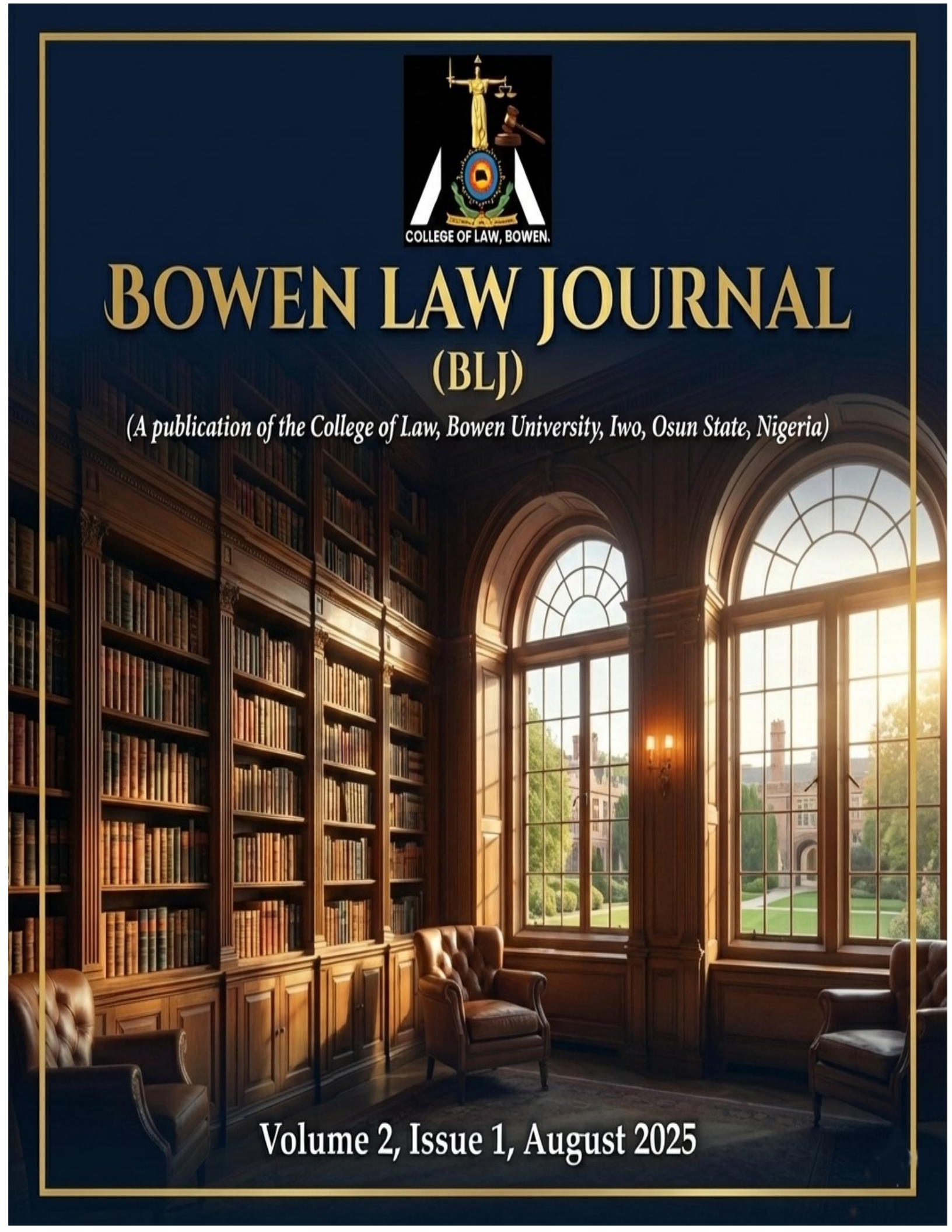
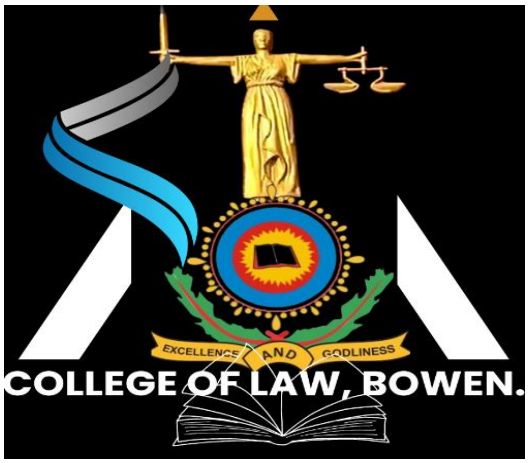

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Editorial

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College of Law, Bowen University, Iwo, Osun State, Nigeria.

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This edition of *Bowen Law Journal* is not only a resuscitation of the publication but its first online edition. It is appearing at a time that the world has become a global village, interconnected and observable by technological means. The journal, the content of which is peer reviewed, is therefore purposed for global impact through the projection of the dignified visibility of its contributors.

The journal accepts contributions on all areas of the law as is apparent from the present contents that span the areas of criminal law and criminology, human rights, employment law, law and medicine, security, peace, and tourism as well as business law generally, including taxation.

The thematic coverage of this journal accommodates impactful and scholarly contributions towards the advancement of the knowledge of law and its application in society. Significantly, the journal is interested in contributions that ensure that law addresses the intricacies of human relations and dealings as well as order in the world we live in.

