



# UNODC

United Nations Office on Drugs and Crime

## United Nations Convention Against Corruption- ... a pictorial guide



This work is based on the United Nations Convention Against Corruption (UNCAC). An easy to understand, pictorial representation of the different provisions are meant for persons who are not well versed in the legal connotations of this convention. Readers are advised to access official version of the UNCAC for exact articles.

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## Cover page depiction

A giant octopus signifying corruption.

Tentacle 1 : Has captured the globe.

Tentacle 2 : Has captured National governments.

Tentacle 3 : Has captured all wealth (dollars, gold bars, bank buildings).

Tentacle 4 : Has captured and crushed law courts.

Tentacle 5 : Has crushed the poor people.

Tentacle 6 : Is seen stroking pirates, thieves who are laughing wildly.

Tentacle 7 : Is helping convicts escape to other countries with their loot.

Tentacle 8 : Is seen holding up law enforcement agencies.



UNITED NATIONS OFFICE ON DRUGS AND CRIME

**Regional Office for South Asia**

# United Nations Convention Against Corruption- ... a pictorial guide



**Message from the Representative  
UNODC, Regional Office for South Asia**

I am happy to share with you this pictorial guide on the United Nations Convention against Corruption (UNCAC). The United Nations Convention against Corruption entered into force in 2005. As of today, 165 countries are party to it. The Convention is a universal and legally binding document which introduces a comprehensive set of standards, measures and provisions, which – when applied – will strengthen the legal and regulatory regimes to prevent and counter corruption in the public and the private sector.

In the world, we live today, people are increasingly aware of the consequences of corruption and they would like to know what can be done. While the United Nations Convention against Corruption offers this comprehensive guidance, through the present visual guide, an attempt has been made to capture the essence of the UNCAC and some of its articles in a pictorial and “easy to understand” manner. The guide can be used by public officials and private sector employers and employees, who deal with anti-corruption in their professional life, by students who study related subjects, such as law and economics, as well as by the concerned citizen.

I do hope that with this guide UNODC can contribute to making the work against corruption a more informed one. I hope you enjoy reading this guide and look forward to receiving your feedback.

*Cristina Albertin*

**Cristina Albertin**

### **Disclaimer:**

The designations employed and the presentation of material in this publication do not imply the expression of any opinion whatsoever on the part of UNODC concerning the legal status of any country, territory or city or its authorities, or concerning the delimitation of its frontiers or boundaries.

This pictorial guide is prepared solely for the purpose of presenting a simplified version of UNCAC in a visualized way. The pictorial guide attempts to provide the gist of the main provisions through a combination of stories, text boxes and flow charts, so that the legal framework, institutional mechanism and expected deliverable are easy to understand for the average reader. The authors and publisher are not offering this book as legal or other professional service.

While best efforts have been made in preparing this book, keeping in mind the spirit and essence of the UNCAC, neither the authors nor the publisher shall be held liable or responsible to any person or entity with respect to any loss, incidental or consequential damages caused, directly or indirectly, by the information contained herein. Each circumstance is different and the advice and strategies contained herein may not be suitable for every situation. The stories, images, characters and entities used in this guide are fictional and used solely for representational purposes only. Any likeness to actual country, person/s, either living or dead, is purely coincidental.

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*"Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violation of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish"*



**Kofi Annan**  
Former Secretary General,  
United Nations  
2003

*The cost of corruption is measured not just in the billions of dollars of squandered or stolen government resources, but most poignantly in the absence of the hospitals, schools, clean water, roads and bridges that might have been built with that money and would have certainly changed the fortunes of families and communities. Corruption destroys opportunities and creates rampant inequalities. It undermines human rights and good governance, stifles economic growth and distorts markets.*



**Ban Ki-moon**  
Secretary General  
United Nations  
2012



## A few Milestones for UNCAC...

## [How it all began]



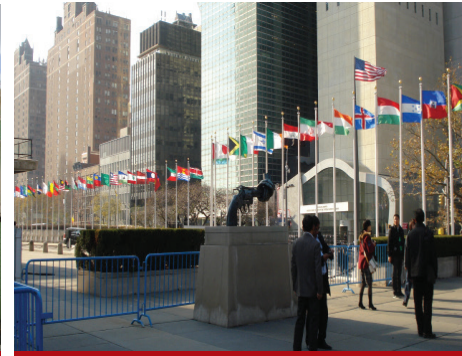
UNHQ, NYC (12 Dec 2003 to 9 Dec 2005)

UNCAC was adopted by the General Assembly on 31 Oct 2003 at UN HQ in New York.



Merida, Mexico (9-11 Dec 2003)

UNCAC was open to all States for signature. 140 States signed. In Dec 2005, the UNCAC entered into force.



Convention thrown open for accession.

Any State or Regional Economic Integration Organization can accede to the Convention anytime.



In 2008, the UNCAC was opened for amendment.

After 5 years, the UNCAC was opened for changes. No changes were proposed.



Many States have ratified the Convention over the years.

To date 165 States are party to it. India ratified UNCAC in 2011.



Amman, Jordan (10 to 14 December 2006)

First session of the Conference of the State Parties to the UNCAC.



(Nusa Dua, Indonesia,  
28 January-1 February 2008)

**Second session of the Conference of the State Parties to UNCAC**



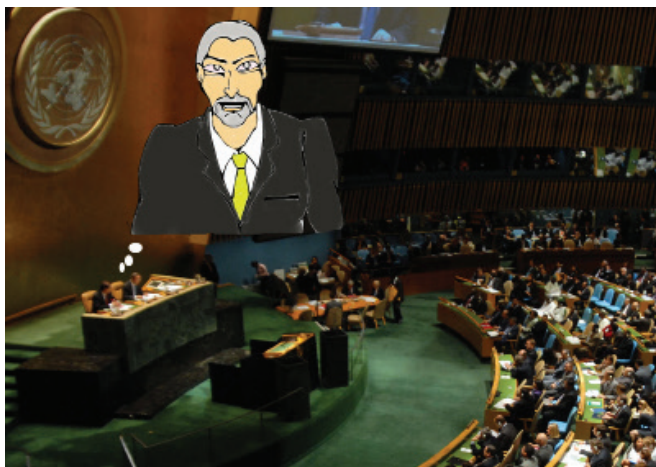
(Doha, Qatar  
9-13 November 2009)

**Third session of the Conference of the State Parties to UNCAC**



(Marrakech, Morocco  
24-28 October 2011)

**Fourth session of the Conference of the State Parties to UNCAC**



**The United Nations General Assembly passed the resolution to give effect to the United Nations Convention Against Corruption (UNCAC) with a view:**

*To promote and strengthen measures to prevent and combat corruption more efficiently and effectively.*

*To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery.*

*To promote integrity, accountability and proper management of public affairs and public property.*

## Understanding certain terms in UNCAC\*

### What is meant by 'signatory'?

When a country signs or becomes a signatory to a convention it implies that in principle it agrees to the provisions of the convention and for the moment has only an obligation to refrain, in good faith, from acts that are contrary or are against the objectives of the convention. The signature is usually followed by ratification.

### When a country ratifies, what does 'ratification' mean?

Ratification refers to when a country gives its consent to be legally bound by the provisions of the convention. The country first signs and then ratifies the treaty. Usually (but not always) ratification involves two distinct procedural steps. The first is related to the aligning its internal laws so that country can assume its international obligations enshrined in the international agreement. In the second step, the instrument of ratification, a formal sealed letter referring to the decision and signed by the State's responsible authority, is deposited with the United Nations. Countries that have ratified the convention are often referred to as 'Party' to the convention.

### What is 'Accession'?

Accession signifies an agreement to be legally bound by the terms of the Convention, but the procedures differ from ratification. In the case of ratification, the State first signs and then ratifies the treaty. The procedure for accession has only one step—it is not preceded by an act of signature. However, the legal consequences are still the same.

### What is Conference of State Parties?

Is a mechanism by which countries that are parties to the convention meet to discuss different issues and themes related to a particular convention. The objective is to improve the capacity of and cooperation between countries to achieve the objectives laid out in the convention and to promote and review its implementation.

\*The explanation provided for the above mentioned terms are not their legal definitions, as these terminologies often have legal interpretations. An attempt has been made to provide to the reader a simplified and common man's understanding.

**UNCAC briefly stated\* -The UNCAC contains 5 main sections - a summary of which is stated below:**

### **Preventive Measures**

An act of corruption can be criminalized but ideally it is prevented before it occurs. Prevention measures are required in both the public and private sectors but importantly preventing corruption requires an effort from all members of society at large.

### **Criminalization and Law Enforcement**

The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption in their domestic law, if these are not already covered in this section.

### **International Cooperation**

Countries agree to cooperate with one another in every aspect of the fight against corruption including prevention, investigation, and the prosecution of offenders. The UNCAC provides guidelines for this cooperation.

### **Asset Recovery**

The legitimate owner or requesting country shall enjoy the right to recover stolen assets or be compensated appropriately. It is a fundamental principle of the Convention.

### **Technical Assistance and Information Exchange**

Technical assistance and information exchange to facilitate those responsible for preventing and combating corruption.

#### **IMPORTANT**

**This book does not explain all the articles in the Convention, rather its purpose is to expose the reader to the broad provisions of the UNCAC. The reader is encouraged to refer to the official version of the UNCAC. In addition to these 5 sections, there is also a section on general provisions. Please find details at <http://www.unodc.org/unodc/en/treaties/cac/index.html> #UNCAC fulltext.**

*\* A concise list of articles at the end of the book segregates them into mandatory (M), optional (O) and obligation to implement if consistent with fundamental legal principles (C).*

## **Article 1**

### **Statement of Purpose**

The purposes of this convention are to prevent and combat corruption, facilitate international cooperation in fighting corruption and bring about integrity and accountability in public affairs.



## How does UNCAC apply to different stakeholders?



### UNITED NATIONS

#### **Role & Responsibilities**

Policy making  
Facilitating implementation  
Coordination among member states  
Monitoring implementation

#### **Link to UNCAC**

UN assists the Member States to become parties to the UNCAC and also implement its provisions.



### National Governments

#### **Role & Responsibilities**

Legislate for recognition, prevention, detection and punishment of corruption

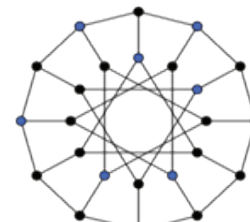
Executive government to implement anti-corruption laws

Effective judiciary for prosecution of offences

#### **Link to UNCAC**

Citizens and stakeholders expect rule of law and good governance. UNCAC provides countries with a legally binding, global anti-corruption instrument to achieve these.

UNCAC signatories should adopt at least mandatory provisions.



### Independent Bodies

#### **Role & Responsibilities**

Independent accountability bodies, investigating agencies, etc., have to ensure transparent and objective implementation of anti-corruption laws, rules and regulations.

#### **Link to UNCAC**

UNCAC provisions guide in the formulation of role of independent bodies.

## How does UNCAC apply to different stakeholders?



### **PUBLIC SECTOR**

#### **Role & Responsibilities**

Enabling adherence to anti-corruption procedures in public interest.

#### **Link to UNCAC**

UNCAC encourages corruption free ethical conduct of public sector officials thereby enabling benefits from public programmes to reach intended beneficiaries.



### **PRIVATE SECTOR**

#### **Role & Responsibilities**

Good corporate governance and ethical business practices.

#### **Link to UNCAC**

UNCAC criminalizes certain acts by the private sector, such as bribery and embezzlement, etc.

It also provides guidelines for preventing corruption in the private sector.



### **BANKS**

#### **Role & Responsibilities**

Assisting in detection and prevention of economic offences such as money laundering.

#### **Link to UNCAC**

UNCAC provides guidelines for drafting laws. It also provides for national and global cooperation to encourage vigilance in preventing money laundering and in detecting transfers of proceeds of crime and for ensuring greater banking transparency.



### **NGOs**

#### **Role & Responsibilities**

Helping anti-corruption governance by sensitizing people on issues and challenges.

#### **Link to UNCAC**

UNCAC provides guidance to NGOs to play a catalytic role in the society to ensure that rule of law prevails.



### **CIVIL SOCIETY**

#### **Role & Responsibilities**

Facilitating citizen interface with other stakeholders in the country and at international forum(s).  
Highlighting issues of public concern before the larger audience.

#### **Link to UNCAC**

UNCAC provides guidelines for civil society to play an informed role to encourage and enable citizens to voice their concerns for a corruption free governance.



### **CITIZENS**

#### **Role & Responsibilities**

Ultimate beneficiary of corruption free society. His/her intolerance to corruption is paramount.

#### **Link to UNCAC**

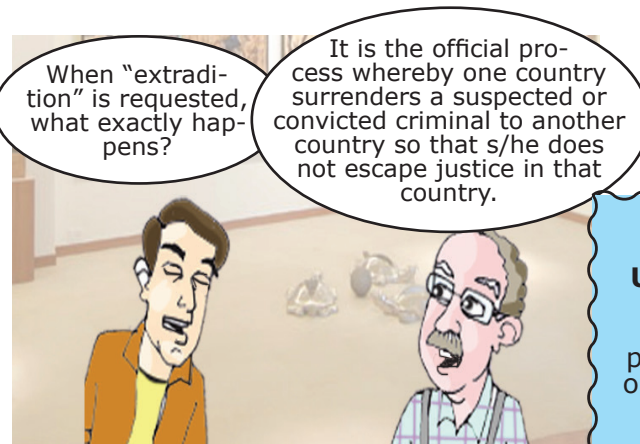
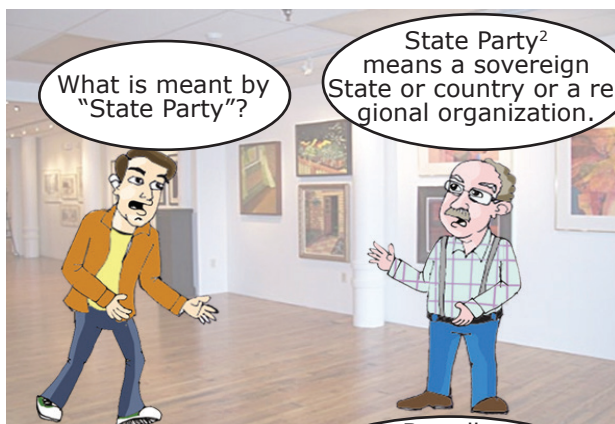
Citizens' effective participation and informed vigilance are supported by UNCAC provisions.

### **IS UNCAC A LAW?**

UNCAC is not a law. It is a convention agreed to by member nations based on which laws can be drafted. It contains (a) articles that are mandatory for the country signing it (b) articles that must be considered for adoption and (c) articles that are optional for drafting its own law.

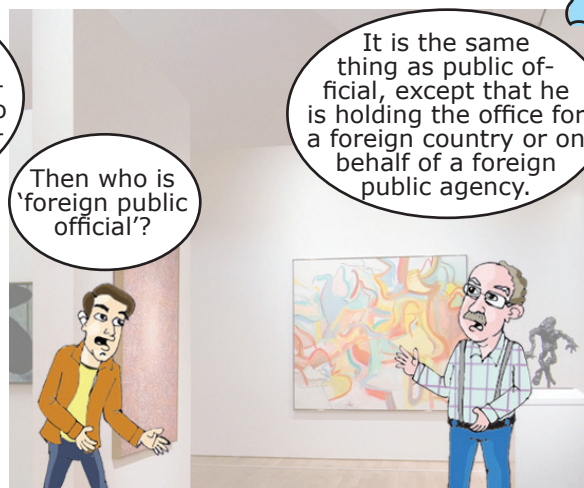
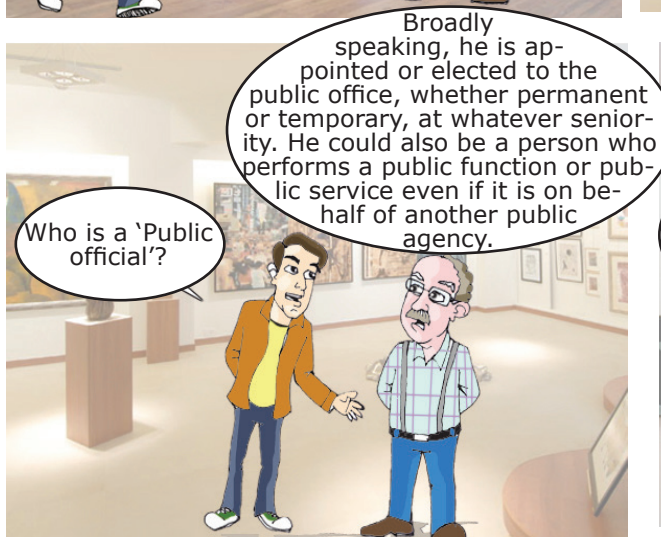


**Professor and his student are on a visit to the UN Head Quarters. Excerpts from their discussions on clarity of some terms.**



### Article 2 Use of Terms

This article provides clarity on use of terms relevant to UNCAC.



