

The United Nations Convention against Corruption Safeguarding against Corruption in Major Public Events

LESSON 3: The United Nations Convention against Corruption (UNCAC)



Introduction

The various risks of corruption identified so far can be addressed within the framework of the United Nations Convention against Corruption (the Convention or UNCAC), in particular under Chapter II, which requires States parties to introduce effective policies for the prevention of corruption.



In this lesson, we will:

- ✓ Introduce the Convention (UNCAC) and its purpose
- ✓ Consider what is "corruption" and how it may be defined.
- ✓ Look at the types of corruption described in UNCAC
- Consider why it is important to emphasize prevention and how this is relevant to the organization of a major public event



UNCAC

- ✓ Adopted by the General Assembly in October 2003
- ▼ The only legally binding universal instrument addressing corruption
- ✓ Unique tool for developing comprehensive responses to a complex problem



UNITED NATIONS CONVENTION AGAINST CORRUPTION







A brief history of international anti-corruption treaties

2003 United Nations Convention against Corruption

2003 African Union Convention

1999 Council of Europe Conventions

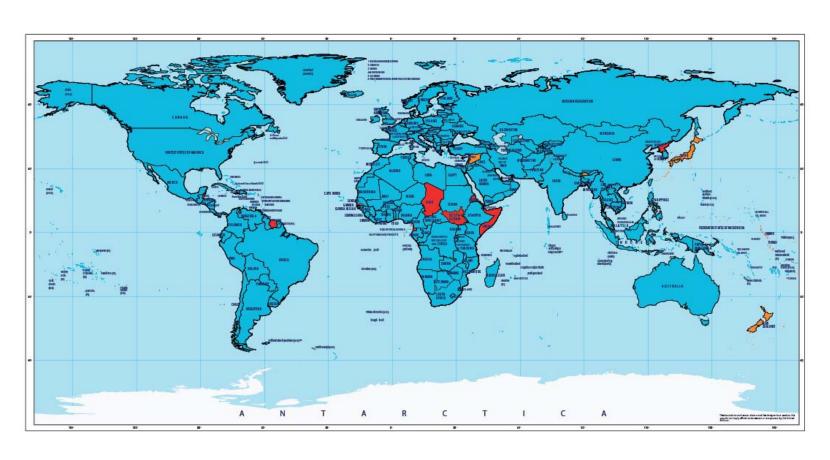
1997 Organization for Economic Co-operation and Development Convention

