

U4 Guide 2019:2

UNCAC in a nutshell 2019

A quick guide to the United Nations
Convention against Corruption for
donor agency and embassy staff

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This guide provides an overview of the anti-corruption provisions of the UNCAC, covering criminalisation and preventive measures, international cooperation and asset recovery, as well as the Convention's implementation review mechanism. Furthermore, it provides suggestions how embassies and donor staff can use the Convention to engage partner governments on the provision of technical support and help facilitate a transparent and inclusive review process that can create momentum for reform. The guide also stresses some of the weaknesses of the Convention, including the inadequate space it provides for civil society participation and contribution.

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What is the UNCAC?

The United Nations Convention against Corruption (UNCAC) is an international treaty adopted by the UN General Assembly in October 2003. It entered into force in December 2005, representing a remarkable achievement: a global response to a global problem. With 186 States Parties (as of 9th May 2019), the Convention is unique not only for its worldwide coverage but also for the scope of its provisions, recognising the importance of both preventive and punitive measures.¹ It also addresses the cross-border nature of corruption with provisions on international cooperation and on the return of the proceeds of corruption. States Parties - countries that have ratified the Convention - are expected to cooperate in criminal matters and consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.²

The Convention further calls for the participation of civil society and non-governmental organisations in accountability processes and underlines the importance of citizens' access to information. The UN Office on Drugs and Crime (UNODC) in Vienna serves as Secretariat for the UNCAC.

Corruption undefined: Acts and actors

Interestingly, the UNCAC does not define corruption as such. It rather lists and defines a series of offences that should be criminalised and covered by legal provisions in every jurisdiction covered by UNCAC. These include bribery of national and foreign public officials and in the private sector, embezzlement, money laundering, concealment, and obstruction of justice.

Concerning the agents of corrupt practices, UNCAC Article 2 uses a functional definition of the term “public official”: it covers anyone who holds a legislative, administrative, executive or judicial office, or performs a

1. 181 UN Member States plus the Cook Islands, Niue, the Holy See, the State of Palestine, and the European Union. The full list of Member States together with the dates of signature and ratification is available at <https://www.unodc.org/unodc/en/corruption/ratification-status.html>.

2. UNCAC Article 43.1.

public function or provides a public service (as defined in the domestic law of the State Party).³

What are the contents of the UNCAC?

The UNCAC has eight chapters and 71 articles. While many of its provisions are mandatory (“States Parties shall...”), some measures carry an obligation to consider adopting a provision (“shall consider adopting...”), and others contain optional provisions. In addition, many provisions of the Convention include clauses to prevent conflicts with national legislation, allowing for significant room for different interpretations of the Convention’s requirements in any given country.

The chapters of the Convention are described below, as well as how the Convention’s implementation is monitored.

Is the country you work in a party to the Convention?

The only UN member states that have not signed or ratified the Convention are Andorra, Barbados (signatory), Eritrea, Monaco, North Korea, Saint Kitts and Nevis, Saint Vincent and the Grenadines, San Marino, Somalia, Suriname, Syria (signatory), and Tonga (as of 9th May 2019).⁴

Chapter I: General provisions

The first Chapter highlights the three main goals of the Convention, namely:

- a. to promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- b. to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;

3. UNCAC Article 2(b).

4. For further information please visit the UNODC dedicated webpage:<https://www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html>.

c. to promote integrity, accountability and proper management of public affairs and public property.”⁵

Chapter I is followed by the four chapters containing substantive provisions.

Chapter II: Preventive Measures

The preventive policies covered by the Convention include, among others, transparent and competitive public procurement systems as well as transparency and accountability in the management of public finances, a merit-based civil service with comprehensive frameworks to prevent and address conflicts of interest, enhanced transparency in the public administration including by ensuring that the public has effective access to information, auditing and accounting standards for the private sector, independence of the judiciary and prosecutors, active involvement of civil society, non-governmental organisations and community-based organisations in efforts to prevent and combat corruption, as well as measures to prevent money-laundering.

Specifically, Chapter II calls on State Parties to:

- Have an independent anti-corruption body or bodies – Article 6 (mandatory);⁶
- Enhance transparency, efficiency and the use of objective criteria in the recruitment, hiring, retention, promotion and retirement of public officials – Article 7.1 (non-mandatory);
- Enhance transparency in the funding of electoral campaigns and political parties – Article 7.3 (non-mandatory);
- Apply codes of conduct (and of ethics) to the performance of public functions – Article 8.2 (non-mandatory);
- Establish measures and systems aimed at facilitating the reporting of corruption by public officials to appropriate authorities – Article 8.4 (non-mandatory);
- Promote the establishment of asset declaration systems for public officials regarding their private interests – Article 8.5 (non-mandatory);
- Establish appropriate public procurement as well as public finance

5. UNCAC Article 1.

6. Note that Article 6 opens for a variety of institutional arrangements, and not only a separate anti-corruption commission or agency.

management systems based on transparency, competition, and objective criteria – Article 9 (mandatory);

