

REPUBLIC OF SENEGAL

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*The National Office for the Fight
against Fraud and Corruption*

REPORT ON THE CELEBRATION OF THE 5TH AFRICAN ANTI-CORRUPTION DAY



ENA, July 2021

INTRODUCTION

On the occasion of the celebration of the 5th African Anti-Corruption Day, the National Office for the Fight against Fraud and Corruption (OFNAC) organised on Monday 12 July 2021, at the Ecole Nationale d'Administration (ENA) in Dakar, a panel on the theme retained by the African Union: "***Regional Economic Communities (RECs): key actors in the implementation of the African Union Convention on Preventing and Combating Corruption***".

Mrs. Seynabou NDIAYE DIAKHATE, President of OFNAC, chaired the event. It was also attended by representatives of various ministerial Departments, public institutions, civil society organisations, members of the Parliament and the Heads of Departments and services of OFNAC. Due to the context of the COVID 19 pandemic in Senegal, the number of participants was limited.

It should be noted that Africa Anti-Corruption Day, celebrated annually on 11 July, is a strategic event in the African Union (AU) calendar commemorating the day of adoption of the AU Convention on Preventing and Combating Corruption.

Therefore, the panel organised as part of this day aimed to discuss the role of the Regional Economic Communities (RECs) in the implementation of this convention. More specifically, the aim was to:

- share the content of this instrument of prevention and fight against corruption in African States
- analyse the situation of the implementation of the AU Convention on Preventing and Combating Corruption;
- highlight the role of ECOWAS as an important actor in the implementation of the AU Convention on Preventing and Combating Corruption;
- make recommendations for the commitment of ECOWAS in the implementation of the said convention.

The celebration of this day was organised in three phases: i) the opening ceremony; ii) the presentation of papers to the panel; iii) the recommendations and iv) the closing ceremony.

I. THE OPENING CEREMONY

In her opening remarks, the President of OFNAC welcomed the convening of the 5th Africa Anti-Corruption Day, despite the context of the resurgence of the COVID 19 pandemic in Senegal, which made it possible to foresee an organisational format that limited the participants.

She explained the significance of this day commemorating the adoption of the African Union Convention, which is to raise awareness among African societies of the negative effects of the global scourge of corruption.

The President of OFNAC recalled that corruption has become one of the major challenges to good governance and development facing Africa.

By establishing community, cooperation, prevention and prosecution mechanisms, such as the AU Convention on Preventing and Combating Corruption (CUAPLC), adopted in Maputo on 11 July 2003, the African Union is helping to protect societies and curb this scourge.

By ratifying these charters, some African countries such as Senegal have strengthened their commitment to democracy, human rights and the rule of law, as well as to the values of transparency, integrity, participation and accountability.

However, she warns that the challenges remain enormous. Given the "context of globalisation marked by the development of technologies, corruption and criminal activities are becoming a global disaster with negative consequences on the economic, social and political rights of individuals and on the economies of States", as indicated in the explanatory note of law n°2007 - 09 authorising the President of the Republic of Senegal to ratify the CUAPLC.

After outlining the objectives and missions of the institution she chairs, the President of OFNAC stressed that the actions taken to achieve them are the most credible barometer of the efforts made daily by the Office to be in full compliance with the principles of the African Union and the ECOWAS Protocol on the fight against corruption.

Furthermore, monitoring and alert, prevention, information and communication mechanisms are always envisaged to crystallise actions and performance indicators.

The most eloquent illustration of this is the elaboration and recent adoption of the National Strategy for the Fight against Corruption in Senegal up to 2024.

Addressing the theme of this fifth Day, the President of OFNAC welcomed the creation, in 1991 through the Abuja Treaty of Regional Economic Communities (RECs) in all the major geographical regions of the African Continent.

She noted that these RECs are indispensable pillars of economic integration in Africa and key players working with the African Union to ensure peace and stability in their respective regions.

From this perspective, the RECs should be committed to improving the lives of Africans by implementing policies that promote the progress and development of the Continent; hence their important role and necessary engagement in the implementation of the African Convention on Preventing and Combating Corruption.

II. PRESENTATION OF PAPERS TO THE PANEL.

The panel registered three communications moderated by Professor Sidy Alpha NDIAYE.

2.1. First paper on: "The African Union Convention on Preventing and Combating Corruption: An Instrument for Preventing and Combating Corruption" by Professor Ousmane Khouma.

In his presentation, Prof. Ousmane Khouma gave a general overview of the African Union Convention on Preventing and Combating Corruption (AUCPC) adopted on 11 July 2003 and ratified in 2007 by the State of Senegal. He specified that the normative context of this convention is dependent on the international context, notably the United Nations Convention against Corruption and the African Charter on Human Rights.

In the same way, PrKhouma focused on articles 2 and 4, which deal with the objectives and scope of the convention.

