

**CONTRIBUTIONS FROM THE IBERO-AMERICAN NETWORK OF PROSECUTORS
AGAINST CORRUPTION TO THE POLITICAL DECLARATION TO BE ADOPTED ON THE
OCCASION OF THE SPECIAL SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY
AGAINST CORRUPTION (UNGASS/2021)**

October 2020

TAKING INTO ACCOUNT the adoption, on December 17th, 2018, by the United Nations General Assembly (UNGA) of Resolution 73/191, convening a Special Session Against Corruption, scheduled for the first semester of 2021, with the purpose of discussing the challenges and measures to strengthen international cooperation in the fight against corruption, for the adoption of a concise and action-oriented political declaration;

TAKING INTO ACCOUNT that the **Ibero-American Network of Prosecutors against Corruption** (hereinafter, the Network) is a permanent body linked to the **Ibero-American Association of Public Prosecutors (AIAMP)**, created in 2017, under the coordination of the Federal Prosecution Service (MPF) of Brazil, conforming an important forum precisely for the strengthening of international cooperation among public prosecution services and prosecutor's offices in the fight against corruption;

TAKING INTO CONSIDERATION the framework of the Sustainable Development Goal (SDG) 16, of the 2030 Agenda, to confront corruption as a phenomenon that delegitimizes public institutions and prevents the comprehensive development of peoples, by stimulating the distrust of citizens towards the Democratic State based on the Rule of Law and the probity of administrative acts;

TAKING INTO CONSIDERATION, as recognized in Report A/HRC/44/47 on the Independence of Judges and Lawyers, approved by the United Nations Human Rights Council (HRC) on March 23rd, 2020, that corruption has a corrosive systemic effect in society, as it compromises the capacity of States to promote transparent governance systems and to allocate the maximum amount of available resources for the promotion of human rights, especially for the most vulnerable social segments; and that the maintenance of the principles of independence and impartiality of the institutions and members of the judiciary, including prosecutors, is a fundamental element in the fight against corruption associated with the guarantee of human rights;

The Network presents the following contributions, guided by the fundamental themes that it aims to see reflected in the final text of the Political Declaration to be adopted by UNGASS/2021:

1. The central role of Public Prosecution Services in the fight against corruption;

The construction of a criminal justice system based on due process and impartial trials, particularly with respect to crimes of corruption, depends directly on the upholding of the principles of independence, integrity and autonomy of the criminal prosecution institutions, especially of the Public Prosecution Services. In this context, it's also essential to have permanent strategies for the training, specialization and updating of the work teams of the different control bodies, which must also have guaranteed the freedom to exchange data and information among themselves.

It is essential to recognize that, where a culture of impunity prevails, it is not possible to guarantee even the pillar of the prevention of corruption. Therefore, one of the most effective ways to prevent this practice is precisely to guarantee solid investigation and prosecution responses, whenever signs of corruption are revealed, carrying out effective measures by the justice systems. To do this, the sanctions applied must cover natural and legal persons, not only at the administrative level, but mainly in the criminal sphere.

2. The relevance of Networks for the effectiveness of international cooperation;

By strengthening the bonds of mutual trust among its members, the Networks facilitate communication between the competent authorities of different countries, solving difficulties that may exist and benefiting international cooperation, based on the exchange of information, through secure and reliable channels. Such exchanges include providing clarifications on specific legislation and legal procedures in each country, seeking practical solutions of mutual benefit, which may even transcend the legal universe to include the exchange of experiences and good practices at various levels.

The networks of specialized prosecutors, supported by the Inter-Institutional Cooperation Agreement between the Public Prosecutor's Offices members of AIAMP, have proven to be a fundamental tool to combat transnational corruption and associated practices. Specifically in what relates to the activities of this Anticorruption Network, work is being carried out, for example, on the identified need to generalize the mechanisms for registering and exchanging information on the final beneficiaries and politically exposed persons.

3. Promote appropriate and efficient legal tools to identify and control illicit financial practices;

Confronting transnational crime has proven to be an increasingly complex challenge, due to the use of new technologies, distorted by criminal practices. Therefore, the Network emphasizes the need to encourage innovation in what concerns the application of law, either with the adoption of modern and robust laws, which include new legal tools, as well as with the provision of resources and infrastructure necessary to carry out investigations and prosecutions, including with respect to the tracking of illicit transnational financial flows.