<sup>2</sup> We shall use the terms State Party, Member State, country, member government or regional organization interchangeably in this book. Refer to the UNCAC full text as regards article 3 and 4 on scope of application and protection of sovereignty.



## Chapter -2



## Preventive Measures

**Preventive measures** include - model preventive policies, establishment of anticorruption bodies, enhanced transparency in the financing of election campaigns and political parties, delivery of public services that are efficient and transparent, recruitment of public officials based on merit. Public servants should be subject to codes of conduct, financial and other disclosures, and appropriate disciplinary measures for non-compliance. Prevention of corruption is particularly critical in areas of the public finance such as the public procurement and judiciary. Lastly and most importantly, those who use public services must expect a high standard of conduct from their public servants. For these reasons, the Convention calls on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it.

### Addressing corruption starts with prevention.



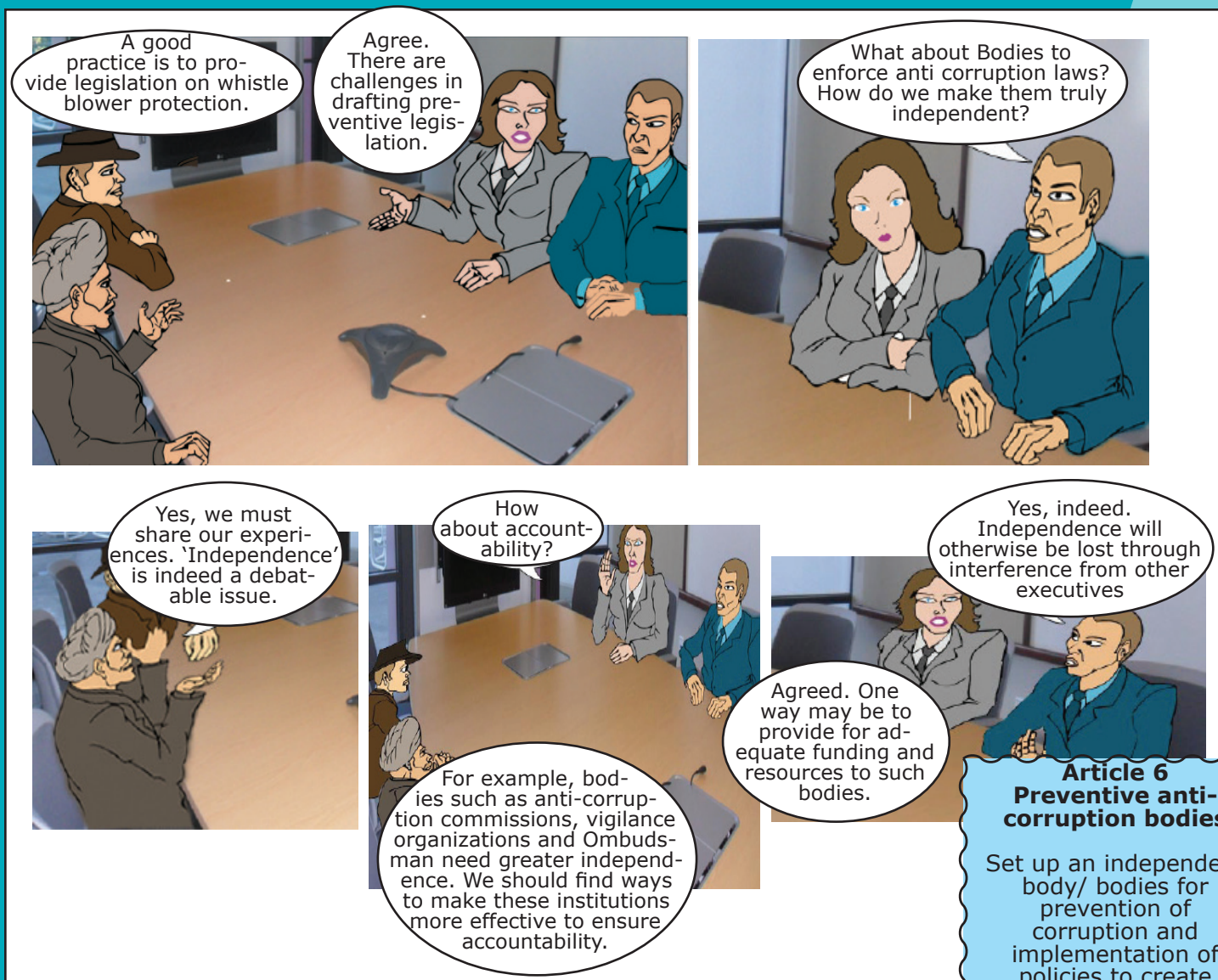
### Article 5 Preventive anti-corruption policies and practices

Countries should implement anti-corruption policies and promote the participation of society in this endeavour that promote rule of law, integrity, transparency and accountability in public affairs and collaborate with one another.

These policies and legal instruments must be periodically reviewed.







### Article 6 Preventive anti-corruption bodies

Set up an independent body/ bodies for prevention of corruption and implementation of policies to create awareness.

## Public Sector recruitment and its management are important areas.

**Selection of public officers on merit in a transparent manner contributes towards fighting corruption.**

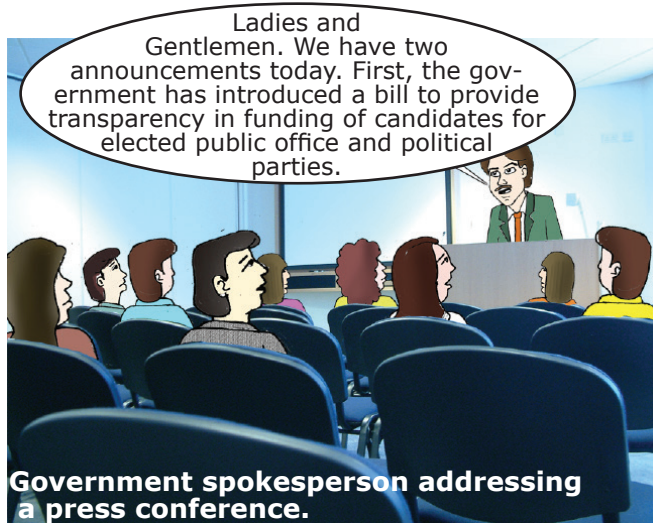


### Article 7 Public Sector

- a) Systems of recruitment, hiring, retention, promotion and retirement of civil servants on objective and transparent criteria on merit.
- b) Rotation and training for those in public positions that are vulnerable to corruption.
- c) Adequate remuneration.
- d) Training programmes for correct and honourable performance of functions and for awareness on risk of corruption.

### Public Sector management presents other important areas.

Transparency in funding of political candidates and parties is another area for consideration of countries.



Great news! That means I do not have to window dress my accounts to hide political donations!



Yes, that's a big change.



#### Article 7 (Contd) Public Sector

e) lay down necessary criteria that a person must fulfil to stand for public office.

f) Transparency in funding of candidature for elected office and political parties.

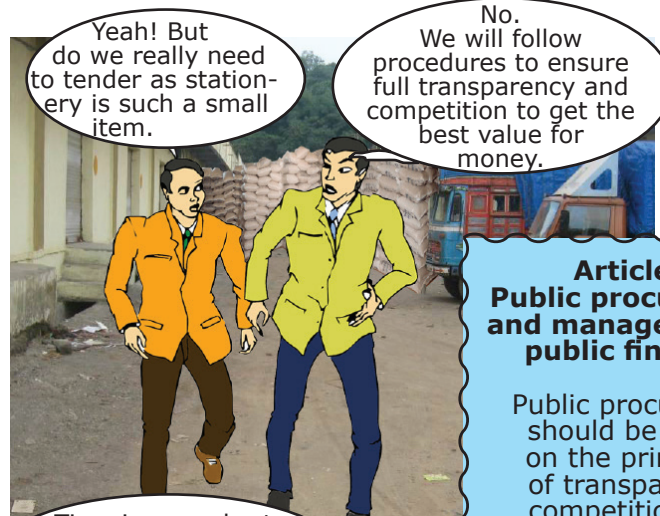
g) Promote transparency and prevent conflict of interest.



**Integrity, honesty and responsibility among public officials are important to fight corruption.**



**Public procurement means when a country purchases goods or services using its national budget. It is important to keep it free of corruption.**



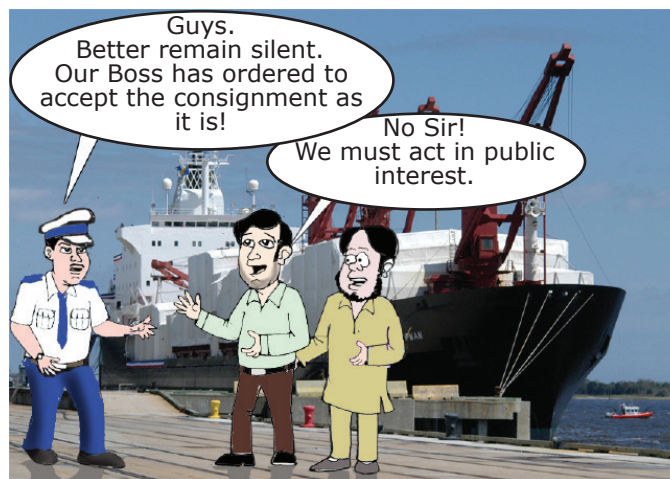
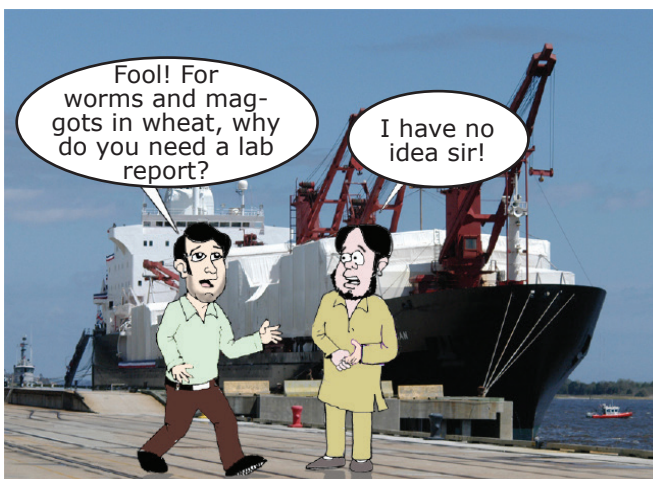
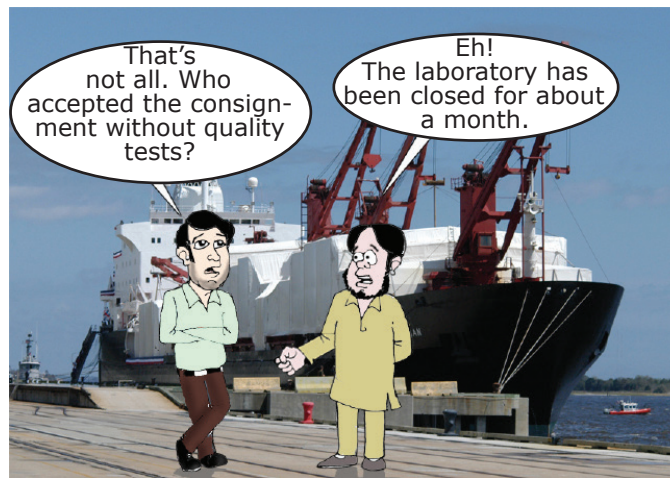
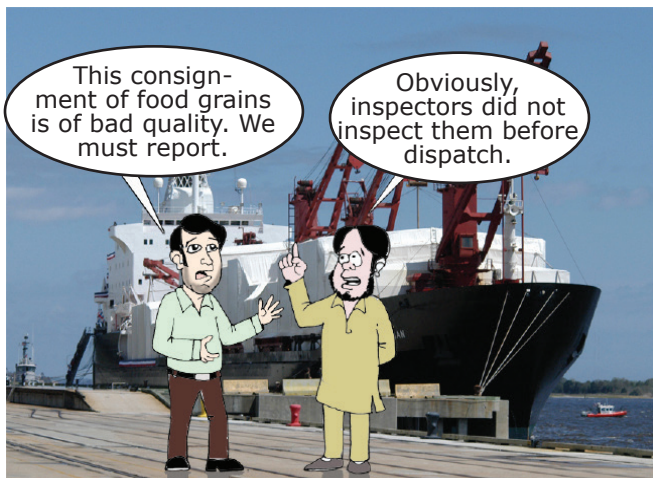
### **Article 9 Public procurement and management of public finances**

Public procurement should be based on the principles of transparency, competition and objectivity to prevent corruption.