Coming back to the definition of corruption, he pointed out the incompleteness of the meaning given to this term to the detriment of a more systemic conceptualisation and considered that it is a categorisation of acts of corruption that is rather made in the lexical field. He highlighted the two forms of corruption identified, the so-called passive and the active.

Two fundamental ideas formed the matrix of Professor Khouma's presentation, namely the issues at stake and the applicability of the CAPLC.

On the issues at stake, he said that there are intrinsic links between corruption and development, the rule of law, democracy, organised crime and the essential interests of a state.

Ways to fight corruption were advocated, including

- Transparency, fairness and efficiency in public service recruitment procedures
- The declaration of assets of public officials
- The establishment of a code of conduct and the respect of ethics;
- Efficiency in public procurement in accordance with community directives (UEMOA case);
- Transparency in the rules for financing political parties;
- The adoption of legal and regulatory measures in the private sector;

- The establishment by states of preventive and anti-corruption agencies...

On the applicability of the convention, Prof.Khouma referred to Article 22, which provides for a monitoring mechanism. At this level, States have a duty to report on their obligations under ratified conventions.

On the other hand, for the applicability before the judge, the principle of the effectiveness of the rights remains dependent on the office of the judges in the matter; but it should be noted that there is not enough interaction between the national judges and the African judges.

To conclude his presentation, the speaker proposed recommendations contained in the third part of this report.

2.2. Second presentation on : "The situation of the implementation of the African Union Convention on Preventing and Combating Corruption (CUAPLC)" by Mr.Moustapha KÂ, Magistrate.

The speaker focused his intervention on two main points: a) the perfectible implementation of the CUAPLC taking into account the measures of the organs of prevention and repression against corruption; b) the substantial role played by civil society and the media in this fight against corruption.

Mr KA calls on the magistrates who apply the sanction and the public agent or civil servant who are the recipients of the norm, together with the users of the public service.

The interests are multiple because they refer to a democratic issue, the consolidation of the rule of law and the consolidation of public finances.

He pointed out that there is a duality in the normative framework in this area:

- A national normative framework with:

- The public procurement code

- The law on the declaration of assets of 2 April 2014 (which aims to prevent and fight against illicit enrichment);

- Article 25-3 of the constitution (constitutional law 2016): "Every citizen has the duty to defend the country against any aggression and to contribute to the fight against corruption and misappropriation"... ;

- A regional and international normative framework

Coming back to the current situation of corruption in Senegal, Mr. KA made two appreciations:

a positive empirical assessment based on the 2016 and 2018 OFNAC reports, which indicate that at least 93% of Senegalese say they are aware of cases of corruption.

A more critical assessment would place Senegal in the red zone. All ECOWAS countries except Cape Verde are in the red zone.

The red zone corresponds to the alarming situation of countries that are below the average of 50 according to Transparency International's corruption perception index.

Moreover, only half of the public officials in question declare their assets.

Regarding the criminalization of corruption, KA said that the criminalization focuses on acts such as bribery and embezzlement of public funds, influence trafficking, concealment and laundering of the proceeds of corruption, offences committed in support of corruption such as money laundering and obstruction of justice.

As significant achievements, Senegal has put in place repressive bodies that deserve to have greater powers: OFNAC, the Court of Auditors, CREI, CENTIF, and IGE...

The speaker made relevant recommendations presented in the third part of this report.

2.3 Third paper on: "ECOWAS: A key player in the implementation of the African Union Convention on Preventing and Combating Corruption" by Mr. Alioune Sall, Professor, former Vice-President of the ECOWAS Court of Justice

Presenting the main lines of the ECOWAS Protocol on the fight against corruption adopted on 21 December 2001, Prof. Alioune Sall pointed out that the objective of this normative instrument is to strengthen the effective mechanisms for preventing, combating and eradicating corruption in each of the States Parties through cooperation between them.

It calls for the harmonisation by States Parties of their national anti-corruption laws to enable the adoption of effective preventive measures against corruption and proportionate and dissuasive sanctions.

The Protocol provides for preventive measures in the public and private sectors and requires that independent national anti-corruption authorities be established, maintained and strengthened.

It also requires the criminalisation of a range of offences concerning public officials or employees of private sector companies and obliges States Parties to prosecute and penalise the bribery of foreign public officials.

Professor SALL outlined the two major obligations contained in this protocol:

- the obligation for States to establish their territorial or personal jurisdiction;
- and the obligation to prosecute or extradite.

The Protocol also provides a framework for international cooperation that could improve law enforcement assistance within West Africa and with other parts of Africa. It provides a framework for confiscation and seizure of assets and extradition.

The Protocol also calls for the establishment of a Technical Anti-Corruption Commission to monitor application at both national and sub-regional levels.

