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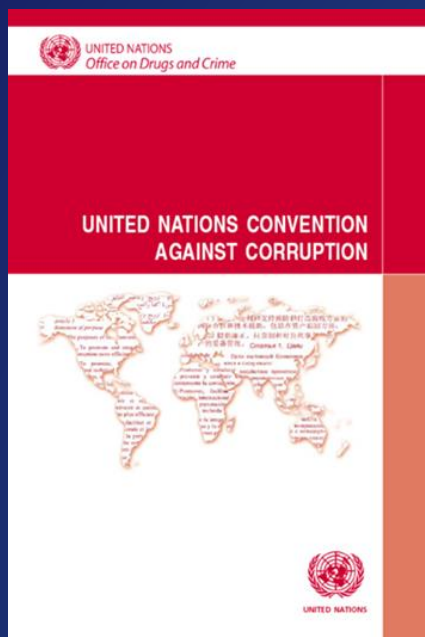
United Nations Office on Drugs and Crime

Regional Office for Southeast Asia and the Pacific

UNCAC

Consequences of Corruption

Compensation of Damages



Article 34. Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party **shall take** measures, [...], to address consequences of corruption.

States Parties may consider corruption a relevant factor in legal proceedings to **annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.**

UNCAC Reviews

Corruption is a factor in the annulment or rescindment of contracts or the withdrawal of concessions or similar instruments in the large majority of countries, (BUT - not much in SEA)

How is this regulated?

- Contract law principles in common law or civil codes
- Regulated by special provisions of various administrative decrees, anti-corruption acts, public procurement laws concession acts
- In the Criminal code

- Commonly: application of general (either common-law or civil code) **principles of contractual law**
- permit annulment or rescission of a contract **involving mala fides** (bad faith or fraudulent misrepresentation)-**bribery, corruption**, on the part of at least one of the contractual parties;
- The aggrieved party and persons with a **legitimate interest** may challenge the relevant contract

Regulated by **criminal law provisions**: in the penal code or the code of criminal procedure.

- Provide for the possibility of restitution, returning things to their previous state, restoring an earlier right, **annulling certain transactions or repairing the civil consequences** and damages of corruption, usually based on an order contained in the sentence issued after a criminal conviction.
- An annulment of the contract, concession or other legal instrument is considered part of reparation of damages.

Other types of remedial actions (beyond the rescission of contracts and restitutions)

- Blacklisting
- Withdrawal of subsidies, administrative licenses or authorizations
- Confiscation of funds, securities, or other assets acquired through a corrupt transaction
- The recovery of retirement funds and other entitlements based on the notion that an employee convicted of a corruption offence has failed to fulfil his or her contractual duties.

Common Recommendations

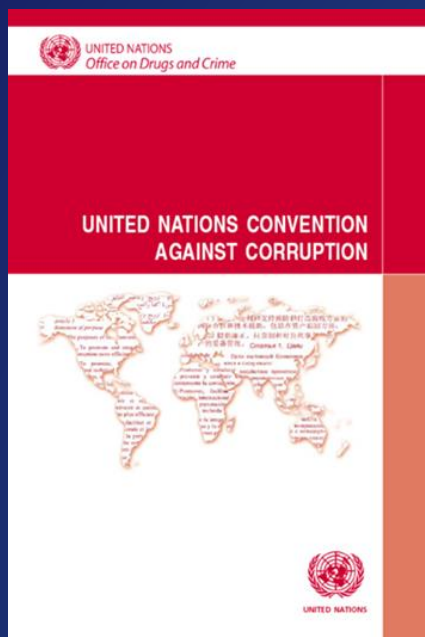
- include more detailed provisions in such regulations on **making corruption a relevant factor** in the annulment or rescission of a contract or **the withdrawal of a concession**, and to clearly delineate the applicable criteria;
- introduce regulations on concessions or additional remedial measures beyond rescission of contract (debarment – blacklisting)
- consider adopting measures to address the **consequences of corruption in the private sector.**

Good practices:

- Consider as *ab initio* void a **contract whose object is illegal** or contradicts public order or good morals: contract will be void if the corrupt act has substantially influenced the content of the contract, or if the object of the contract is the corrupt transaction itself
- include **standard clauses in government contracts** to allow the Government to rescind contracts, withdraw licenses and take other, similar remedies **where corruption or criminal conduct has occurred.**

Good practices

- **Public procurement law:** no contract for public procurement or concession is concluded and, if concluded, deemed invalid or void, in case of **nonconformity of the candidates** (owing to a previous conviction for a corruption offence).
- **comptroller general of the State**, verifies whether administrative acts comply with the law and principles of probity, transparency, openness, equality, free competition of bidders. If these provisions or principles are found to have been violated, **the comptroller general proceeds to invalidate them.**



Article 35. Compensation for damage

Each State Party **shall** take measures [...], to ensure **that entities or persons** who have suffered damage as a result of an act of corruption have the **right to initiate legal proceedings** against those responsible for that damage in order to obtain compensation.

Who may be found liable

Any person (natural – legal)

The public administration: for damages as a result of an act of corruption by a public official, along with the culpable person.

Its is not a defense **if the perpetrator was not aware of the specific damage** to specific claimants' interests

Filing a complaint

- The regular path > civil proceedings before a civil court against the offender.
- In many cases, the victims can seek redress both through by filing **a civil claim in the context of criminal proceedings** if the damage was a direct personal and immediate consequence of the crime.
- **A criminal conviction is not a precondition** to the commencement of such proceedings by a victim seeking compensation from an alleged wrongdoer, and the **award of civil damages does not preclude the application of criminal penalties.**

Compensation orders : not compliant with art 35

- In some States the national law **gives the criminal court**, the option to order the compensation of the victim or restitution for reasonable and verified losses
- This “**compensation order**” is a form of punishment issued at the discretion of the court, either on its own initiative or following an application by the public prosecutor. It does not, however, necessarily give persons who have suffered damage the right to claim compensation from those responsible > this solution should be considered as insufficient for the purposes of the Convention.

Good Practices

Admissible for an **enterprise to be a civil party in a criminal procedure** when its bids are rejected because of the corruption of a public official by one of its competitors

a third party, outside the corruption agreement, can invoke the material and moral damage caused to it by the consequences of this criminal contract.

a civil claim for “social damages” may be brought by the office of the state (counsel general) in the case of offences affecting collective interests.

For more information:

www.unodc.org/corruption
www.track.unodc.org



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