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2. The standard British citation method should be adopted.
3. Articles must be accompanied by an abstract not exceeding 250 words.
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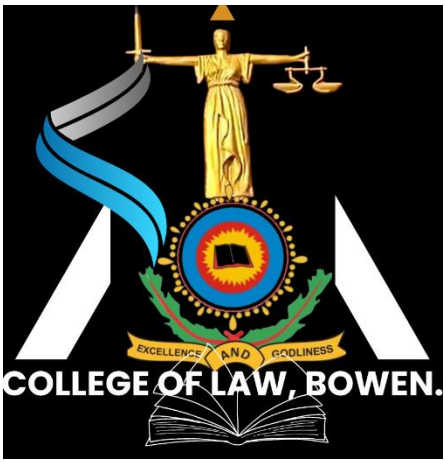
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Evaluation of the Effectiveness of the of United Nations Convention Against Corruption in Combating Corruption in Nigeria

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Abstract

This study undertakes a comprehensive evaluation of the effectiveness of the United Nations Convention Against Corruption (UNCAC) in combating corruption within Nigeria. Recognizing the Convention's status as the foremost global legal instrument against corruption, the research delves into its implementation within the Nigerian context, analysing its impact on the country's anti-corruption efforts. The study explores the key provisions of the UNCAC, focusing on areas such as preventive measures, criminalization of corrupt practices, international cooperation, asset recovery, and technical assistance. It further examines Nigeria's legal and institutional frameworks for combating corruption, assessing their alignment with the UNCAC's requirements. Through a combination of legal analysis, empirical data, and case studies, the research investigates the extent to which the UNCAC has influenced Nigeria's anti-corruption policies, legislation, and enforcement mechanisms. It also critically analyses the challenges and obstacles encountered in implementing the Convention's provisions, considering factors such as political will, institutional capacity, and socio-economic dynamics. By evaluating the UNCAC's effectiveness in curbing corruption in Nigeria, this study aims to provide valuable insights for policymakers, anti-corruption agencies, civil society organizations, and international stakeholders. The findings will contribute to the ongoing discourse on anti-corruption strategies, highlighting best practices and areas for improvement in strengthening the fight against corruption in Nigeria and beyond.

Keywords: *Anti-corruption, Anti-corruption laws, Provision, United Nations convention,*

Word count: *296*

Introduction

Corruption has long been a pervasive issue in Nigeria, hampering its growth, development, and stability. The country has suffered from decades of mismanagement of public resources, embezzlement, bribery, and other corrupt practices, which have severely undermined governance institutions, eroded public trust, and hindered foreign investment. Recognizing the urgent need to address corruption at both national and international levels, Nigeria ratified the United Nations Convention Against Corruption (UNCAC) in 2004. This multilateral treaty provided a comprehensive framework to prevent, investigate, and punish corruption, promoting international cooperation and the recovery of stolen assets.

In line with its commitment to combating corruption, the Nigerian government has enacted various legislation at the domestic level, including the Economic and Financial Crimes Commission (EFCC) Act, Independent Corrupt Practices and Other Related Offenses Commission (ICPC) Act, and the Money Laundering (Prohibition) Act, among others. These laws aim to align the country's legal framework with UNCAC obligations and strengthen its anti-corruption efforts. However, despite these legislative efforts, corruption continues to persist in various sectors of Nigerian society, including politics, public administration, law enforcement, and business. Implementation gaps, weak enforcement mechanisms, inadequate resources, and systemic challenges have hindered the effective implementation of the UNCAC provisions and Nigerian anti-corruption laws.

The United Nations Convention Against Corruption (UNCAC) is an international instrument for preventing and combatting corrupt practices globally and was adopted by the United Nations General Assembly in October 2003 and entered into force in December 2005[199]. Nigeria, a State Party to the UNCAC, signed the treaty on December 9, 2003, and ratified it on October 24, 2004, notwithstanding the fact that the UNCAC has yet to be domesticated in Nigeria in conformity with the provisions of the Constitution[200]. It is appropriate to highlight, however, Nigeria's legislative bodies, both at the national and state levels, have enacted numerous laws that align with various articles of the UNCAC. Houses of Assembly, and several implementation institutions have been established in light of such legislation[201]. The UNCAC is unique for its global coverage, the scope of its provisions, which includes but is not limited to preventive and punitive measures, its call on civil societies and non-governmental organizations to participate in the accountability process, and, most importantly, its provisions on international cooperation among State Parties by assisting each other in the fight against corruption. This paper sought to evaluate measures to effectively combat corruption in light of the provisions of the United Nations Convention.

Concept of Corruption

The term 'corruption' is a universal phrase that lacks a globally acknowledged definition. Interestingly, even the United Nations Convention Against Corruption, which was analyzed in this

[199] U4 Guide 2019 'A quick guide to the United Nations Convention against Corruption for donor agency and embassy staff' Available at, <https://www.u4.no/publications/uncac-in-a-nutshell-2019> accessed June 23, 2020.
[200] Constitution of the Federal Republic of Nigeria 1999 (Cap C23 /x LFN 2004) s 12.
[201] Corrupt Practices and Other Related Offences Act (Cap C31 LFN 2004), Economic and Financial Crimes Commission Act (Cap E1 LFN 2004) and code of Conduct Bureau and Tribunal Act (Cap C15 LFN 2004).

study and is one of the most important global anti-corruption tools, does not define corruption. The Convention simply enumerated and specified a range of offenses that should be criminalized by State Parties[202]. Regardless, so much ink has been spilled in an attempt to define corruption. "Corruption, as defined by Transparency International (TI), is 'the abuse of entrusted power for private gain,'[203] while the World Bank characterizes it as 'the abuse of public office for private gain.' These definitions, though concise, highlight the core concept of corruption as the misuse of authority for personal benefit." [204]

The definition of the World Bank restricts the definition of corruption to that involving public offices alone. While this may be true, since corruption largely involves public officials, it is also true however that corruption permeates through private institutions too. Uwais CJN (as he then was) captured it succinctly when he described corruption thus in *AG Of Ondo State V. AG Of the Federation & Ors*[205]: "Corruption is not a disease which afflicts public officers alone but society as a whole." statutory explanation of corruption is given by the Corrupt Practices and Other Related Offences Act when it defined corruption as that which includes bribery, fraud, and other related offenses[206]:

