

## Implementing UNCAC

### Query:

*“Has any U4 agency done a compliance or gap analysis of the UN Convention against Corruption? I am particularly interested in 1) national legislation vis-a-vis UNCAC provisions and 2) information about what works in terms of supporting effective implementation.”*

### Purpose:

“We would like to support a few pilot projects, preferably in cooperation with U4 partners, to promote stronger implementation of UNCAC.”

### Please also see:

A related Expert Answer, [The UN Convention against Corruption and the Donor Community](#).

### Content:

- Part 1: Discusses the role of donors in relation to the use of UNCAC as a tool to advance anti-corruption reforms.
- Part 2: Focuses on initiatives related to implementation of the UNCAC, including gap/compliance analyses.

The [UN Convention against Corruption \(UNCAC\)](#), the first global anti-corruption treaty (it entered into force on 14th December 2005), is an important platform for donor action regarding anti-corruption and good governance. **Part I** of this answer discusses the role of the donors in relation to the use of UNCAC as a tool to promote and advance anti-corruption reforms.

**Part II** of the answer focuses on your question of gap/compliance analysis of the UNCAC to aid its implementation, such as examining UNCAC provisions vis-à-vis national legislation. To our knowledge, there are presently no specific initiatives focusing on such a compliance analysis and implementation support by the U4 partner agencies in a systematic or concerted manner (there are very likely to be efforts at the national level in some countries, particularly in the form of technical assistance, but these do not appear to be well recorded at this stage).

There are several initiatives related to the implementation of the UNCAC outside U4 by various donors and international organisations that you may find useful to tap into. These are presented below, in Part II of the query answer.

### Part 1: UNCAC and the Role of the Donor Community

The UNCAC is a useful tool that can be used by the anti-corruption community 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,

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[www.cmi.no](http://www.cmi.no)

**Authored by:**  
Anna Hakobyan.  
Transparency International

**Reviewed by:**  
Robin Hodess Ph.D  
Transparency International  
[rhodess@transparency.org](mailto:rhodess@transparency.org)

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promote the tool to the governments of both donor and recipient countries and monitor and support its implementation at different levels. In addition to the basic steps of promoting the Convention extensively to **facilitate its wider ratification**, the donor community can:

### **1. Use 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.

### **2. Use 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. Use 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 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 upon by 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 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 relevant authorities to handle issues of 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 2: International Initiatives and Platforms for Aiding the UNCAC Implementation**

### **UNODC/UN GPAC**

The [United Nations Office on Drugs and Crime \(UNODC\)](#), the UN agency tasked with supporting the signatory parties implement the provisions of the UNCAC, is currently drafting a **Legislative Guide** to inform and support the process. The main objective of the Guide is to assist the States seeking to ratify and implement the UNCAC by identifying legislative requirements, issues arising from those requirements and various options available to States as they develop and draft the necessary legislation.

While the Guide has been drafted mainly for policy makers and legislators in countries preparing for the ratification and implementation of the Convention, it also aims at providing a helpful basis for bilateral technical assistance projects and other initiatives that will be undertaken as part of international efforts to promote the broad ratification and implementation of the UNCAC.

Furthermore, with regards to the Convention, [UNODC's Global Programme Against Corruption \(GPAC\)](#) has prepared a [background document setting the UNODC strategy](#) for the implementation of the UNCAC. One of the objectives of the strategy is "to work with other agencies to ensure a unified response that maximises the impact of international assistance. Promoting a global response ensures that resources are maximised, duplication avoided, comparative areas of expertise developed and as many relevant stakeholders as possible are mobilised in integrated, creative and constructive ways." The strategy includes GPAC's planned country activities and pilots for 2004-2006.

By way of background, since UNODC first launched GPAC in 1999, it has been active in four main areas, namely: (1) providing technical assistance to Member States in strengthening their legal and institutional anti-corruption framework; (2) strengthening judicial integrity; (3) developing and disseminating anticorruption policies and tools; and (4) enhancing interagency anti-corruption coordination.

Following the signing of the UNCAC, the GPAC is **focusing on measures aimed at preventing corruption**, including provision of technical assistance 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 asset recovery pilot-projects are being developed for **Nigeria** and **Kenya**.

### **UNDP**

The [UN Development Programme \(UNDP\)](#) has commissioned a **Comparative Study of National Anti-Corruption Legislation and Institutional Mechanisms**. The TOR states:

The study is designed to be in support of country efforts to implement the UN Convention Against Corruption and to capture and record specific ways in which individual countries in various parts of the world have undertaken legal and quasi-legal (not purely administrative) reforms that are relevant to the implementation of the UN Convention Against Corruption and are believed to have been effective in reducing levels of corruption generally, or in areas of government activity that are particularly at risk.

Specifically, the study will:

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- Systematically review relevant national laws and legislations, including related policies targeting the fight against corruption.
- Identify, analyze and codify good practices and lessons learned on effective and relevant national anti-corruption provisions and challenges to implementation of these legal and policy measures, particularly with regard to developing countries and states in transition.
- Provide critical examples for use in the relevant sections and chapters of the official legislative guide on the UNCAC.

The study will identify and write up what are considered to be **emerging good practice in the implementation** of both the mandatory and discretionary provisions of the Convention. The project will cover all four parts of the Convention: prevention, criminalisation, mutual legal assistance and assets recovery (i.e. it will not be confined to criminal provisions but can include codes of conduct, administrative penalties, debarment etc.).

The study should examine the widest range of countries possible, keeping in mind the need for regional balance. Overall, around 40 countries are targeted.

