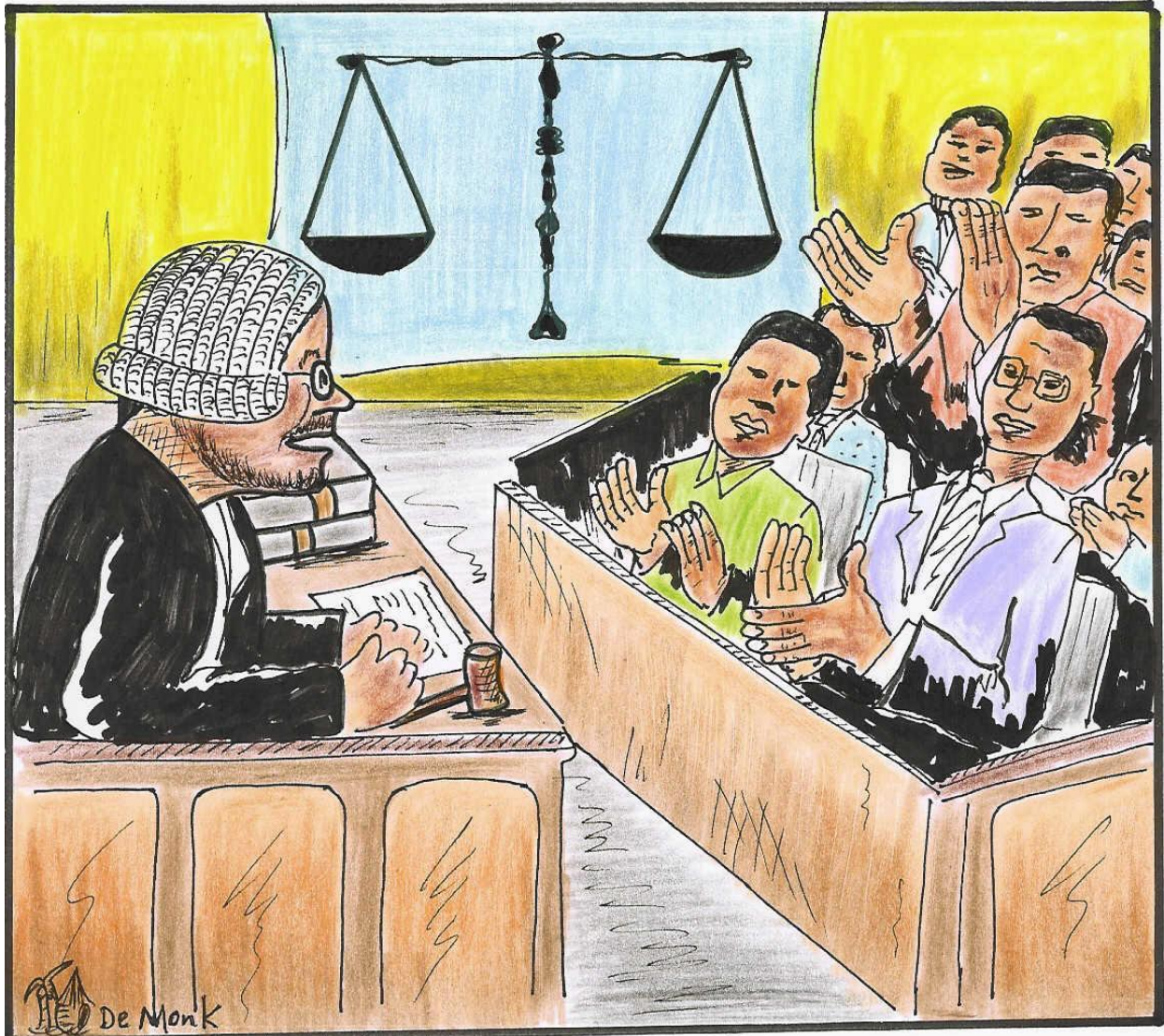


TRANSPARENCY INTERNATIONAL SIERRA LEONE
HANDBOOK
ON
THE UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)



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PREFACE

Over the years in Sierra Leone, civil society has played a very active role as an agent to facilitate political change at national and local levels. This has been evident in the role civil society played in ensuring the reintroduction of the local governance system and the review of the 2000 Anti-Corruption Act. The fight against is the “people’s fight” therefore all stakeholders must come onboard to ensure that there are adequate and effective laws that captures provisions in international anti-corruption convention so that Sierra Leoneans will succeed in the fight against corruption. It is against this backdrop that transparency International Sierra Leone seeks to engage civil society groups, the media, and accountability institutions as key stakeholder in the advancement of the Conventions on Corruption in Sierra Leone.

