

The UN Convention against Corruption and the Donor Community

Query:

“I would appreciate if you could provide suggestions of how donors could use the UN Convention Against Corruption as a tool to promote good governance in general and anti-corruption in particular.”

Purpose:

“Information will be used for an in-country workshop.”

Content:

- Part 1: Presents background to the UNCAC
- Part 2: Addresses the role of the donor community
- Part 3: Further reading

We are pleased to provide you with some guidance on how can the donor community make effective use of the [UN Convention Against Corruption](#) (UNCAC) to promote good governance and anti-corruption. Following a background section on the Convention, its highlights and its current status, we have answered the query from three angles: 1) what can the donor community do at home, in the donor countries, to promote compliance with these universal standards; 2) how can the donor community use the Convention to improve its working practices, such as through adhering to high standards of conduct, ethics as well as improving public reporting and liaison; and 3) what can the donor community do in donor-aid recipient countries to maximise the potential of the Convention and use it as basis for some of its development and technical assistance programmes.

Part 1: Background

Facts and figures:

The convention was adopted by the UN General Assembly on 31 October 2003. It has been open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at the UN headquarters in New York until 9 December 2005, in accordance with article 67 (1) of the Convention. The Convention shall also be open for signature by regional economic integration organisations provided that at least one member State of such organization has signed this Convention in accordance with its article 67 (2).

Convention Highlights:

Whilst the Convention is a major achievement, it is also necessary to keep in mind that **a number of provisions were compromised** in the process of the lengthy multi-party negotiations. One of the major shortcomings is the **absence of a monitoring process**. It has been widely noted by critics that the experience with other international conventions has demonstrated the importance of having effective implementation and monitoring processes in place. Nevertheless, some of the major positive highlights of the Convention include:

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Authored by:
Anna Hakobyan.
(with input from Gillian Dell)
Transparency International

Reviewed by:
Robin Hodess Ph.D
Transparency International
rhodess@transparency.org

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- **Prevention** - an entire chapter of the Convention is dedicated to prevention. It has measures directed at **both the public and private sectors**, and touches on the day-to-day interactions in public life. The measures proposed by the Convention include model preventive policies, such as the establishment of anticorruption bodies. Other preventative measures are to be found in the areas of public service (codes of conduct, ethics and other measures), due diligence to prevent laundering of proceeds of corruption, and increased transparency in public finances.
- **Criminalization** - the Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law. Some cases demand a legal obligation for States to establish offences. In other cases, in order to take into account differences in domestic law, they must consider doing so. The Convention contains a host of other provisions to support criminalization.
- **International cooperation and mutual legal assistance** - countries have agreed to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court and to extradite offenders. Countries are also required to undertake measures, which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.
- **Asset recovery** - in a major breakthrough, countries agreed on asset-recovery, which is stated explicitly as "a fundamental principle of the Convention." Identifying and recovering stolen assets is a major challenge. This is a particularly important issue for many developing countries where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies under new governments. Reaching agreement on this chapter has involved intensive negotiations, as the needs of countries seeking the illicit assets had to be reconciled with the legal and procedural safeguards of the countries whose assistance is sought in repatriating the assets back. Several provisions specify how cooperation and assistance will take place.

See [U4 Helpdesk Answer](#) "Recovery of Corruption Related Assets" for case studies related to asset recovery.

Current Status:

The Convention received the 30th ratification it needs to go into effect on September 15, 2005. As of October 1, 2005 there were 133 signatories and 33 state parties to the Convention.

Part 2: The Role of the Donor Community

The UN Convention Against Corruption (UNCAC) is a useful tool that can be used by the anti-corruption community at large to promote anti-corruption reforms, integrity and transparency in both the public and the private domain. Some of the key actors that can maximise its impact are the civil society and the donor community - who can, jointly and individually, promote the tool to the governments of both donor and recipient countries and monitor its implementation at different levels. In addition to the basic steps of promoting the Convention extensively to facilitate its ratification and subsequent entry into force, the donor community's role can be three-fold:

1. Using the Convention to set standards in donor countries

Donor agencies can use the UNCAC to check the performance and raise the standards of domestic institutions in their own country. Along with other benefits, this can give them far greater credibility when asking recipient countries to take effective action against corruption.

