



UNCAC CHAPTER III – CRIMINALIZATION AND LAW ENFORCEMENT

The United Nations Convention against Corruption (UNCAC) is the world's only legally-binding, anti-corruption instrument, to which UNODC is the guardian. The Convention was adopted by the General Assembly in October 2003 and entered into force in December 2005. To date, there are 190 States parties to UNCAC, representing a ground-breaking commitment to tackle corruption.

Chapter III recognizes the importance of having a means by which to deter and punish corruption. The Convention requires States to establish criminal and other offences to cover corrupt acts if these are not already crimes under their domestic law. It includes both mandatory provisions and provisions to be considered by States parties. Chapter III covers the criminalization of corruption in both the public and private sectors.

It is necessary for States to enact laws that criminalize the active form of **bribery of national and foreign public officials and officials of public international organizations**. The active form is defined as the intentional promise, offering, or giving of an undue advantage (something tangible or intangible, pecuniary or non-pecuniary, either directly or indirectly) to these officials. The purpose of the undue advantage is either to ensure that the public official acts, or refrains from acting, in carrying out his or her official duties. UNCAC articles 15 and 16 also cover the passive form of bribery, which is the solicitation or acceptance of an undue advantage by a national or a foreign public official or an official of a public international organization.

In order to address **corrupt conduct in the private sector**, States are required to consider adopting legislation that criminalizes certain acts when committed intentionally in the course of economic, financial or commercial activities. These acts include the active form of bribery to any person who directs or works for a private

Who is a public official? (UNCAC article 2(a))

Any person:

- Holding a legislative, executive, administrative or judicial office, whether appointed or elected, whether permanent or temporary, whether paid or unpaid;
- Who performs a public function, including for a public agency or enterprise, or provides a public service; or
- As defined by domestic law.

sector entity, as well as the passive form of bribery by such a person.

States are also required to consider criminalizing the active form of **trading in influence** (i.e., making it a criminal offence for a person to promise, offer or give an undue advantage to a public official or any other person, directly or indirectly, in order for them to abuse their influence to give that person or another person an undue advantage) and its passive form (i.e., when a public official or another person solicits or accepts such an advantage).

Legislation must further be adopted that makes it an offence for a public official to intentionally **embezzle, misappropriate or otherwise divert property** for his or her benefit or that of another person or entity. This offence must also be considered by States in relation to the private sector. 'Property' in this context could include real property, private funds or securities, or any other thing of value entrusted to that person by virtue of his or her position.

States are required to also consider criminalizing the intentional **abuse of functions or position**; that is, the performance of or failure to perform an act, in violation of laws, by a public official to obtain an undue advantage.



UNCAC is becoming an increasingly used tool to counter illicit enrichment. UNCAC article 20 requires States to consider adopting laws that would make it a criminal offence for a public official to experience a significant increase in assets that he or she cannot reasonably explain in relation to his or her lawful income.

While UNCAC Chapter II addresses the prevention of money laundering, article 23 addresses the criminalization of the **laundering of proceeds of crime**. This includes the conversion or transfer of property, when done to conceal or disguise the illicit origin of the property or of helping any person who is involved in the commission of the original crime to evade the legal consequences of his or her action. Predicate offences should include, at a minimum, a comprehensive range of criminal offences established in accordance with the Convention. Furthermore, pursuant to article 24, States are required to consider criminalizing the intentional concealment or retention of property that derives from offences established in accordance with the Convention by a person that did not participate in the offence.

States must also criminalize the **obstruction of justice**, namely the use of physical force, threats, intimidation, or the inducement of false testimony or evidence. Actions to interfere in the giving of testimony or production of evidence, or with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences are also addressed.

One key to fighting corruption is an effective **whistleblower and witness protection system**. To this end, States are required to provide effective protection from retaliation or intimidation for witnesses, experts and victims who give testimony in relation to UNCAC offences, as well as their relatives and others close to them. Protection against unjustified treatment for anyone reporting facts regarding these offences must also be considered. Measures are required to be taken to enhance the likelihood of cooperation with law enforcement authorities of persons who have participated in the commission of an offence, including by mitigating punishment of, or granting immunity to, an accused person who provides substantial cooperation in the investigation or prosecution of a corruption offence.

There is a range of obligations on States to **strengthen the prosecution of corruption**

Money is the prime motivator for engaging in almost any type of criminal activity.

Money laundering is the method by which criminals disguise the illegal origins of their wealth and protect their assets, so as to avoid the suspicion of law enforcement agencies and prevent leaving a trail of incriminating evidence. Preventing and detecting money laundering is an effective method of identifying criminals and the underlying illegal activity from which money is derived.

offences. Broad jurisdiction will allow for the prosecution of offences established in accordance with the Convention. Accomplices and those who otherwise participate in or instigate corruption offences should be held criminally liable. A long statute of limitations is required for UNCAC offences to ensure that perpetrators are brought to justice. Sanctions are also to be effective, proportionate to the offence, and serve as a deterrent.

Necessary measures are to be taken to enable the identification, tracing, freezing, seizure, and confiscation of the proceeds of crime. States must also address the consequences of corruption (i.e., rescinding of contracts or concessions granted through corruption) and by ensuring those who have suffered damage as a result of a corrupt act can initiate legal proceedings to obtain compensation.

Importantly, States are also required to ensure that a **specialized law enforcement body (or bodies)** exists to fight corruption. This body must be independent, and empowered, trained, and resourced adequately to carry out its functions effectively and without undue influence.

Given the complexity of investigating and prosecuting corruption, States are required to take measures to encourage **cooperation** among their public authorities and officials. States are also required to encourage cooperation between national authorities and private sector entities, especially financial institutions.

The full text of UNCAC Chapter III is available at https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

