



## **Challenges faced and best practices applied by States in integrating human rights into their national strategies and policies to fight against corruption, including those addressing non-State actors, such as the private sector**

### **1. Background and overview**

In its resolution 41/9, the United Nations Human Rights Council requested the Office of the High-Commissioner on Human Rights (OHCHR) “to prepare a report on the challenges faced and best practices applied by States in integrating human rights into their national strategies and policies to fight against corruption, including those addressing non-State actors, such as the private sector, and to submit the report to the Human Rights Council at its forty-fourth session.”<sup>1</sup> OHCHR, accordingly, requested international organizations to provide inputs for the report through a call for inputs dated 19 July 2019.

This report is a compilation of the United Nations Office on Drugs and Crime’s (UNODC) practice and experience in the issues delineated by the Human Rights Council. The information provided in this document should be considered as supplementary to that provided by States parties and should not be interpreted as representing any of their views as it only refers to information that is available to UNODC as a result of its technical assistance delivery and the Implementation Review Mechanism of the United Nations Convention against Corruption (UNCAC).

Within UNODC, the Division for Treaty Affairs (DTA) and, under it, the Corruption and Economic Crime Branch (CEB) is mandated to facilitate the process of UNCAC implementation. The compilation received inputs from UNODC staff at its headquarters and field office locations. In addition, the information contained herein draws on the latest reports to be provided to the Conference of the States Parties (COSP) to UNCAC.<sup>2</sup>

### **2. Major areas of synergies and best practices**

#### *2.1. Access to information*

Access to information, including the freedom to seek, receive and impart information and ideas of all kinds, is a right enshrined under article 19 both in the ICCPR and the UDHR. It also constitutes one of the measures to prevent corruption, in accordance with UNCAC article 13(1). Therefore, preventive anti-corruption measures designed to enhance transparency and ensure access to information also contribute to the fulfilment of this specific human rights obligation.

UNODC has provided extensive technical assistance in the field of anti-corruption strategies where transparency and access to information have been highlighted as a key principles to be followed. For example, in Mexico, UNODC supported the Tax Administration Service in an assessment of its preventive capacity, where the right of the public to access information was highlighted. Another example is UNODC’s support to the Bolivian Government in creating

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<sup>1</sup> A/HRC/RES/41/9, par. 13.

<sup>2</sup> See CAC/COSP//2019/4 and CAC/COSP/2019/8 (both forthcoming);

transparency and access to information systems at the municipal level. As an additional example, UNODC is currently implementing a series of awareness raising activities and technical workshops in Southeast Asia to promote whistle-blowers protection, access to information and media freedom.

## 2.2. *Participation in decision-making, non-discrimination and special consideration to specific populations*

Under article 13(1), UNCAC calls for States parties to promote the contribution of the public to decision-making processes, which is also supportive commitments under ICCPR article 25, as well as relevant provisions of CEDAW, ICERD, ICRPD and the CRC.<sup>3</sup> Within this scope, UNODC regularly supports States parties, civil society organizations and other non-State actors in order to foster participatory decision-making in line with UNCAC and relevant provisions of international human rights instruments.

As an example of integration between UNCAC article 13 and relevant CEDAW, ICERD and ICRPD provisions relating to non-discrimination, UNODC has incorporated human rights sessions within trainings for anti-corruption investigators in Cambodia. The sessions cover rights of citizens with emphasis on minorities, children, women and other specific population groups, particularly with regard to their rights when conducting investigations and in case of pretrial detention. In Indonesia, UNODC is working with the Anti Corruption Commission (KPK) to produce a study of corruption risks in the logging industry. Illegal logging, fuelled by corruption results in the disruption of the livelihood of local communities and violation of their human rights, which also feature as rationales for the study. The document will inform policies addressing the issue of illegal logging.

Another advance toward the promotion of inclusive participation in decision-making is the establishment of UNODC's Education for Justice (E4J)<sup>4</sup> initiative, which is part of the Global Programme for the Implementation of the Doha Declaration (A/RES/70/174). E4J seeks to educate children and youth on UNODC's mandate areas, particularly to foster a culture of lawfulness among youth and promote them as agents of positive change. Education on rule of law issues, to which E4J is dedicated, also encompasses education on rights related to and affected by crime, and corruption is not an exception. UNODC's work with education to promote integrity, undertaken in countries such as India, Mauritius, Peru and Uzbekistan, has regularly focused on the linkages between corruption and human rights, particularly with regard to preventive measures and the right to participation in decision-making.