**Diligent employees and transparent system of procurement prevent opportunities for corruption and frauds.**



**A few days later : Abdul was caught thanks to the whistle blowing on the quality of food grains.**

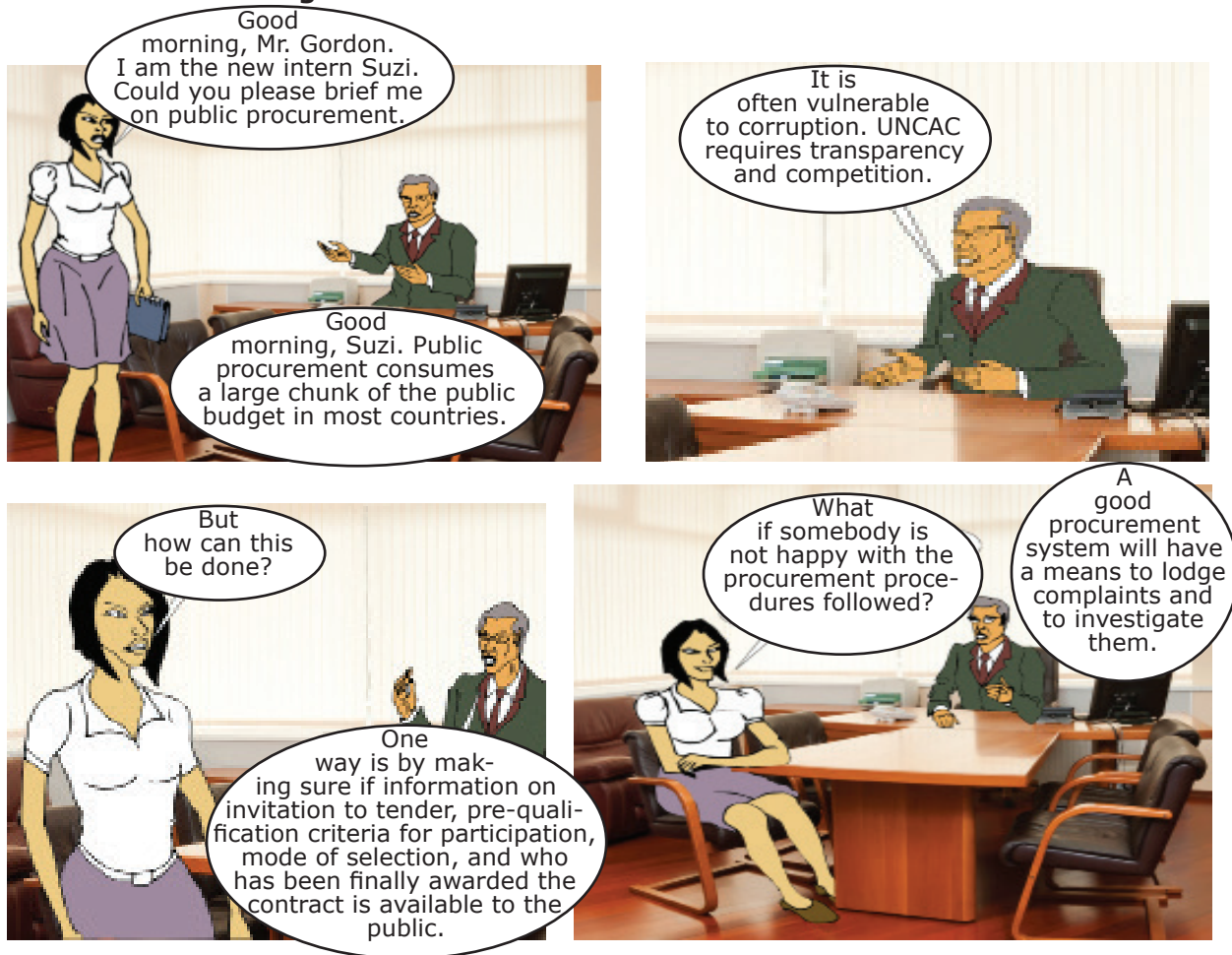


**Article 9  
Public procurement and  
management of public finances**

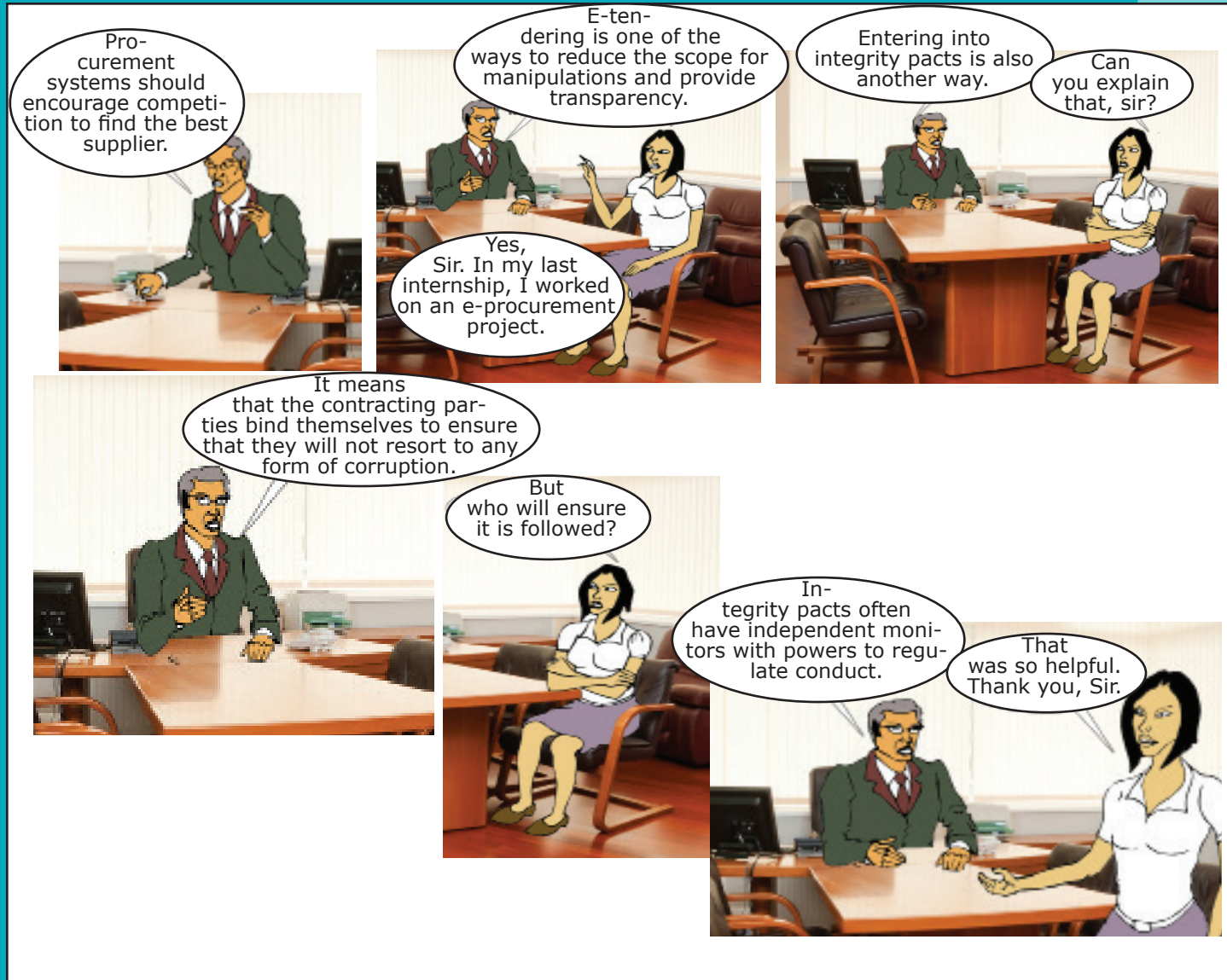
Each Country should put in place an effective system of appeal and legal action in the event that anti-corruption procedures are not followed.



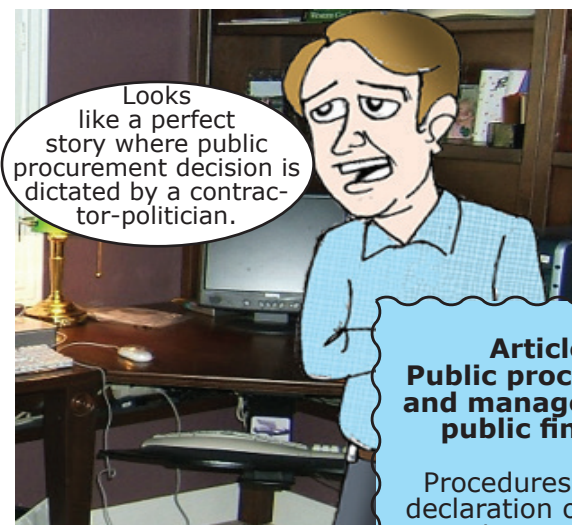
**Procurement systems must be transparent and must promote competition and allow for objective decision making.**







### Conflicts of interest take many forms and affect decision making in public procurement

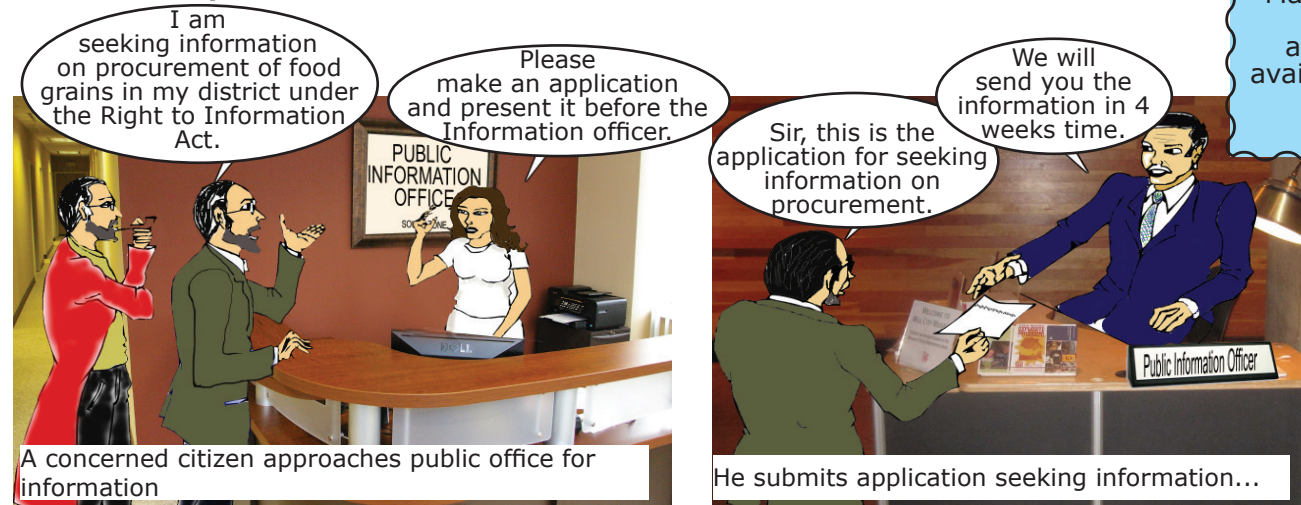


#### Article 9 Public procurement and management of public finances

Procedures such as declaration of interest must be provided and regulated.

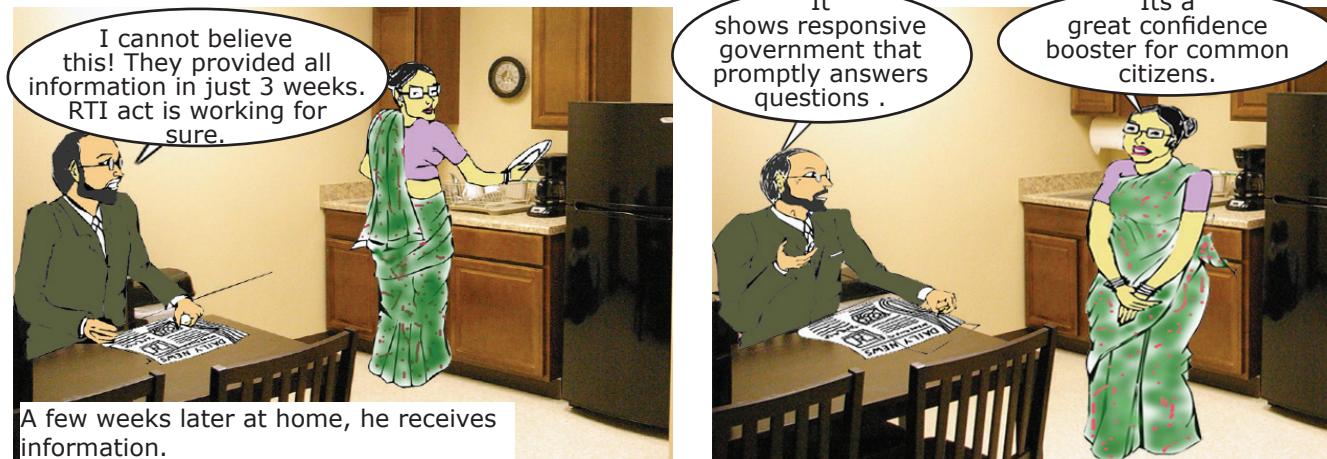


**Transparent public reporting of information on the organization, functioning and decision making processes in public administration are important to curb corruption.**



### Article 10 Public reporting

Make information on public administration available to general public.



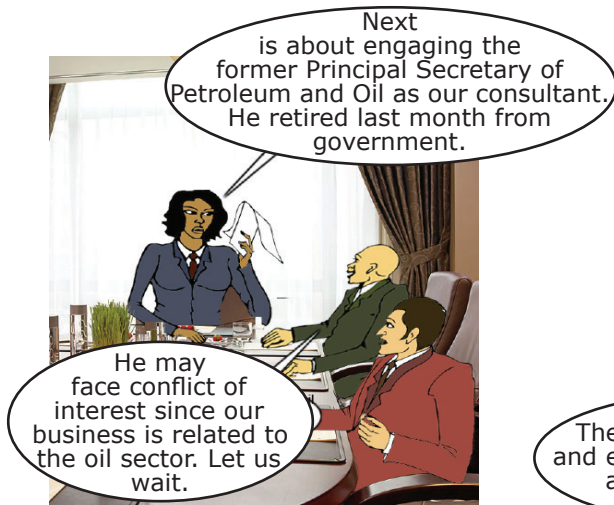
## Addressing corruption in the private sector.

**Board meeting of XYZ private limited company is in progress...**



### Article 12 Private Sector

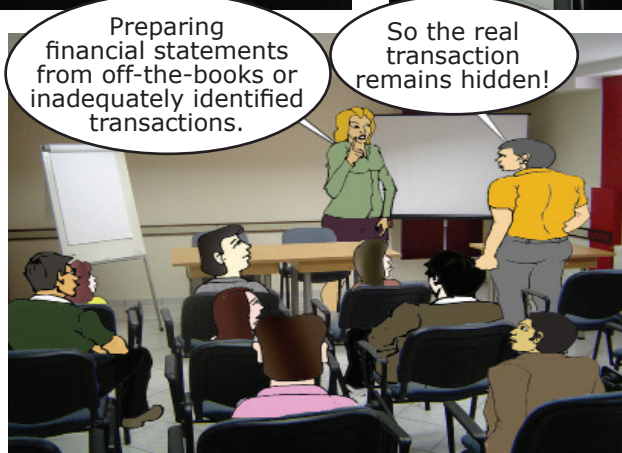
It is important to prevent corruption in the private sector, strengthen auditing and accounting mechanisms and provide penalties for violations.



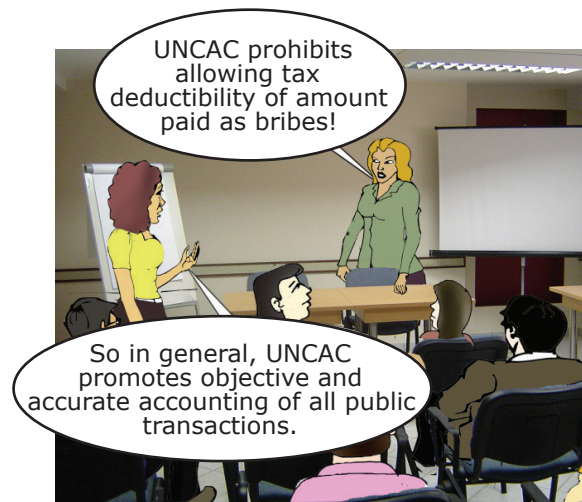
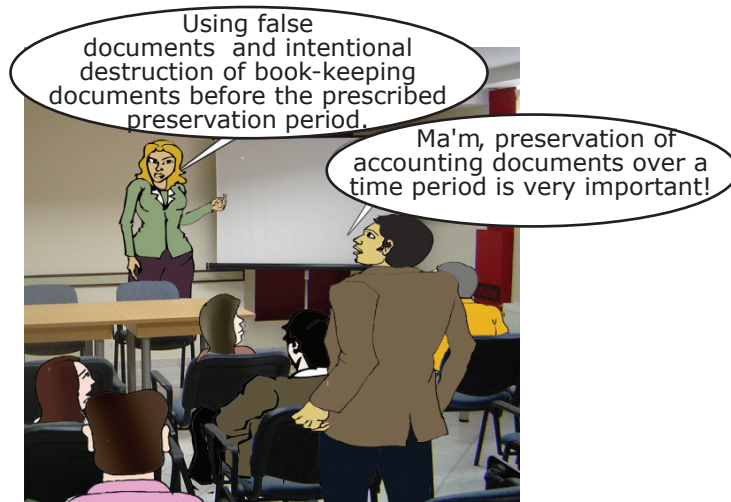
**Board meeting of XYZ private limited company is in progress...**





**Article 12 (contd)  
Private Sector**

Proper maintenance of books & records, financial statement, accounting & auditing standards.



**Participation of individuals and civil society groups in preventing and fighting corruption is important.**



### **Article 13 Participation of society**

Civil society, non-governmental groups and community based organizations can raise awareness on the gravity and existence of corruption.