According to the Black's Law Dictionary in 2009, corruption is defined as:"an impairment of integrity, virtue, or moral principle; especially the impairment of a public official's duties by bribery or the act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others"[207]. From the various definitions of corruption proffered above, this research seeks to adopt that of Transparency International,[208] which defines corruption as the abuse of entrusted power for private gain. This is premised on the understanding of the nature of corruption by this research, which is to the effect that all corrupt practices emanate from the abuse/wrong use of a particular form of power wielded. The power may take the form of physical power, political power, economic power, academic/intellectual power, spiritual power et cetera. This power, in whatsoever form, would provide the fertile ground for its possessor to perpetrate a corrupt practice, because a powerless man, literally and in the real sense, is indeed powerless and incapable of doing anything.

United Nations Convention Against Corruption

The United Nations Convention against Corruption (UNCAC) is a universal legal instrument to deal with the menace of Corruption including corruption at the global level. The UNCAC is a legally binding universal anti-corruption document that includes five major areas: preventive measures, criminalization and law enforcement, international collaboration, asset recovery, and

202. United Nations Convention Against Corruption (adopted October 2003, entered into force December 2005) (UNCAC) art 15-25.
203. <https://www.transparency.org/en/what-is-corruption#> accessed 21 July 2020.
204. <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm> accessed 21 July 2020.
205. (2002) LPELR-623(SC).
206. Corrupt Practices and Other Related Offences Act 2000, section 2.
207. Garner Bryan A and Henry Campbell Black, Black's Law Dictionary (9th edn, St Paul Minnesota West2009) 397.
208 Transparency International is a global non-governmental organization that focuses on combating corruption. It is known for its Corruption Perception Index (CPI), which ranks countries based on perceived levels of public sector corruption.

technical aid and information exchange[209]. It addresses different forms of corruption in both the public and private sectors, including bribery, influence peddling, and function abuse. One of its key characteristics is the introduction of a particular chapter on asset recovery, which aims to return assets to their original owners, including countries from where they were illegally seized[210]. However, several scholars have noted shortcomings in the convention's provisions, particularly in terms of required language and ability to impact the domestic legal systems of its States Parties. Despite being a global treaty, UNCAC has been criticized for having weak and vague principles, which may restrict its usefulness in influencing domestic legal systems and preventing international collaboration in areas such as extradition and mutual legal assistance[211].

The UNCAC is a legally binding international treaty that aims to prevent and combat corruption in all its forms and the provision of the treaty include[212]:

1. **Preventive measures:** The Convention encourages countries to adopt and implement codes or standards of conduct for public officials, as well as to establish independent bodies to investigate allegations of corruption.
2. **Criminalization and law enforcement:** The Convention compels countries to outlaw several forms of corruption, including bribery, influence peddling, and abuse of functions. It also outlines processes for governments to recover assets that have been seized illegally.
3. **International cooperation:** The Convention promotes cooperation among countries in criminal matters related to corruption, including extradition, mutual legal assistance, and law enforcement.
4. **Asset recovery:** The Convention includes a chapter on asset recovery, which aims to return assets to their original owners, including countries from which they were taken illegally.
5. **Technical assistance and information exchange:** The Convention encourages countries to provide technical assistance and share information to help prevent and combat corruption.

The UNCAC has been ratified by the vast majority of United Nations Member States, making it a powerful tool in the global fight against corruption.

For 25 years, the United States stood alone in criminalizing the bribery of foreign public officials in international business transactions through the Foreign Corrupt Practices Act (FCPA). While many countries had some measures against domestic corruption, efforts to combat transnational bribery were particularly lacking. This inadequacy was compounded by several factors: underdeveloped internal control systems within companies, lax record-keeping requirements, and the allowance of tax deductions for bribes in many countries, including major capital exporters.[213] Furthermore, international cooperation was hampered by practical and legal obstacles. Bank

[209] Convention against Corruption <https://www.unodc.org/unodc/en/treaties/CAC/>.*
[210] Negotiating Peer Review of the UN Convention Against Corruption <https://www.jstor.org/stable/24526380>.
[211] The Limitations of the United Nations Convention against Corruption <https://academic.oup.com/book/36270/chapter-abstract/316512651?redirectedFrom=fulltext>.
[212] 2003 United Nations Convention against Corruption - UNTC <https://treaties.un.org/Pages/ViewDetails.aspx?chapter=18&clang=_en&mtdsg_no=XVIII-14&src=IND>.
[213] This refers to the practice where companies could reduce their tax liability by claiming bribes as business expenses, effectively incentivizing corrupt behavior.

secrecy laws shielded illicit financial flows, and the requirement of dual criminality, meaning the offense had to be a crime in both countries involved, often hindered extradition and mutual legal assistance.[214] Adding to these challenges were the limited experience of prosecutors in handling complex transnational corruption cases and a general lack of political will in many nations to address the issue.

Early in the 1990s, a number of things happened that started to alter the political landscape both at home and abroad with regard to the corruption issue. Among other developments, the fall of the Berlin Wall and the Soviet Union, the expansion of democracy and more open societies (including a free press) throughout much of the world, globalization, and the predominance of market-based economic models created an environment that was favorable to openness, transparency, and merit-based. The costs of corruption were widely recognized by multinational corporations, and the distortions it caused were increasingly felt by governments and international organisations. The swift evolution of global anticorruption norms was accelerated by these developments. Almost a hundred nations have ratified treaties in the last ten years that mandate that they prosecute international bribery of foreign officials under the FCPA's anti-bribery provisions, that money laundering where the base offence is corrupt activity be prosecuted, and that they cooperate with other nations in their enforcement and investigation efforts. The development of international standards started with a regional convention in Latin America in 1996, spread to the major capital-exporting nations with the Organisation for Economic Co-operation and Development (OECD) Convention in 1997, gained regional traction with the adoption of the European Union Convention in the late 1990s, the Council of Europe Criminal and Civil Law Conventions, and the African Union Convention in 2003. To name a few of the most notable developments, the trend expanded to international financial institutions with the World Bank's adoption of new anticorruption rules in 1997[215].

