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SUSTAINABLE BUSINESS FOR UGANDA

PRIVATE SECTOR
LED CORRUPTION
REPORTING
FACILITY

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SUSTAINABLE GROWTH AND JOBS



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1 BACKGROUND

Initiated by the European Union Delegation (EUD) Kampala and the Private Sector Foundation Uganda (PSFU) and supported by CESO*, an international consultancy firm, under the Sustainable Business for Uganda Platform (SB4U), this report summarises the findings of an assessment of options for establishing a private sector led-whistle blower facility.

Corruption had been identified, by both Ugandan and EU private sector actors, as a major obstacle to investment and private sector growth in Uganda in the 'EU-Uganda Roadmap to Improved Investment Climate'. One of the proposed remedies was the establishment of private sector led whistle-blower facility. This would have two purposes:

- To provide much-needed evidence through a structured collection of data revealing the type of corruption and the public or private entities involved; and
- To build confidence among private sector actors and ensure that the identities of the reporting companies are safeguarded.

Within this two-fold purpose lay a further set of options: 1) whether the whistle-blower facility should serve as a mechanism to gather and refer corruption cases to law enforcement agencies (LEAs); or 2) whether it should serve as an intelligence gathering mechanism to facilitate evidence-based advocacy on the part of the private sector in Uganda.

In order to determine the best fit for the need to of the private sector in Uganda in moving ahead with a reporting mechanism consultations with a broad range of stakeholders were conducted, resulting in the findings and recommendations outline in this synthesis report.

2 FINDINGS

Perceived effectiveness of existing whistle-blower mechanisms

A number of whistle-blower mechanisms are already in place in Uganda. Agencies and institutions that have established such mechanisms include the Inspectorate of Government, the Kampala Capital City Authority (KCCA), the Public Procurement and Disposal of Public Assets Authority (PPDA) and the Uganda Revenue Authority (URA). The most recent, and high-profile, initiative is the hotline launched in conjunction with the establishment of the State House Anti-Corruption Unit (SHACU). While commendable initiatives, respondents did not consider that they had been effective tools in addressing corruption, with the possible exception of the SHACU hotline.

The main reasons cited by respondents for why existing whistle-blower mechanisms have not been more successful is lack of trust in the mechanisms and the institutions housing them including concerns about the level of confidentiality and protection of whistle-blowers, lack of action on the part of law enforcement agencies, the slow pace of judicial proceedings that can span over years and, according to respondents, a cultural aversion to being considered a 'snitch'. The term 'whistle-blower' was itself seen as problematic in the Ugandan context, widely considered to have a negative connotation.

Viability of collecting and referring cases

It was not thought viable for a private sector led whistle-blower facility to collect or refer cases to law enforcement agencies. There was a concern among private sector actors that blowing the whistle may jeopardise future business opportunities which serves as a major obstacle to them stepping forward to report cases of corruption. This was one of the considerations behind the initial proposal for a private sector led facility that could help keep a company blowing the whistle anonymous. However, law enforcement agencies would not be able to open a case on an anonymous tip unless it was sufficiently detailed that the identity of the complainant would anyway become apparent.

A private sector led facility handling complaints in this way, i.e. collecting actionable evidence and compiling case files to pass on to government agencies, may itself be open to corruption, with the potential to undermine rather than strengthen the private sector's contribution to the fight against corruption. A whistle-blower facility is ultimately only perceived to be effective to the extent that whistle-blowers can see concrete action being taken on the issues they raise. As law enforcement agencies themselves are frequently not thought to be effective in the fight against corruption and action may be difficult to attribute, this approach was thought to have limited potential to make an impact on levels of corruption or raise the profile of the private sector's contributions in a positive way.

The need for ensuring confidentiality and data protection

Respondents felt that the success of any whistle-blower facility will depend on the ability of those making use of it to remain anonymous and the ability of the facility to ensure data protection. Over time, this will determine the extent to which private sector actors decide to engage with the facility. This places some limitations on the functioning of the facility and the type of data that it will produce, although a trade-off considered by respondents worth making.

The importance of evidence-based engagement

There is likely to be more potential for engaging government in dialogue on corruption-related obstacles faced by the private sector in Uganda than taking an adversarial approach. Seeking to change attitudes, norms and behaviours in society more broadly will also be critical. A private sector led facility could support this through receiving reports on issues encountered from private sector actors, compiling these issues to identify corruption hot spots (i.e. where cases/issues relating to corruption appear to be occurring more frequently) and identify trends (i.e. are there areas where corruption appears to be increasing or are there institutions where improvements can be seen), and use this information to engage with government and other relevant stakeholders in evidence-based dialogue and advocacy. Providing government agencies with consolidated reports from the private sector led facility could also benefit them by guiding their efforts in tackling corruption.

3 PROPOSED REPORTING MECHANISM

Based on the findings above a “Private Sector Led Corruption Reporting Facility” (PS-CRF) was proposed, the name seeking to avoid the negative connotations of the term whistle-blower and better reflecting the proposed function of the facility. The purpose of the PS-CRF is to allow the private sector in Uganda to collect, consolidate and analyse reports on corruption/corruption-related issues faced by domestic and foreign businesses. This information will then be used by the private sector to engage in evidence-based dialogue with the Government of Uganda and advocate for the necessary actions/reforms that will contribute to minimising the negative impact that corruption has on the investment and business climate in Uganda. The PS-CRF is not intended as a mechanism to help resolve individual corruption cases faced by private sector actors. It is not intended to serve as a channel through which corruption cases are passed on to LEAs.

