

Anti-corruption policy making in practice: Implications for implementing UNCAC

Broad national anti-corruption strategies have so far been a popular response by governments to wide-spread corruption in many countries. The results have, however, been mixed. This U4 Brief argues that States Parties to the UN Convention against Corruption (UNCAC) should have a strategic vision when they “develop and implement or maintain effective, coordinated anti-corruption policies” as Article 5 stipulates. The authors also argue that anti-corruption policies may be conducted in many different ways, and they are not limited to anti-corruption strategies alone.

Coordinated anti-corruption policies as a gateway for implementing UNCAC

The United Nations Convention against Corruption (UNCAC) has been recognised as a reference framework for the fight against corruption, unique because of its comprehensive coverage based on a common understanding among a broad range of States Parties. While it provides new avenues and guidance for national policies and anti-corruption measures, it also poses considerable new challenges: for instance the temptation to undertake too many anti-corruption measures at the same time.

Providing guidance for national anti-corruption approaches as well as for UNCAC implementation itself, Article 5 (1) of UNCAC stipulates, that “*Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.*”

The article reflects the conviction of the States Parties that anti-corruption measures should be embedded in coordinated policies instead of being carried out in isolation or an ad hoc manner. It also recognises that anti-corruption approaches cannot be confined to technocratic solutions only, but acknowledges the inherently political nature of anti-corruption work. Article 5 notably reinforces the spirit of the Convention in preventing and combating corruption – not as an end in itself, but to promote integrity and accountability as well as the proper management of public affairs. Therefore, national anti-corruption policies face the challenge not only of building bridges between

“Article 5 notably reinforces the spirit of the Convention in preventing and combating corruption – not as an end in itself, but to promote integrity and accountability as well as the proper management of public affairs.”



by Karen Hussmann
karen.hussmann@gmail.com
and
Hannes Hechler, U4/CMI
hannes.hechler@cmi.no
Download this brief from
www.U4.no/themes/uncac

the realms of corruption prevention and law enforcement, but also of linking them adequately to other policies and reforms aimed at strengthening the country’s governance systems. As a fundamental preventive provision, Article 5 puts emphasis on a strategic approach, and is a gateway for the implementation of the UNCAC provisions as a whole.

Against this background, the U4 Anti-Corruption Resource Centre found it relevant to study experiences from existing anti-corruption policy frameworks and to analyse what can be learnt from them. From among the various forms that anti-corruption policy frameworks can take, U4 explored in detail the experience of six countries (Georgia, Indonesia, Nicaragua, Pakistan, Tanzania, and Zambia) which have pursued explicit national anti-corruption policies or strategies.

The main objectives were to examine how countries have so far grappled with the challenges of anti-corruption policy making and implementation, to analyse from a public policy perspective what this experience can tell us, and to identify issues for consideration in future policy making, both for States Parties and for development partners (with ‘development partners’ we refer to donor agencies).

Challenges of anti-corruption policy making

Anti-corruption policy making is not a highly rational process with static goals in which technocrats have the control to achieve predicted or stated outcomes. While this applies to other fields of public policies as well, anti-corruption policies are a particularly complex undertaking as they cut across different sectors and multiple institutions of a country's governance system. These policies are usually created by a variety of actors with multiple, often conflicting and at times changing political objectives and they can complement, strengthen, or compete with each other.

Also, contrary to a common belief, anti-corruption policy making does not follow a linear model where implementation is conceived as simply putting government documents into practice. Conversely, policy processes are dynamic interactions with multiple feedback loops permeated by politics and power issues that influence or even dominate technocratic approaches. Hence, interactions between reformers and opponents, who fear for restrictions of their vested (illicit) interests and (access to) power, create unforeseen consequences for the policy objectives and require adjustments and corrective measures throughout the implementation process.

It is important to note that the provisions of UNCAC are often pursued through a series of cross-cutting policies under the auspices of different ministries and other public agencies. During the political cycle of a government, these policies move up and down in importance on the political agenda depending on the priorities of the moment, the leadership of the responsible institution, and other factors of the political environment.