- Enhance transparency in the public administration (mandatory), including by adopting procedures to facilitate public access to information and to competent decision-making authorities (non-mandatory) – Article 10;
- Strengthen integrity among members of the judiciary and the prosecution service – Article 11 (mandatory);
- Enhance ethics, integrity, and transparency in the private sector through, inter alia, promoting transparency among private entities, post-employment restrictions on public officials, the adoption of accounting and auditing standards as well as the establishment of penalties at civil, administrative and criminal levels – Article 12 (mandatory);
- Promote active participation of civil society and non-governmental organisations in the prevention of and fight against corruption (mandatory), including by measures such as enhancing the transparency of and promoting the contribution of the public to decision-making processes, ensuring effective public access to information and promoting and protecting the freedom to seek, receive and publish information concerning corruption – Article 13;
- Establish regulatory and supervisory regimes to deter and detect money-laundering – Article 14 (mandatory).

UNCAC Article 13: Participation of society

Article 13 of the UNCAC highlights the important role of civil society in anti-corruption efforts and applies a broad definition of societal actors. It requires States Parties to open up a public space for participation, recognising that combating corruption requires the efforts of a broad constituency and is less effective if initiatives are limited only to the state.⁷

Article 13 mandates that each State Party “shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of

7. Lawry-White, M., 2019. ‘Article 13: Participation of Society’ in Rose, C., et al., *The United Nations Convention Against Corruption - A Commentary*. Oxford: Oxford University Press. p. 137.

individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption”.

The Article further proposes measures to enhance the transparency of decision making processes and to promote contributions by the public, and ensuring effective public access to information, as well as respecting, promoting and protecting the freedom to seek to receive, publish and disseminate information concerning corruption.

This complements Article 5 (“Preventive anti-corruption policies and practices”) which highlights that any policy on corruption prevention “has to envisage specific ways in which representatives of society will be included in all processes of its design, content, development, endorsement, implementation and review (...) as well as the means to measure progress.”⁸

While Article 13 is framed in mandatory terms, its qualifying phrases allow states to calibrate the implementation to their stage of economic development and their domestic legal frameworks, providing loopholes for states that are intent on undermining the spirit of Article 13 and avoiding scrutiny from a strong civil society.⁹

As is shown below, UNCAC fora and the UNCAC implementation review process do not abide by the principles stressed in Article 13.

Chapter III: Criminalisation and law enforcement

Chapter III contains a set of offences that States Parties are mandated to establish as crimes, followed by a number of offences that States Parties are

8. Technical Guide to the United Nations Convention against Corruption, UNODC, 2009, available here: https://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf, Article 5, pp 4-5. , para II.3.

9. See *supra* note 7, p. 144.

required to consider criminalising.¹⁰ The Convention covers the following offences:

- Bribery of national public officials – Article 15 (mandatory);
- Bribery of foreign public officials and officials of international organisations – Article 16 (mandatory);
- Embezzlement, misappropriation or other diversions of property by a public official – Article 17 (mandatory);
- Trading in influence – Article 18 (non-mandatory);
- Abuse of functions – Article 19 (non-mandatory);
- Illicit enrichment – Article 20 (non-mandatory);
- Bribery in the private sector – Article 21 (non-mandatory);
- Embezzlement of property in the private sector – Article 22 (non-mandatory);
- Money-laundering – Article 23 (mandatory);
- Concealment – Article 24 (non-mandatory);
- Obstruction of justice – Article 25 (mandatory).

Furthermore, the Convention calls on States Parties to take appropriate measures aimed at protecting witnesses of corruption, experts and victims (Article 32) as well as whistleblowers (referred to as reporting persons in Article 33) from retaliation.

Chapter IV: International Cooperation

The Convention provides a basis and a framework for mutual legal assistance: States Parties are obliged to cooperate and assist each other in cross-border criminal matters related to corruption offences covered by the Convention. This includes, for example, gathering and transferring evidence of corruption for use in court (Article 46). The requirement of dual criminality – meaning that the alleged crime for which mutual legal assistance is sought must be criminalised in both the requesting and requested countries –, which has traditionally hindered cooperation, is loosened. In civil and administrative cases relating to corruption, cooperation is not mandatory but must be considered (Article 43).

10. Legislative guide for the implementation of the United Nations Convention against Corruption, UNODC, 2006. available at: https://www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf, pp. 58-59 para 177, 179.

The Convention also provides a legal basis for the transfer of sentenced persons (Article 45) and a legal basis for extradition related to corruption offences (Article 44), in instances where countries do not have a bilateral extradition agreement. So far, this possibility appears to have been used by only a few countries.¹¹

Chapter V: Asset recovery

The return of proceeds from corruption to its country of origin is one of the core objectives and a “fundamental principle” (Article 51) of the Convention and States Parties are required to “afford one another the widest measure of cooperation and assistance in this regard.”

The UNCAC provides a framework for countries to adapt both their civil and criminal law in order to facilitate tracing, freezing, forfeiting, and returning of funds and other property obtained through corrupt activities. Depending on the case, the confiscated property may be returned to the State Party, to previous legitimate owners or victims of the crime (Article 57).

