

The United Nations Convention Against Corruption

The United Nations Convention against Corruption (UNCAC) represents one of the most recent and extensive Conventions to specifically recognise and tackle corruption. UNCAC comprehensively requires that States' Parties put in place and implement effective, coordinated anti-corruption policies that promote the participation of non-state actors and set forth the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. States Parties are also required to develop and promote effective corruption prevention measures centring on public procurement (Art. 9), the judiciary (Art.11), and the private sector (Art. 12).

Formed by UN Resolution 55/61 (2000), UNCAC represents the most comprehensive legal instrument to date in the fight against corruption. While it does not explicitly define corruption, it sets out to define and criminalise the actions of corruption to which its provisions apply and establishes 4 main pillars: Prevention, Criminalisation (Chapter III), International Co-operation (Chapter IV) and Asset Recovery (Chapter 5).

Chapter III (Criminalisation) defines the following mandatory offences:

- Active and passive bribery of national public officials;
- Active bribery of national and foreign public officials (Arts. 15 and 16);
- Embezzlement, misappropriation or other diversion of property by a public official (Art. 17);
- Laundering of the proceeds of corruption (Art. 23); And
- Obstruction of Justice (Art. 25)

Further acts of corruption are depicted as advisable, but non-mandatory, by the Convention:

- Passive bribery of foreign and international public officials (Art. 16);
- Active and passive bribery in the private sector (Art. 21);
- Trading in influence (Art. 18);
- Abuse of Function (Art. 19);
- Embezzlement, misappropriation or other diversion of property in the private sector (Art. 21); and
- Illicit enrichment (Art. 20).

With extensive provisions for the definition of various corrupt practices, Chapter III of the UNCAC goes beyond previous instruments, not only criminalising basic acts of corruption, but also the acts of trading influence, concealment and the laundering of proceeds of corruption.

The Convention dedicates an entire chapter to the prevention of corruption and legislates for inter-Member State co-operation. In terms of specifics, Chapter II places an emphasis upon effective and co-ordinated anti-corruption policies and bodies, public procurement,

the judiciary and the private sector for preventative measures intended to improve transparency, integrity and accountability.

Chapter V recognises asset recovery to be a fundamental principle of the UNCAC and that co-operation and assistance shall be assisted to parties where necessary in order to recover funds. The Chapter mainly focuses upon the prevention of the transfer of the proceeds of crime (Art.52) and the return of assets (Art. 57), with specific provisions to guard against the embezzlement and laundering of public funds

The importance of the international nature of corruption as a phenomenon is recognised in Chapter IV of the UNCAC which seeks to facilitate international co-operation. Driving this emphasis upon international cooperation is the chapter's recognition that worldwide efforts to combat corruption are impeded by the huge variation in national definitions of corruption-related offences arising from a diverse range of legal traditions and cultural norms.

Such international variation represents a fundamental challenge for international judicial co-operation, an example being the principle of 'dual criminality', whereby inter-state legal cooperation will be refused for acts alleged as crimes if they are not also defined as crimes in the jurisdiction receiving the request for assistance. Thus an emphasis within the Chapter upon extradition, ensuring that all convention offenses are extraditable between state parties, and mutual legal assistance are intended to bolster international co-operation amongst state signatories (see Annex 1).

In reflecting upon the scope of the UNCAC, its primary aim appears to be the provision of a comprehensive, universally accepted legal instrument to prevent and combat corruption. However, the convention's extensive mandate goes further in establishing an ambitious review mechanism. A **self-assessment system** has been developed by the UN Office on Drugs and Crime (UNODC) to help State Parties and signatories to the convention regularly report on progress.

Furthermore, the Conference of the States Party to the Convention, which was intended to oversee its implementation, decided in November 2009 to establish a **review mechanism** in order to complement the self assessment system. The Commission took an active part in the negotiations leading to the establishment of a review mechanism for implementation of the Convention during the Conference of States Parties in Doha in November 2009.

The Terms of Reference (TOR) of the review mechanism as contained in Resolution 3/1 of the Conference of the States Parties specify that:

- Implementation of UNCAC will be reviewed by way of a peer review process, where each State party shall be reviewed by two other States parties, and the State party under review should be actively involved;
- Governmental experts will be appointed by States Parties to carry out reviews;
- Each review phase shall be composed of two review cycles of five years each and all States parties must undergo the review within each cycle;

- The first review cycle will cover UNCAC chapters III (criminalization and law enforcement) and IV (international cooperation);
- The desk review will be based on the responses to the comprehensive self-assessment checklist. Active dialogue between the country under review and the Reviewers is a key component of the process; and
- A country review report and executive summary of this report will be prepared under the ownership of the country under review.

The EU has advocated a review mechanism of a technical nature, promoting open and constructive collaboration and dialogue. The review mechanism is set to facilitate effective implementation of the Convention, identify successes and challenges in implementation, promote and strengthen international cooperation, and identify technical assistance needs. The lessons learned through this process shall then be used to inform and improved the Commission's anti-corruption assistance efforts in partner countries.

In order to achieve effective implementation of the Convention, the EU firmly believes that three non-mandatory elements of this mechanism are essential for strengthening its implementation: the participation of civil society in the review process; country visits by the reviewers; and the publication of full country review reports.

UNCAC remains the most comprehensive and universally respected anti-corruption convention to date. It seems worth to include some elements on the number of State Parties having ratified the convention and to mention that in September 2005 the European Community, represented by the European Commission signed the 2003 United Nations Convention Against Corruption (UNCAC) and ratified it in November 2008. Therefore the EU as represented by the European Commission is now party to the Convention.