The United Nations Convention Against Corruption (UNCAC), also known as the UN Convention or UN Corruption Convention, represents a significant step towards creating global anti-corruption norms. It aims to establish a shared set of duties for nations to collaborate on investigations and enforcement, addressing a critical gap in the fight against corruption. While advancements in anti-corruption measures were being made in various regions, these efforts remained largely haphazard. Following the conclusion of the Convention Against Transnational Organized Crime in November 2000, which included some anti-corruption measures, the United Nations recognized the need for a dedicated instrument to tackle corruption comprehensively. Negotiations for the UNCAC began in early 2002, culminating in the adoption of the Convention's text in the autumn of 2003. The Convention was opened for signature in Merida, Mexico, on December 9, 2003, and entered into

[214] Dual criminality mandates that an offense be recognized as a crime in both the requesting and requested countries for extradition or legal assistance to be granted. This can be problematic when countries have different definitions of corruption offenses.

[215.] Lucinda, A.L. 'The New Global Legal Framework: The OECD, OAS, and Council of Europe Antibribery Conventions: New International Standards and National Anti-Corruption Laws: Challenges for Effective Implementation And Enforcement, prepared for the IBA/ICC/OECD Conference on "The Awakening Giant of Anti-Corruption Enforcement," Paris 22-23 April 2004 ("2004 Paris Conference Comparative Paper"), IBA, <www.ibanet.org>.

force on December 14, 2005. By April 2006, 50 countries had ratified the Convention out of the 140 that had signed it.[216]

Important international players who are not signatories to any other international anticorruption convention are among the parties to the UN Convention. The People's Republic of China stands out in this respect. Furthermore, supporters of the Convention have already been drawn from almost every corner of the world. Its swift adoption by a significant number of nations, and the number is still rising, suggests that it has the ability to establish truly global norms and a global framework for government collaboration in the prosecution of corruption cases. Due to its universality, the Convention can fulfil a function that is not possible for any other international anticorruption agreement. Therefore, the UN Convention's importance to efforts to prevent corruption is undeniable. The Convention also breaks new ground by addressing topics not fully covered in other anti-corruption agreements, such as the OECD Anti-Bribery Convention[217] or the Inter-American Convention Against Corruption.[218] For instance, the UNCAC includes comprehensive provisions on asset recovery, a crucial aspect of combating corruption that was previously neglected in many international instruments. Additionally, its rules on collateral effects, such as the consequences of corruption convictions on public officials and businesses, are more expansive than those found in other agreements. This broader scope presents both opportunities and challenges. While the UNCAC provides prosecutors and other stakeholders with powerful new tools to fight corruption, it also carries potential risks, such as the possibility of misuse or unintended consequences.

Preventive Measures

The UNCAC, as the only legally binding universal anti-corruption instrument, is a powerful tool in combating corruption globally.[219] With 188 signatory states as of August 2021, its comprehensive framework addresses five key areas: preventive measures, criminalization and law enforcement, international collaboration, asset recovery, and technical aid and information exchange. Focusing on preventive measures, the UNCAC goes beyond previous conventions by promoting a proactive approach to combating corruption. It encourages state parties to: [220]

Develop and Implement Anti-Corruption Policies: The UNCAC urges countries to establish comprehensive and coordinated anti-corruption policies. This emphasizes the need for a holistic strategy that integrates anti-corruption measures across all sectors of government and society. By encouraging national ownership and tailored solutions, the UNCAC promotes sustainable anti-corruption efforts.

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216. The full text of the convention is available on the U.N. web site. <http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf. An index of signatories and parties is also available there. See http://www.unodc.org/unodc/crime_signatures_corruption.html>.

217 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997).

218 Inter-American Convention Against Corruption (1996).

219. About the UNCAC <https://uncaccoalition.org/the-uncac/about-the-uncac/>.

220. United Nations Convention against Corruption <https://legal.un.org/avl/ha/uncc/uncc.html>.

Establish Independent Anti-Corruption Authorities: Recognizing the importance of independent oversight, the UNCAC calls for the establishment of specialized anti-corruption bodies with the authority and resources to investigate and prosecute corruption cases. These bodies play a crucial role in upholding the rule of law and ensuring accountability.

Improve Transparency and Objectivity in the Public Sector: The UNCAC promotes transparency and objectivity in public sector operations, including public procurement, hiring practices, and financial management. By advocating for open and competitive processes, the Convention aims to reduce opportunities for corruption and enhance public trust.

Engage Civil Society: The UNCAC recognizes the vital role of civil society and non-governmental organizations in preventing and combating corruption. It encourages their participation in monitoring government activities, raising public awareness, and promoting anti-corruption education.

These preventive measures, when effectively implemented, can significantly contribute to creating a culture of integrity and accountability. By addressing the root causes of corruption and promoting good governance, the UNCAC aims to prevent corruption before it occurs, rather than simply reacting to its consequences. This proactive approach is a significant advancement in the global fight against corruption, and its effectiveness is enhanced by the Convention's legally binding nature.

The UN Convention's preventative measures chapter goes beyond other anticorruption accords by emphasizing both public and private sector actions. It is noted that the private sector initiatives have the most potential to directly affect private businesses if they are put into place nationally.