- States Parties are obliged to take measures to prevent and detect the transfer of proceeds of crime. Those measures can be divided into two categories: measures to prevent money laundering and measures on financial disclosure – Article 52 (mandatory).
- Governments have to ensure that the proceeds of corrupt acts committed in other States Parties can be confiscated and returned – Article 55 and 57 (both mandatory).

Chapter VI: Technical Assistance and information exchange

In the Convention, technical assistance generally refers to support aimed at helping countries comply with the UNCAC provisions. Chapter VI includes articles addressing trainings, material and human resources, research, and information sharing. The Convention encourages trainings for personnel

11. The UN Convention Against Corruption as a Legal Basis for Extradition, Transparency International, 2018, <https://knowledgehub.transparency.org/helpdesk/the-un-convention-against-corruption-as-a-legal-basis-for-extradition>

responsible for preventing and combating corruption on topics such as investigative methods, planning and developing strategic anti-corruption policies, preparing requests for mutual legal assistance, public financial management, and methods used to protect victims and witnesses in criminal cases (Article 60). States Parties, based on their own capacity, shall consider providing technical assistance to others, especially to developing countries, and shall consider helping each other conduct evaluations and studies on the forms, causes, and costs of corruption in specific contexts, with a view to developing better strategies and action plans for combating corruption (Article 60). Furthermore, States Parties are mandated to take measures “conducive to the optimal implementation” of the Convention, to the extent possible, through international cooperation and in coordination with each other and through international and regional organisations, to enhance financial, material and technical assistance to support developing countries’ efforts to implement the Convention (Article 62).

Chapter VII: Mechanisms for Implementation

Article 63 establishes the Conference of the States Parties (COSP). The Conference is a body that holds biennial sessions and seeks to improve the capacity of and cooperation between States Parties in achieving the objectives set forth in the Convention. It is assisted by the UNCAC secretariat (Article 64).¹²

The mandate of the COSP includes:

- facilitating the exchange of information among States Parties on patterns and trends in corruption, and on successful practices for preventing and combating it;
- strengthening cooperation with relevant international and regional organisations and mechanisms and non-governmental organisations; periodically reviewing the implementation of the Convention by its States Parties.

12. The next COSP is tentatively scheduled to take place in December 2019 in Abu Dhabi, United Arab Emirates. See: <https://www.unodc.org/unodc/en/corruption/COSP/conference-of-the-states-parties.html>

Several subsidiary bodies of the COSP have been established. Working groups and the Expert Meeting are not permanent bodies; they operate based on COSP resolutions that define their mandate and schedule:

- The Implementation Review Group (IRG) is an open-ended intergovernmental group of States Parties, currently meeting twice or three times per year. It provides an opportunity for countries to report on the implementation status of UNCAC provisions, to share information on best practices and establish dialogues on emerging issues;¹³
- The Working Group on Prevention meets annually and is responsible for advising and assisting the Conference in regards to preventive measures under Chapter II;¹⁴
- The Working Group on Asset Recovery also convenes once per year and is responsible for advising the Conference and assisting the implementation of provisions on the return of proceeds of corruption;¹⁵
- The Expert Meeting on International Cooperation assists and encourages the development of cumulative knowledge in the area of international cooperation, facilitates the exchange of experiences among States Parties, and assists the Conference in identifying the capacity-building needs of States.¹⁶

Chapter VIII: Final provisions

Chapter VII calls upon States Parties to take all the necessary legislative and administrative measures, in accordance with fundamental principles of domestic law, to ensure the implementation of the obligations deriving from the Convention. The Chapter also includes provisions on the entry into force, the ratification process and amendments to the text of the Convention.

13. For more details, see <https://www.unodc.org/unodc/en/corruption/IRG/implementation-review-group.html>.

14. See: <https://www.unodc.org/unodc/en/corruption/WG-Prevention/working-group-on-prevention.html>

15. See: <https://www.unodc.org/unodc/en/corruption/WG-AssetRecovery/working-group-on-asset-recovery.html>

16. See: <https://www.unodc.org/unodc/en/corruption/EM-InternationalCooperation/expert-meetings-on-international-cooperation.html>

The Implementation Review Mechanism

The decision to create the Implementation Review Mechanism for the UNCAC was taken at the third session of the COSP held in Doha, Qatar, in November 2009.¹⁷ The multi-stage peer review mechanism involves the review of each State Party by two peers – one from the same UN region and one from another one.

The review mechanism became operational in July 2010 when the Implementation Review Group met for the first time. To cover all States Parties, the review process is divided into two five-year cycles where countries are randomly selected to be reviewed in each year of the cycle. The first cycle started in 2010 and covers Chapter III and IV of the Convention.¹⁸

The second cycle was launched in November 2015 and is currently underway, covering Chapters II and V, reviewing corruption prevention measures and asset recovery.¹⁹ While the second cycle is scheduled to end in 2021, the process is facing substantial delays. More than three years into the second cycle, only 20 of the 184 countries had completed the review process by May 2019.²⁰ It has yet to be decided if and how the review mechanism will continue after the end of the five years foreseen for the second cycle, but if the first cycle is a guide, then the reviews will continue beyond the five years.