Different types of anti-corruption policy frameworks

Every country faces the challenges and risks associated with the phenomenon of corruption. However, the ways in which corruption creeps into and reproduces itself in a given society and political system vary widely, as do the ways in which governments choose to deal with corruption. Nevertheless, a series of distinct approaches with common features can be identified:

Some countries have chosen to develop explicit broad national strategies – some of which contain hundreds of administrative and legal measures – while others pursue more selective policies focused on improving integrity, ethics, and transparency, as well as accountability in a variety of key areas of the public administration. Other countries have opted for embedding anti-corruption measures in broader public sector reforms, which is particularly the case in the early stages of post-conflict reconstruction. Further, certain countries set out on legislative transparency and anti-corruption agendas aimed at improving systemic weaknesses in their legal infrastructure while implementation is largely left to existing institutions. Others used such a legislative approach to achieve compliance with international treaties, for example the EU accession criteria. Clear demarcation lines between these approaches are difficult to establish, and in practice it is quite common to find a combination of such approaches.

Experience with national anti-corruption strategies

As mentioned before, the U4 report *'Anti-Corruption Policy Making in Practice'* analysed in detail the experience of six countries with national anti-corruption strategies. Although the findings cannot be generalised, presumably they are also relevant for other countries with similar experiences.

As to the main findings, it is noteworthy that the political response to perceived widespread corruption in most of the countries studied consisted in the development of a broad national anti-corruption policy or strategy. In most countries this approach has not been overly successful for a variety of reasons, amongst which the following merit special attention:

- **Not enough attention has been given to the political dimension of anti-corruption policies:** In particular, the high-level political will which often gave birth to anti-corruption strategies, could not be maintained throughout the whole governmental cycle, not to speak of continuation into the terms of new governments.
- **Those supposed to implement do not 'own' the strategies:** The high-level leadership of ministries and public agencies which have to implement the lion's share of the measures contained in anti-corruption policies and strategies did not participate actively in their design. Political agreements and committed buy-in were weak.
- **The tension between comprehensive versus targeted approaches remains unresolved:** Most anti-corruption strategies were not strategic. They did not set priorities, nor did they consider a sequenced roll-out across agencies, which would have allowed for pilot testing and for keeping in line with capacities and resources.
- **The coordinating agencies often lack authority:** The public agencies charged with the coordination and monitoring of anti-corruption strategies usually did not have the authority, political backing and capacity to encourage or compel powerful line ministries to implement envisioned measures and to report on progress.
- **Absence of technical advice and mentoring:** Public agencies that have to implement anti-corruption measures frequently did not have the required capacities to integrate these measures into their daily business operations, and anti-corruption lead agencies often lacked the capacity to remedy this situation.
- **Monitoring and evaluation has been almost entirely ignored:** Self-assessments did not bring results and "external" reviews of progress, e.g. by parliaments, research institutes and universities, had often not even been planned.
- **Lack of information and communication with stakeholders:** The lack of information for – and communication with – implementing agencies, political actors, the media, and the public continuously hindered the creation of a sustained political debate which, in turn, could have created political pressure to move anti-corruption policies forward.
- **The role of development partners has been problematic:** Although important support was provided, development partners often failed to help partner countries creatively to remedy the above mentioned shortcomings. They also often lack sufficient

senior expertise on the ground to help identify alternative avenues and provide appropriate guidance.

These main findings do not suggest that there are no serious players in each country studied who firmly believe in the need and usefulness of anti-corruption strategies and who actively engage in the fight against corruption. They do indicate, however, that anti-corruption strategies in their current form are easily derailed from their original track into overly ambitious and unmanageable undertakings. The analysis of some key features of policy making can provide some insights into why this happens:

With regard to **national ownership**, anti-corruption policies and strategies are indeed based on initial political will and clearly pursue political objectives. However, these objectives tend to be concentrated on strengthening the government's power base and maintaining the status quo. Also, while democratic processes have had positive effects for the public to voice demand for anti-corruption policies, the lack of mechanisms for continuing participation throughout the full policy cycle impedes the effectiveness of these anti-corruption efforts.