Public Sector Measures

The public sector measures include requirements (subject to varying degrees of obligation, as previously noted) for nations to create anticorruption policies and practices, to establish independent anticorruption bodies, to select civil servants on the basis of merit and, in accordance with their level of development, to pay them appropriately, to establish codes of conduct for public officials that include measures to combat conflicts of interest, to implement transparent procurement systems, and to take other actions to enhance the transparency and accountability of public finances. Article 11 contains provisions that are fairly general in nature and pertain to the prevention of corruption in the prosecution and justice services.

In accordance with Article 10 of the public sector preventive measures, nations must also take steps to improve openness in public administration generally. These steps may include passing legislation granting freedom of information, streamlining administrative processes, and disseminating information. They mandate that nations take action to advance public access to information and opportunities for public participation in government decision-making, within their capacity and in compliance with core principles of domestic law (Article 13). If the United States' experience is any guide, the countries that implement these measures may find that they have a major effect.

Article 7(3) of the UN Convention, which addresses campaign money, is arguably the most contentious of the public sector preventive measures. According to this clause, nations must only

"consider" implementing "necessary legislative and administrative measures", compatible with the aims of this Convention and in line with the core values of their national legal systems, to improve transparency in the funding of political party campaigns and, where relevant, candidates for elected public office. This clause has drawn criticism for being so flimsy as to be completely useless due to the ambiguous nature of the "must consider" obligation. More vigorous action was anticipated, especially by those who believe that the U.S. system of campaign finance is crooked.

Private Sector Measures

The private sector-focused preventive measures in Chapter II urge nations to adopt a range of actions to stop corruption in the private sector, all while adhering to the core tenets of their own national legal systems. The quantity of preventive actions aimed at the private sector seems to indicate a shift in emphasis away from the public sector and a better understanding of the critical role that private sector performance and compliance play on the "supply side" of the corruption issue.

The UN Convention's clauses pertaining to the private sector mostly, but not exclusively, address the need to set up accounting and internal control requirements that roughly align with the FCPA's books and records regulations. These provisions also address measures to promote corporate transparency, such as those that help identify the legal and natural persons involved in the establishment and management of corporate entities; measures to restrict the activities of former public officials (also known as "revolving door" provisions); and the prohibition of bribes being tax deductible. Additionally, these provisions address the promotion of corporate codes of conduct, best practices, and compliance programs for business and professions. (Section 12).

Additionally, the UN Convention mandates that nations implement a range of preventive measures aimed at preventing money laundering (AML). Additional AML-related preventive actions are included in the asset recovery chapter and serve to supplement these efforts. (See, for example, Article 14; Article 52, as addressed in Section VI, below). It surpasses the AML requirements of previous treaties, which concentrate on criminality, in this regard. Financial Action Task Force (FATF) non-treaty-based standards are the basis for many new AML preventive measures, such as the creation of regulatory frameworks for bank and non-bank financial institutions, the creation of financial intelligence units (FIUs), and protocols to track cross-border cash transfers and the movement of negotiable instruments. Additionally, financial institutions are subject to softer requirements, such as origination to provide identifying information in relation to electronic funds transfers, and enhanced scrutiny obligations for transactions that do not meet the established transparency standards. These requirements state that financial institutions "must consider implementing appropriate and feasible measures" in relation to certain activities.

Criminalization and Law Enforcement

The UNCAC dedicates a significant portion of its framework to criminalization and law enforcement, requiring states to enact laws that address a wide range of corrupt activities.[221] This section, known as Chapter III, mandates the criminalization of various acts of corruption, including:

[221.] UNCAC. <https://star.worldbank.org/focus-area/uncac>.

Bribery: The UNCAC requires the criminalization of both active and passive bribery in both the public and private sectors. This includes offering, promising, giving, or accepting a bribe.

Trading in Influence: This offense involves the misuse of one's position or influence to obtain an undue advantage for oneself or another person.

Abuse of Functions: This covers situations where a public official uses their position for personal gain or to benefit others, even if no bribe is involved.

Illicit Enrichment: This offense targets the unexplained increase in the assets of a public official that cannot be reasonably explained by their lawful income.

Private Sector Corruption: The UNCAC also addresses various corrupt practices in the private sector, such as embezzlement, fraud, and money laundering.

Beyond these core offenses, the Convention also requires the criminalization of acts that facilitate corruption, such as money laundering and obstruction of justice.[222] This comprehensive approach ensures that all aspects of corrupt behaviour are addressed. While the UNCAC's criminalization provisions are ambitious, they also incorporate flexibility for states. The Convention utilizes a range of obligations, from mandatory ("shall adopt") to optional ("shall consider adopting"), allowing countries to tailor their implementation based on their specific legal and cultural contexts. This flexibility is further reflected in the possibility for states to express reservations to certain provisions, although within the limits of international law. [223]

Despite this flexibility, the UNCAC's criminalization requirements remain significant. The Convention's broad scope aligns more with regional conventions like the Council of Europe (CoE) Criminal Law Convention and the Organization of American States (OAS) Inter-American Convention Against Corruption than with the narrower focus of the OECD Anti-Bribery Convention. This broader approach reflects the UNCAC's aim to address corruption comprehensively, recognizing its diverse manifestations across different countries and sectors. The Convention also provides guidance on crucial aspects of enforcement, including the requirement of intent for most offenses and the possibility to infer knowledge and intent from circumstantial evidence. Additionally, it addresses contentious issues such as private rights of action and the collateral consequences of corruption convictions, demonstrating its comprehensive approach to combating corruption. [224]

However, implementing these provisions presents challenges for many countries. Limited resources, institutional capacity, and political will can hinder the effective enforcement of anti-corruption laws. The Convention's ability to influence domestic legal systems also faces

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[222.] Implementation of Chapter III (Criminalization and Law Enforcement) of the United Nations Convention Against Corruption. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/implementation-chapter-iii-criminalization-and-law-enforcement>

[223.] United Nations Office on Drugs and Crime. <https://www.unodc.org/ropan/en/AntiCorruptionARAC/united-nations-convention-against-corruption.html>.