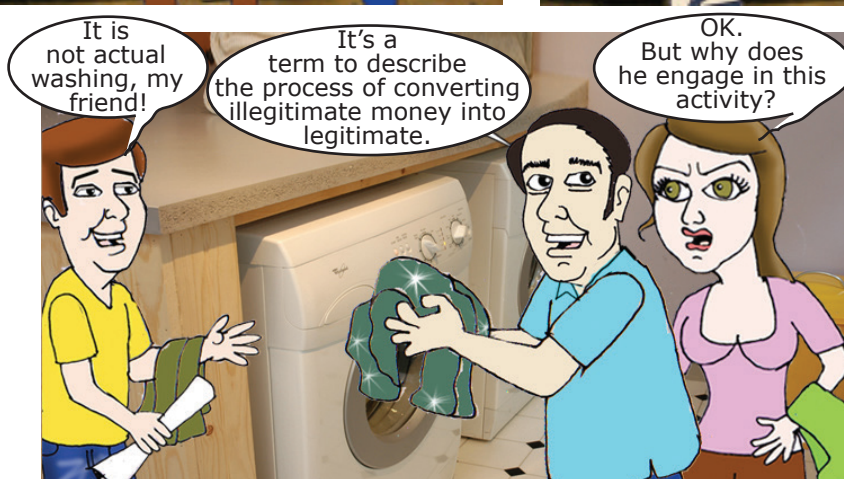


### **Article 14**

#### **Measures to Prevent Money-laundering**

- a) There must be provisions whereby banks, financial institutions or any body susceptible to money laundering can ask customers to provide necessary information about ownership of money, record keeping and report suspicious transactions.*
- b) Regulatory, law enforcement officials and other authorities must be able to cooperate and exchange information at national and international level.*
- c) countries must consider implementing measures to detect and monitor the movement of cash and other negotiable instruments across their borders.*
- d) enhanced transparency on the originator of funds and greater scrutiny in case this information is not complete.*
- e) Establish a domestic regulatory and supervisory regime.*

**Process of converting illegitimate money into legitimate is known as money laundering.**





### Article 14 (contd) Measures to prevent money laundering

Regulatory mechanism and promotion of banking compliance practices to check and prevent money laundering are a must.



He puts this cash into series of banking transactions in such a way that nobody can trace the original deposit in cash by him.

So it is disguised till he can later legitimately issue cheques to reclaim that money. How clever?





**Strengthen mechanisms in financial institutions to detect and prevent attempts to convert money earned from illegal sources.**



**Acts of money laundering present challenges for tracing.**









## Chapter -3

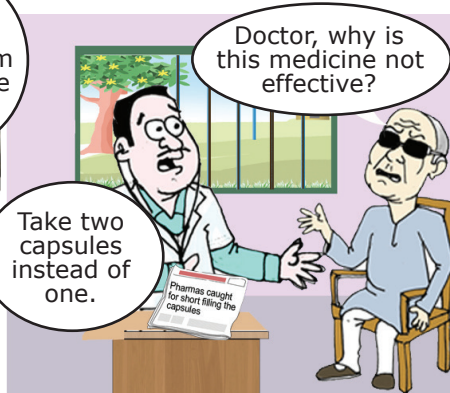
# Criminalization and Law enforcement

**Criminalization and Law enforcement-** The Convention goes beyond basic forms of corruption such as bribery and the embezzlement of public funds and includes many other acts that must be criminalized as corruption. The convention suggests the following acts to be criminalized as corruption- bribery (Giving and taking) by any public official, international public official, private sector officials; embezzlement, trading in influence, illicit enrichment and abuse of functions; obstruction of justice; concealment and laundering of the proceeds of corruption; It deals with the important area of private sector corruption. It suggests the need to legislate to freeze, seize and confiscate the proceeds of corrupt acts and compensate parties that have suffered damages due to corruption; to remove obstacles to bank secrecy laws; to ensure protection for the whistle blowers and provide a long Statute of Limitation for corruption offences.

**Bribery is not the only form of corruption. There are many other forms. These are some ways where corruption manifests itself.**



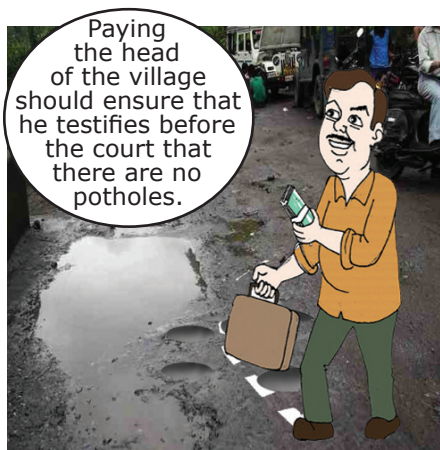
Promises made by politicians may contain hidden agenda which may have conflicts of interest.



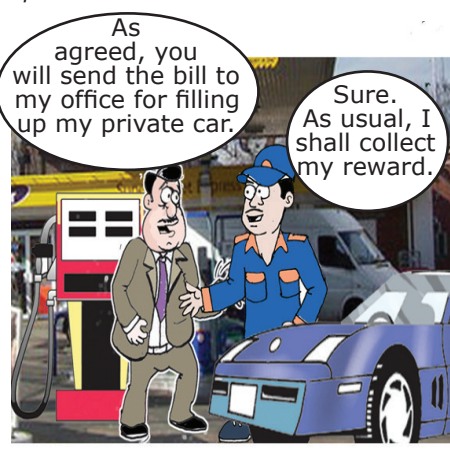
Pharma companies may bribe doctors to overlook their fraudulent practices and prescribe higher doses of under-filled capsules.



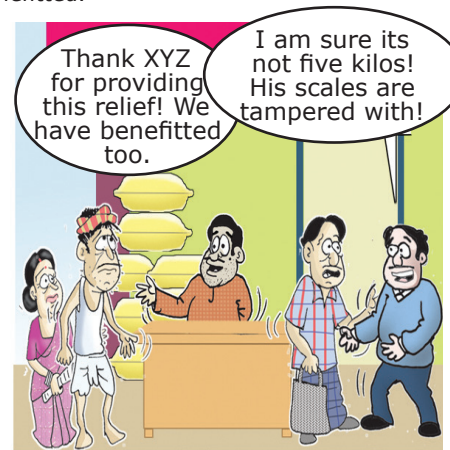
Public housing projects-stopped at second floor although listed on paper as having 10 floors - contractors and public officials have benefitted.



Obstruction of justice resorted to by use of force, payment, threat, etc.



Managers may find ways to collude with others to book private expenses as company expenditure.



Public distribution of donor driven relief supplies may get misappropriated by NGOs.



**Corruption is much more than bribery. The UNCAC provides for acts which are required to be criminalized. These illustrations provide details of these acts.**



Defence Ministry officer meeting a visitor



### **Article 15 Bribery of national public officials**

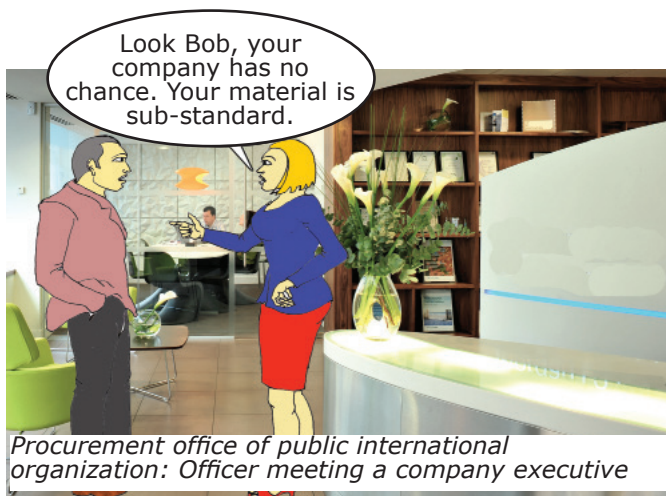
Bribery includes:  
Promise, offering or giving to a public official, directly or indirectly either for himself or another person.  
Solicitation or acceptance of undue advantage by the public official for himself or another.



Next day at the golf club



**Bribing foreign public officials and officials of public international organizations. Bribery may not always be in the form of cash and may take innovative forms.**



**Article 16  
Bribery of foreign  
public officials/  
public international  
organization**

Bribery includes:  
Promise, offering or giving to a public official, directly or indirectly either for himself or another person  
Acceptance by the public official for himself or another.



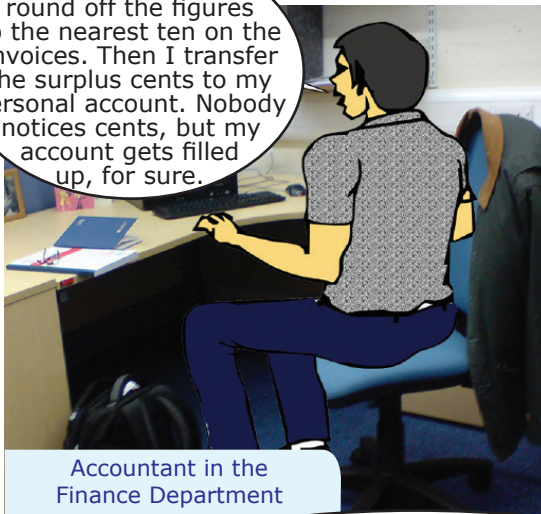


**After the company got its order, a few days later at the resort...**



### Misappropriation of public property by public officials.

Hm!  
It's fun to round off the figures to the nearest ten on the invoices. Then I transfer the surplus cents to my personal account. Nobody notices cents, but my account gets filled up, for sure.



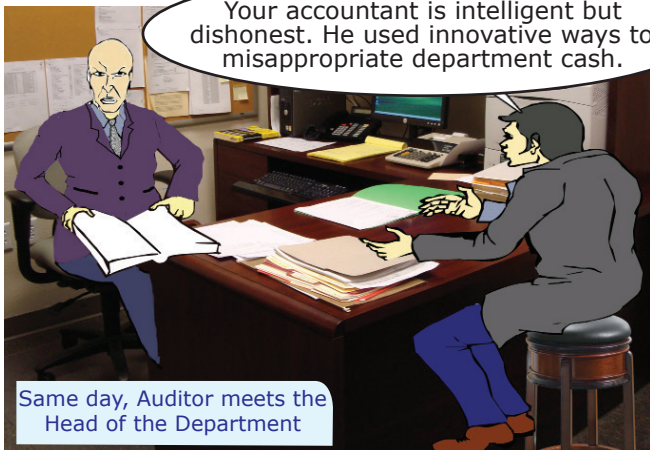
Accountant in the Finance Department

This much of a discrepancy! Let me look at how the figures have been rounded.



Later, Auditor in the same department

Your accountant is intelligent but dishonest. He used innovative ways to misappropriate department cash.



Same day, Auditor meets the Head of the Department

Oh no! I have ruined my career and life because of my greed! What will my family think?



Next day, Vigilance Officers summon the accountant

#### Article 17 Embezzlement, misappropriation or other forms of diversion of property by a public official

The illegal use or fraudulent conversion or diversion by a public official of property, funds or anything of value that had been entrusted to him by virtue of his position.



**Increase in wealth of public officers that is disproportionate to their known sources of income.**



**Article 20  
Illicit enrichment**

Significant increase in the assets of a public official that s/he cannot explain in relation to his/her lawful income.

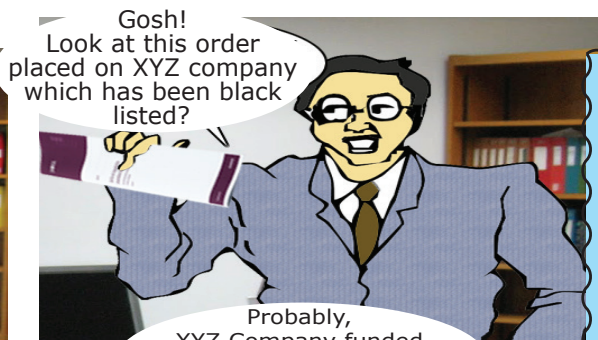


**Similarly article 21 & 22 deal with bribery & embezzlement of property.**

## Illicit enrichment (contd)



**Bob, investigated if Nina indulged in illicit enrichment through corrupt practices.**



(Similarly it is important to take a look at articles 18 and 19)

### **Article 18 Trading in influence**

a) Promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the official abuses his influence to obtain undue advantage from the administration.

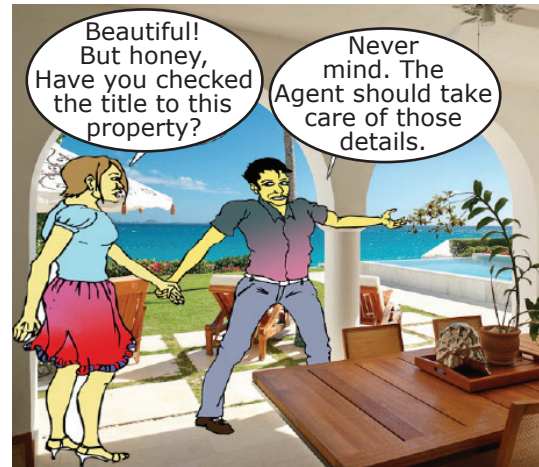
b) The solicitation/ acceptance of the same by the public official for a similar objective.

### **Article 19 Abuse of functions**

Failure of a public official to perform his duties in order to obtain an undue advantage for himself or for another person



### Conversion or transfer of property acquired through proceeds of crime.



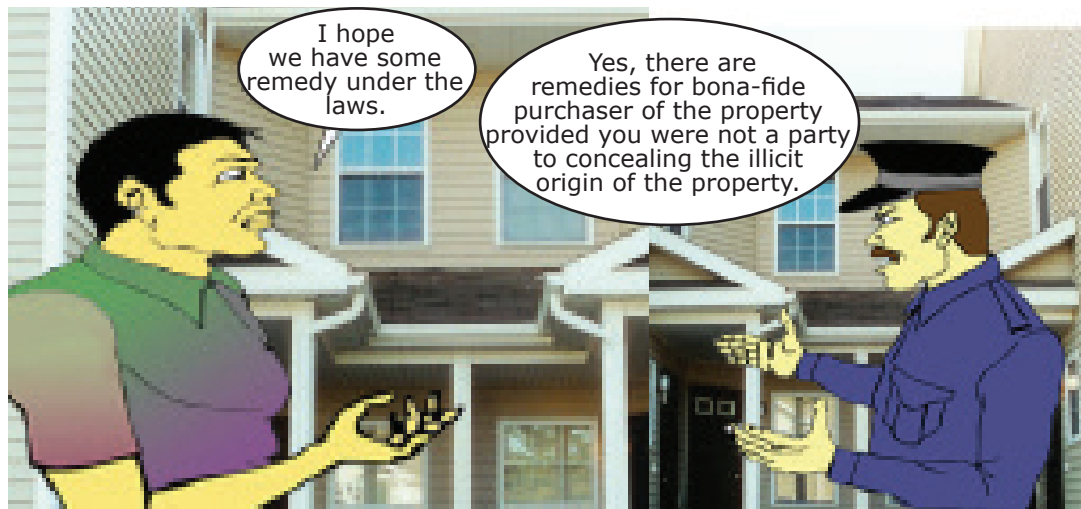
#### Article 23 Laundering of proceeds of crime

Converting, concealing or transferring property acquired from money earned through illegal means and making it seem as if it has been acquired through legal sources of earning.



#### Article 24 Concealment

Intentional concealment even without participation in committing the offence of corruption or retention of property, when the person knows that such a property is a result of offences committed.