In their **content**, most of the anti-corruption strategies which were studied, focus on norms and institutions – with a limited regard for performance and results. The notable mismatch between the political nature of the problem and the technocratic solutions is likely to result in superficial interventions. In addition, envisioned solutions are not based on adequate diagnostics of what causes the problems. In fact, diagnostics are often entirely lacking. Furthermore, integration with other core governance policies and reforms takes place on paper, but not in practice. Finally, addressing corruption risks in development aid has so far not been part of national anti-corruption strategies.

In terms of **implementation, coordination and monitoring**, it is particularly worrisome to note that this crucial phase of the policy cycle does not receive sufficient political and operational attention. Leadership and oversight are often characterised by a mismatch between limited institutional capacities and too ambitious objectives. Also, it is not clear how an approach of self-reform through self-assessment is supposed to work, in particular when taking into account that institutions in general tend to resist change. Last but not least, the lack of meaningful participatory monitoring and evaluation seems to convert anti-corruption policies into paper tigers.

The **role of international anti-corruption treaties** should also be considered: while they have certainly served as catalysts for legal reform, too little attention has so far been paid to the challenges of implementation. This applies both to avoiding the distortion of regulations implementing these treaties, and to putting them effectively into practice.

Implications for UNCAC implementation

Regarding implementation, there are implications to be derived from the U4 Report which are relevant for a variety of actors including governments, parliaments, civil society organisations, media, and development partners. However, this Brief focuses particularly on States Parties eligible to receive technical assistance for UNCAC implementation, and on the donor agencies which provide such assistance. With this focus, U4 aims to make a specific contribution to bring the demand and supply of technical assistance for UNCAC implementation closer together.

Considerations for State Parties

First of all, it seems of great importance that States Parties recognise the need to build high-level political agreements and achieve a national consensus in order to develop a strategic vision about how to fight corruption. The challenge lies specifically in making an anti-corruption policy framework “strategic” rather than elaborating long wish lists. For this purpose, it is also important to acknowledge that there are no ready-made or definite solutions, but rather pertinent questions for States Parties to consider when they set out to design their anti-corruption policy framework, such as:

- Is a single anti-corruption strategy feasible and desirable, or should an alternative approach for coordinated policies be chosen? What conditions influence the choice?
- Would the integration of an explicit anti-corruption dimension into government core policies and reforms be a viable option?
- Can sectoral approaches be an alternative? If so, under what conditions? Would they complement or substitute an overarching national approach?
- How can appropriate prioritisation and sequencing be achieved? How can a balance be struck between national roll-outs and pilot-testing?
- Can monitoring of ongoing policies and reforms from an anti-corruption perspective help to fight corruption? How can public sector reforms be matched with (constructive) demand from civil society, the business sector, media, and academia?
- What kind of institutional arrangement for implementation and coordination is necessary for the approach chosen?
- What kind of political agreement is needed for the chosen option(s)? How can anti-corruption issues be turned into state policies that ideally survive more than one government cycle?

No matter what form the anti-corruption policy framework may take, results from the U4 report suggest that States Parties may want to consider more modest goals and objectives, clearer implementation arrangements, stronger monitoring, and concrete prioritisation of issues, in particular those that constitute battles which can be won in the short to medium term (e.g. service delivery in key areas).

Finally, fighting corruption by directly addressing it may not be the most suitable approach in all contexts. Instead, the question arises as to whether an approach that concentrates on widely accepted antidotes to corruption, such as transparency and accountability, might be more promising. Therefore, States Parties should consider whether to formulate a “negative”, that is anti-corruption, approach, or a “positive”, that is pro-integrity or transparency, approach.

Considerations for the provision of technical assistance by development partners

For development partners, there is a series of issues to consider when designing support and deciding whether to assist States Parties with UNCAC implementation, particularly in relation to Article 5:

- First and foremost, they should use and promote UNCAC as a binding legal and political international commitment to foster good governance.

