

An Ambassador's Guide to the United Nations Convention against Corruption

This guide provides key information on the UN Convention against Corruption (UNCAC) and steps that can be taken to foster its implementation in partner countries.



What is UNCAC?

The UNCAC is a landmark, international anti-corruption treaty adopted by the UN General Assembly in October 2003. It represents a consensus-based global response to a global problem, outlining obligations of States Parties (countries that have ratified the Convention) to implement policies to reduce corruption and to enforce sanctions against it. As of December 2012, 165 countries are party to the convention (Check whether your country of work is amongst them: <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>). The value of UNCAC is its broad coverage of **preventive** and **punitive** measures, as well as the cross-border nature of corruption with provisions on **international cooperation** (mutual legal assistance) and the return of the proceeds of corruption (**asset recovery**). States Parties are also obliged to help each other through **technical assistance**, including financial and human resources, training, and research. The UNCAC further underlines the importance of civil society participation in accountability processes and citizens' access to information. The Convention has mandatory and optional measures. Its main areas cover:

Prevention: States Parties must adopt coordinated policies to prevent corruption and designate a 'body or bodies' to coordinate and oversee their implementation. Such policies shall entail measures such as transparent procurement systems, a merit-based civil service, access to information, civil society involvement in the fight against corruption, an independent judiciary, public auditing procedures and anti-money laundering measures.

Criminalization: States Parties must criminalize bribery (both the giving of an undue advantage to a national, inter-

national or foreign public official, and the acceptance of an undue advantage by a national public official), as well as embezzlement of public funds, obstruction of justice, and the concealment, conversion or transfer of criminal proceeds. Acts that states ought to consider for criminalization include the acceptance of an undue advantage by foreign and international public officials, trading in influence, abuse of function, illicit enrichment, bribery and embezzlement within or among private sector entities, money laundering and the concealment of illicit assets.

International cooperation: States Parties are obliged to assist each other in cross-border criminal matters. This includes, for example, gathering and transferring evidence of corruption for use in court. The requirement of dual criminality (alleged crime for which mutual legal assistance is sought must be criminal in both the requesting and requested countries), which has traditionally hindered cooperation, is loosened. Cooperation in criminal matters is mandatory; in civil and administrative matters it must be considered.

Asset recovery: A main innovation of the Convention is the right to recovery of stolen state assets. The UNCAC provisions lay a framework, in both civil and criminal law, for tracing, freezing, forfeiting, and returning funds obtained through corrupt activities.

Opportunities for ambassadors to foster UNCAC implementation abroad

As corruption is a major threat to development, security and political stability, donor countries have a key interest in following their UNCAC obligation to support other countries in their implementation efforts. Donor countries in the OECD Development Assistance Committee have acknowledged UNCAC as a framework for supporting anti-corruption reform in developing countries. However, although UNCAC lays out internationally-agreed standards, it cannot be taken as a blueprint for reform. Instead, leadership in each country must determine priorities and the appropriate sequencing of steps towards implementation. The biggest challenge for donor countries may well be to "mainstream" the Convention into political dialogue and technical assistance programmes. UNCAC suggests a number of courses of action for

ambassadors seeking improved anti-corruption outcomes:

- **Depoliticizing political dialogue:** Where ambassadors so far have experienced difficulties in putting “corruption” on the agenda, compliance with UNCAC – as a signed, international agreement – can provide a more neutral basis for dialogue.
- **Broadening political dialogue:** The fact that UNCAC refers to a broad range of societal stakeholders can be used to broaden political dialogue beyond a donor-partner sphere. By including civil society, private sector and other actors in a dialogue, a broad demand for reform can be supported.
- **Grounding political dialogue:** Each State Party is required to conduct a self-assessment on reform and technical assistance needs for UNCAC compliance. Ambassadors may request such information as a basis for dialogue and action. While there is no obligation to share this information, partner countries may have an interest in doing so in order to receive technical assistance.
- **Strategizing political dialogue:** Based on UNCAC and related compliance assessments, governments need to identify priorities for reform. Where such reform priorities don’t exist or are not communicated yet, ambassadors should ask for clear ideas how partner countries plan to proceed in implementing the Convention. Where such priorities are put forward, there should be an inclusive dialogue about how to align government’s reform priorities with priorities demanded by other stakeholders (be it civil society, private sector, parliaments, donors).
- **Following up political dialogue:** Once national reform priorities are identified, UNCAC-related assessments can provide a useful source for benchmarks to be used in donor-partner aid agreements. It is important to look at actual performance, not just the existence of anti-corruption legislation, institutions and measures. Based on this, donor countries can identify – in consultation with the partner country – areas for potential support and alignment of existing aid programmes with partner country priorities for UNCAC implementation. Civil society and citizens’ participation should play a role in support efforts, as this will improve reform accountability.
- **Giving credibility to the political dialogue:** If donor countries demand that their partners act against corruption, they need to be credible themselves. Ambassadors should ensure that embassy procedures and staff behaviour are consistent with Convention standards (e.g., address the management of facilitation payments, conflicts of interest, transparency about funding, etc.).

Opportunities for ambassadors to foster UNCAC compliance at home

Due to its broad coverage and international scope, UNCAC is well suited to address the increasingly global nature of corruption and cross-border transfers of illicit money. However, for this to happen, it is particularly important that donor countries address international drivers of corruption by prosecuting cross-border bribery cases, limiting bank se-

Review of implementation:

The States Parties decided to set up a multi-staged review mechanism where each State Party is to be reviewed by two peers. To cover all countries, the process is divided in two five-year cycles. UNCAC chapters III and IV will be reviewed in the first cycle (2010-2014), while compliance with chapters II and V will be assessed during the second cycle (2015-2019). Thus, review on corruption prevention measures – a focus for many donor countries – will happen at a later stage.

Critically, external scrutiny by other actors (for example civil society or academic experts) is not required, though each State Party is free to choose such additional measures. Only the executive summaries of the country review reports will be published, unless a reviewed country chooses otherwise.

As the minimal requirements of the review mechanism are rather basic, it remains to be seen how much they will be able to capture de facto implementation and enforcement of anti-corruption policies. It is therefore important that embassies in countries that are up for review encourage their local counterparts to make the most of the review process by e.g.:

- identifying technical assistance needs
- inviting civil society to participate
- inviting reviewers to a country-visit
- publishing the full country reports.

Embassies can also assist partner countries in making their participation in the review mechanism an effective monitoring exercise by supporting the development of appropriate, effective and publicly accessible information systems that allow for “external” monitoring.

In order to find out if and when your country is being reviewed, please consult the UNODC UNCAC website (<http://www.unodc.org/unodc/en/treaties/CAC/IRG.html>) or your home country’s mission at the UN in Vienna.

crecy where necessary at home, and providing technical expertise especially to aspects of mutual legal assistance, such as asset recovery claims. Ambassadors can support this, for example, by:

- instructing their staff to identify hurdles between their home country and their partner country in mutual legal assistance and asset recovery cases.
- using diplomatic channels to ease the often cumbersome communication process between both countries.
- inquiring about the possibility of home country institutions supporting investigations and even prosecutions at home (the UK’s work with the Nigerian Economic and Financial Crimes Commission is a case in point).
- considering support for such processes through diplomatic measures targeting suspected persons (such as visa bans) where appropriate.
- reminding home country companies doing business in-country of UNCAC commitments to abstain from bribery.