17. See: <https://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session3-resolutions.html>

18. The following countries have not published the executive summary of their 1st cycle review, meaning the process has yet to be completed: Chad, Comoros, Congo-Brazzaville, Democratic Republic of the Congo, Equatorial Guinea, Guyana, India, Japan, North Macedonia, Saint Lucia, Samoa, South Sudan, Sudan, Tajikistan, and Turkmenistan (as of 8th May 2019).

19. To find out if and when country is scheduled to be reviewed, consult the respective country's profile on UNODC's UNCAC website, at <https://www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html>. There, you will also see the country's reviewers, a list of nominated government experts (one of whom will serve as a focal point for the review process) and available reports from the review.

20. Australia, Bosnia and Herzegovina, Botswana, Burkina Faso*, Cabo Verde*, Indonesia, Ireland, Italy, Liechtenstein*, Malaysia*, Mauritius, Mexico, Morocco, Mozambique*, Portugal, Saudi Arabia, Senegal, Sierra Leone, Solomon Islands, and Sri Lanka – the countries marked with * allowed for the publication of the full country report on the UNODC website.

Crucially, there is no formal follow-up process on the findings and recommendations made in either of the implementation review cycles. Some countries report voluntarily to the IRG on actions they have taken after the completion of the review.

The review process consists of a desk review based on the self-assessment report of the reviewed country. It includes country visits only if requested by the reviewed country: Among a total of 179 first and second cycle reviews completed by 2018, 171 direct dialogues between the reviewed country and the reviewers had been held (158 country visits, and 13 joint meetings).²¹

The only key document that must be published at the end of the review process is an executive summary, which is released on the UNODC website.

Transparency and participation in the UNCAC review

Two other key documents of the review process may only be published if the reviewed country acts to allow the release.²² These are, first, the self-assessment checklist, in which the reviewed country details if and how it has implemented UNCAC provisions. Second, the full country report, which contains all findings of the review, including details on the implementation of the Convention's provisions, relevant statistics and enforcement data, and all recommendations.

Only 14 out of 169 countries that have completed the first review cycle published their self-assessment checklist on the UNODC website, 82 published the full country report. In the second review cycle, out of 20

21. Report of the Implementation Review Group on its first resumed ninth session, held in Vienna from 3 to 5 September 2018, p3 <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/3-5September2018/V1806008e.pdf>

22. "The country review reports shall remain confidential. The State party under review is encouraged to exercise its sovereign right to publish its country review report or part thereof." Paragraphs 37, 38 of the "Mechanism for the Review of Implementation of the UNCAC – Basic Documents", https://www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf

countries that have released their executive summary, four have published the self-assessment checklist, seven the full country report.²³

Out of all 184 countries, so far eighteen have voluntarily committed to meet minimum standards of transparency and civil society participation in the second cycle of the UNCAC review mechanism by signing the UNCAC Coalition’s “Transparency Pledge”.²⁴ Complementing the pledge, the UNCAC Coalition has also developed a guide with best practice approaches to promote transparency and participation in the UNCAC review process.²⁵

Contrary to the spirit of Articles 5 and 13 of the Convention, the rules of procedure for the review mechanism do not *require* the participation and consultation of relevant non-governmental stakeholders, including civil society groups, in the review process. The procedures, however, encourage such involvement by the reviewed country, including when preparing the comprehensive self-assessment checklist and during a country visit of the reviewers.

Due to a lack of information made available on the review process, civil society groups are in many cases unaware of the stage the process is in and are often not informed about upcoming visits by reviewers. Obtaining that information from the government focal point, who coordinates the process in the reviewed country, is often difficult, as these focal points and their contact information are in many cases not published.²⁶

Participation of civil society in UNCAC fora

NGOs with ECOSOC consultative status can apply to attend a COSP as an observer (unless otherwise decided by the Conference). Other NGOs can

23. As of 8 May 2019, based on information available at <https://www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html>. In some cases, full country reports have been published with a substantial delay after the executive summary was released.

24. These countries are: Belgium, Bulgaria, Cyprus, France, Germany, Italy, Latvia, Lebanon, Mexico, Norway, Peru, Poland, Portugal, Slovenia, Spain, Sweden, the United Kingdom and the United States (as of 8 May 2019).

25. The Transparency Pledge and the Guide to Transparency and Participation in the UNCAC Implementation Review Mechanism are available at https://uncaccoalition.org/en_US/uncac-review/transparency-pledge/.