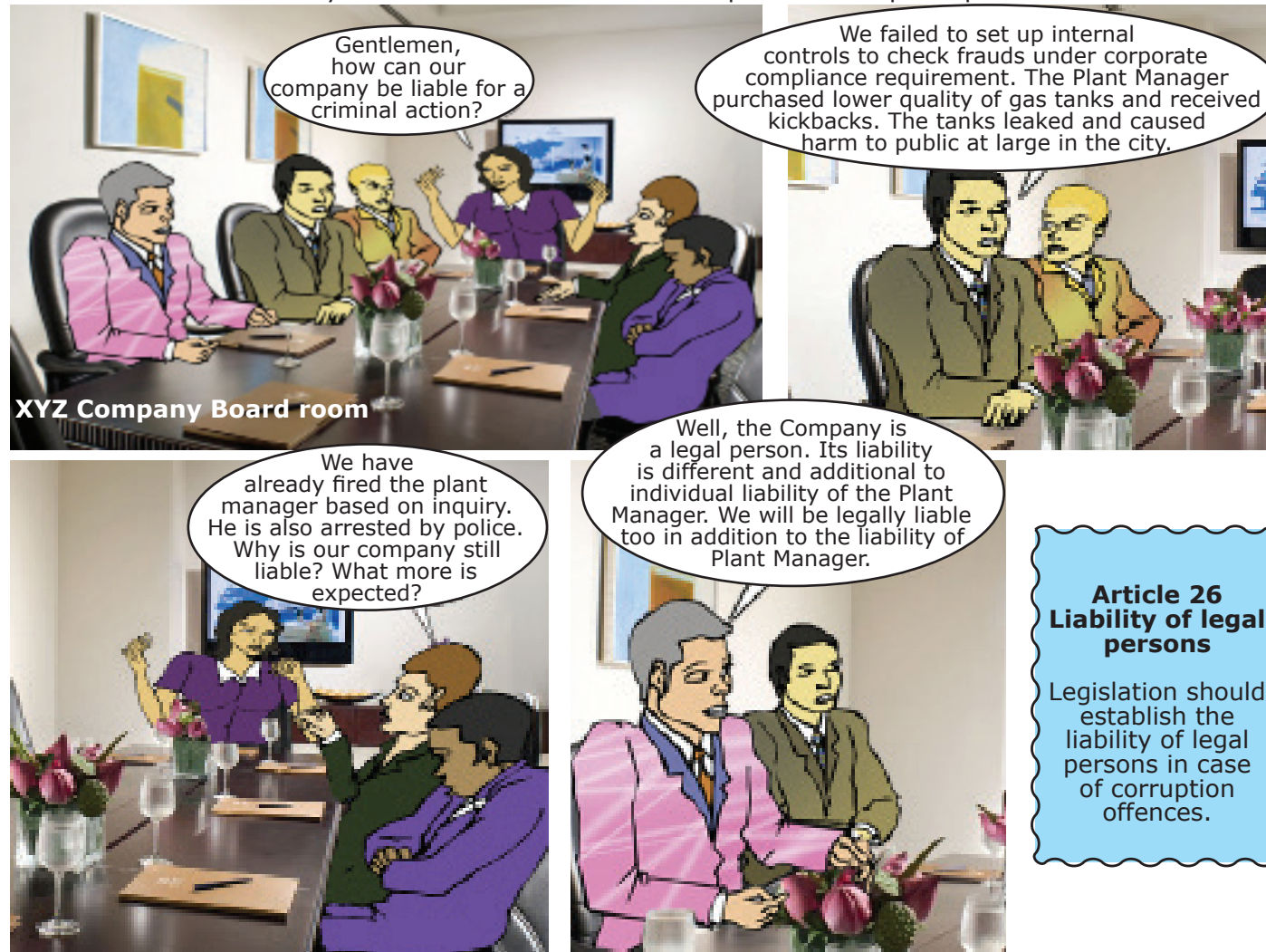
**Obstruction of justice in a crime of corruption: It could include use of physical force, threat, intimidation, promise or inducements to obtain false testimony.**



### **Article 25 Obstruction of justice**

Obstruction of justice in a crime of corruption. It may include use of physical force, threats, intimidation, promise or inducements to obtain false testimony.

Companies are legal persons and are liable for criminal, civil or administrative action in case of corruption offences. Their liability is in addition to that of natural persons who participated in the offences.



Preparation for, attempt to or participation in committing an offence are criminalized under the UN-CAC



### Article 27 Participation and attempt

Preparation for the crime, attempt to commit an offence, participation in any capacity as an accomplice, assistant or instigator.





Knowledge, intent and purpose are important elements in determining an offence.

Just remember the law!  
For an offence to be completed,  
not only the act but also  
intention is essential.



Of course.  
Without a criminal  
intention, a criminal act  
cannot be performed.



**Article 28**  
**Knowledge, intent**  
**and purpose as**  
**elements of an**  
**offence**

Knowledge, intent  
and purpose required  
in an offence can  
be inferred from  
objective factual  
circumstances.

How  
can we  
establish criminal  
intent in all  
cases?



Simple!  
The factual  
circumstances can  
establish the  
purpose.





Maximum time period within which an offence could be prosecuted must be long enough so that no one escapes justice. This time limit could be extended in suitable cases.

Statute of limitations is important for prosecution. Shorter the duration, it will become difficult to establish a case against me.



Yes. There is Statute of Limitations, prescribing the time period for every offence to be prosecuted.



### Article 29 Statute of limitation

Statute set time limits on the institution of proceedings against defendants. Since corruption offences often take a long time to be discovered and established; set a long period by which the offender must be brought to justice.

It will not! If the alleged offender flees the country to avoid justice, they can suspend the statute of limitations. This may apply to you.

So, do you think it will help if I live abroad till the time limit is reached?

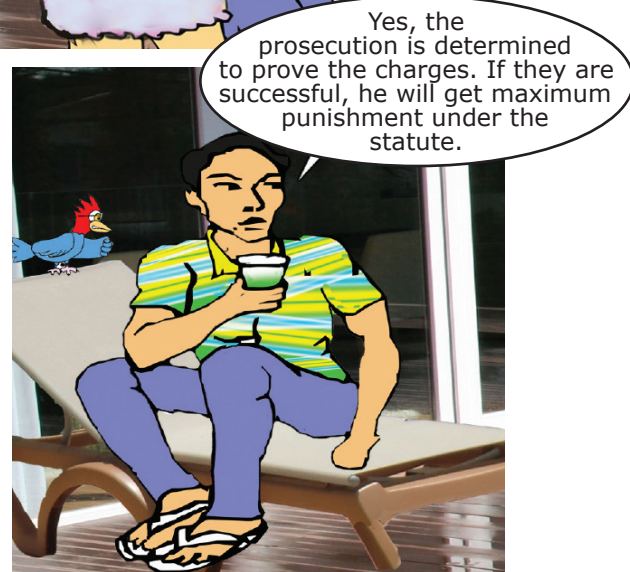


**Gravity of an offence is an important consideration while deciding on prosecution of offenders. Discretionary legal powers of the state must be used to prosecute in a timely manner.**



### **Article 30 Prosecution, adjudication and sanctions**

Legislation shall provide for sanctions commensurate with the gravity of offences.



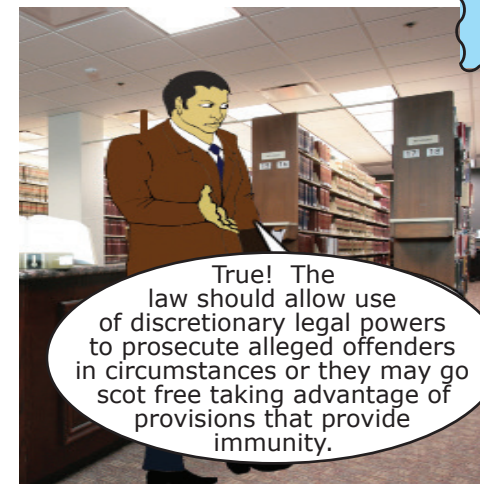


**A consultation process in the State Party's Department of Law where they are drafting the punishment sections of the law to deal with criminal offences.**



### **Article 30 (contd) Prosecution, adjudication and sanctions**

Immunities or jurisdictional privileges of public officials have to be balanced with effective investigation, prosecution and adjudication of offences.





### Article 30 (contd) Prosecution, adjudication and sanctions

Public official accused of an offence could be removed, suspended or reassigned by the appropriate authority.

In case of grave offences, court orders may disqualify him to hold public office or office in public sector enterprises.

\*Parole is the provisional release of a prisoner who agrees to certain conditions.



## Freezing and confiscating property or equipment acquired from proceeds of crime or used in crime.



### Article 31 Freezing, seizure and confiscation

1. Enable identification, freezing, seizure, confiscation of property or proceeds of corruption that have been obtained from offences described in the Convention and provide for administration of this confiscation process by competent authorities.
2. This applies even to those properties that have been converted in to other forms of property or assets.
3. If these proceeds or properties have been intermingled with property got from legitimate sources, the property shall be liable to be confiscated or seized up to the assessed value of the property got from proceeds of crime .
4. Income earned or other benefits derived from the property acquired from proceeds of crime can also be liable to similar measures.
5. Bank, financial and commercial records should be made available or seized.
6. The offender must demonstrate the lawful origin of the property liable for confiscation.
7. The right of the Bona-fide third party should be protected.

**Protection of witnesses, experts and victims from potential retaliation or intimidation. This includes protection for their relatives and those close to them too.**



**A police officer meeting a witness in a criminal case...**



### **Article 32 Protection of witnesses, experts and victims**

Legislation should protect victims and witnesses (including their relatives and close persons) to crime.

Measures include non-disclosure of identity, relocation and safety of such persons. States Parties may also sign agreements with each other to ensure relocation of witnesses, victims and experts.



### Whistle blower protection or protection of persons who report about an offence in good faith.



#### Article 33 Protection of reporting persons

Whistle blower protection against unjustified treatment for any person who reports facts concerning offences. This reporting must be in good faith and not with vested interests.



**Acts of corruption may be a factor that could lead to cancellation of contract, withdrawal of concession or any other remedial action.**



### Article 34 Consequences of acts of corruption

Corruption may be considered a relevant factor in the legal proceeding to cancel a contract, withdraw concession or other similar measures



### Article 35 Compensation for damage

Persons or entities who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings to obtain compensation.

Later, at the contractor's office, the Manager is meeting his lawyer.



### Independent body or bodies must exist to combat corruption through law enforcement.



#### Article 36 Specialized authorities

Existence of independent body/bodies specialized in combating corruption through law enforcement. The persons should have appropriate training and resources to carry out their tasks.



### Lesser punishment for an accused who provides substantial cooperation in the investigation or prosecution of offences.



Your Honour, the accused, an accomplice in the crime has decided to cooperate with prosecution.



All right. The court has noted it in relation to sentencing guidelines for lesser punishment.

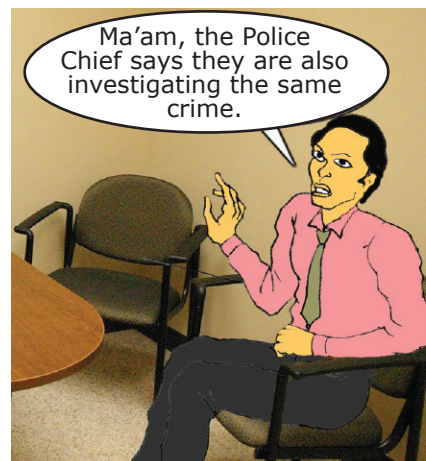


#### Article 37 Cooperation with law enforcement authorities

Person who participated in a crime may be granted immunity/ reduced punishment if he provides information or evidence or substantial cooperation that leads to recovery of proceeds of crime.



**Cooperation between national authorities in the investigation and prosecution of criminal offences is important.**



### **Article 38 Cooperation between national authorities**

Measures shall be taken to ensure cooperation between public officials, public authorities and authorities responsible for investigating and prosecuting criminal offences.

### **Article 39 Cooperation between national authorities and the private sector**

Cooperation between investigating and prosecuting bodies and the private sector, nationals and other persons living in the country since very often it is these people who can provide valuable information about an offence.



### Establishing mechanisms within legal systems to overcome obstacles that may arise out of bank secrecy laws.

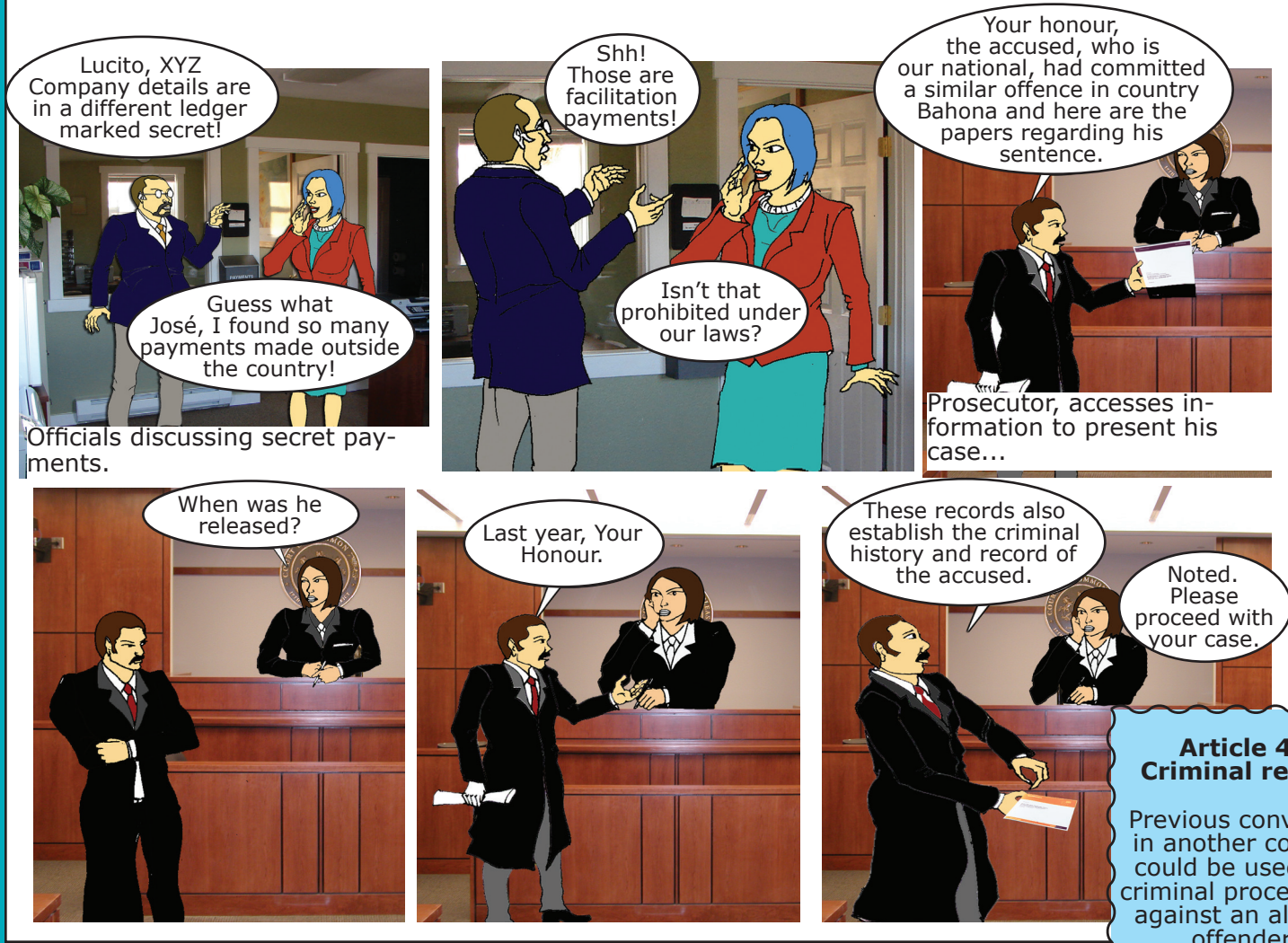


#### Article 40 Bank secrecy

Application of bank secrecy laws shall not prevent investigation and prosecution of offences.



**Use of relevant information about previous criminal record in another country against the accused for investigation and prosecution.**







### Article 42 Jurisdiction

Each country must adopt measures for prosecuting an offence committed on its soil or on board a ship flying its flag or an aircraft registered in that country.

Each country must establish its jurisdiction on offences committed by its nationals abroad but present in its territory.

Where appropriate, countries must consult one another to coordinate their actions.





The law enforcement officers are continuing their conversation on jurisdiction issues.







## Chapter -4

# International Cooperation

**International Cooperation-** This cooperation could take the form of sharing evidence for use in prosecution, entering into bilateral or multilateral treaties or using the UNCAC as a legal basis among States Parties for extraditing accused persons, provisions for extraditing persons accused of UNCAC offences, transfer of sentenced persons to other jurisdictions, rendering mutual legal assistance to each other, conducting joint investigations, cooperating in law enforcement and participating in special investigation techniques.



**International cooperation: What is dual criminality?**

Thank you Mr. Prasad for receiving this mission at short notice.

You are welcome.

Yes, indeed. Cooperation across borders can assist in investigations.

First of all, let's check that the charges in your case are also criminal offences in our country.

Sure, we did our homework.

Our case is precisely covered by the Foreign Corrupt Practices Act of USA.

And the Indian Prevention of Corruption Act also applies.

**Article 43**  
**International cooperation**

a) Countries must cooperate with each other in criminal matters and assist with investigations and proceedings related to corruption.

b) Dual criminality shall be considered fulfilled even if they are referred to by different terminologies in the different countries or fall in different categories of their law.