UNODC has also conducted awareness raising activities of Southeast Asian countries on the issue of corruption and trafficking in persons – a crime which is linked to violations of the different human rights instruments, including the ICRMW and UDHR, ICCPR, CAT and ICERD provisions pertaining to human dignity, personal security, torture and the right to decent working conditions. A regional event conducted in 2018 resulted in a mapping of corruption throughout human trafficking processes and informed policymakers on possible solutions at the policy and enforcement levels.

### 2.2.1. Civil society organizations

The promotion of participatory decision-making also requires coordination and opportunities for work with civil society organizations. Therefore, UNDOC also actively supports

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<sup>3</sup> Inasmuch as the subject matter may be considered, under local legislation, to be a matter directly concerning the child

<sup>4</sup> [www.unodc.org/e4j](http://www.unodc.org/e4j).

non-governmental organizations (NGOs) in various countries to actively take part in anti-corruption efforts and policymaking, also in line with ICCPR article 25.

In April 2019, UNODC, together with the UNCAC Coalition, trained 27 civil society representatives and 26 government representatives from 15 African countries on implementing UNCAC at a workshop in Addis Ababa, Ethiopia. This training was followed by one-day Civil Society Roundtable at destination to the CSOs from the participating countries to the project on “Fast-Tracking UNCAC Implementation.” Such multi-stakeholder trainings are held on a yearly basis by UNODC. Another example of UNODC support for civil society organizations comes from a Small Island Developing State, under a joint initiative with UNDP. The project supported an event of the Fiji Council of Social Services, the umbrella body of civil society organizations in that country, which organized a dialogue on addressing corruption and strengthening the accountability, transparency and legitimacy of the civil society sector to ensure efficient and effective advocacy work to both Government and the private sector. The Council also organized a workshop to finalize and validate its Code of Accountability, becoming the first local CSO to develop a self-regulatory Code of Accountability.

### 2.3. *Right to a fair trial and due process*

Within the context of UNCAC, implementation of article 11, which addresses the integrity of the judiciary and prosecution services, has a direct bearing upon the enjoyment of the right to a fair trial under ICCPR article 14 and UDHR article 10. In addition, safeguards related to due process are provided for in the preamble to UNCAC, as well as articles 30(4), 30(9) and 32(5). For this purpose, UNODC works with its counterparts to ensure that anti-corruption measures and strategies adhere to the safeguards contained in those instruments.

In 2018, UNODC, as part of its Global Programme for the Implementation of the Doha Declaration, established the work of the Global Judicial Integrity Network.<sup>5</sup> The Network contributes to ensuring the respect of the right to fair trial by an independent and impartial tribunal, which is directly related to ICCPR article 14. This newly established platform aims at promoting opportunities for judges and judiciaries to share experiences and knowledge, providing access to resources, addressing existing and emerging judicial integrity-related challenges, and facilitating the identification of technical assistance needs. The ultimate purpose of the Network is to strengthen judicial integrity and prevent opportunities for corruption in the justice system. Guided by the 2018-2019 workplan developed by the Network’s Advisory Board, the Network has been addressing numerous pertinent issues that might impact on judges’ integrity, impartiality and independence, such as the use of social media by judges, gender-related judicial integrity issues, the development and implementation of codes of judicial conduct, and the role of judicial immunities in safeguarding judicial integrity. The Network has also developed a comprehensive training package on judicial conduct and ethics to help judges deal with various ethical challenges they may come across. To date, over 40 jurisdictions have become pilot sites and agreed to implement the training package at the national level.

In training sessions conducted in Cambodia, UNODC also focused on issues related to privacy and other limitations when conducting searches and reverting to special investigative techniques (such as wiretapping and interception of communications, which may affect the right to privacy). Furthermore, as another example, in July 2018, UNODC launched the Protocol of Joint Action between the National Civil Police and the Armed Forces of El Salvador, for the Prevention of Crime and the Fight against Corruption, with strict adherence to human rights.