26. See: Trivunovic, M., et al (2013): The role of civil society in the UNCAC review process: moving beyond compliance?, p.6, <https://www.u4.no/publications/the-role-of-civil-society-in-the-uncac-review-process-moving-beyond-compliance.pdf>

also apply but may only attend if there is no objection from a government. NGOs that are allowed to attend a COSP can attend its plenary meetings, and – upon invitation of the President and subject to the approval of the conference – make oral statements or provide written reports on questions relating to their activities.²⁷

In 2017, two Hungarian NGOs were not accredited to the seventh COSP due to an objection from a government.

The UNCAC Coalition and Transparency International have highlighted a problematic lack of transparency in this process, as the objecting State Party remains anonymous, does not have to provide any rationale for the objection and there are no clear criteria as to what justifies refusal of observer status.²⁸

CSOs have also highlighted censorship and curtailment of civil society’s freedom of expression at the COSP, as civil society groups have to submit any materials they would like to present, display or distribute at the Conference for screening to UNODC in advance of the meeting. At the seventh COSP, UNODC rejected and failed to clear a number of submitted documents.²⁹

Civil society representatives are not allowed to attend as observers meetings of the Implementation Review Group or the UNCAC working groups.

How can the UNCAC be used by embassy and donor agency staff?

The Convention obliges States Parties to “enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption”.³⁰

27. Rules of Procedure for the CSOP to the UNCAC, Rule 17, https://www.unodc.org/pdf/crime/convention_corruption/cosp/07-80230_Ebooke.pdf

28. Transparency International and UNCAC Coalition Letter to UNCAC COSP President and Secretary, https://uncaccoalition.org/en_US/transparency-international-and-uncac-coalition-letter-to-uncac-cosp-president-and-secretary/

29. *Ibidem*.

30. Paragraph 2(a) of Article 62: “(...) through economic development and technical assistance.”

Although UNCAC lays down internationally agreed standards, it should not be confused with a blueprint for reform. Instead, leadership in each country must determine priorities and the appropriate sequencing of implementation measures. However, where issues addressed by the UNCAC are part of a reform process in the country, donors can discuss Convention requirements in political dialogue, and integrate them in technical assistance programmes with partners. The UNCAC implementation review process may provide an opportunity to take stock of the anti-corruption framework and to engage a broad range of stakeholders, including civil society, in discussions about moving forward specific reforms.

Using the UNCAC for Political Dialogue

UNCAC and donor anti-corruption frameworks: The UNCAC reinforces existing donor initiatives to combat corruption. The OECD Development Assistance Committee (DAC) Principles on Anti-Corruption, for example, echo UNCAC’s holistic approach, calling for attention to both the supply and demand sides of the problem.³¹ The UNCAC implicitly promotes the Paris Declaration on Aid Effectiveness by providing a commonly agreed framework for support, and by promoting accountability and transparency – two cross-cutting concepts of this declaration.³²

UNCAC and the Sustainable Development Goals: There is some overlap between the provisions of the UNCAC and targets included in the Sustainable Development Goals, in particular, SDG 16, which seeks to “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. Anti-corruption targets include the recovery and return of stolen assets (16.4), the reduction of corruption and bribery in all forms (16.5) the development of effective, accountable, and transparent institutions at all levels (16.6), the establishment of responsive, inclusive, participatory and representative decision-making at all levels (16.7), and public access to information and the protection fundamental freedoms (16.10).

31. <http://www.oecd.org/dac/accountable-effective-institutions/principlesfordonoractiononanti-corruption.htm>

32. This interlinkage has been acknowledged in resolutions of the Conferences of States Parties to the UNCAC, as well as in the Accra Agenda for Action, the follow-up agreement to the Paris Declaration. See also: <https://www.oecd.org/dac/effectiveness/34428351.pdf>

UNCAC and the Open Government Partnership (OGP): There may be significant synergies between the UNCAC – in particular, the provisions on prevention and transparency that are reviewed in the ongoing second review cycle – and the Open Government Partnership, through which close to 80 governments and their civil society leaders have drafted national action plans to make governments more inclusive, responsive and accountable. Donors and agencies that support the OGP mechanism can consider ways to connect UNCAC commitments with national OGP action plans.³³

High-level policy dialogue: Commitments to prevent and combat corruption should be anchored in high-level policy dialogue between partner governments, donors and civil society. Compliance with UNCAC can provide a more neutral basis for dialogue, where donor interventions might earlier have been perceived as moralising or as external interference in internal affairs. Government reform priorities should be used as a basis for constructive dialogue.

Advancing anti-corruption discussions at a global level: The UNCAC Conference of States Parties and other UNCAC fora can provide an opportunity for countries to shape and advance global discussions on particular policy areas linked to anti-corruption, complementing principles and standards developed in other fora.

Indicators and benchmarks in aid agreements: Ratification of the UNCAC obliges States Parties to take concrete steps towards compliance. Donor agencies can assist partner countries to define indicators or benchmarks of progress and integrate them into high-level aid agreements in order to ensure regular monitoring. The different UNCAC requirements lend themselves to this purpose. However, in setting such benchmarks, government reform priorities need to be considered. Moreover, actual performance, not just the existence or introduction of anti-corruption legislation and measures, should be evaluated.

