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Consideration of the draft United Nations Convention against Corruption

Proposals and contributions received from Governments

United States of America: amendments to chapter II

II. Preventive measures

Article 4 bis

[Deleted.]

Article 5

Preventive anti-corruption policies

1. Each State Party shall, in a manner consistent with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies. Those policies shall promote [integrity, accountability and good governance].

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

3. Each State Party shall endeavour to evaluate periodically existing relevant legal instruments and public practices with a view to determining their adequacy to fight corruption.

4. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.



Article 5 bis
Preventive anti-corruption bodies

1. Each State Party shall, in a manner consistent with the fundamental principles of its legal system, ensure the existence of a body or bodies to prevent corruption, where appropriate, by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies; and

(b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material means and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

Article 6
Public sector

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:¹

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and, where appropriate, the rotation of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes for public officials to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

¹ The *travaux préparatoires* will reflect that the existence of systems in this paragraph shall not be interpreted as preventing States Parties from maintaining or adopting specific measures for disadvantaged groups.

2. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

3. In order to fight corruption, each State Party shall promote, inter alia, behaviour that favours the promotion of integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

4. Each State Party shall consider, in accordance with principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate public authorities when such acts come to their notice in the performance of their functions.

5. Each State Party shall endeavour, where appropriate, in accordance with fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, employment, investments, assets and substantial gifts or benefits that may constitute a conflict of interest with respect to their functions as public officials.

6. Bearing in mind the crucial role of the judiciary in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary [in the exercise of their functions]. Such measures may include rules and procedures with respect to the conduct of members of the judiciary. Measures taken pursuant to this paragraph may by analogy be introduced and applied within the public or state prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

7. Each State Party shall consider taking appropriate legislative and administrative measures, consistent with the objectives of the present Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria for the appointment of public officials to public office by a process of election.

8. States Parties shall also consider adopting, in accordance with fundamental principles of their domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

9. For the purposes of implementing the provisions of this article, States Parties shall, where appropriate and in accordance with the fundamental principles of their domestic legal systems, take account of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials.²

² General Assembly resolution 51/59, annex.

[*Note:* Former article 6, paragraph 2, is moved verbatim to the *travaux préparatoires* as an interpretative note and would read as follows: “The existence of systems referred to in paragraph 1 of this article shall not prevent States Parties from maintaining or adopting specific measures for disadvantaged groups.”]

Article 6 bis
Elected public officials

[*Merged into article 6.*]

Article 7
Codes of conduct for public officials

[*Merged into article 6.*]

Article 8
Public procurement and public financial management

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish procurement rules that are effective in preventing corruption. Such rules, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The arrangements for public distribution of specific procurements, including information on invitations to tender and the award of contracts, allowing potential tenderers sufficient time to prepare and submit a responsive tender;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules;

(d) The arrangements for an effective system of domestic review in the event that the rules established pursuant to this paragraph are not followed;

(e) The regulation of matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take relevant measures to ensure adequate transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

(a) The preparation and approval of the national budget;

(b) The timeliness of reporting on revenue and expenditure;

(c) Accounting, audit control and related oversight;

(d) Powers of remedy in the case of failure to comply with the requirements established in this paragraph.

Article 9
Public reporting

1. [Taking into account the need to combat corruption,] States Parties shall, in accordance with fundamental principles of their domestic legal system, take such measures as may be necessary to enhance transparency in their public administration, including with regard to its organization, functioning and appropriate decision-making processes. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of their public administration and on decisions and legal acts that concern members of the public;

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(c) Publishing periodic reports, which may include reports on the risks of corruption in their public administration.

Article 9 bis
Measures with respect to the judiciary

[Merged into article 7.]

Article 11
Private sector

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and audit standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to accomplish these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest;

[(c) Establishing an adequate supervisory framework for financial institutions, based on the principles of transparency, accountability and sound corporate governance and with appropriate capacity for international collaboration on cross-border financial transactions;]

(d) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities and of holders of the capital and shares of corporate entities;

(e) Preventing the misuse of public procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(f) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(g) Measures, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in articles [...] of this Convention:

- (i) The establishment of off-the-books accounts;
- (ii) The making of off-the-books or inadequately identified transactions;
- (iii) The recording of non-existent expenditure;
- (iv) The entry of liabilities with incorrect identification of their objects; and
- (v) The use of false documents;

[(h) Ensuring that private entities, taking into account their size, have sufficient internal accounting controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private entities are subjected to appropriate auditing and certification procedures.]

3. Each State Party shall deny the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with article [...] of this Convention, and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Article 12

Accounting standards for [the] private sector

[Merged into article 11.]

Article 13

Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with the fundamental principles of its domestic legal system, to promote the active participation of civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of corruption. This participation should be strengthened by measures such as, inter alia:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring effective access to information for the public;

(c) Protection of persons who have reported to the competent authorities, in good faith and on reasonable grounds, any incidents that may be considered to constitute an offence as defined in this Convention;

(d) Public information activities that contribute to non-tolerance of corruption, as well as programmes of public education, including school and university curricula; and

(e) Encouraging the freedom of the media and others to seek, receive, publish and disseminate information concerning corruption.

2. Each State Party shall take measures to ensure that appropriate anti-corruption bodies referred to in article [...] [Preventive anti-corruption bodies] of this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence as defined in this Convention.