**Countries shall enter into bilateral or multilateral agreements for extraditing\* criminals.**



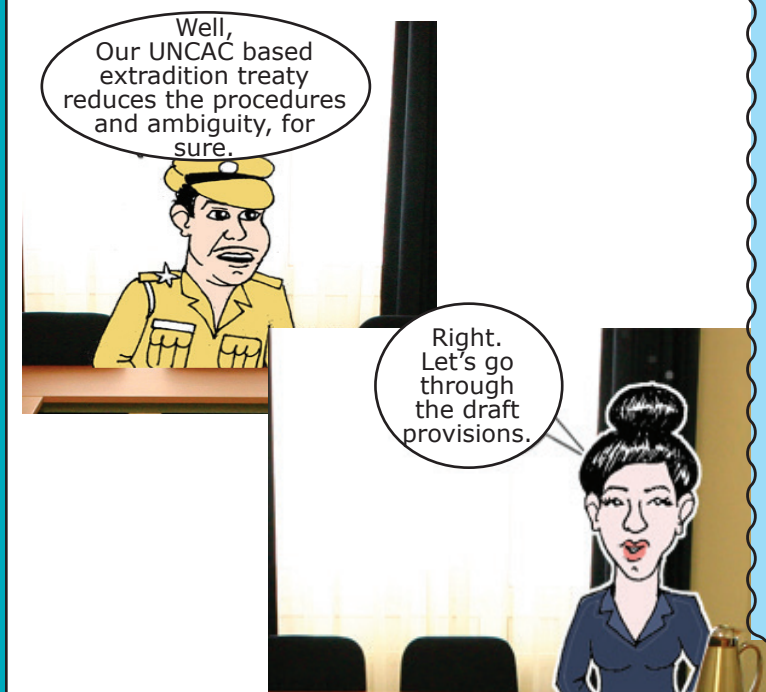
**Article 44  
Extradition**

Countries should have bilateral or multilateral extradition treaties for extraditing criminals.



\* Extradition is the official process whereby one nation or state surrenders a suspected or convicted criminal to another nation or state.





### Article 44 Extradition

1. Extradition could be requested of a person, for the offence that is punishable in both requesting and requested countries.
2. It is also permissible to extradite when offences are not punishable under the domestic laws using the UNCAC as the legal basis if the countries are States Parties.
3. If at least one offence of the many is extraditable under the Convention, then extradition is allowed.
4. Political offence cannot be included in the extradition treaty as extraditable.
5. UN must be notified of the legal basis for extradition when Convention is being used between the countries.
6. Extradition could be conditional or subject to minimum penalty requirements or subject to domestic laws, or could be refused on certain specified grounds (subject to consultation).
7. The country should consider enforcing sentences in case of refusal to extradite.
8. There is no obligation to extradite if prejudice as to sex, race, religion, nationality, ethnic origin or political opinion is evident.
9. Extradition may not be refused on the sole ground that the offence involves fiscal matter.

**Article 45  
Transfer of  
sentenced persons**

Countries may enter into bilateral or multilateral agreements so that persons who may be imprisoned for corruption may complete their term in the said country.



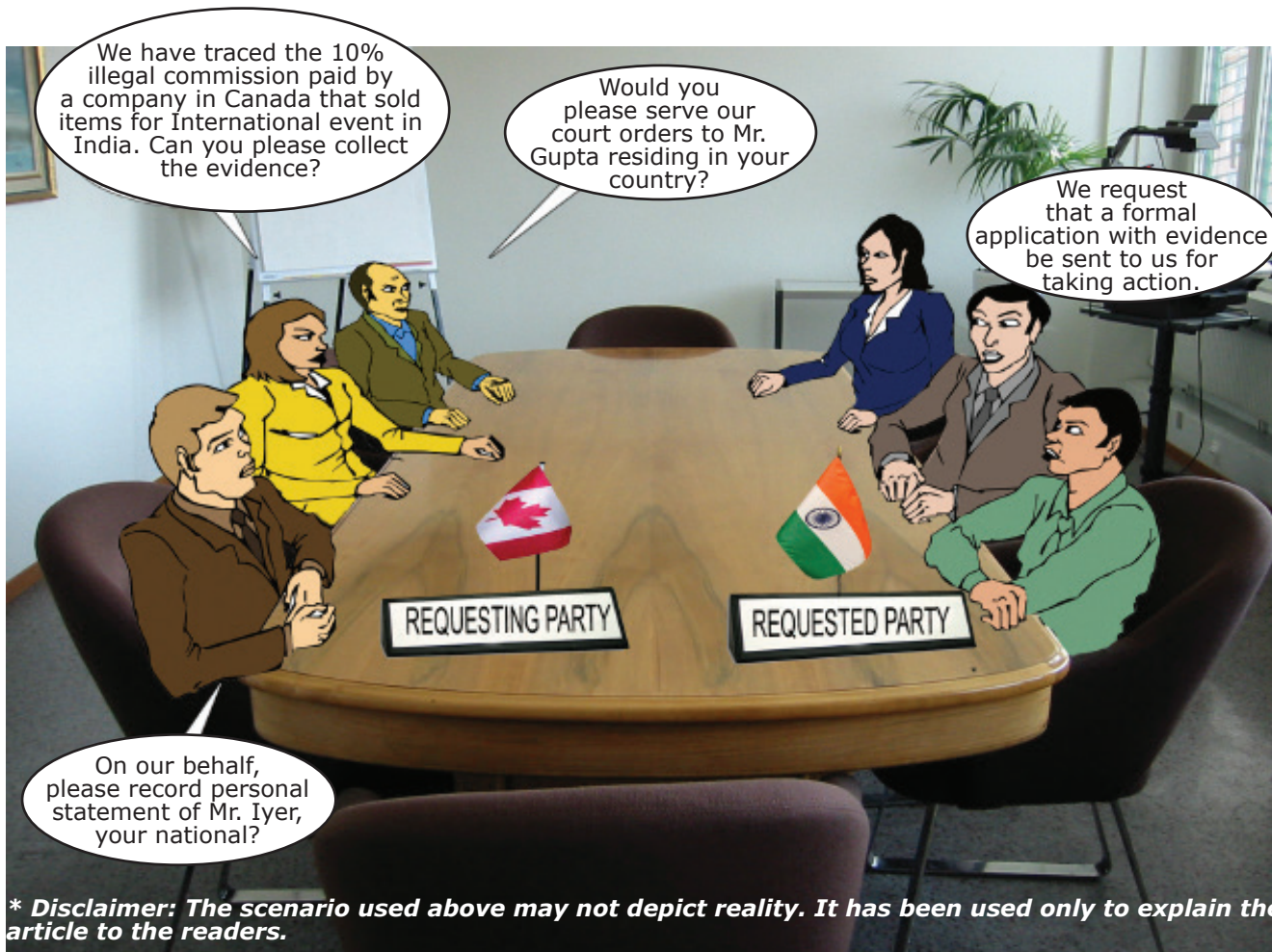
**Article 46**  
**Mutual legal assistance**

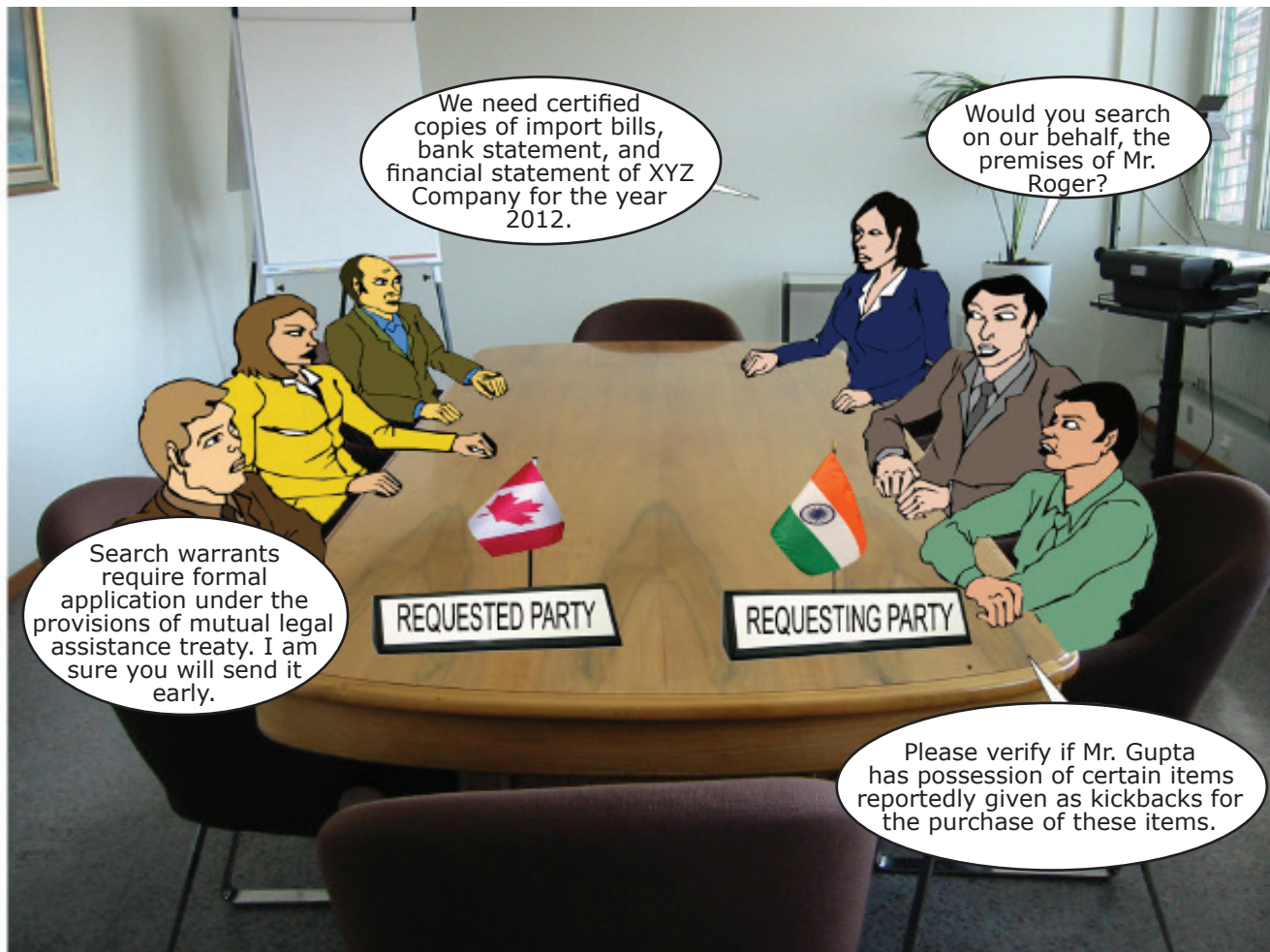
May be requested or provided for any of the following purposes:

- a. Taking evidence or statements from persons.
- b. Effecting service of judicial documents.
- c. Executing searches, seizures and freezing.
- d. Examining objects and sites.
- e. Providing information, evidentiary items and expert evaluations.
- f. Providing necessary documents and records.
- g. Identifying or tracing proceeds of crime, property, etc.
- h. Facilitating voluntary appearance of persons.
- i. Any type of assistance that is not contrary to the domestic law of the country.

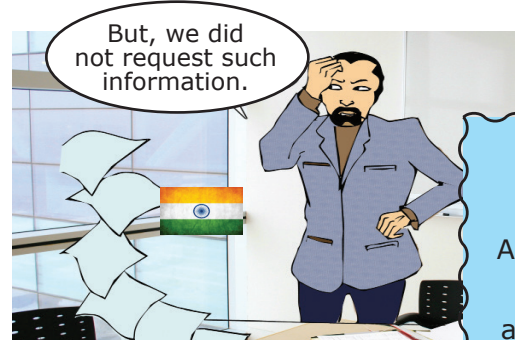
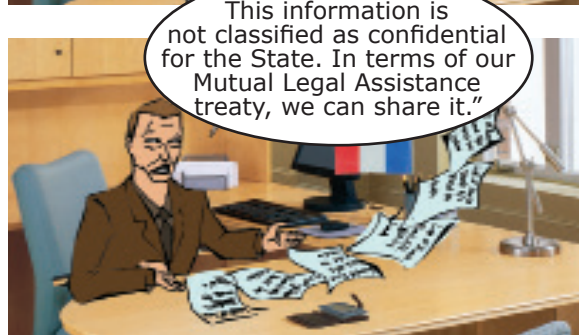
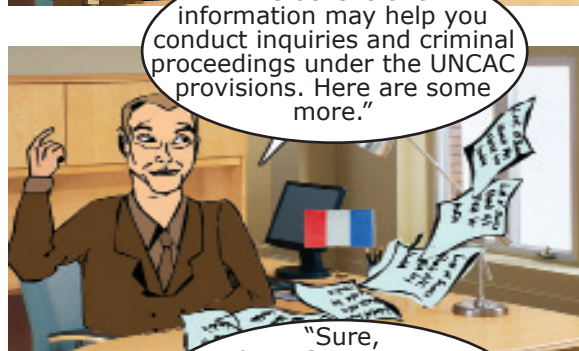


**Countries must provide one another mutual assistance in matters of legal investigations, prosecutions and judicial proceedings.**





**Countries may spontaneously provide relevant information that may potentially help other member countries in their inquiries and criminal proceedings.**



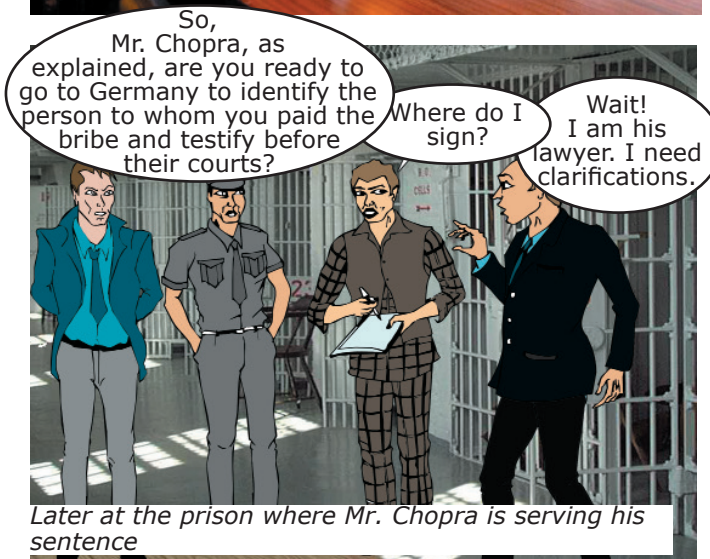
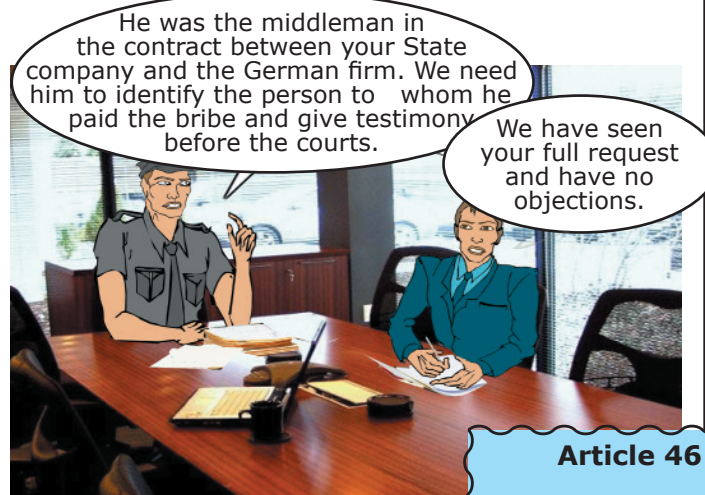
### Article 46

#### Mutual legal Assistance (contd)

A competent authority in one country may transmit information on criminal matters to its counterpart in another country without prior request in the belief that the information will help in inquiries and criminal proceedings.