At the outset, the purpose of the PS-CRF is also not intended to capture reports on corruption within the private sector itself. This may be an area to explore once the PS-CRF is established, but initially focus will be on the corruption faced by the private sector when engaging with public actors. To manage expectations continuous communicate with private and public sector actors on what can and cannot be achieved through the PS-CRF will be necessary.

Expected outputs

With the facility designed to capture reports from private sector actors on corruption that they have encountered, the main output expected from the PS-CRF are regular reports that can clearly show where the main issues are occurring, both by institution and by geography. The reports will also be able to show trends over time.

The PS-CRF will be able to ensure awareness and impact through the regular publication of the data collected. This will allow for public dialogue as well as serve as a catalyst for engagement. However, a balance will need to be struck between publicly sharing the data received and maintaining a constructive relationships with the Government that the private sector is seeking to engage with on further anti-corruption reform. The data produced by the PS-CRF would serve both as a source of pressure on government to act and an opportunity for government to demonstrate what actions it has taken. These reports should be launched at regular public events to ensure that they get the necessary visibility. However, this type of engagement with Government should come after a period when the PS-CRF has become fully established and gained the trust and confidence of a broad set of private sector actors, as well as developed the necessary relationships with public sector actors.

The reports, along with the events, will allow the private sector to engage in evidence-based advocacy, engage the broader public in conversations around corruption and anti-corruption, as well as putting pressure on government to act. At the same time, these events will help raise awareness of the PS-CRF, as well as raise the profile of the contribution made by the private sector to efforts to tackle corruption.

Key considerations

The PS-CRF should be set up to capture reports from private sector actors through multiple channels, with the understanding that different actors may wish to access the facility by means of various media. Accessibility is of paramount importance, as is ensuring confidentiality and data protection.

Generating reports

The PS-CRF will have the capacity to automatically compile the reports received. The value of the PS-CRF will lie in its ability to generate data on the type and extent of corruption faced by private sector actors, as well as where it is faced. This will allow for generating corruption heat maps and engaging in targeted and evidence-based dialogue and advocacy with Government. Over time it will also allow for identifying trends/patterns and could even be used to identify and recognise those government agencies that have seen the greatest year-on-year improvement. As the reports generated will be based on anonymised information confidentiality for those reporting will also be ensured.

Creating dialogue

The reports/analysis should form the basis for generating a dialogue and public debate on corruption issues affecting the private sector and the reforms needed to come to terms with this. The periodic PS-CRF reports should be launched at public events, with specific messages/points of discussion identified for each event. The annual anti-corruption week organised by the Government of Uganda could also serve as an opportunity to highlight the outputs of the PS-CRF.

There are legitimate concerns that a reporting mechanism could be used to make false or malicious allegations of corruption. However, as the PS-CRF is not intended to refer corruption cases for further action this becomes less of a risk. Given the nature of the PS-CRF, in-depth analysis of each report received to determine whether it is a legitimate complaint or not becomes less critical and the impact on the overall data of malicious or false reports should be negligible if a sufficient number of reports are received.

Engaging with government

Engaging with the Government of Uganda is a key part of the strategy for the long-term success of the PS-CRF. While at the outset the PS-CRF should focus on gaining the trust and confidence of private sector actors in Uganda it is also necessary to build the necessary linkages with relevant Government of Uganda entities. It is important from the very outset that government counterparts understand what they can expect from the PS-CRF. Given the proposed design of the facility it will not be possible to provide data that would allow them to call witnesses or pursue criminal investigations. This would also go against the established principal of confidentiality/anonymity.

Long term impact

It will be critical to ensure that private sector actors understand that the PS-CRF is intended to contribute to broader policy dialogue and long-term reform efforts and convince them that they have a critical role to play in pushing the agenda forward by making use of the PS-CRF. Ultimately, the PS-CRF should become the channel which the private sector actors are able to bring their concerns to the attention of the Government of Uganda.

4 RECOMMENDATIONS

In moving ahead with establishing the PS-CRF, the following recommendations should be taken into consideration:

- Ensure strong engagement with Ugandan and EU private sector actors, to build the necessary trust to generate a sufficient number of reports so as make the PS-CRF meaningful. This should include working through the various business associations, as well as Member State trade advisers to raise awareness and ensure the commitment of private sector actors.
- Engage with Government of Uganda entities to develop longer-term relationships and secure a meaningful collaboration between the public and private sphere.
- Work towards demonstrating that making a report to the PS-CRF has a perceived impact, as this will be critical to long-term success of PS-CRF.
- Carefully manage expectations of what impact will look like, as impact is more likely to be seen at an aggregate, rather than individual, level. Ensuring awareness of the PS-CRF and its purpose should be a priority.
- Seek to work through the dialogue platform on specific issues in order to show tangible results coming out of the analysis carried out by the PS-CRF on the reports received.





