

United Nations Convention against Corruption

“Corruption hurts the poor disproportionately—by diverting funds intended for development, undermining a government’s ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid”.

Kofi Annan, United Nations Secretary-General

in his statement on the adoption by the General Assembly of the United Nations Convention against Corruption

Text of the United Nations Convention against Corruption

Background

In its resolution 55/61 of 4 December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime (resolution 55/25, annex I) was desirable and decided to establish an ad hoc committee for the negotiation of such an instrument in Vienna at the headquarters of the Centre for International Crime Prevention, Office for Drug Control and Crime Prevention. The text of the United Nations Convention against Corruption was negotiated during seven sessions of the Ad Hoc Committee for the Negotiation of the Convention against Corruption, held between 21 January 2002 and 1 October 2003.

The Convention approved by the Ad Hoc Committee was adopted by the General Assembly by resolution 58/4 of 31 October 2003. The General Assembly, in its resolution 57/169 of 18 December 2002, accepted the offer of the Government of Mexico to host a high-level political signing conference in Merida for the purpose of signing the United Nations Convention against Corruption. The Assembly invited all States to be represented at the Conference at the highest possible levels of Government.

Convention highlights

Prevention

Corruption can be prosecuted after the fact, but first and foremost, it requires prevention. An entire chapter of the Convention is dedicated to prevention, with measures directed at both the public and private sectors. These include model preventive policies, such as the establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties. States must endeavour to ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit. Once recruited, public servants should be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, in the particularly critical areas of the public sector, such as the judiciary and public procurement. Those who use public services must expect a high



standard of conduct from their public servants. Preventing public corruption also requires an effort from all members of society at large. For these reasons, the Convention calls on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it. Article 5 of the Convention enjoins each State Party to establish and promote effective practices aimed at the prevention of corruption.

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. In some cases, States are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so. The Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and “laundering” of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic areas of private-sector corruption.

International cooperation

Countries 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, 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...” 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.

Several provisions specify how cooperation and assistance will be rendered. In particular, in the case of embezzlement of public funds, the confiscated property would be returned to the state requesting it; in the case of proceeds of any other offence covered by the Convention, the property would be returned providing the proof of ownership or recognition of the damage caused to a requesting state; in all other cases, priority consideration would be given to the return of confiscated property to the requesting state, to the return of such property to the prior legitimate owners or to compensation of the victims.

Effective asset-recovery provisions will support the efforts of countries to redress the worst effects of corruption while sending at the same time, a message to corrupt officials that there will be no place to hide their illicit assets. Accordingly, article 51 provides for the return of assets to countries of origin as a fundamental principle of this Convention. Article 43 obliges state parties to extend the widest possible cooperation to each other in the investigation and prosecution of offences defined in the Convention.



Mexican Government
[web site for the](#)
High-level Political
Conference for the
Purpose of Signing
the UN Convention
against Corruption

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With regard to asset recovery in particular, the article provides inter alia that “In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties”.

Implementation mechanisms

The Convention needs 30 ratifications to come into force. A Conference of the States Parties is established to review implementation and facilitate activities required by the Convention.

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Why a Global Programme against Corruption?



Image courtesy of IMF

The greatest impact of corruption is on the poor – those least able to absorb its costs. By illegally diverting state funds corruption undercuts services, such as health, education, public transportation or local policing, that those with few resources are dependent upon. Petty corruption provides additional costs for citizens – not only are service provision inadequate, but 'payment' is required for the delivery of even the most basic government activity, such as the issuing of official documentation.

In many countries, applicants for drivers' licences, building permits and other routine documents have learned to expect a "surcharge" from civil servants. At a higher level, larger sums are paid for public contracts, marketing rights or to sidestep inspections and red tape. However, the consequences of corruption are more pervasive and profound than these bribes suggest. Corruption causes reduced investment or even disinvestment, with many

long-term effects, including social polarization, lack of respect for human rights, undemocratic practices and diversion of funds intended for development and essential services.

The diversion of scarce resources by corrupt parties affects a government's ability to provide basic services to its citizens and to encourage sustainable economic, social and political development. Moreover, it can jeopardize the health and safety of citizens through, for example, poorly designed infrastructure projects and scarce or outdated medical supplies.

Most fundamentally, corruption undermines the prospects for economic investment. Few foreign firms wish to invest in societies where there is an additional level of 'taxation'. National and international companies too by offering bribes to secure business, undercut legitimate economic competition, distort economic growth and reinforce inequalities. In many societies widespread public suspicion that judicial systems are corrupt and that criminal acts are committed by elites in both the private and public spheres undercuts government legitimacy and undermines the rule of law.