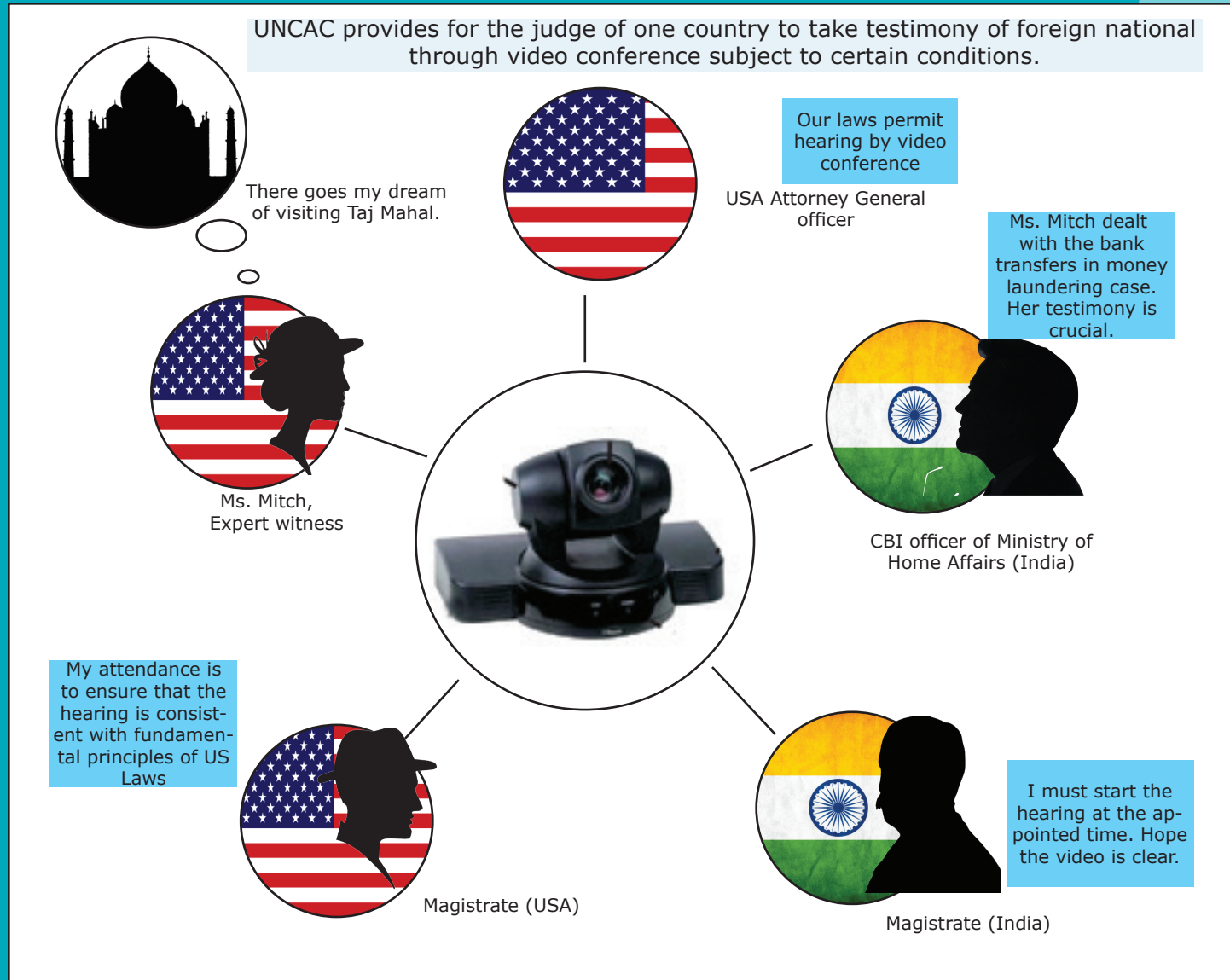
**Transfer of sentenced person from one country to another is possible subject to certain conditions.**



**Article 46**

**Mutual legal Assistance (contd)**  
An imprisoned person in one country may be transferred to another subject to certain condition, i.e. if requested in order to provide assistance in investigation, prosecution or judicial proceedings in relation to offences.







**Article 46**

Mutual legal Assistance (contd)  
Mutual legal assistance may be refused under certain circumstances. Reasons shall be given for refusal. Assistance may be postponed or conditional or on different deadlines.

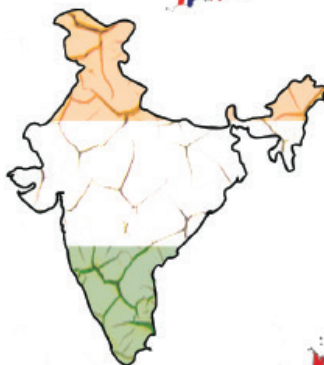


Your request will prejudice our Sovereignty.

If we fill in your request, we may have a 'law and order' situation here.



We are not authorized to prosecute the listed offence in our country

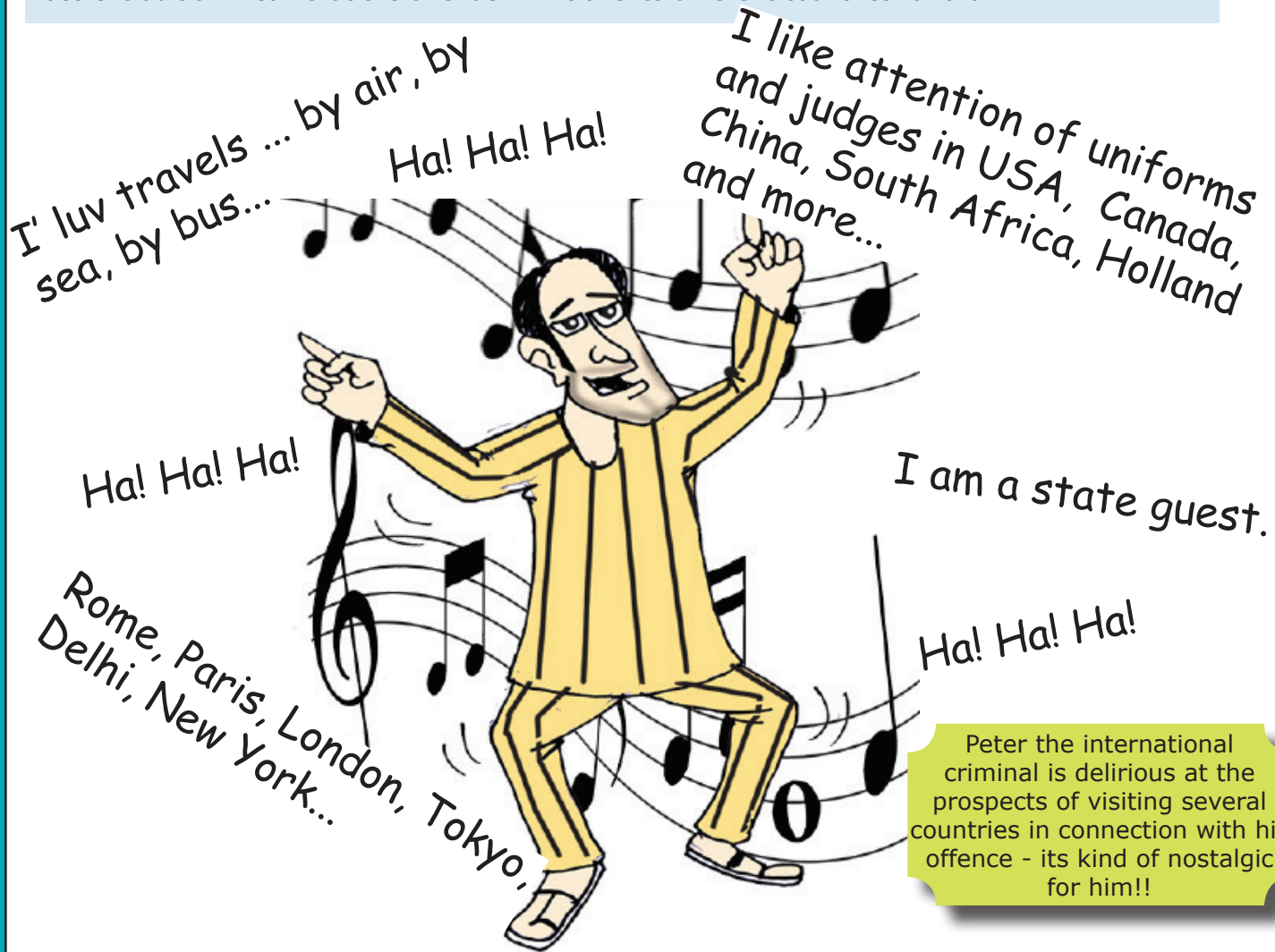


Sir, technically your request for MLAT is not in conformity with the UNCAC.



Well, we cannot help as the request is contrary to our legal system. Sorry!

Does extradition mean that the offender will travel to different countries for trial...



Authorities around the world are cooperating with one another to ensure a speedy trial for the same offence committed in several countries.

We established 4 cases for the same offence in USA.

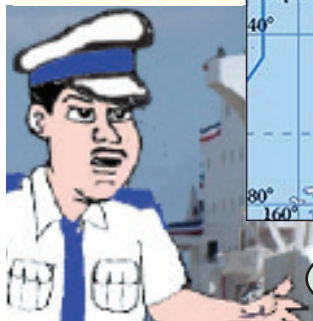


In the interest of proper administration of justice, let us transfer all our cases to Vanuatu.

Well, Well, well. Just one here, but 6 in Europe for the same offence.



We have 3 ready for prosecution of the same offence.



He committed 24 chargeable offences in Vanuatu.



UNCAC provides for this arrangement.

Sounds great!



**Article 47**  
**Transfer of criminal proceedings**

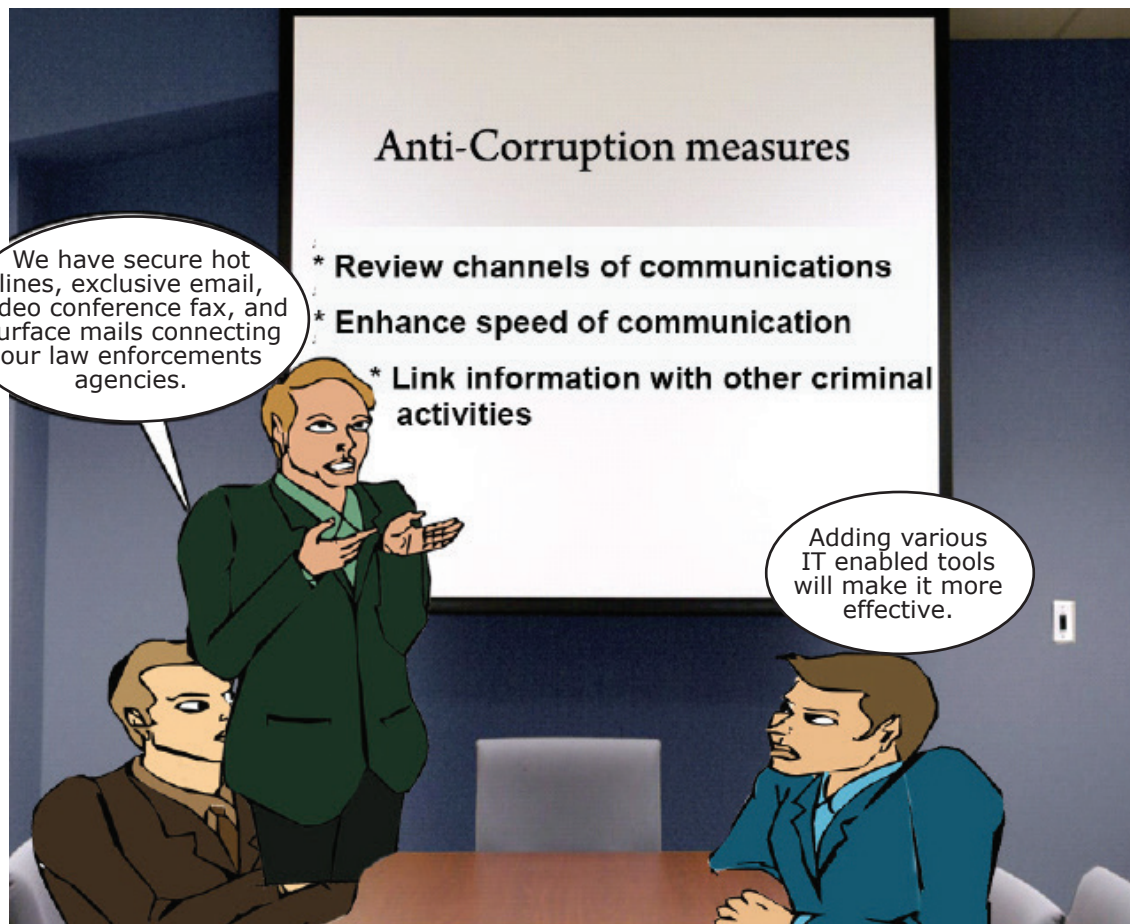
Countries can transfer criminal proceedings to another, for prosecution of an offence if it is in the interest of proper administration of justice particularly when several jurisdictions are involved.



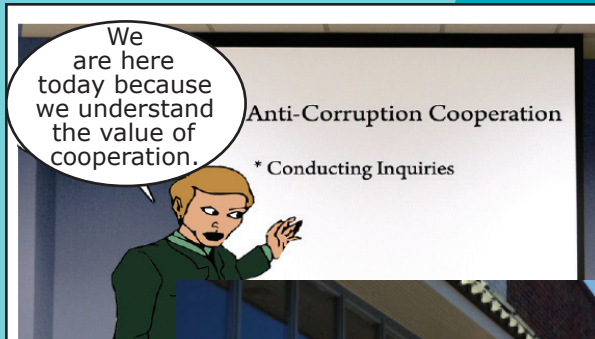
**Article 48  
Law enforcement  
cooperation**

Enhance effectiveness of law enforcement by establishing channels of communication between competent authorities in different countries.

**Cooperation among State Parties on anti-corruption measures including inquiries, exchange of information and setting up bilateral agreements or arrangements.**







## Scenario 1

Cooperation in conducting inquiries.

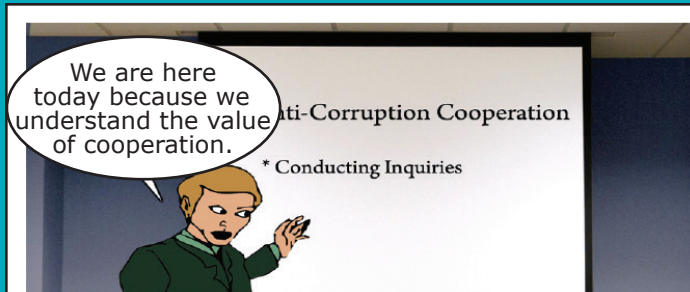
**Article 48 (contd)**  
**Law enforcement cooperation**

States Parties, subject to their domestic laws, shall consider assisting each other in conducting inquiries concerning identity, whereabouts and activities of suspects in offences.



"Relay to France - diary number 123alfa2009"





Scenario -2

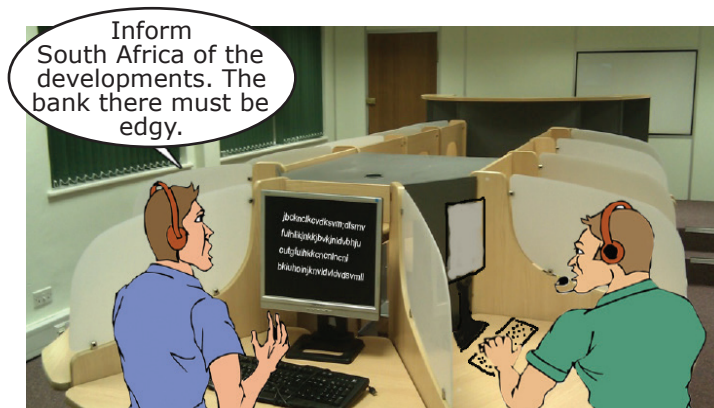
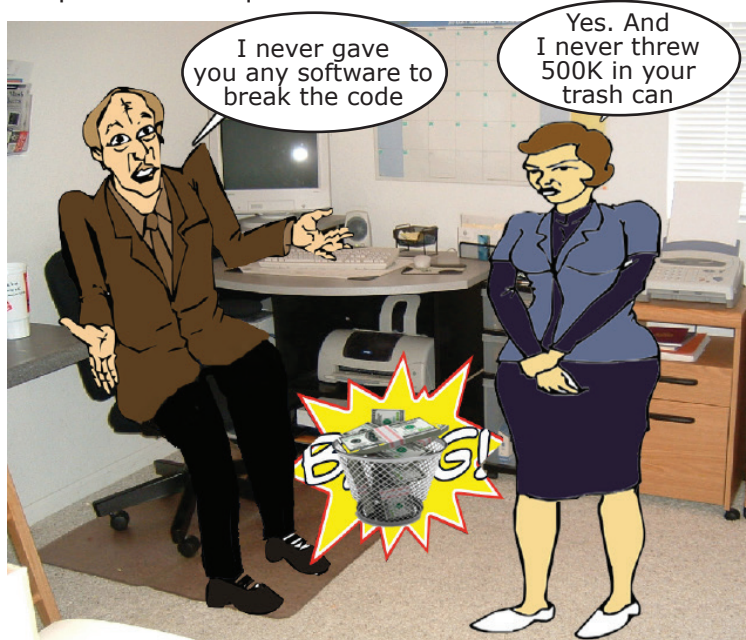
Cooperation in inquiries

### Article 48 (contd) Law enforcement cooperation

Countries shall consider assisting each other in conducting inquiries concerning the movement of proceeds of crime or property derived from offences.