The speaker also mentioned other important texts existing in the West African sub-region. - the 2009 WAEMU Directive on the Transparency Code in the WAEMU area. Public money is at the core of the rule of law and democracy. This directive includes a number of principles: legality, transparency, democratic control and accountability; public disclosure of public financial operations; public information; integrity of the various actors, etc.

- The 2005 WAEMU Directive on the procurement, execution and payment of public contracts. Its orientations postulate good management of public finances, improving the productivity of public spending, strengthening the effectiveness of the fight against corruption, promoting small and medium-sized enterprises, consolidating intra-community trade, developing economic convergence through the development of public procurement, and guaranteeing effective remedies. They promote two logics that are at the core of the new changes in public finance: transparency and performance.

In concluding his presentation, Prof. SALL affirmed and demonstrated that ECOWAS, due to its status as an Economic Community (REC), can be a determining factor in the fight against corruption in Africa, in addition to its role as an instrument of economic integration of West African States. These include:

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2.4 Lessons learned from the presentations and discussions

The presentations and the discussion that followed during this panel provide information on some of the controversial dialectics that were either explicitly or implicitly discussed.

A. Corruption and the rule of law

Corruption has a negative effect on the functioning of democratic institutions. One cannot imagine a rule of law with a high degree of corruption, because it is not just a matter of setting up institutions or formally achieving the separation of powers, nor is it a matter of the existence of texts.

In order to measure the rule of law, it is necessary to examine practices and the degree to which the population internalises the norms laid down, and in this respect, the level of corruption provides information on the degree of adherence to the rule of law.

B. Corruption and public international law

Three levels of normativity were discussed: the international, regional and sub-regional levels.

Indeed, corruption is a transnational problem like the environment, terrorism and armed conflict.

The United Nations Convention against Corruption (UNCAC), which entered into force in 2005, measures the evolution of the issue at the international level.

It is a universally applicable, binding anti-corruption instrument with a significant number of States Parties: currently about 170 States are signatories.

C. What should be done in the fight against corruption to further consolidate the rule of law and democracy?

A pedagogical review was made: the conventions that aim to prevent and fight corruption do not contain repressive mechanisms as such. The theoretical justification for this inadequacy refers to the congenital limits of international criminal law, as criminal repression is ultimately a matter for the state and a manifestation of its sovereignty.

III. RECOMMENDATIONS FROM THE PANEL

Following the rich communications of the speakers and the relevant exchanges of the participants, the following recommendations emerged

- Corruption should be subject to universal jurisdiction: make corruption an international crime on the same level as the hard core of classic international crimes (war crimes, crimes of aggression, crimes against humanity and genocide);
- Extend the limitation period to seven (7) years: to fight against impunity;
- strengthen international cooperation and mutual legal assistance;
- strengthen the powers and resources (human, financial, etc.) of OFNAC and therefore review the 2012 law establishing it;

- adopt legislation on the seizure, confiscation, recovery and management of illicit assets and set up a body responsible for the management and recovery of such assets;
- Adopt legislation on the protection of informants, whistleblowers, witnesses and victims of fraud, corruption and related offences;
- Promote the dematerialisation of the system of payment of fines;
- clean up the political environment by adopting a law on transparency of political party financing
- finalise and adopt the draft law on access to information;
- criminalise corruption in the private sector (there is no provision for company directors, for example);
- Encourage citizenship through awareness raising in the school curriculum;
- take more account of abuse of office in Senegal;
- correct the elements of non-compliance in the fight against money laundering;
- transpose the 2011 directives on the control of the financial regime of local authorities into Senegalese legislation;
- invite the IGE to share its reports with the jurisdictional authorities;
- finalise the code of ethics and deontology within the Ministry of the Civil Service. - Make the identification of uniformed officers in charge of traffic more transparent;

IV. CLOSING

In her closing remarks, the President of OFNAC, Ms.Seynabou NDIAYE DIAKHATE, expressed her satisfaction with the smooth running of the panel, which was a moment of exchange, a time for relevant communication and key advocacy in the fight against corruption in Africa and in Senegal.

She pointed out that the African Union Convention on Preventing and Combating Corruption should be further disseminated, implemented by the States involved and developed over time.

Similarly, she advocated a substantial reform of Senegal's legal, regulatory and judicial environment in the fight against corruption and related offences in the public and private sectors.

In view of the burden of corruption in African countries, the President of OFNAC called for greater commitment and implication of civil society organisations, the private sector, the media, the Parliament, all public institutions and local authorities so that the recommended solutions and strategies can be implemented on a large scale.

Therefore, Countries affected by corruption must implement proactive, integrated, multisectoral, repressive and decentralised public policies.

Through the annual celebration of this day, the African Union aims to strengthen the rule of law and solid institutions to support democracy and economic growth in African Countries.

Concluding her remarks, the President of OFNAC thanked the speakers and participants for their qualitative contribution and reassured them that the important recommendations resulting from this 5th African Anti-Corruption Day would be implemented.