Aid architecture: As part of donor coordination mechanisms at country level, members should agree on a division of labour among aid-related dialogue fora in a partner country and ‘mainstream’ compliance with the UNCAC into the macro-level as well as sector dialogue. The participation

33. For further information about the Open Government Partnership, see: <https://www.opengovpartnership.org/>

of civil society in these fora should be promoted. It is important that those working at the level of policy dialogue and those working at sector level interact and have a common understanding of how compliance with the UNCAC can be pursued.

The UNCAC as a framework for technical assistance

The UNCAC can provide an organising framework to deliver technical assistance to partner countries and may catalyse better coordination of analytic work and technical assistance among donors in a given country. When choosing to support UNCAC implementation, embassies and donor organisations can engage in a range of activities, whether short-term assessment initiatives to help prepare the ground for dialogue and assistance, or longer-term initiatives, which are necessary to meaningfully advance in reducing corruption.

Status of UNCAC implementation: Embassies and donor organisations can engage in proactive discussions with the partner government as to the status of UNCAC implementation. Gaps could be filled by engaging in multi-stakeholder collaborations: together with state and non-state actors, support can be provided at various stages.

During the UNCAC implementation review, the reviewed country is encouraged to provide information about needs for technical assistance it has identified and about technical assistance it is already provided with in the self-assessment checklist.³⁴ While UNODC, as a follow-up to the review process, may provide some technical assistance to the reviewed country, the needs assessment may provide an opportunity for other donors to engage and provide demand-driven support.³⁵

Support to UNCAC self-assessments and the review process: Donors can assist their partners to complete the mandatory UNCAC self-assessment checklist on compliance with the Convention and provide support for the whole review process, where possible. Such involvement may help address delays and may contribute to making the review process more inclusive.

34. COSP Resolution 7/3, <https://www.unodc.org/unodc/en/corruption/COSP/session7-resolutions.html>

35. UNODC (2017): Technical assistance in support of the implementation of the United Nations Convention against Corruption, <https://www.unodc.org/documents/treaties/UNCAC/COSP/session7/V1705968e.pdf>

The drafting of the self-assessment is best addressed in a broad manner (including and coordinating relevant stakeholders and aligning it to other national assessments and a political reform dialogue) in order to add value. Donors should also encourage States Parties to include civil society in all stages of the review process, provide assistance for this purpose, and eventually publish the self-assessment checklist and the full country report on the UNODC website (as well as on a dedicated national website). The Going Beyond the Minimum (GBM) methodology developed by UNODC and UNDP promotes a more inclusive and broader self-assessment process.³⁶

Support to an UNCAC gap analysis: Alternatives or additions to the official checklist exercise could also be considered. Teams of public officials, together with national and international experts, could use a gap analysis approach to compare existing policies with UNCAC requirements in order to inform or refine country-led efforts and strategies to address corruption. Such efforts have been conducted in Kenya, Bangladesh and Indonesia with the support of GIZ (formerly: GTZ).

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Such exercises could also be used to connect UNCAC provisions with other relevant mechanisms, including the SDGs, the Open Government Partnership, the OECD Anti-Bribery Convention, the implementation of recommendations of the Financial Action Task Force (FATF), or other relevant regional or multinational frameworks.

Support national follow-up discussions and action plans: To help generate a momentum for reforms from the UNCAC implementation review, donors should support follow-up discussions and action plans that

36. Guidance Note – UNCAC Self-Assessments: Going Beyond the Minimum, UNDP, 2011, <https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/guidance-note---uncac-self-assessments-going-beyond-the-minimum/>

37. Schultz, J.: The UNCAC Compliance Review in Kenya: Process and Prospects, U4 Practice Insight 2010:3, <https://www.u4.no/publications/the-uncac-compliance-review-in-kenya-process-and-prospects.pdf>;

38. Government of Bangladesh (2008): UNCAC – A Bangladesh Compliance & Gap Analysis, <https://bigd.bracu.ac.bd/images/TechnicalAssistance/UNCAC/UNCAC%20A%20Bangladesh%20Compliance%20%20Gap%20Analysis.pdf>

39. ACCH (2006): Identification Of Gap Between Laws/Regulations Of The RI And The UNCAC, <https://acch.kpk.go.id/id/berkas/litbang/identification-of-gap-between-laws-of-the-ri-and-the-uncac>

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41.

address recommendations made in the implementation review. For example, Sweden and UNODC, as a follow-up to the first cycle review, developed a multi-year project in Myanmar to support authorities in their implementation of the Convention. In Ghana, Kenya, Namibia and the United Republic of Tanzania, UNODC helped develop comprehensive strategies to address the recommendations in the reviews. In Sri Lanka, UNODC facilitated a workshop including non-governmental actors to prioritize necessary actions, actors and resources needed to implement recommendations from the implementation review.⁴²

Engage with civil society: External scrutiny is key for assessing the enforcement and impact of government reforms. Embassy and donor agencies staff often lack the necessary UNCAC-based knowledge to engage in fruitful partnerships with anti-corruption bodies/institutions. Collaborating with civil society, in this sense, can help them access the expertise (both theoretical and practical). On the other side, civil society organisations might find a strong advocacy ally in embassies and donor agencies.