- They should recognise Article 5 as the “gateway” for the implementation of UNCAC, but not as an automatic obligation to develop one single national anti-corruption strategy. They should help States Parties to identify different options for coordinated policy frameworks and provide experience-based information about their advantages and disadvantages.
- Development partners need to make every effort to strengthen the links between anti-corruption and governance reforms. This also entails overcoming certain “silo” visions that continue to persist within sectoral approaches, as well as with sector experts. Integrating specific anti-corruption components into core reforms is key, as well as continuing training and mentoring of sector specialists in anti-corruption approaches.
- In the countries where they operate, development partners should promote an open and transparent dialogue between themselves and the government, parliament, and non-state actors.
- They should increase knowledge and understanding of corrupt practices and their forms, manifestations and dynamics. Such information should be disseminated widely and made accessible to the public.
- Development partners should invest much more in fostering effective monitoring and evaluation of anti-corruption policies, of both state and non-state actors such as parliaments, universities and civil society organisations. This particularly important area would entail the less attractive, but highly relevant issue of strengthening national information management systems. It would also entail supporting more creatively the production of non-state monitoring and evaluation materials.
- Despite progressing with coordination at headquarter level, especially within the OECD-DAC, development partners should make greater efforts to bring their actions at country level more in line with OECD-DAC agreements, in particular with regard to mutual accountability, donor coordination, harmonisation of aid and particularly their joint “Principles for Donor Action in Anti-Corruption”.
- Finally, development partners should review their collective reaction when partner governments do not live up to mutual agreements. In particular, the often portrayed dilemma of having to choose between no-tolerance to corruption and the pursuit of “bigger goals” such as poverty reduction, needs to be questioned since there is room for pragmatic “grey zone” approaches which would avoid an “either-or” answer.

Conclusion

By way of concluding, it must be cautioned against the applicability of one and the same approach to implementing Article 5 of UNCAC in all countries around the globe. Countries with different degrees of institutional capacity and diverse political contexts and social backgrounds will require and may want to choose different modalities. In addition, interpreting “effective and coordinated anti-corruption policies” as a need for a single anti-corruption strategy, certainly constitutes one option, but there are several more. Last but not least, State Parties – with the support of development partners, if necessary and desired – should consider pursuing anti-corruption work with effective modest targets instead of ambitious but unfeasible promises.

References

- Hussmann, K. (ed.) (2007): U4 Report – Anti-Corruption Making in Practice: What can be learned for the implementation of Article 5 of UNCAC? www.u4.no/themes/uncac
- Campos, J.E. & Pradhan, S. (2006), “The many faces of corruption – Tracking vulnerabilities at the sector level”, World Bank, Washington D.C., USA.
- Doig, A., Watt, D. & Williams, R. (2005), “Measuring success in five African anti-corruption commissions – the cases of Ghana, Malawi, Tanzania, Uganda & Zambia”, U4 Anti-Corruption Research Centre, Norway. www.u4.no/themes/aacc
- Meagher, P. (2005), “Anti-corruption agencies: Rhetoric versus reality”, *The Journal of Policy Reform*, Vol. 8, No.1, pp.69-103.
- Michael, B. (2004), “The rapid rise of the anti-corruption industry”, in *Local Governance Brief*, Spring 2004, Open Society Institute, Budapest, Hungary.
- OECD-DAC (2007), “Principles for Donor Action in Anti-Corruption” www.oecd.org/dataoecd/8/54/35901020.pdf
- OSI – Open Society Institute (2002), “Monitoring the EU accession process: corruption and anti-corruption policy”, EU Accession Monitoring Programme, www.eumap.org
- Shah, A. & Schachter, M. (2004), “Combating corruption: look before you leap”, Finance & Development.
- Smilov, D. (2006), “Anti-corruption commissions and agencies in South East Europe”, ISCTE, Lisbon, Portugal.
- Steves, F. & Rousso, A. (2003), “Anti-corruption programmes in post-communist transition countries and changes in business environments, 1999-2002”, Working Paper No. 85, World Bank, Washington D.C., USA.
- Tiri (2007) “Integrity in reconstruction project”, www.tiri.org
- U4 Brief (2007), “Rethinking governance to fight corruption”, by Sue Unsworth, www.u4.no/themes/private-sector
- UNDP (2005), “Institutional arrangements to combat corruption – a comparative study”, Regional Centre in Bangkok, Thailand.