Along with the growing reluctance of international investors and donors to allocate funds to countries lacking adequate rule of law, transparency and accountability in government administration, corruption has the greatest impact on the most vulnerable part of a country's population, the poor.

Throughout the world there is a growing tide of awareness recognizing that combating corruption is integral to achieving a more effective, fair and efficient government. More and more countries see that bribery and cronyism hold back development and are asking the UN to help them gain the tools to curb such practices. Since the causes of corruption are many and varied, preventive, enforcement and prosecutorial measures that work in some countries may not work in others.

UN Convention against Corruption

The adoption of the Convention against Corruption in Merida, Mexico, Dec. 2004, provides the opportunity for a global response to the problem. The level of support it has received, measured by the number of countries that have already signed (106 as at April 2004), indicates both an acute awareness of the severity of the problem, as well as a remarkable political commitment to tackle it. This commitment must be harnessed. UNODC has limited resources: building on the framework of the Convention, it must lever (?) change in areas

where it has acquired expertise and experience and in societies where the problem is most severe. And, critically, it must work with others to ensure a unified response that maximises the impact of international assistance. The Convention marks a major step forward in international cooperation against corruption.

What Causes Corruption?

Etymologically the word "corruption" comes from the Latin verb "corruptus" (to break); it literally means broken object. Conceptually, corruption is a form of behaviour, which departs from ethics, morality, tradition, law and civic virtue.

The classic definition, followed by the World Bank and Transparency International, views corruption as the use of one's public position for illegitimate private gains. Abuse of power and personal gain, however, can occur in both the public and private domains and often in collusion with individuals from both sectors. Information International in Lebanon therefore adopted the following definition: "*Corruption is the behaviour of private individuals or public officials who deviate from set responsibilities and use their position of power in order to serve private ends and secure private gains.*" (Lebanon Anti-Corruption Initiative Report 1999)

The UN's Global Programme against Corruption (GPAC) defines corruption as the "abuse of power for private gain" and includes thereby both the public and private sector. Although perceived differently from country to country, corruption tends to include the following behaviours: conflict of interest, embezzlement, fraud, bribery, political corruption, nepotism, secretarisme and extortion. One measure of the extent of corruption in a particular country is Transparency International's annual Bribe Payers and Corruption Perception Index.



Why corruption develops varies from one country to the next. Among the contributing factors are faulty government and development policies; programmes that are poorly conceived and managed; failing institutions; inadequate checks and balances; an undeveloped civil society; a weak (corrupt) criminal justice system; inadequate civil servants' remuneration; and a lack of accountability and transparency. In most cases however, these are symptoms rather than causes of corruption. In any case, we consider them as correlates of corruption since corruption is likely to occur when any of these conditions exist, but it is not always necessary that there will be corruption where any is found.

A serious impediment to the success of any anti-corruption strategy is a corrupt judiciary. A corrupt judiciary means that the legal and institutional mechanism designed to curb corruption, however well-targeted, efficient or honest, remains crippled. Unfortunately mounting evidence is steadily surfacing of widespread judicial corruption in many parts of the world. Insufficient attention has been given to the integrity of the judiciary and the broader criminal justice system.

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About the UN Global Programme

The Global Programme against Corruption (GPAC) was first launched in 1999 by the United Nations Centre for International Crime Prevention (later merged into the United Nations Office on Drugs and Crime). The Programme was endorsed by Member States in early 1999. On the occasion of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in April 2000, an expert group reviewed and provided comments for refining the Programme's implementation strategy. Since 1999 to April 2004, GPAC was active mainly in four areas, namely (1) providing technical assistance to Member States in strengthening their legal and institutional anti-corruption framework, (2) supporting and servicing international groups of Chief Justices on strengthening judicial integrity, (3) the development and dissemination of anti-corruption policies and tools, and (4) enhancing interagency anti-corruption coordination. .

Since 1999, GPAC provided technical assistance to Lebanon, Hungary, South Africa, Colombia, Romania, Indonesia, Iran, Mozambique and Nigeria and developed new projects in Kenya, Iraq, Afghanistan as well as follow-up projects for Romania, South Africa and Nigeria. These projects mainly focus on strengthening the integrity and capacity of the criminal justice sector, in particular of the judiciary but also on the three other areas of preventive measures addressed by the new Convention: (i) National anti-corruption policies and mechanisms, (ii) Promoting integrity in the public and private sectors and (iii) Denying the proceeds of corruption and facilitate the recovery of illicit assets

Following the signing of the new Convention Against Corruption (CAC), the GPAC is focused on measures aimed at preventing corruption including the provision of technical assistance to states to strengthen national anti-corruption policies and control mechanisms; enhancing rule of law by strengthening judicial integrity and capacity; promoting integrity in the public and private sectors; and asset recovery. Accordingly, preparatory assistance for the prevention of corruption and assets recovery pilot-projects are being developed for Nigeria and Kenya.