In particular, donors can try to ensure that the donor country's domestic institutions are fulfilling their UNCAC obligations in key areas that may affect the development of country prevention and law enforcement efforts. These areas include mutual legal assistance, money laundering, asset recovery and prevention of corruption

involving the private sector. They also include enforcement of legislation prohibiting foreign bribery, by investigating and prosecuting such cases.

But equally, donor agencies can also make efforts to ensure that domestic institutions meet UNCAC standards with regard to addressing domestic corruption, whether through prevention or enforcement. Donor agencies will not be well-placed to hold recipient countries to UNCAC standards if the home country doesn't meet them themselves.

2. Using the Convention to guide donor agencies' own work practices

At the same time, donor agencies can use the UNCAC standards with reference to their own agencies and their own work. They may especially want to take into account the provisions in the Preventive Measures chapter of the Convention. These include provisions concerning the hiring and retention of public officials, codes of conduct for public officials, public procurement and management of public finances, public reporting and encouragement of citizen and civil society participation.

3. Using the Convention to set standards in recipient countries and to guide development assistance for anti-corruption work

The UNCAC contains standards negotiated and agreed among a large group of countries, including recipient developing countries. Donors may hold recipient countries to these standards with the double legitimacy derived from (i) the recipient country's own previous involvement in the development of the standards and agreement to these standards; and (ii) the fact that the standards in question are global standards agreed among the vast majority of nations.

In particular, donors can use the provisions of the chapters on prevention and criminalisation to guide any requirements they introduce to recipient countries with regard to anti-corruption measures in their general aid programmes.

Framework for development assistance for anti-corruption programmes:

The UNCAC also provides an agreed framework for providing support to developing countries to enhance their anti-corruption efforts. It specifically includes a chapter on Technical Assistance and Information Exchange. This covers a range of issues, including building capacity in the development and planning of strategic anti-corruption policy, training competent authorities in the preparation of requests for mutual legal assistance, and activities relating to prevention of transfer of proceeds of offences. It also specifically calls on states parties, to the extent possible, to enhance financial and material assistance to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement the Convention successfully.

Moreover, the UNCAC provides for a Conference of the States Parties to agree upon activities, procedures and methods of work to achieve the objectives of the Convention. These include mobilisation of voluntary contributions. Thus the Convention provides the possibility of an international institutional framework for assessing needs and coordinating development assistance in the field of anti-corruption.

Framework for assessing performance:

The aforementioned UNCAC provision for a Conference of the States Parties also calls for them to agree upon activities, procedures and methods of work to achieve periodic review of the implementation of the Convention. It specifically requires States Parties to provide the Conference with information on their programmes, plans and practices, as well as on legislative and administrative measures to implement the Convention. It provides for the Conference of the States Parties to examine the most effective way of receiving and acting upon information.

Donor agencies can make use of this framework for reviewing country progress. The UNCAC offers the opportunity for consolidated reporting and review of country progress, which may have the side benefit of **eliminating multiple reporting** to different donors. Moreover, donor countries are held accountable in the same way. However, for this to occur effectively, it will be necessary to develop the necessary procedures, to be decided on by the Conference of States Parties. The effectiveness of the UNCAC will depend on whether

the States Parties succeed in developing an implementation mechanism. Donor governments have a role to play in the negotiation, establishment and funding of such an implementation mechanism.

Part 3: Further reading

For more information about the UNCAC, see the [webpage](#) provided by the UN Office for Drugs and Crime (UNODC). UNODC will be hosting a series of seminars during 2005-2006 to facilitate regional implementation efforts.