

Highlights of the UN Convention against Corruption (UNCAC) Factsheet

UNCAC – Global anti-corruption instrument

The United Nations Convention against Corruption (UNCAC) was signed on 9 December 2003 in Merida, Mexico, and entered into force on 14 December 2005. By the end of April 2007 UNCAC had been ratified by 92 nations, of which the majority are developing countries. The Convention is now the global instrument for combat-ing corruption. It complements the anti-corruption con-ventions of the Organisation of American States (OAS) states, the African Union and the Council of Europe, the SADC Protocol against Corruption and the OECD Con-vention on combating bribery of foreign public officials in international business transactions. The Convention is divided into eight chapters. The most important provi-sions relate to preventive measures, criminalisation and law enforcement, international cooperation, asset recov-ery and technical assistance.

Ratification and implementation

Industrialised countries normally implement the Conven-tion upon ratification, thereby meeting, at least implicitly, the requirements of a monitoring mechanism that the Conference of the States Parties has yet to put in place. In the developing and transition countries, however, this is not the case. Many African, Latin American, Asian and East European countries have ratified the Convention without creating the conditions for active implementation. As we understand it, though, ratification entails adapting national legislation and enacting effective implementing regulations (full compliance). Technical assistance can facilitate the process of implementation, accompanying or complementing ratification in partner countries. Tech-nical cooperation projects in the area of good govern-ance are particularly well placed to do this.

Core issues

Prevention

The preventive measures of UNCAC (Chapter II) cover both the public and private sectors. They include meas-ures such as the setting up of anti-corruption bodies, provisions governing finance, procurement and appoint-ments in public administration, public reporting and par-ticipation of civil society and business. Emphasis is laid on the strengthening of transparency in financial matters and public procurement and in the funding of election campaigns and political parties. States undertake to introduce effective appointment and promotion systems that are based on transparency, efficiency and perform-ance. Public officials should be bound by codes of con-duct; effective sanctions should be imposed if particular provisions are infringed. Since the combating of corrup-tion depends on cooperation between state and society, UNCAC places particular emphasis on the involvement of civil society and on the general reporting process

Good practice

In Indonesia the UNCAC Project, working with the national anti-corruption agency (KPK) and other na-tional and international stakeholders, carried out a gap analysis to identify gaps at legislative and practical level in the implementation of UNCAC. National and international expertise complemented each other perfectly and the results met with great acclaim both in Indonesia and further afield. The analysis presented to the 1st Conference of the States Parties to UNCAC in December 2006 was particularly important. As a unique Technical Cooperation measure it was recog-nised as good practice for the support of partner coun-tries implementing a multilateral regime.

through which the public administration reports to the people. The requirements made of the public sector also apply to the private sector – it too is expected to adopt transparent procedures and codes of conduct.

Criminalisation

Chapter III of UNCAC regulates the punishing of corrupt behaviour, such as active and passive bribery in the public and private sectors. All the states parties are obliged to extend the concept of the public official to members of parliament. According to UNCAC, offences of corruption also apply to international public officials. Particularly important is the introduction of the liability of legal persons. Provisions are also proposed that would simplify the provision of evidence of corrupt behaviour; this is especially important as corrupt behaviour is very difficult to prove before a court. In the area of law enforcement the Convention calls for better cooperation between national and international bodies and with civil society. There is provision for the protection of witnesses, victims, expert witnesses and whistleblowers, in order to ensure that law enforcement is truly effective.

International cooperation

Chapter IV places particular emphasis on mutual legal assistance and extradition. Countries should enter into bilateral agreements or be able to refer directly to UNCAC in making requests for legal assistance or extradition. International cooperation between the states parties is simplified by a looser form of “double incrimination”. In order for a request for legal assistance or extradition to be implemented, it is not necessary for the alleged behaviour to be described in both countries as exactly the same offence.

In this context UNCAC makes detailed provision for handling the formalities of requests for legal assistance or extradition, which are often very difficult to comply with.

UNCAC recommends that the states parties assist each other in capacity building in order to ensure that international cooperation is underpinned by training and development measures.

Asset recovery

Asset recovery is one of the core issues dealt with in the convention (Chapter V). It is a vitally important matter for countries in which state funds or the proceeds of natural resource extraction have been misappropriated by kleptocrats and corrupt elites and transferred into foreign accounts. To assist the process of recovery, provisions regulate the national financial sector as well as international claims that the states parties may have to goods embezzled within their country. All the states parties are encouraged to set up mechanisms for the direct recovery of assets. Here, too, countries that have no legal assistance agreements with third countries can make direct recourse to the relevant provisions of UNCAC.

Technical assistance

Technical assistance is fundamental to the support offered to developing and transition countries in implementing the convention. The relevant provisions are detailed in Chapter VI; they cover the development of national capacity to implement legal compliances and preventive measures, and legal assistance in connection with investigations or asset recovery. The setting up of a trust fund that could be used to fund technical assistance initiatives is suggested.

References

www.gtz.de/en, www.unodc.org, www.u4.no.

Implications for technical cooperation

Many projects of German Technical Cooperation (TC) contribute to the implementation of UNCAC in a manner that is neither visible nor widely acknowledged; development policy dialogue does not take account of this. We therefore recommend that projects and programmes that are linked to UNCAC-related issues should address both prevention issues (such as integrity standards, financial management, accountability, procurement, cooperation with civil society) and penal law issues (such as opportunities to contribute to criminal law reform); dialogue with partner institutions should take up these issues. Compliance is established by way of many small steps. Initiatives linked to current TC projects and programmes or directly anchored in them can help to promote political dialogue and thus the implementation of the Convention. If we make this visible and promote it, we can in the course of our everyday work make a significant contribution to implementing UNCAC and thus combating corruption.

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April 2007

Imprint

Published by:

Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH

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