Strengthen the UNCAC review mechanism: To ensure the maximum possible impact of the UNCAC implementation review process, donors and embassies can engage the reviewed country to encourage and support a highly transparent and inclusive process.⁴³ To facilitate civil society contributions to the review, donors should consider providing funding for relevant activities, such as CSO parallel review reports, follow-up action and engagement in a specific policy reform process.

Practice what you preach: Donor countries should similarly ensure that their UNCAC review process is transparent and inclusive. If donor countries make accessible the contact information of their country reviewers and the schedule of country visits they are involved in and share this information with civil society in the reviewed country, this may help facilitate a more inclusive review process.

42. UNODC (2017): Technical assistance in support of the implementation of the United Nations Convention against Corruption, <https://www.unodc.org/documents/treaties/UNCAC/COSP/session7/V1705968e.pdf>

43. For more details, see the UNCAC Coalition's Transparency Pledge and the Guide to Review and Participation in the UNCAC Implementation Review, available at https://uncaccoalition.org/en_US/uncac-review/transparency-pledge/

Strong compliance with UNCAC provisions can decrease the country's attractiveness as a destination for money laundering and storing stolen assets, for example through a strong anti-money laundering framework, conflict of interest provisions for public officials, and ensuring transparency of beneficial company ownership.

Specialised legal assistance: International and regional legal specialists can be useful to help partner governments bring domestic law and institutional arrangements into compliance with UNCAC requirements. Funding for long-term advisors and mentors provides hands-on technical support to government institutions involved in corruption prevention and control.

Pool of expertise: In order to adequately address the comprehensive demands of UNCAC implementation and technical assistance, the various institutions within a donor country should consider pooling and coordinating their relevant expertise (e.g., legal departments, supreme audit institutions, financial crime units).

Knowledge and learning: Donors can support the establishment of fora for communication of lessons learned from experience, in and between countries. Given the existence of regional conventions and networks that preceded the UNCAC, there is already an existing mutual assistance practice that can to some degree be transferred to the implementation of UNCAC. Donors should explore avenues for strengthening this practice of south-south cooperation – partnerships between developing countries, which often have more advanced frameworks in place in areas such as government transparency than the donor countries. Donors should also invest in evaluating lessons learned of reform efforts wherever suitable.

Using the UNCAC to address international drivers of corruption

Due to its broad coverage (including international anti-corruption measures such as mutual legal assistance) and international scope, the UNCAC is well suited to address the increasingly global nature of corruption and the cross-border money transfers that hide its proceeds. For this potential to be fully achieved, donor countries also need to act on the home front. Leading by example will facilitate a more credible dialogue with partner governments. Country level donor and embassy staff can take measures to:

Address international drivers of corruption: Donor countries should address international drivers of corruption by prosecuting cross-border bribery cases, limiting bank secrecy, and providing technical expertise especially on the international aspects of mutual legal assistance, such as asset recovery claims. Furthermore, donor countries should allocate adequate staffing and resources to bodies providing mutual legal assistance and should, wherever possible, actively share information with the partner country (i.e. on identified and frozen assets originating from corruption cases in that country). Donor agency and embassy staff can identify existing hurdles between their home country and their partner country in mutual legal assistance and asset recovery cases, and embassy staff can use their institutional channels to ease the often-cumbersome communication process between countries. Embassies can explore whether home country institutions can support investigations (the UK’s work with the Nigerian Economic and Financial Crimes Commission is a point in case). Diplomatic measures against suspected persons (such as visa bans) can be refined and applied. Donor agencies can also advise on the management of repatriated assets.

Ensure agency practices are in line with UNCAC: Donor and embassy staff should ensure that their agency practices are consistent with Convention standards (e.g., address the management of facilitation payments, conflicts of interest, transparency about funding, etc.).

Get to know what your partner government is doing to implement UNCAC

Donor agencies and embassies should ask partner governments to make UNCAC-related information available to the public, allowing local civil society groups as well as the development and donor community to act upon this information. This includes a country’s responses to the UNCAC self-assessment as well as the full country report once the review is completed, and, in particular, their identification of technical assistance needs.⁴⁴ This information can be a useful basis for dialogue. Partner governments are not

44. The responsibility for coordinating the review process and preparing this information often lies with the Ministry of Justice, Ministry of Foreign Affairs, President’s Office and/or an Anti-Corruption Agency.

obliged to make this information available but should have an interest in doing so in return for donor support to their efforts.⁴⁵

Countries under review submit a “governmental experts list” to UNODC, which is published – with varying level of detail and without contact information – on the country’s profile page.⁴⁶ This list will usually include the government’s focal point who is coordinating the review. Where partner governments have no identified UNCAC focal point, embassies can address their own mission at the UN in Vienna to contact a partner country’s mission there or to request this information from UNODC. This may be cumbersome, but as UNCAC responsibilities at country level often seem unclear or hidden, such channels can create useful pressure on States Parties to be more transparent with their information, especially if seeking assistance.