It is hoped that this book would serve as an impetus to encourage Civil Society Organizations, the Media, Traditional Rulers, Religious Leaders, Parliamentarians and Accountability Institutions to ensure that the Africa Union Convention on Preventing and Combating Corruption and Related Offences could be ratified and the United Nations Convention against Corruption be fully domesticated and effectively implemented in Sierra Leone.

Apart from providing in-depth information about the Conventions on Corruption, the handbook would hopefully encourage active civil society advocacy, and lobbying to ensure that the government and other relevant stakeholders commit themselves to the ratification and implementation of the AU and UN Conventions and consequently, the Anti-Corruption Campaign.

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CHAPTER ONE

GENERAL OVERVIEW OF CORRUPTION

What is Corruption?

Corruption includes a wide range of offences from the higher level of embezzlement of public funds to the demand, giving and taking of bribe between public officials and private business people.

According to Transparency International (TI) Corruption is defined as **‘The abuse of entrusted power for private gain’**.

Who can be Corrupt?

The corrupt act (the abuse) may be perpetrated by a person in a decision making position in the public or private sectors, it may be initiated by a person attempting to influence the decision-making process.

- Thus, a public official or any person in a position to take or give a bribe for carrying out any service can be corrupt.
- Any person who diverts the use or ownership of property (e.g. government vehicle, public funds or buildings)
- Any person who takes undue advantage such as giving or accepting gift in cash or kind for the award of a contract, tender or provision of services.

Forms of Corruption

- Bribery
- Embezzlement
- Extortion
- Interest peddling
- Fraud
- Illicit enrichment
- Laundering of the proceeds of Corruption, aiding Corruption and obstructing justice are also offences relating directly or indirectly to Corruption.

Situations That Give Rise to Corruption

- Weak institutions and structures.
- Poor ethical standards
- Skewed incentives
- Insufficient enforcement of laws and policies.

EFFECTS OF CORRUPTION

When Corruption is widespread in a country, the adverse effect is felt in different ways by many e.g. Business people, school teacher, hospital patients, etc. below are some of the effect of corruption.

1. Undermines Democracy and Good Governance

- Poses serious threats to the stability and security of the nation
- Undermines institutions and values of democracy, ethical values and justice
- Lead to electoral malpractice such as, buying citizens votes in elections and offering favors to influence political parties.
- Buying the vote of parliamentarian's representatives on matters such as taxation, distribution of public resources, regulation of business etc.
- People who are skilled, honest and able remain unemployed, while those who are dishonest or connected have jobs.

2. Causes Poverty and efforts to alleviate it

- The poor are affected most because they are the most vulnerable. These include women, children, and the elderly and physically challenged.
- Rule made to ensure fairness and efficiency is circumvented by one person or a small group who illicitly benefits at the expenses of the larger community.
- Violates human and social rights of people by destroying rendering effective and political instructions and processes.
- Undermining the independence of the judiciary and law enforcement bodies.
- Denies equitable access to public services such as health, education, etc.
- Acts as obstacles in the way of earning a decent and honest livelihood in the public and private sectors.

3. Undermines Economic Development

- Distorts public spending
- Undermines efficiency
- Discourage investment and growth
- Undermines economic competition
- Increases the costs of business
- Corruption in Civil Services promotions led in less qualified people making decisions and controlling the use of resources.

Corrupt Offences as Prescribed in the Reviewed Anti-Corruption Act of 2008

1. Corrupt acquisition of wealth
2. Possession of unexplained wealth
3. Offering, soliciting or accepting advantage
4. Using influence for contracts
5. Influencing a public officer
6. Peddling influence
7. Bid rigging
8. Corrupting public officer
9. Bribery of or by public officer to influence decision of public body
10. Soliciting, accepting or obtaining advantage for public officer
11. Misappropriation of public funds or property
12. Misappropriation of donor funds or property
13. Impeding investment
14. Corrupt transactions with agents
15. Deceiving principal
16. Accepting advantage to protect offender from legal proceedings
17. Abuse of office
18. Abuse of position
19. Public officer using his office for advantage
20. Conflict of interest
21. Treating of public officer
22. Receiving of gift for a corrupt purpose
23. Protection of public property and revenue etc

CHAPTER TWO

CORRUPTION AS A CROSS-BORDER ISSUE

Corruption is a Cross-Border concern because of the following reasons:

- States are interconnected through trade, investment, financial transaction and communication. Therefore Corruption in one country affects the other because it interferes with trade and investment opportunities.
- It may lead to misuse of international development assistance.
- Corruption networks based in one country also operates abroad allowing corruption to spread to other countries.
- The proceeds of corruption are concealed laundering funds across borders E.g. deposit in foreign banks, cross border.
- Individual involved in corruption may escape law enforcements by moving from the country where investigation or prosecutions are taking place or where a country judgment has been handled down.
- Governments may be prevented from investigating or prosecuting corrupt persons in cases where evidence, witness or corrupt persons are located abroad.