[224.] Paragraph 2, Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions, Addendum, Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention Against Corruption, A/58/422/Add.1, note 38, 7 October 2003 (hereinafter, "Interpretive Notes").

limitations, as states retain sovereignty over their internal affairs. [225] Despite these challenges, the UNCAC's criminalization and law enforcement provisions represent a significant step forward in the global fight against corruption. By establishing a comprehensive framework and encouraging international cooperation, the Convention provides a powerful tool for holding corrupt actors accountable and promoting integrity across borders. [226].

Criminalization Requirements

The UNCAC's Chapter III on criminalization provides a detailed framework for addressing various corruption offenses. It expands upon existing definitions, such as "undue advantage," to encompass a broader range of corrupt practices, including those not traditionally covered by national laws. For example, the Convention's prohibition on trading in influence extends beyond direct interactions with public officials to include any transaction where undue influence is exerted. This broader approach aligns with the growing trend in international law to address all forms of corruption, regardless of the sector or actors involved.[227] The Convention also tackles complex issues like illicit enrichment, requiring states to consider criminalizing the unexplained increase in assets of public officials. This provision, while potentially raising constitutional concerns in some countries, underscores the commitment to holding corrupt officials accountable for their illicit gains. Additionally, the UNCAC encourages the criminalization of private sector bribery, recognizing the importance of integrity in both public and private spheres.[228]

Furthermore, the Convention addresses offenses related to money laundering and obstruction of justice, ensuring that all aspects of corruption are comprehensively addressed. It also provides flexibility for states by including both mandatory and optional provisions, allowing for tailored implementation based on national contexts. While some provisions, such as those related to domestic bribery and money laundering, are mandatory, others, like those addressing private sector bribery and trading in influence, are optional. This flexibility allows states to gradually implement the Convention's requirements while still upholding a core set of anti-corruption standards. [229] Overall, the UNCAC's criminalization chapter represents a significant step forward in the global fight against corruption. [230] By establishing a comprehensive framework and encouraging international cooperation, the Convention provides a powerful tool for holding corrupt actors accountable and promoting integrity across borders. While challenges remain in implementing these provisions, the UNCAC's detailed requirements and flexible approach offer a pathway for

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225. Revised Draft United Nations Convention Against Corruption, art. 21, U.N. Doc. A/AC.261/3/Rev. 4, May 12, 2003.

226. Where a government owns all or a majority of the equity of an enterprise, there is generally little disagreement that it should be treated as a public enterprise. Where, however, an enterprise has been partially privatized, or the government has only a minority equity interest but retains significant management or control authority, questions may arise about its status. The issue becomes even more difficult when the government stake is held through intermediate entities rather than directly. One would have expected a similar approach to this issue as the Convention took to the definition of official – establishing an autonomous standard that local law could expand but not contract.

227. Article 12, discussed in Section II.D.2, 2004 Paris Conference Comparative Paper, supra n. 1.

228. Lobbying Disclosure Act of 1995, P.L. 104-65, 109 Stat. 691, Dec. 19, 1995, codified at 2 U.S.C. § 1601, et seq.

229. Article 7; see Section II.D.2, id.

230 (2000) (D. Ut.), Case No. 2:00CR-0324S.

states to strengthen their anti-corruption efforts and contribute to a more transparent and accountable global environment.[231]

Law Enforcement in the United Nations Convention Against Corruption

The United Nations Convention Against Corruption (UNCAC) contains a chapter on criminality and law enforcement. This chapter requires member nations to create criminal and other charges to encompass a wide variety of corrupt conduct, including bribery, influence peddling, abuse of functions, and unlawful enrichment. It also targets offenses committed to promote corruption, such as money laundering and obstructing justice. The convention emphasizes the need for cooperation between national law enforcement authorities and with the private sector to effectively enforce these provisions. However, the implementation of these measures presents significant challenges for many countries, and there are concerns about the limited capacity of the convention to influence the domestic legal systems of its state parties[232]. Despite these challenges, the UNCAC remains the only legally binding universal anti-corruption instrument, with 188 state parties as of August 2021[6].

The other sections of Chapter III address pertinent matters pertaining to the scope, interpretation, and law enforcement of the criminal corruption offences that are to be formed, rather than the actual offences themselves. This covers the jurisdiction, statute of limitations, immunities, and standards of culpability for legal people (businesses) as well as how the knowledge and intent standards of the offences are to be understood. These clauses strengthen the fundamentals of these offences and ought to encourage consistency across the country's legal systems.

Article 26: Sanctions against corporations and liability of legal persons Although nations must hold legal persons (businesses) accountable for corrupt activities, this article does not mandate that they create corporate criminal liability, which is a feature of the US and certain other nations but has not traditionally been present in nations with civil law. It permits culpability to be of a criminal, civil, or administrative nature instead. Effective, proportionate, and dissuasive corporate sanctions are defined by the OECD, and this definition is adopted by the UN Convention as the standard worldwide.

Article 28: The Elements of an Offence May Be Knowledge, Intent, or Purpose: As mentioned in this section's opening, this article would let intent to be deduced from the circumstances. This aligns with the "willful ignorance" criteria applied in the United States in numerous criminal situations, including as money laundering and corruption. International anticorruption conventions now include this new clause. Similar to the "willful ignorance" threshold in the United States, this could have significant practical implications.