Note: According to the TOR, the work should be nearly complete by now. We are trying to obtain an update from UNDP.

### **UNDP/TI/ISS**

There is also a **joint project** between UNDP, **Transparency International** and the **Institute for Security Studies (South Africa)**, which will produce guidance and practical instruments targeting legislators, legal experts, policy makers and civil society for the ratification and implementation of the UNCAC and the AU Convention, as part of the UNDP Anti-Corruption Tool Kit, specifically as an additional stand-alone module to CONTACT (Country Assessments in Accountability and Transparency) guidelines.

In order to make the two Conventions more accessible for both African governments and civil society and to promote their ratification and implementation, the project will produce two guides that can be used throughout Africa.

The project has four main outputs:

- (1) An **UNCAC and AU Convention advocacy guide** for civil society.
- (2) A **comparative guide** on UNCAC and the AU Convention for legislators.
- (3) **Two national studies** examining steps needed for national implementation, as well a survey of practical challenges to implementation in 12 West African countries (Benin, Burkina Faso, Cameroon, The Gambia, Ghana, Guinea (Conakry), Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo).
- (4) A two-day **West Africa regional workshop** on ratification and implementation of UNCAC and AU Convention.

This is an ongoing project and further details can be obtained by contacting Gillian Dell (email: [gdell@transparency.org](mailto:gdell@transparency.org)).

### **OECD DAC/GOVNET**

The **Development Assistance Committee (DAC)** is the principal body through which the OECD deals with issues related to co-operation with developing countries. Coordination around anti-corruption issues is done through the Network on Governance (GOVNET).

The **revised DAC 'Principles for Donor Action in Anti-Corruption'** build in elements of the alignment and harmonisation principles to focus on anti-corruption work. They show the linkages needed in anti-corruption work: within a country, between donor headquarters and country offices, with the private sector, and in building up the global knowledge base on how best to fight corruption. **Principle One includes the need for coordination around the UNCAC:**

"Meeting the MDGs requires, inter alia, a commitment to fighting corruption and to meet commitments agreed in relevant international and regional conventions including the UN Convention Against Corruption (UNCAC) and

the recommendations of the Financial Action Task Force (FATF) on anti-money laundering. Whenever feasible, these endeavours should be led by the host government."

Furthermore, at the country level, donors should collectively:

"Promote with government the development of a shared government-donor vision/strategy and collaborative mechanism(s) for anti-corruption dialogue and action, ideally based on government commitment to implement the UN Convention (or other relevant instrument)."

The DAC is thus another important platform to consider for mobilising and coordinating donor responses aimed at supporting the implementation of the UNCAC.

### **ADB OECD**

The [ADB OECD Anti-Corruption Initiative for Asia and the Pacific](#) provides another (regional) platform for UNCAC implementation and compliance analysis.

The recent signature of the Convention by many of the Initiative's members has created the need for certain legal and institutional adjustments in preparation of the instrument's ratification. As the UN Convention and the ADB OECD Anti-Corruption Action Plan for Asia-Pacific have important similarities in terms of involved actors, thematic coverage and means to achieve their common goal to eliminate corruption, the two instruments have **great potential for synergy**. Taking advantage of this synergy, the Initiative has held a [seminar](#) addressing the obligations resulting for Asian and Pacific countries from the ratification of the UNCAC and exploring how the ADB/OECD Initiative can assist endorsing countries in this reform process.

The seminar was conducted on 14-17 February 2005 in cooperation with the UNODC and hosted by the National Accountability Bureau of Pakistan. In the framework of the Action Plan's self-assessment process, the ADB/OECD Initiative's member countries have conducted an in-depth analysis of their laws and anti-corruption systems in place. Based on this accumulated knowledge, due attention should now be paid to the mandatory provisions of the UNCAC, as clearly the accession of Asian and Pacific countries to this instrument will further strengthen their on-going anti-corruption reform, including under the Action Plan. Against that background, the objectives of the Initiative's capacity building seminar were to:

- Identify the obligations resulting for signatory states from their ratification of the UNCAC.
- Analyse mandatory provisions of the UNCAC which are critical for the Asia-Pacific region and assess legislative changes and institutional reform required to comply with these provisions.
- Assess how to translate resulting obligations into each country's national context.

### **Transparency International**

TI considers that the success of the UNCAC is largely dependent on an effective follow-up monitoring process. At present, the Convention lacks the necessary monitoring mechanism. However, Chapter VII (Mechanisms for Implementation) of UNCAC, particularly Article 63, gives the Conference of States Parties responsibility for considering an appropriate mechanism or body to assist in the effective implementation of the Convention.

Considering that development of an acceptable process for UNCAC monitoring presents special challenges, TI has taken the initiative to conduct a **Study of a Follow-up Monitoring Process for the Convention** and to convene an expert Study Group to assist in that process. The purpose of the TI Study is to produce a report containing recommendations and supporting analysis for presentation to the UNODC, the office responsible for UNCAC follow-up, prior to the first Conference of States Parties, which is expected to take place in 2006.

In preparing its recommendations, the **TI Study Group** will draw on the experience developed with other programmes for monitoring conventions, consider the specificities of the UN system and its challenges, and also take account of the existence of monitoring systems under other anti-corruption conventions. The TI Study Group will also consider the funding requirements for effective monitoring, as well as how technical assistance can be built into the follow-up process in order to help governments meet UNCAC requirements.

For further information, you may contact Gillian Dell (email: [gdell@transparency.org](mailto:gdell@transparency.org)).