Why do we need International Cooperation and Intervention?

- Corruption must be addressed on an international basis.
- Cross border cooperation is essential for prevention, detection and prosecution of Corruption.
- When the proceeds of corruption are located abroad, the assistance of foreign institutions is needed in order to recover funds or property.

How can individual countries counter Corruption?

Countries require a comprehensive and global approach. National and international system of Transparency and Accountability must be strengthened, which includes the following:

- A. Preventive measures are meant to create conditions that promote good, honest, transparent and efficient public management as well as high standards in the private sector.
- B. Punitive Measures- These are meant to punish corrupt actions through judicial or administrative process.

Individual countries can make progress in countering corruption in their countries by introducing preventive and punitive measures. However, due to the international nature of corruption countries need to cooperate in order to succeed or make lasting results.

The Conventions against Corruption provides a framework for strengthening preventive and punitive measure. They also address the need for an international legal framework for technical assistance.

What are the Conventions against Corruption?

- They are the manifestations of an international consensus that emerged in the 1990s, identifying corruption as an important problem needing to be address and in particular, requiring internationally agreed solution.
- The consensus is further strengthened when the conventions are signed by a significant number of governments in those assemblies.
- They become binding when a predetermined number of countries ratify them.
- They are standards and requirements in the prevention, detection, investigation, and sanctioning of acts of corruption.
- The anti-corruption measures require by the convention must be implemented through legislation, regulations, policies and practices.
- The Conventions discussed here is the United Nations Conventions Against Corruption (UNCAC).

CHAPTER THREE

THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

What is UNCAC?

- An acronym: United Nations Convention against Corruption.
- Adopted by the General Assembly resolution 58/4 of 31st October 2003.
- With this adoption, the Convention came into force on 14th December 2005.
- To date over 122 countries have signed up to the Convention; Sierra Leone signed up in 2005.
- The UNODC is the guardian of the Convention and Secretariat to the Conference of State Parties.
- The Convention requires the establishment of a range of offences associated with corruption and devotes a separate chapter to its prevention.
- It also attaches importance to strengthening international cooperation to combat corruption.
- It also makes provisions for asset recovery as well as technical assistance and implementation.

Contents of the UNCAC – The Statute

The Statute has 8 chapters with a total of 71 Articles. The chapters include the following:

- **Chapter 1:** General provisions
- **Chapter 2:** Preventive measures
- **Chapter 3:** Criminalization and Law Enforcement
- **Chapter 4:** International Cooperation
- **Chapter 5 :** Asset Recovery
- **Chapter 6:** Technical Assistance and information Exchange.
- **Chapter 7 :** Mechanism for implementation
- **Chapter 8:** Final Provisions.

The Main Features of the UNCAC.

- It introduce a comprehensive set of standards, measures and rules that all countries can apply in order to strengthen their legal and regulatory regimes to fight Corruption.
- It makes a major breakthrough by member states to return assets obtained through corruption to the country from which they were stolen.
- The UNCAC is unique among other anti-corruption conventions not only because of its global outlook but also in the specificity of its provision.
- A very important aspect of the UNCAC is that it employs a very broad definition of the term “public official”, which includes any person holding a legislative, executive, administrative or judicial office of the state or performing a public international function or service.
- It covers officials of public international organizations and requires punitive measure for those who bribe them.

The Critical Documents in the Implementation of the UNCAC

1. The Technical Guide:

This is designed to promote implementation by highlighting policy issues, institutional aspects and operational frameworks related to the full and effective implementation of the Convention; it focuses on the tools and examples of good practices.

2. The Legislative Guide:

This is prepared mainly for use by legislators and policy makers in states preparing themselves for the ratification and implementation of the Convention.

However it is important to note that both documents complement each other.

Benefits of the Guides

- The Guides provide a consultative framework for national authorities that need to acquire a full understanding of the provisions of the Convention.
- They can be used as helpful basis for more comprehensive technical assistance covering a range of policy and institutional challenges that need to be addressed for full implementation.
- Could jointly be used as part of a comprehensive package of tools aimed at enhancing the knowledge and capacity of stakeholders like anti-corruption agencies, criminal justice and law enforcement agencies.

