

Conventions overview United Nations (UNCAC)

Adopted: 31 October 2003 by the UN General Assembly
Signatories: 111 (as of 10 August 2004). Opened for signature on 9 December 2003
Ratifications: 4 (as of 10 August 2004)
Entry into force: 90th day after 30th ratification (anticipated by end 2005)
Open to: All countries and regional economic organisations

The UN Convention Against Corruption (UNCAC) was negotiated and agreed among approximately 129 nations. It represents international consensus about what states should do in the areas of corruption prevention and criminalisation, as well as international cooperation and asset recovery. It recognises the commonality and complexity of the problem among all nations and shared responsibilities in cases of cross-border corruption activities. Has great potential but major efforts needed for effective implementation. The adequacy of political will and resources not yet certain.

General structure: Eight chapters, 71 articles

- I General provisions
- II Preventive measures
- III Criminalisation and law enforcement
- IV International cooperation
- V Asset recovery
- VI Technical assistance and information exchange
- VII Mechanisms for implementation
- VIII Final provisions

Coverage

Sectors covered: Public and private sector corruption

Corruption offences covered: Wide interpretation of corruption offences, including bribery, domestic and foreign; embezzlement; trading in influence and money laundering

Measures: Preventive, criminalisation and international cooperation measures, as well as technical assistance provisions. Criminal and civil sanctions.

Level of obligation: Mixture of mandatory and discretionary provisions

Monitoring Arrangements

The first Conference of State Parties to the Convention is to be convened within a year after entry into force of the Convention. The responsibilities of the Conference include reviewing the implementation of the Convention by States Parties and making recommendations to improve the Convention and its implementation. The Conference may put into effect supplemental review mechanisms to assess the measures taken by States Parties (and difficulties encountered) to implement the Convention. Based on experience with other anti-corruption Conventions, an effective monitoring mechanism is essential for UNCAC.

Main benefits of the Convention

- International agreement on importance of addressing corruption with a comprehensive framework, setting common standards. It is the only Convention that is truly global.
- Asset recovery framework elaborated for the first time on a global basis, north and south.
- International cooperation framework improved for mutual law enforcement assistance, notably in extradition and investigations.
- Extensive coverage of ways, means and standards for preventive measures for public and private sectors.

Additional benefits

- Recognition of the role of the private sector and of private sector ("private-to-private") corruption as part of the problem.
- Requirements to provide for effective, proportionate and dissuasive civil, administrative or criminal penalties for the private sector; requirement that States establish accounting and auditing standards for private sector and eliminate tax deductibility of bribes (Art.12)
- Recognition of role of civil society in fighting corruption and need for access to information (Art.13)
- Requirement of liability of legal persons i.e. companies (Art.26)
- Recognition of need for long statutes of limitations (Art.29)
- Recognition of the need to protect witnesses, reporting persons and victims of corruption (Arts.32, 33)
- Recognition of the right of entities or persons who have suffered damages from corruption, to initiate legal proceedings for compensation. (Art.35)
- Recognition of the need for information exchange and technical and financial assistance, and of the special needs of developing countries in this regard (Arts. 60, 61, 62)

Main weaknesses

- No concrete provisions on a monitoring mechanism
- Current lack of resources for implementation
- Many provisions non-mandatory, creating risk of failure to develop common standards e.g. political party funding, private sector corruption, whistleblower protection
- Lack of mandatory requirement of nationality jurisdiction
- Very limited coverage of officials of international organisations

Next steps

- Ratification of the Convention by national governments that have signed the Convention. This generally requires the approval of the legislature.
- Adoption of any necessary additional domestic legislation to meet convention requirements; depends on adequacy of existing legislation
- Entry into force of the Convention, 90th day after the 30th ratification
- Preparation and convocation of Conference of State Parties within a year after entry into force of the Convention. A high priority of the Conference will to provide for an adequate monitoring process and to agree on necessary

resources and technical assistance to enable developing countries to implement effectively.

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