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Learning by Doing

Because corruption is dynamic and has cross-cutting dimensions and impacts, the most appropriate approach must also be dynamic and holistic. Emphasis should be equally distributed among preventive, enforcement and prosecutorial measures. UNODC's main focus will be to strengthen judicial and law-enforcement systems in Member States.

Technical cooperation will reflect a modular approach of comprehensive anti-corruption measures, or [tools](#), that may be implemented in different stages at the international, national and local levels. This will maximize the flexibility of the adoption of such measures to fit the needs and context of each country or sub-region. Each tool will be tested and refined by the action-learning process before being made available to Member States.

Action Learning

GPAC's Projects invoke and employ 'Action Learning' principles to pass ownership for the development and implementation of activities, and responsibility for outcomes, to the host country. Sometimes reduced to the acronym CDAR (Connect/Decide/Act/Reflect), the concept is simple and uncomplicated. The elements are: bring stakeholders together (Integrity meetings); identify the nature and extent of the underlying problem (the Assessments); use

what had been learned from the assessments to develop an intervention (Action Plans), implement pilot projects, measure the impact (Evaluation), and finally, full circle – bring stakeholders back together, learn from what worked and what didn't during the pilot implementation and from the impacts, and then refine the Action Plans accordingly, and then "roll-out" at the national or federal level. Action Learning principles are also employed in the construction and activities of the Implementation and other sub committees (complaints committees, court user committees). The principle role of UNODC is that of a facilitator.

At the international level:

GPAC promotes international transparency and accountability through:

- The establishment of a monitoring mechanism;
- The provision of inputs for a UN Convention against Corruption; and
- The adoption of coherent strategies by the international community to fight corruption through shared experience and information.

At the national level:

GPAC works to strengthen anti-corruption measures by:

- Assessing existing institutions, strategies, policies, measures and tools against corruption;
- Assisting in the drafting and revising of relevant legislation and strengthening the rule of law;
- Providing advice on establishing and strengthening anti-corruption bodies;
- Developing preventive measures (such as public awareness campaigns and codes of conduct);
- Promoting integrity in the public and private sectors through the provision of technical assistance in civil service reforms, development and enforcement of codes and standards of conduct for public officials;
- Providing advisory services and capacity building for the prevention corruption and illegal transfer of funds;
- Supporting the civil society and non-governmental organizations in the fight against corruption; and
- Providing training on newly introduced anti-corruption measures to all stakeholder groups.

At the sub-national/local level:

Member States will be advised to place emphasis on the initiation of anti-corruption programmes at the grassroots level, as close to the "customers" (i.e. civil society) as possible. At the sub-national level the anti-corruption programme could:

- Assess existing sub-national institutions and measures against corruption;
- Provide technical assistance in implementing relevant regulatory and procedural measures; and
- Facilitate adoption and implementation of national initiatives and preventive measures at the local level.

Link to the Utstein Anti-Corruption Resource Centre

The Utstein Anti-Corruption Resource Centre is dedicated to the global fight against corruption. It is organized around two purposes: to guide you to



relevant anti-corruption resources, and to inform you about the Utstein partners and their anti-corruption work.

U4 provides:

- An anti-corruption portal with well organised links
- Selected and annotated literature for easy on-line access
- Answers to FAQs on corruption
- Policy and project information on the Utstein partners' anti-corruption efforts
- News and events calendar

U4 is created at Chr. Michelsen Institute, Norway, assisted by Transparency International's Centre for Innovation and Research.

For more information about other organizations involved in the fight against corruption, please see [Links](#).

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Publications

The purpose of GPAC's publication series is to share the experiences gained in our anti-corruption projects as well as to stimulate discussion among policy makers, law enforcers and other practitioners with diverse views and perspectives. The series reflects the integrated and evidence based methods applied by GPAC to help Member States build integrity to curb corruption and includes both policy papers, as well as more practical, project-oriented material.

GPAC publications are categorized according to:

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Contact Us

By Snail Mail:

Global Programme against Corruption
UN Office on Drugs and Crime
Vienna International Centre
P.O. Box 500, Room E1272
A-1400 Vienna
Austria

By Fax:

+43(1) 26060-5898

By Phone:

+43(1) 26060-4406