CHAPTER FOUR

REQUIREMENTS OF THE CONVENTIONS

A). Ratification

- To become a party to a convention, and be bound by its requirements when it enters into force, a state must express its consent to be bound by ratification or accession to the convention.
- The procedures for this are usually laid down under the nation laws and often approved by a national legislative body.
- Sometimes publication in an official gazette is as part of the process.
- Sometimes state ratify Convention with reservations, which means that there are often articles in the instrument that are non-applicable or non-binding in their case.
- The final step in the ratification or accession is generally for the government of the country ratifying it to deposit the instrument to be ratified to an office or institution designated in treaty.

B). Accession

This is the act whereby a state accepts the opportunity to become a party to a treaty already negotiated and signed by other states. It usually occurs after the treat has entered into force.

C). Entry into Force:

A convention applies to a country that has ratified it only once it enters into force, which depends on ratification by a minimum number of states.

For the UNCAC, the 30th ratification was deposited on 15th September 2005 and it entered into force 90 days later on the 14th December 2005.

The 15 ratification required for entry into force of the AU Convention were reached in 2006 and entered into force 30 days later.

CHAPTER FIVE

THE UNCAC REVIEW MECHANISM

Since its entry into force in 2005, the UNCAC has become a rallying point across the world for efforts to combat corruption. It provides a comprehensive framework to address corruption. In 2009, the CoSP to the UNCAC adopted resolution 3/1 entitled “Review Mechanism”. It empowers the CoSP to establish any appropriate mechanism or body to assist in the effective implementation of the Convention.

State parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and non-intervention in the domestic affairs of other States.

Guiding Principles of the Review Mechanism

- Be transparent, efficient, non-intrusive, inclusive and impartial.
- Not produce any form of ranking
- Provide opportunities to share good practices and challenges.
- Be an intergovernmental process
- Not serve as an instrument for interfering in the domestic affairs of States parties
- Be conducted in a non political and non selective manner.
- Take into account the levels of development of State parties, as well as the diversity of judicial, legal, political, economic and differences in legal traditions.

Aims, Objectives and Relevance of the Review

The main aim of the review is to assist state parties in their implementation of the convention.

The review is relevant because of the following reasons.

- It promotes the purposes of the Convention as set out in its articles.
- It Provides the CoSP with information on measures taken by states in implementation and the difficulties encountered.
- It helps to identify and substantiate specific needs for technical
- It Promotes and facilitate international cooperation, the prevention and fight against corruption and asset recovery.
- It Provides the Conference with information on successes, good practices and challenges of implementation.

CHAPTER SIX

THE DOMESTICATION OF THE CONVENTION – THE ROLE OF CIVIL SOCIETY

It is now widely accepted that measures to address corruption are essential to establishing and maintaining the most fundamental good governance structures, including domestic and regional security, the rule of law and social and economic structures.

Sierra Leone signed and ratified the UNCAC in 2005, because its legislation was not consistent with the convention requirements. As a result the Anti-Corruption law was revised in 2008 to capture some of the provisions of the UNCAC. However more needs to be done to ensure the full domestication and effective implementation of the UNCAC.

That notwithstanding, there is no significant public awareness of the UNCAC and its provisions. Moreover there are little or no lobbying efforts by civil society for the full domestication and effective implementation of the UNCAC.

Article 12 of the African Union Convention provides for the States to ensure that civil society and the media are fully engaged in the fight against corruption and the popularization of Anti-Corruption Conventions. They should embark on a rigorous public sensitization campaign to facilitate and ensure government's commitment to the effective implementation of the UNCAC through an effective advocacy and lobbying programs.

Therefore, the role civil society can play in promoting the full domestication and implementation of the UNCAC are as follows:

- Draw public attention to the Convention and to the fact that countries that have ratified it are now bound by it.
- Launch campaign at both national and international levels to promote ratification and implementation.
- Conduct independent monitoring the implementation of the UNCAC and ensuring that it is high on government's agenda
- Lobby government to make implementation a priority.

Transparency International Sierra Leone, formerly the National Accountability Group is a local non-profit, non-governmental anti-corruption advocacy civil society organization established as a taskforce in 2001. In July 2004, TISL formerly NAG was reorganized as an independent organization with a mandate to achieve greater accountability, transparency and integrity in private and public affairs. Its work is dedicated to curb corruption by holding local and national governments and public duty bearers accountable to the people of Sierra Leone.

After serving as a local chapter in the formation and completing a Self Assessment of TI for Full Chapter status, TISL was granted Full Accreditation by TI Secretariat as the Local Chapter in Sierra Leone. This has led to the change of name and logo in April 2011