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<sup>5</sup> [www.unodc.org/ji](http://www.unodc.org/ji)

### 2.3.1. Death penalty and torture

In some countries, those who are convicted of certain corruption offences may face the death penalty. Within the Implementation Review Mechanism, there have been occasions in which reviewing States suggested that countries under review reassess the sanctions attributed to offences under UNCAC, in line with ICCPR-OP2, or at least set a moratorium on such sentencing. In some instances, reviewing States have also suggested that disproportionate penalties for corruption-related offences be reconsidered by countries under review. This lends to the conclusion that, although UNCAC article 65(2) allows for States parties to set more severe penalties, it is generally recognized that such punishments may not affect the right to life (UDHR, article 2) and human dignity, as per article 30(1) of UNCAC, which requires States parties to consider the gravity of offences.

### 2.3.2. International cooperation and asset recovery

Within the context of anti-corruption measures, great emphasis is usually given to international cooperation, particularly as UNCAC devotes an entire chapter to it. Human rights safeguards must also be considered in mutual legal assistance (MLA) and extradition requests. With regard to the latter, States parties must guard against the exposure of persons whose extradition is being requested to discrimination (specifically prohibited under UNCAC article 44). In addition, the UNCAC Implementation Review Mechanism has also identified systematic refusals of Governments to extradite persons who may be subject to the death penalty or torture, inhuman or degrading treatment, thus alluding to ICCPR-OP2 and CAT provisions.<sup>6</sup>

## *2.4. Compensation and reparation to victims and asset recovery*

The United Nations Convention against Corruption underlines the importance of the availability of remedies to those who have suffered damage as a result of corruption in numerous articles. Article 35 requires States parties to take measures to ensure that entities and persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation. Article 32 calls on States parties to protect and enable victims to have their views and concerns presented and considered during criminal proceedings against offenders, thus giving corruption victims the possibility to be heard. Article 34 addresses consequences of corruption and encourages States parties to consider corruption a relevant factor in legal proceedings to annul or rescind a contract. Article 42 explicitly encourages States to increase means of establishing jurisdiction over corruption offences, such as those committed against a State party or its national(s), thus removing potential obstacles to the initiation of legal proceedings against alleged criminals.

Chapter V of the Convention on asset recovery also includes several relevant provisions. For example, Article 53(b) calls on States parties to take measures to permit their courts to order those who have committed corruption offences to pay compensation or damages to another State party that has been harmed by such offences. Article 57 (3(c)) on return and disposal of assets further emphasizes the importance of returning confiscated property, inter alia, to its prior legitimate owners or of compensating the victims of the crime.

Within the human rights framework, aside from provisions under the legally-binding conventions, the General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and

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<sup>6</sup> For more information, refer to UNODC, *State of Implementation of the United Nations Convention against Corruption: criminalization, law enforcement and international cooperation*, 2<sup>nd</sup> edition, 2017.

Serious Violations of International Humanitarian Law,<sup>7</sup> according to which victims of human rights violations should have access to “Adequate, effective and prompt reparation for harm suffered.”<sup>8</sup>

This framework notwithstanding, the identification of victims and parameters for their compensation varies significantly, as do the perceptions of States parties with regard to the linkage between human rights violations and cases of corruption. In its resolution 6/2, the Conference of the States Parties to the United Nations Convention against Corruption directed the Open-ended Intergovernmental Working Group on Asset Recovery to initiate the process of identifying best practices for identifying victims of corruption and the parameters for compensation. In its resolution 7/1, the Conference of the States Parties to the United Nations Convention against Corruption directed the Open-ended Intergovernmental Working Group on Asset Recovery to *inter alia* continue “its efforts to gather information on and conduct enhanced analysis of best practices for the identification and compensation of all different types of victims” To facilitate expert debate on this topic UNODC organized panel discussions during the regular sessions of the Working Group. UNODC also conducted research on this issue by analysing available information, including the data obtained in the process of the UNCAC Implementation Review, and requesting additional information from the States Parties. The research outcomes were presented to the Working Group in two background notes that described the various approaches undertaken by States parties in this regard.<sup>9</sup>

### *3.1 Right to property, presumption of innocence and right against self-incrimination*

The right to property under article 17 of UDHR is relevant to the implementation of articles 20, 31, 54, 55 and 57 of the Convention.

According to article 20, subject to constitutional and fundamental principles of their legal systems, States parties must consider the establishment of illicit enrichment as a criminal offence. States must 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.

Article 31 requires States parties to adopt measures, to the greatest extent possible within their legal system, to enable the confiscation of proceeds, equivalent value of proceeds and instrumentalities of offences covered by the Convention, and to regulate the administration of such property.

Articles 54 and 55 set forth procedures for international cooperation in confiscation matters. These are important powers, as criminals frequently seek to hide proceeds, instrumentalities and evidence of crime in more than one jurisdiction, in order to thwart law enforcement efforts to locate and seize them.