Examples of these legal tools are the so-called leniency and plea bargain agreements, which are adjusted for obtaining information in exchange for benefits granted to the collaborator/whistleblower. By providing useful data for the investigation, the informant contributes to the management of cases that are already in execution, avoiding the excessive expenditure of public resources by speeding up the criminal procedure. Another type of innovation that contributes to the control of financial practices is the identification of international market transactions, guaranteed by blockchain technologies, whose method of monitoring monetary flows favors a comprehensive and coherent cooperation system, by increasing trust between the parties. Finally, another tool that has proven to be increasingly valuable today to combat transnational corruption are the Joint Investigation Teams (JITs) between two or more countries. The creation of JITs between Public Prosecution Services must, therefore, be promoted by the States without unnecessary bureaucratic obstacles, as authorized by the different international treaties that support it.

4. Recovery of assets derived from corruption and proper allocation of these resources: end of cyclical corruption;

With respect to the recovery of illicit assets, which often depends on cooperation between countries in view of the transfer of embezzled funds abroad, it is considered important to link this pillar to two basic and interrelated principles: on the one hand, the sovereignty of States that have the prerogative to demand the return of illegally transferred funds; and, on the other hand, the promotion of equality and social justice, by defining criteria that guarantee the proper use of recovered resources. In other words, it is important to allocate recovered values to public policies that enable comprehensive social development, with mechanisms that prevent the return of those resources to the "corruption cycle".

Within the same purpose, the adoption of precautionary measures for the seizure of assets is of the utmost importance, in addition to considering the technique of reversing the burden of proof in debates about assets, so that the person being investigated be forced to demonstrate the lawfulness of the amounts seized.

5. Corruption as a facilitator of other crimes and its differentiated impact on women and girls;

The Network acknowledges that corruption, as a multidimensional phenomenon, is not neutral and has different impact on women and girls, who suffer from corrupt practices to a greater extent and in specific ways due to their gender and conditions of vulnerability. Women are affected by specific manifestations of corruption, such as, for instance, sexual extortion associated with access to public services.

The corruption of public and private agents is also the basis for the commission of other crimes, including transnational crimes, such as human trafficking, which disproportionately affect women and children. The dismantling of criminal structures linked to human trafficking, for example, is not enough if it is not linked to the fight against the components of facilitation or omission, that is, the corruption of public agents that makes

the crime possible. Gender equality and the empowerment of women at different levels are elements that are not unrelated to the fight against corruption and criminality, such as human trafficking. On the contrary, it is necessary to reinforce the articulation of joint work strategies to confront corruption as a facilitator of other crimes.

In this sense, it is essential to acknowledge the importance of strategies that enable: (i) to make the differentiated impact of corruption visible, in order to have more differentiated data, information, and analysis for better construction of public policies on the matter; (ii) the training of officials and civil society for prevention, as well as the strengthening of reporting channels and of channels dedicated to the protection of victims and whistleblowers; (iii) review of criminal policy to consider the classification of sexual extortion as a crime of corruption; and (iv) strengthening the forms of investigating phenomena such as sexual extortion and corruption as a facilitator of trafficking, including the development of criminal analysis tools that highlight the links between corruption and gender and of spaces for articulation between prosecutor's offices.

6. The role of society.

Finally, the Network emphasizes that the strengthening of a culture of transparency and accountability, in which corruption is rejected as a practice by society, is essential to end impunity. In this sense, one must guarantee access to information, as well as the inclusive participation of civil society, the private sector, the universities, the media, among others, in efforts to prevent and combat corruption. The campaigns promoted by the Public Prosecution Services with the participation of citizens have proven to be effective to this end.

*** The Ibero-American Network of Prosecutors against Corruption is composed, as of October 2020, by focal-points prosecutors designated by the respective Public Prosecution Services of the following countries: Andorra, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Portugal, Spain and Uruguay. More information available at: <http://www.aiamp.info/>