Article 29: Statute of Limitations: In accordance with the Convention, all offences defined under it must have a "long" statute of limitations imposed by the respective nation. Therefore, it would

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[231] 18 U.S.C. § 1956(a)(2) (prohibiting interstate or international transfers of monetary instruments with the intent to promote a specified unlawful activity. The United States has relied on this provision in recent anti-corruption enforcement actions. See, e.g., United States v. Giffen, Case No. 1:03- cr-00404-WHP, filed April 2, 2003 (S.D.N.Y.); United States v. Bodmer, Case No. 1:03-cr-00947-SAS, filed Aug. 5, 2003 (S.D.N.Y.).

[232] Full Text of the UN Convention against Corruption – UNCAC <https://uncaccoalition.org/the-uncac/united-nations-convention-against-corruption/>.

seem that even while a state might not be compelled to make some activities illegal, like bribery in the private sector, this Article would oblige it to give those crimes a lengthy statute of limitations. It is unclear what is meant by "long."

Article 30: Sanctions, Judgement, and Prosecution: Several key ideas are covered in this article, such as the fact that the seriousness of the crime should be considered when determining the appropriate punishment (such as parole or early release), that offenders should not be allowed to occupy public office, and that rights may be suspended or removed. However, paragraph 2, which addresses the subject of official immunities, will likely be the most problematic part of this article for the majority of people. All that is required is that states preserve, in conformity with [their] legal systems and constitutional principles, a suitable balance between any jurisdictional privileges or immunities granted to public officials for the discharge of their duties and the ability, when required, to pursue, prosecute, and decide cases pertaining to offences established at the Convention. It seems, then, to grant governments virtually unlimited latitude in determining immunity. The fact that immunities constitute a major obstacle to prosecution in many nations and are managed to protect even former politicians from legal action has been more and more evident in recent years. (For instance, by providing them with continuous immunity-granting figurehead roles in international organisations upon leaving national government)[233]. For sitting officials to carry out their obligations, there is undoubtedly a justifiable requirement for immunity from prosecution; nonetheless, these provisions don't appear sufficient. The note in favour of domestic law in paragraph 9 of this article further supports this worry. In the not-too-distant future, this will undoubtedly be a problem that has to be resolved on a global scale.

Article 31, Seizure, Confiscation, and Freezing: States must enact many confiscation-related laws in accordance with this article. Mandatory language is used in the duty, and the phrase "to the greatest extent possible within its domestic legal system" emphasises the significance of these steps. In addition to the proceeds of crime, it also covers property "destined for use" in offences as stated in 31(1)(b). The implementation of measures by countries to enable them to identify, trace, freeze, and confiscate proceeds and instrumentalities of offences related to corruption is necessary. In order to carry out the objectives of this article and specific asset recovery requirements of Chapter V, it further mandates in paragraph 7 that the courts of each state party have the authority to confiscate bank, financial, or commercial records, without taking bank secrecy into account. According to paragraph (8), it permits nations to demand that an offender a phrase that is not defined "demonstrate the lawful origin of such alleged proceeds of crime of other property subject to confiscation." But it says that these clauses "must not be interpreted in a way that would infringe upon the rights of legitimate third parties." They are by no means universal, even though they are already included in a number of national legislations. The broad implementation of such regulations may therefore have a substantial effect on enforcement agencies as well as corporate activities. The protection of victims, experts, and witnesses is outlined in Article 32. Required terminology is used in this article. The safeguarding of individuals who report:

Article 33. A clause protecting whistleblowers is this one. Interestingly enough, though, it is worded much softer and is not required, as opposed to the previous article: "shall consider

[233.] Latin Leaders' Legal Escape Hatch, washingtonpost.com, May 22, 2004, available at <http://www/washingtonpost.com/wp-dyn/articles/A47238-2004May22.html>.

appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds."

Article 37: Assistance to Law Enforcement Agencies: According to this provision, states must consider reducing the penalties or even giving immunity to individuals who have voluntarily disclosed their involvement in an offence, as well as encouraging voluntary disclosures from those who have committed the offence. Since it is impossible for disclosing parties to predict the extent to which penalties will be lowered, many feel that existing U.S. enforcement officials' procedures do not provide appropriate incentives for voluntary disclosures. However, this provision would not require any modifications to present U.S. legislation. Furthermore, this field does not frequently employ the practice of immunity grants, which is applied in several fields of federal enforcement.

Article 38: Cooperation Among National Authorities: This article promotes information sharing among national authorities, even on a nation's own initiative.

Article 39 focuses on promoting the reporting of offences by the private sector. It is titled Cooperation Between National Authorities and the Private Sector. Although reporting is encouraged even for private parties who are regular citizens of a country, it is worded more strongly for financial institutions. This fits with the way anti-money laundering rules have been policing the private sector, especially financial institutions, in recent years.

Article 40: Bank Secrecy: According to this article, nations must set up procedures to get over the restrictions imposed by bank secrecy on domestic criminal investigations of anticorruption offences. Bank secrecy has not been completely eradicated, despite recent efforts to weaken it due to other agreements that limit its application as a shield against criminal law enforcement. This makes the provision's inclusion possibly very significant. One of the primary reasons the United States ratified the OAS Convention was because it contained similar restrictions.

Article 41: Criminal Record: Under this clause, nations are permitted to consider convictions for anticorruption offences committed in other states.

Article 42: Jurisdiction: In general, the proposed requirements are consistent with those established in earlier treaties governing jurisdiction. They would apply to all of the offences listed in this section of the Convention and are therefore of great relevance. Most jurisdictional bases—such as nationality, habitual residence, and the protective principle—are optional, although some, like territoriality, are required (against a national of the state or the state itself). The term "the place" is used in all jurisdictional requirements to refer to the offence scene. Thus, it seems that these rules address the offence in a unified manner. If States Parties strictly adhere to these requirements to establish a single location where an offence can be committed, it may limit jurisdiction to the extent that offences under the Convention, especially the offence of transnational bribery, are complex and capable of being committed in more than one jurisdiction. The UN Convention's jurisdictional provisions could not turn out to be sufficiently developed in this regard.

