the poor and marginalised.
3. **Recognizing** that it is the duty of states, commercial enterprises and all right thinking people to prevent and combat corruption because corruption is generally a serious and deplorable crime.
4. **Appreciating** that constitutional democracy under the rule of law and social stability are not served when corruption is endemic.
5. **Noting** that the widely accepted criteria for effective and successful anti-corruption entities include specialization by, training of, independence for, guaranteed resources for and security of tenure of staff of anti-corruption entities.
6. **Acknowledging** that corruption in Africa has reached levels that threaten and undermine economic progress and growth throughout the continent despite the adoption and domestication of international, continental and regional instruments of international law that commit most countries in Africa to prevent , combat, investigate and prosecute corruption.
7. **Concluding that** corruption with impunity is inhibiting investment, increasing the cost of conducting business, undermining service delivery and exacerbating poverty in Africa and that corruption must be

curbed to facilitate higher and more equitable economic growth.

CONFERENCE RESOLVES THAT:

- a. Governments should establish, strengthen, promote and, where appropriate, constitutionally entrench anti-corruption entities that comply with the criteria noted in clause 5 above, both structurally and operationally.
- b. In the formulation of policy and laws, corruption should universally be regarded as an infringement of human rights, which is both immoral and unethical.
- c. Existing anti-corruption entities should be assessed and reviewed for their structural and operational compliance with the criteria noted in clause 5 above for the purpose of making adjustments and reforms where they are required.
- d. Greater protection and incentivising of whistle-blowers, whether or not they are employees, should be considered in order to fortify this important aspect of the combating of corruption through appropriate investigation, prosecution and punishment of the corrupt in both the private and public sectors.
- e. The nurturing of anti-corruption entities, both in the state and in civil society, through public education and the stimulation of the necessary political will to regard corruption as immoral, unethical and as a crime that violates human rights and undermines constitutionalism, should be encouraged through all means available in all forms of media.
- f. A sanctions system, such as that developed by the World Bank, should be considered for implementation at the level of national jurisdiction in relation to all public procurement in whatever sphere of government, including procurement by state owned enterprises.
- g. The private sector and civil society organisations should be encouraged to adopt and implement anti-corruption compliance programmes as contemplated by the Organisation for Economic Co-operation and Development.
- h. Governments should establish a framework for the open and comprehensive declaration of assets and interests by all political office bearers and public officials.

APPENDIX 'B': THE BOKSBURG DECLARATION OF 24TH NOVEMBER 2016

- A. Conference **takes note** of the resolutions passed by the Conference on Combating Corruption held in Cape Town in November 2015;
- B. Conference **acknowledges** that generating the political will to effectively tackle the menacing scourge of corruption is vital to the success of anti-corruption initiatives;
- C. Sensitising and empowering ordinary citizens to create the ripple effect necessary to conquer corruption is at the core of activism against corruption;
- D. It is the responsibility of political parties, the civil service, the media, civil society organisations, trade unions, commerce and industry in Africa to devise programs and strategies that will ensure the fight against corruption is everyone's business;
- E. The role of faith-based organisations is critical to the re-establishment and promotion of sound moral, ethical and spiritual values;
- F. Through its investigation and exposure of corruption, the media plays a pivotal role in popularising the struggle against corruption;

- G. Traditional leaders throughout Africa who govern with integrity and responsiveness to the interests of those they lead have a vital role to play in conquering corruption;
- H. Properly focussed interventions and mechanisms with a multiplicity of strategies at national, regional, continental and worldwide levels are an efficient way of taking on the corrupt;
- I. Machinery of state must comply with the internationally recognised criteria for effective corruption busting.

CONFERENCE ACCORDINGLY RESOLVES THAT:

1. National audits of the anti-corruption machinery of state should be encouraged to ensure that the internationally recognised criteria for anti-corruption entities are universally complied with in Africa;
2. Media campaigns and advocacy, designed to create awareness of the internationally recognised criteria for and the need to create compliant machinery of state, need to be organised;
3. Traditional leaders, civil society, the civil service, trade unions and political parties all have an active role to play in campaigning against corruption;
4. The mobilisation of faith-based organisations around the effects that corruption has on the poor and the vulnerable is critical to the success of the struggle against corruption and the elimination of poverty in Africa;
5. Steps must be devised and popularised at country level to secure implementation of the strategies set out in resolutions f, g and h of the Cape Town Conference. Politicians and public servants must be encouraged to champion one or more or all of the said strategies which are:
 - a. *A sanctions system, such as that developed by the World Bank, should be considered for implementation at the level of national jurisdiction in relation to all public procurement.*
 - b. *The private sector and civil society organisations should be encouraged to adopt and implement anti-corruption compliance programmes as contemplated by the Organisation for Economic Co-operation and Development.*
 - c. *Governments should establish a framework for the open and comprehensive declaration of assets and interests by all political office bearers and public officials*
6. The international community of nations must use its capacity to monitor and investigate global financial movements via the Society for Worldwide Interbank Financial Telecommunication (Swift) as a means for identifying illegal movements of funds implicated in corrupt activity around the world. This capacity must be used to secure the prosecution of individuals and companies who are involved in corruption. Every effort must be made to recover funds which are the product of corrupt activity and to return these funds to the lawful authorities in their countries of origin.
7. All delegates at conference commit themselves and the organisations they represent to “say no to corruption” and “yes to integrity”.