While a country’s response to the self-assessment can serve as a first basis and trigger for dialogue, it may not be sufficient for setting priorities for anti-corruption assistance. Information gathered through self-assessments can have several potential flaws, including executive bias, insufficient coordination between institutions when information is gathered, reporting of de jure rather than de facto implementation, and insufficient reflection of national reform priorities. For instance, only few governments will include technical assistance needs of civil society and other non-executive actors (e.g. parliaments or the judiciary). However, there exists a great set of inputs of technical nature from civil society organisations, which may also be able to share written inputs to the process, including by producing parallel review reports.⁴⁷ Embassy and donor agencies staff can access and contact CSOs active in UNCAC-related matters and thereby enhance their visibility.⁴⁸

45. The terms of reference of the review mechanism call on States Parties to “upon request, endeavour to make country review reports accessible to any other State party. The requesting State party shall fully respect the confidentiality of such reports.” Para. 39, https://www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf

46. See: <https://www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html>

47. A list of UNCAC civil society review reports is available at https://uncaccoalition.org/en_US/uncac-review/cso-review-reports/

48. A good starting point may be the list of members organisations and affiliated groups of the UNCAC Coalition, which contains some 300 organisations from around the world: https://uncaccoalition.org/en_US/about-us/members-list/

The strengths and weaknesses of the UNCAC

Opportunities

- The UNCAC provides not only an international legal basis for cooperation, including on mutual legal assistance and the recovery and return of stolen assets, but is also a political tool for dialogue between countries and between governments and their citizens.
- The UNCAC describes universally agreed acts of corruption and ways to address them within one framework, thus offering an opportunity to overcome hitherto fragmented and often piecemeal efforts.
- The UNCAC fosters the international exchange of expertise, good practices and lessons learned, and it can be instrumental in coordinating international assistance.
- The UNCAC implementation review mechanism may provide a window of opportunity to generate momentum for reforms by supporting follow-up action, including through collaboration with civil society.
- The UNCAC can provide a forum and mechanism to advance anti-corruption debates on a global level, complementing the developments in other relevant international, regional and multilateral fora including the SDGs, OECD, FATF and the Open Government Partnership.

Challenges

- The UNCAC is not a blueprint for anti-corruption reform; it is a compilation of important measures that lack prioritisation or sequencing. Reform must be designed to address country-specific forms, manifestations and dynamics of corruption and to fit into the country's institutional arrangements and procedures. However, UNCAC country reports can help to identify good practices that might be adapted for other contexts, and supporting UNCAC documents can provide guidance to ensure strong anti-corruption policies.⁴⁹
- The UNCAC may be used as a fig leaf: some states may reference their

49. See UNODC's Guidance note on how to fill in the revised draft self-assessment checklist on the implementation of chapters II and V of the UNCAC <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/20-24June2016/V1603598e.pdf>

ratification of the UNCAC to deflect criticism from donors or political opponents while doing little to implement its provisions. If higher levels of transparency are applied in the review process and UNCAC fora and adequate space is provided for civil society to become involved, it is likely that the UNCAC's impact will increase.

- The UNCAC is not an end in itself. UNCAC assessments and implementation efforts may be perceived as stand-alone exercises. For local reformers and their donor/embassy partners, though, these are best employed as political and technical tools to support better governance in the pursuit of development, complementing other relevant international, regional and multinational good governance and anti-corruption mechanisms and frameworks.

Further reading

UNCAC Coalition⁵⁰.

Transparency International⁵¹.

Basel Institute on Governance⁵².

Open Government Partnership⁵³.

Stolen Asset Recovery Initiative (StAR)⁵⁴.

UNODC: United Nations Convention against Corruption⁵⁵.

UNODC: Documents, publications and tools⁵⁶.

50. <https://uncaccoalition.org>

51. <https://www.transparency.org/>

52. <https://www.baselgovernance.org/>

53. <https://www.opengovpartnership.org/>

54. <https://star.worldbank.org/>

55. <https://www.unodc.org/unodc/en/corruption/uncac.html>

56. <https://www.unodc.org/unodc/en/corruption/publications.html>

UNCAC documents

UNODC: Full text of the UN Convention against Corruption⁵⁷ (PDF)

UNODC: Technical Guide to the UNCAC⁵⁸ (PDF)

UNODC: Legislative Guide for the Implementation of the UNCAC⁵⁹ (PDF)

UNODC: Mechanism for the Review of Implementation of the UNCAC (UNODC) — Basic Documents⁶⁰ (PDF)

UNODC: Guidance note on how to fill in the revised draft self-assessment checklist on the implementation of chapters II (Preventive measures) and V (Asset recovery) of the UNCAC⁶¹ (PDF)

57. https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

58. https://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf

59. https://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC_Legislative_Guide_E.pdf

60. https://www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf

61. <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/20-24June2016/V1603598e.pdf>