Article 57 is one of the most crucial and innovative parts of the Convention against Corruption that requires States Parties to return assets representing the proceeds of corruption offences to the States of origin in line with specific conditions.

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<sup>7</sup> A/RES/60/147.

<sup>8</sup> *Idem*, par. 11(b).

<sup>9</sup> For more information please refer to CAC/COSP/WG.2/2019/5, CAC/COSP/WG.2/2016/CRP.1

While facilitating the process of the Implementation Review, UNODC thrives to ensure consistency in balancing the requirements of the Convention and applicable human rights standards.

One of the technical issues that is getting a growing prominence in the context of seizing and confiscation of corruption proceeds is the optional introduction of a so-called non-conviction-based confiscation (art. 54.1(c) of the Convention) and reversal of the burden proof in the confiscation proceedings (article 31.8 of the Convention) in the legal systems of the States Parties. Relevant to this issue is also the question of the introduction of the offence of illicit enrichment (article 20 of the Convention) that faced constitutional challenges in many States. These technical issues are also related to article 11(1) of UDHR and article 14(2),(3(g)) of ICCPR. UNODC, including through its Stolen Asset Recovery Initiative with the World Bank, has been researching these topics and produced corresponding knowledge products.<sup>10</sup> Those issues have been also addressed in the context of the meetings of the Open-ended Intergovernmental Working Group on Asset Recovery and the Open-ended intergovernmental expert meetings to enhance international cooperation under the United Nations Convention against Corruption.

New publications are currently planned that will specifically examine the issue of various confiscation mechanisms vis-à-vis the basic human rights standards.

Regardless of State practice variations, one must consider that resources must be secured in order to ensure the rights of victims to reparation. Therefore, the provisions under UNCAC article 31 are particularly important for the compensation of victims. If assets are confiscated, adequately managed and can be disposed of at the conclusion of criminal proceedings, States can also have access to resources that can compensate victims, whether the State itself or individuals that may have been harmed. There are occasions in which the confiscation and seizure of assets are considered as harmful approaches to the right to property (UDHR article 17). However, this must be looked at from the potential victims' perspective, as well as the necessity of preserving resources (movable and immovable) that can be restored to rightful owners or used to compensate victims. In cases where suspects are found to be innocent, the adequate management of assets must also ensure that they can regain access to their assets, the principle of restitutio ad integrum being respected.

### **3. Challenges for integrating human rights into national anti-corruption strategies**

The main challenges to integrating human rights into anti-corruption strategies stems from the fact that UNCAC is not a human rights treaty per se. This means that States parties tend to focus on UNCAC implementation not necessarily establishing links to relevant human rights obligations that may be affected by corruption.

However, two examples obtained by UNODC on national priorities and articulation may shed further light on potential issues. In one country in South America, it has been reported that there were challenges to linking anti-corruption and human rights as they were still addressed separately and, accordingly, further effort was required to raise awareness on the interlinkages.

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<sup>10</sup> Please see *State of Implementation of the United Nations Convention against Corruption: criminalization, law enforcement and international cooperation*, 2<sup>nd</sup> edition, 2017, and the following publications by the StAR Initiative: [On the Take: Criminalizing Illicit Enrichment to Fight Corruption](#), 2012, [A Good Practice Guide for Non-conviction-based Asset Forfeiture](#), 2009, [Asset Recovery Handbook: A Guide for Practitioners](#), 2011, [Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action](#), 2011.

By contrast, in another country in the same region, it has been reported that the lack of specific tools to assess and explicitly link licit and illicit economies to human rights violations prevents the development of connections between corruption and human rights violations. Furthermore, the local post-conflict setting makes it even more difficult for particular issues to be seen as linked, rather than in silos, especially if national and local institutions' priorities differ.

Finally, it must be noted that, while UNCAC is not a human rights instrument per se, the main challenge to integrating a human rights perspective into anti-corruption strategies remains that of communication. A number of anti-corruption measures prescribed under UNCAC mirror commitments made under certain human rights treaties as well as non-binding standards and norms. In specific cases, it is also important to sensitize States parties on the extent to which specific human rights considerations may complement certain anti-corruption measures.

#### **Abbreviations**

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
ICRPD	Convention on the Rights of Persons with Disabilities
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICCPR-OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
UDHR	Universal Declaration of Human Rights