1997 European Union Convention

1996 Organization of American States Convention



UNCAC Signature and Ratification Status



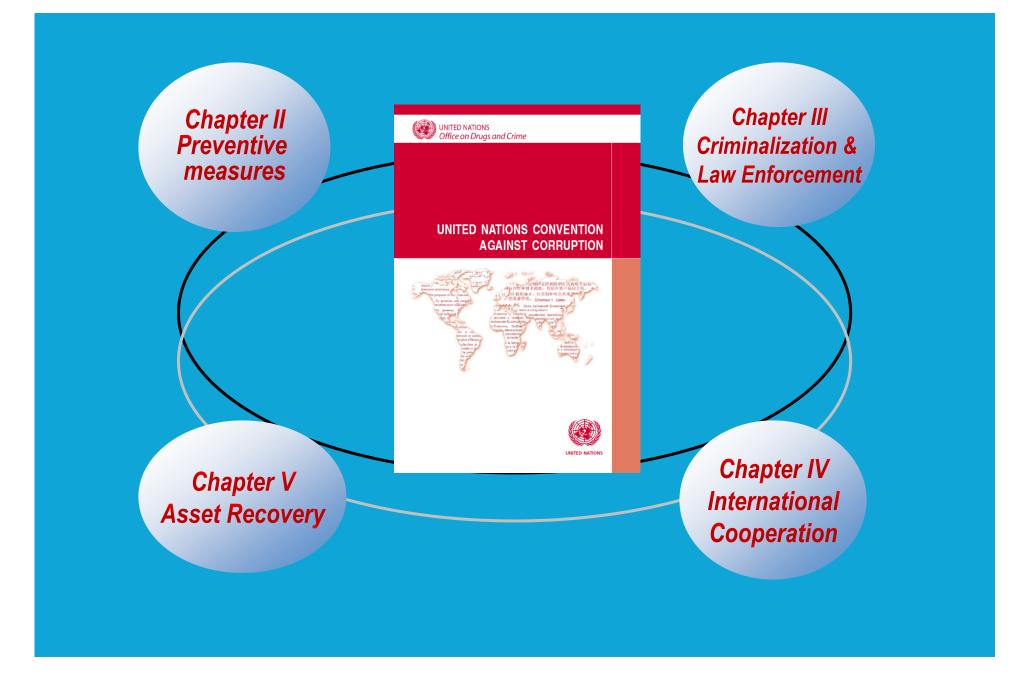
States Parties

Signatories

Countries that have not signed or ratified the UNCAC

Signatories: 140

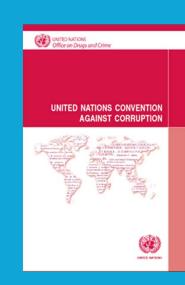
Parties: 173





Emphasis on prevention

- UNCAC foresees an entire system to prevent corruption which is set out in the prevention chapter.
- An entire chapter of UNCAC is dedicated to prevention, with measures directed at both the public and private sectors (Chapter II).
- Prevention of corruption is, of course, the primary focus of this workshop.





Chapter II – Preventive Measures (articles 5 – 14)

- > Anti-corruption policies and bodies
- Public sector: recruitment / retention of civil servants; rules relating to election candidates
- Codes of conduct for public officials
- Public procurement: establishing a system with objective criteria
- Integrity of the judiciary
- Private sector: cooperation / code of conduct / auditing



Chapter III - Criminalization and Law Enforcement

- Criminalization of specific offences
 - Bribery of public official
 - Embezzlement
 - Abuse of functions
 - Illicit enrichment
 - Bribery / embezzlement in the private sector
- > General provisions relating to all offences
 - Statute of limitations
 - Jurisdiction
 - Liability of legal persons
 - Prosecution
 - Protection of whistle-blowers and witnesses



Article 36 - Specialized bodies for combating corruption

Anti-corruption authorities

- Jakarta Statement on Principles for Anti-Corruption Agencies
- Strengthening of anti-corruption authorities proven to have a tangible impact on levels of corruption
- ➤ UNODC works directly with national anti-corruption authorities to support their work



Chapter IV – International Cooperation

> Extradition

- ✓ Addresses the issue of 'double criminality'
- ✓ If State does not extradite its nationals it <u>must</u> seek to prosecute / enforce a sentence that has already been applied
- Encouragement of cooperation and the agreement of bilateral treaties

Mutual legal assistance (MLA)

- ✓ MLA to be provided in relation to investigations, prosecutions and judicial proceedings
- ✓ Requirement for States to designate an MLA authority
- ✓ Outlines a template for an MLA request



Chapter V – Asset Recovery

- ➤ Return of assets as a fundamental principle of UNCAC (article 51)
- Prevention / detection of transfers of proceeds of crime
 - ✓ Requirements on financial institutions to identify customers
 - ✓ Enhanced scrutiny of accounts of public officials
 - ✓ Prevent banks with no physical presence
- Recovery of property through international cooperation
 - ✓ Give effect to confiscation orders from another State party including freezing orders
 - ✓ Assets to be returned to requesting States parties



The Conference of the States Parties

- ✓ Promote, facilitate & review implementation
- ✓ Make recommendations
- ✓ Facilitate information exchange

CoSP 6 Nov 2015 Russia

CoSP 5 Nov 2013 Panama

CoSP 4 Oct 2011 Morocco

CoSP 3 Nov 2009 Qatar

CoSP 2 Jan/Feb 2008 Indonesia

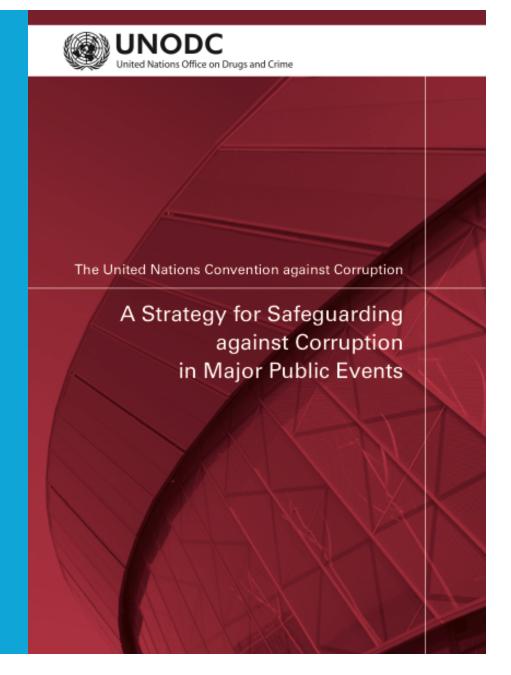
CoSP 1 Dec 2006 Jordan





UNCAC and major public events

Note the references throughout our handbook to the relevant articles of the Convention.