The potential of several states having jurisdiction over a particular issue is discussed in paragraph (5). It does not, however, go beyond the OECD Convention's requirements for nations to confer in order to take coordinated action. Those cases that are prosecuted frequently result in proceedings

in various jurisdictions, despite the fact that questions regarding appropriate enforcement exist. Therefore, it might not be too soon to start outlining the standards for which a nation is primarily interested in pursuing legal action in the event of an alleged infringement. It could be argued that priority of interest should take precedence over prosecution priority in order to prevent numerous proceedings worldwide. Article 47 appears to be a step in the right direction in this regard, as will be covered in more detail in Part V.

The Role of the UNODC in Implementing the UNCAC

The United Nations Office on Drugs and Crime (UNODC) plays a crucial role in supporting the implementation of the UNCAC. As the custodian of the Convention, the UNODC provides technical assistance to states, promotes ratification and implementation, and facilitates international cooperation in the fight against corruption.[32]

Building on its expertise in combating transnational organized crime and illicit financial flows, the UNODC assists countries in developing effective anti-corruption strategies, strengthening their legal and institutional frameworks, and enhancing their capacity to investigate and prosecute corruption cases. The UNODC also conducts research and analysis on corruption trends, provides training to law enforcement officials and judges, and raises public awareness about the detrimental effects of corruption. The UNODC's work on the UNCAC complements its broader mandate to address drug trafficking, crime, and terrorism. By integrating anti-corruption efforts into its programs, the UNODC recognizes the interconnectedness of these challenges and promotes a holistic approach to achieving sustainable development and security.

Anti-Corruption Preventive Measures

This chapter begins with attempting to define corruption before moving on to discuss the many types and forms of corruption, corruption in Nigeria, the United Nations Convention Against Corruption, and Nigeria's ratification of it. Before coming to a conclusion, the chapter delves deeper into the concept of anti-corruption preventive measures and what they involve under the convention.

The United Nations Convention Against Corruption and its Ratification by Nigeria

The United Nations Convention Against Corruption (UNCAC) is a critical international treaty aimed at curbing corruption globally. Adopted in 2003 and in effect since 2005, it promotes measures to prevent and combat corruption, facilitates international cooperation, and advocates for integrity and accountability in public affairs. Nigeria, a signatory since 2003 and a party to the Convention since 2004, has demonstrated its commitment to the UNCAC's principles. [234] Although the Convention has not been fully domesticated into Nigerian law, [235] existing legislation aligns with many of its provisions, including the Corrupt Practices and Other Related Offences Act, the Economic and Financial Crimes Commission Act, [236] and the Code of Conduct Bureau and

234. <https://www.u4.no/publications/uncac-in-a-nutshell-2019> accessed July 20, 2020.
235. Constitution of the Federal Republic of Nigeria 1999 (Cap C23 LFN 2004) s 12(1).
236. (Cap E1 LFN 2004).

Tribunal Act.[237] [238] The UNCAC provides a comprehensive framework for anti-corruption measures, with a particular focus on prevention. Articles 5 and 6 highlight the importance of establishing anti-corruption policies and independent bodies to oversee their implementation. [239] These articles encourage state parties to develop coordinated policies that promote societal participation, transparency, and accountability. They also emphasize the need for periodic evaluation of legal and administrative measures to ensure their effectiveness in preventing corruption.

Furthermore, the UNCAC calls for the establishment of independent anti-corruption bodies with the authority and resources to implement anti-corruption policies, raise awareness, and promote knowledge about corruption prevention. These bodies play a crucial role in fostering a culture of integrity and ensuring effective oversight of public affairs. By outlining these preventive measures, the UNCAC emphasizes a proactive approach to combating corruption, aiming to prevent corrupt practices before they occur rather than simply reacting to their consequences. This focus on prevention is crucial for building a sustainable anti-corruption framework and fostering a culture of transparency and accountability in Nigeria[240].

Conclusion

In conclusion, the UNCAC stands as a vital international framework designed to prevent and combat corruption through the promotion of transparency, accountability, and robust international cooperation. Nigeria's commitment to these principles is evident in its adoption and ratification of the Convention. However, the true measure of success lies in the effective implementation and enforcement of its provisions, areas where Nigeria must strive for significant improvement.

While Nigeria has taken steps to align with the UNCAC, the fight against corruption requires a sustained and multifaceted approach. Strengthening cooperation with international organizations, such as the United Nations and regional bodies, is crucial for knowledge exchange, best practice sharing, and technical assistance. This collaboration can bolster capacity building, intelligence sharing, and mutual legal assistance, all of which are essential for enhancing Nigeria's anti-corruption efforts. Furthermore, the establishment of a robust transnational asset recovery mechanism would facilitate the return of stolen assets and promote transparency in fund disbursement. To achieve meaningful progress, Nigeria must prioritize the effective domestication of the UNCAC into its legal framework and ensure that existing legislation is rigorously enforced. A holistic strategy, encompassing legal frameworks, engagement with the business community, and the active involvement of civil society organizations and the media, is essential for fostering a culture of integrity and accountability. By consistently strengthenng these efforts, Nigeria can demonstrate its commitment to the UNCAC's principles and contribute to a more transparent and just society.

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237. (Cap C31 LFN 2004).
238. (Cap C15 LFN 2004).
239. United Nations Convention Against Corruption (adopted October 2003, entered into force December 2005) (UNCAC) art 1.
240. Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007.