Has your country ratified UNCAC?

If so, when?

If not, why not?



Is the public in your country concerned about corruption?

What is the public particularly concerned about?

Is this concern related in any way to the organization of a major international event?



Defining corruption

- > UNCAC does not provide a definition of corruption.
- Corruption is hard to define because it encompasses a variety of illegal acts.
- ➤ The international community reached consensus on certain manifestations of corruption while leaving each State free to go beyond the minimum standards set forth in UNCAC.
- Put simply, corruption is the abuse of entrusted power for private gain.
- For a public official, it involves giving or obtaining an advantage through illegitimate means or through means inconsistent with his/her duties.



Types of corruption listed in UNCAC

- Bribery in the public sector
- Bribery in the private sector
- Embezzlement, misappropriation or other diversion of property by a public official
- > Trading in influence
- > Abuse of functions
- > Illicit enrichment



Bribery

- ➤ Bribery is the act of conferring a benefit in order to improperly influence an action or decision. It can be initiated by an official who asks for a bribe, or by a person who offers to pay one.
- Active or passive bribery?
- Bribery or extortion?
- ➤ UNCAC requires that both active and passive briberies be treated as serious crimes whether they involve public officials (article 15), foreign officials (article 16), or the private sector (article 21).



- That are different forms of bribes (e.g. cash, mobile phone credits, drugs, or the mere promise of a benefit in the future).
- The benefit of a bribe can pass directly to the person bribed, or indirectly to a third party such as a friend, a relative, or an associate.
- An official may receive bribes from other officials who are themselves colluding with corrupt individuals or criminals.
- Once bribery has occurred, it can lead to other forms of corruption. By accepting a bribe, an official is compromised and becomes vulnerable to blackmailing and being coerced into further, and more serious, derelictions of his or her duties.



Embezzlement, misappropriation or other diversion of property by a public official

- Embezzlement, theft and fraud all involve stealing by an individual exploiting his or her position of employment and constitute corruption.
- ➤ In the case of embezzlement, property is taken by someone to whom it has been entrusted.
- In some cases, it may resemble extortion.
- > See articles 17 and 22 of UNCAC.



Trading in influence

- Trading in influence involves the promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage to get that person to abuse his or her influence (real or supposed) in exchange for an undue advantage for oneself.
- ➤ It may also involve the solicitation or acceptance of such an undue advantage by a public official or any other person.
- > See article 18 of UNCAC.



Abuse of function

- In some cases, corruption involves the abuse of function or discretion.
- Abuse of functions or position = the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.
- > See article 19 of UNCAC.



Illicit enrichment

- ➤ Illicit enrichment is not something that States parties to the Convention must criminalize, but they must consider doing so.
- ➤ Illicit enrichment = a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.
- > See article 20 of UNCAC.



Article 20 of UNCAC – Illicit enrichment

"Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income."



In recent years, what are some of the incidents of corruption that have attracted the attention of the media and the public?

Would these incidents constitute corruption under the terms of the Convention?



Emphasis of preventing corruption

- ➤ As we have seen before, UNCAC emphasizes the importance of preventive measures. The present workshop also emphasizes prevention.
- Preventing corruption in relation to the organization of a major event is easier when the Authority responsible for the event can rely on strong national corruption prevention laws (as required by UNCAC).



Key points to remember

- ✓ UNCAC provides a strong and comprehensive framework for designing and implementing broad anti-corruption measures to address the risk of corruption associated with the organization of major events.
- ✓ UNCAC offers definitions of various corruption offences.
- ✓ UNCAC requires State parties to take various measures to prevent corruption.
- ✓ The criminalization of illicit enrichment can facilitate both the prevention and the prosecution of corruption offences.