### Scenario -3 Cooperation in inquiries



#### Article 48 (contd) Law enforcement cooperation

Countries shall consider assisting each other in conducting inquiries concerning the movement of property, equipment or other instrumentalities used or intended for use in the commission of offence.



### Conversation between law enforcement officers of two countries



### Article 48 (contd) Law enforcement cooperation

Countries shall consider exchange of personnel and experts and posting of liaison officers through bilateral agreements.

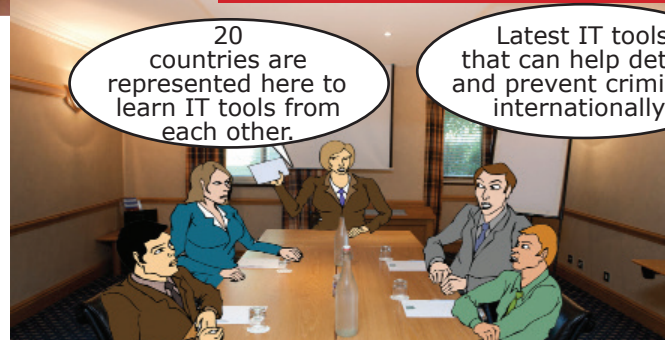
Bilateral agreements are recognized under the UNCAC. Liaison offices could be set up in each other's countries.



### Liaison office of India at USA



### Conference Room



Countries may form a standing joint investigation body or choose to be part of it on a case to case basis.

Anti-Corruption Cooperation

\*Joint investigations

### Article 49 Joint investigations

Countries shall consider establishing a joint investigative bodies to deal with investigation of offences in their jurisdictions through bilateral/multilateral agreements.

Our task is to stop leakage of custom duties.

Both countries are losing revenues...

Not possible without the compliance of our officials...

India-Sri Lanka



**Portugal-India Joint Prosecution team**

### Article 49 (contd) Joint investigations

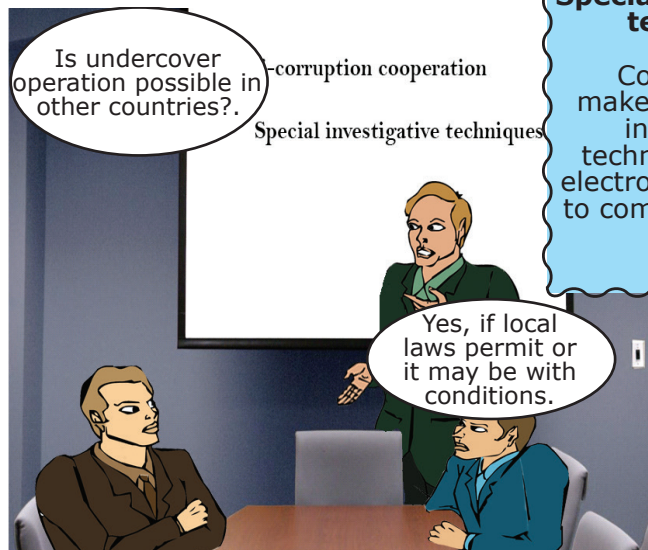
Countries shall consider establishing joint investigative bodies to deal with prosecution or judicial proceedings in one or more countries through bilateral/multi-lateral agreements.

### Nepal-India Joint Prosecution team



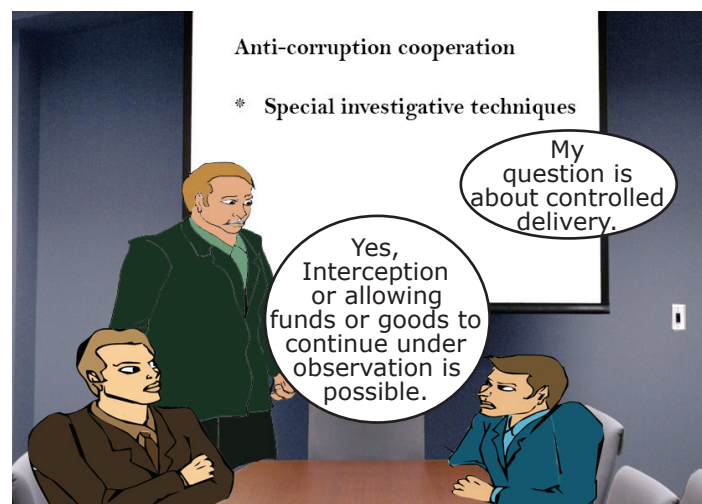
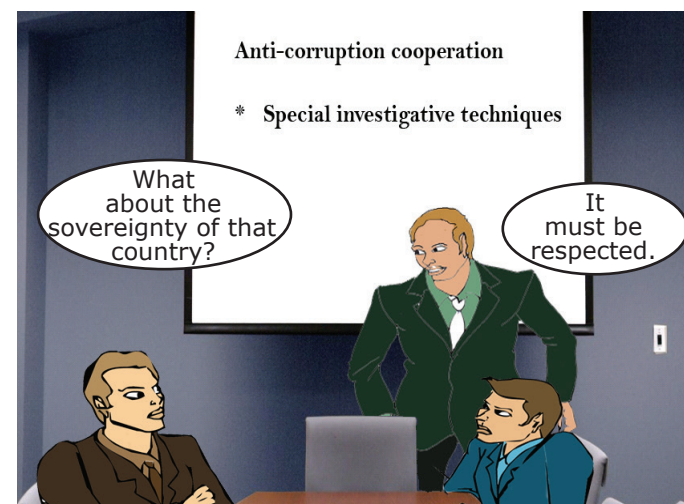


## Use of Special investigative techniques to be allowed domestically and also in international cooperation.



### Article 50 Special investigative techniques

Countries can make use of special investigative techniques such as electronic surveillance to combat corruption.











## Chapter -5

### Asset Recovery

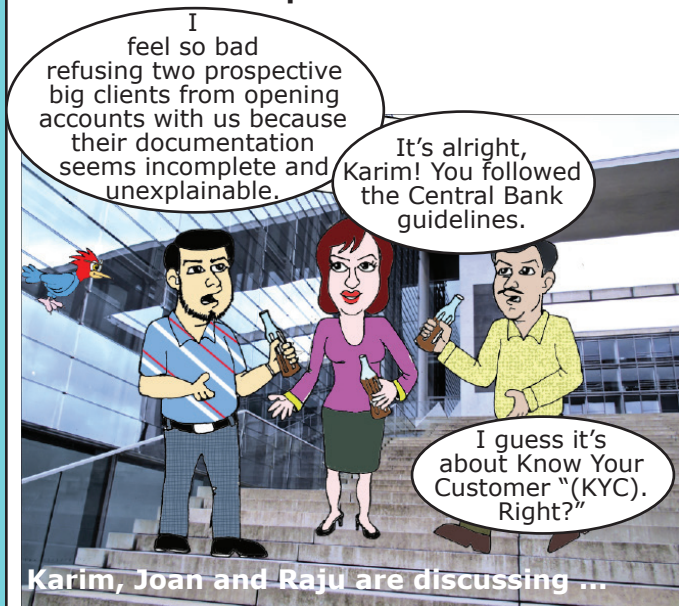
#### Asset Recovery

In the case of embezzlement of public funds, the confiscated property would be returned to the country requesting it; or the proceeds of crimes of corruption would be returned to countries upon providing proof of legitimate ownership or of the damage caused which may be used to pay to victims.

Effective asset-recovery will support the efforts of countries to redress the worst effects of corruption while sending a message to corrupt officials that there will be no place to hide their illicit assets.

Asset Recovery is a fundamental principle of the Convention and particularly important issue for many developing countries where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies.

### Mechanism for prevention and detection of transfers of proceeds of crime



#### Article 52 Prevention and detection of transfers of proceeds of crime

Financial institutions are required to verify identity of their customers/beneficial owners.





I am told that our Manager is personally monitoring their accounts.

They are called Politically Exposed Persons (PEPs) either within or outside our country.



Can you explain that better?

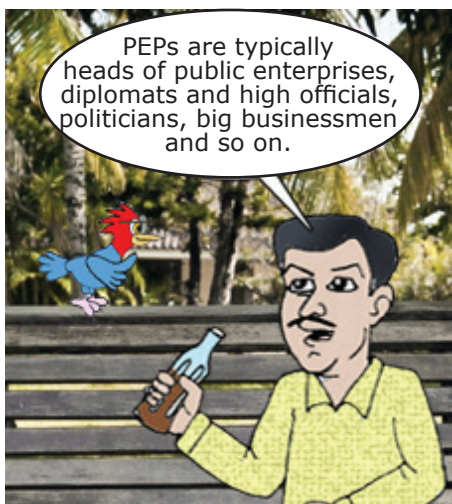
Sure.



### **Article 52 (contd) Prevention and detection of transfers of proceeds of crime**

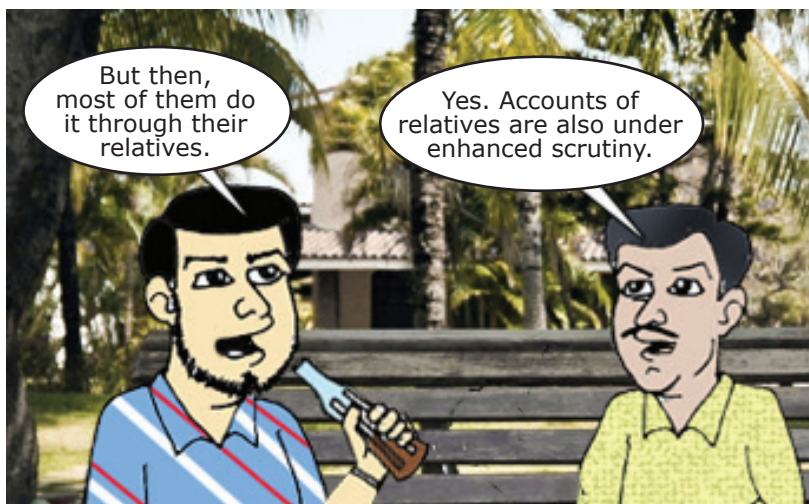
Financial institutions are required to conduct enhanced scrutiny of accounts maintained by persons entrusted with prominent public functions.

PEPs are typically heads of public enterprises, diplomats and high officials, politicians, big businessmen and so on.

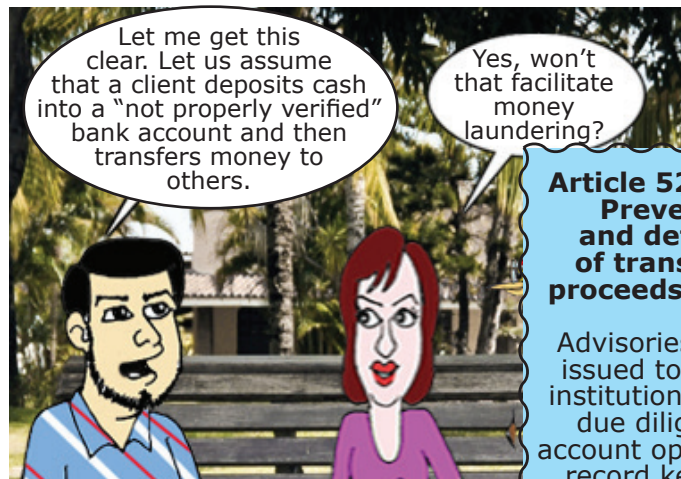


But then, most of them do it through their relatives.

Yes. Accounts of relatives are also under enhanced scrutiny.

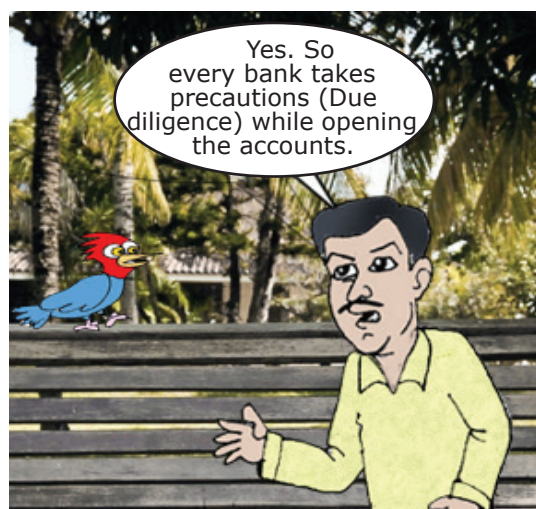






**Article 52 (contd)  
Prevention  
and detection  
of transfers of  
proceeds of crime**

Advisories shall be issued to financial institutions to apply due diligence in account opening, and record keeping in relation to certain types of persons.







**Article 52  
(contd)  
Prevention  
and detection  
of transfers  
of proceeds of  
crime**

Enhanced scrutiny may apply to natural or legal persons too.



Each country has to decide on this. Obviously, it will follow domestic laws.



My desk is filled with such reports. How long should I keep them?

You must keep them for 10 years after the business relationship ends.



And that includes suspicious transactions or high value cash reports too?

Yes. Also keep updated information on customers.









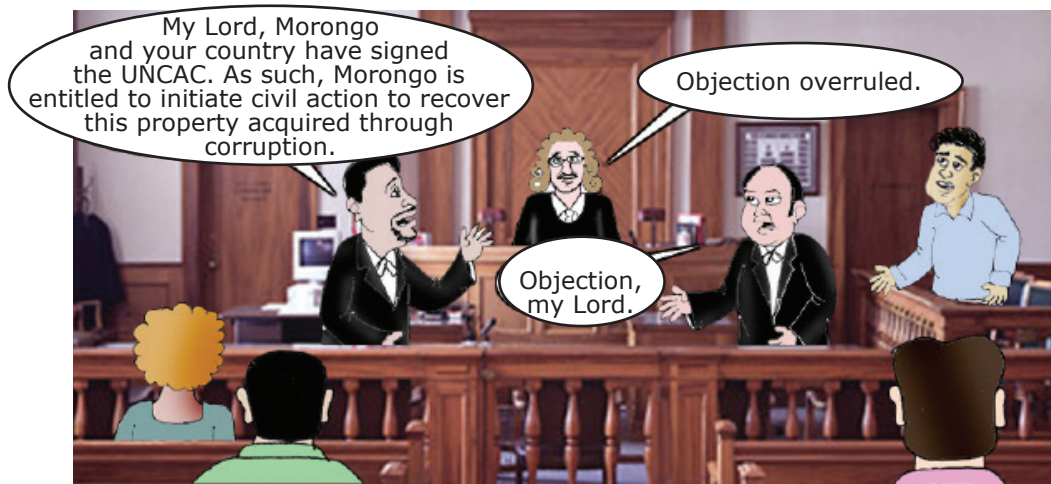
**Article 52 (contd)  
Prevention  
and detection  
of transfers of  
proceeds of crime**

Financial institutions may be required to refuse or continue correspondent banking relationship with institutions that have no physical presence and have no affiliation with regulated financial group.





**Countries to allow one another to initiate action in its civil courts to establish ownership of property acquired through corruption offences.**

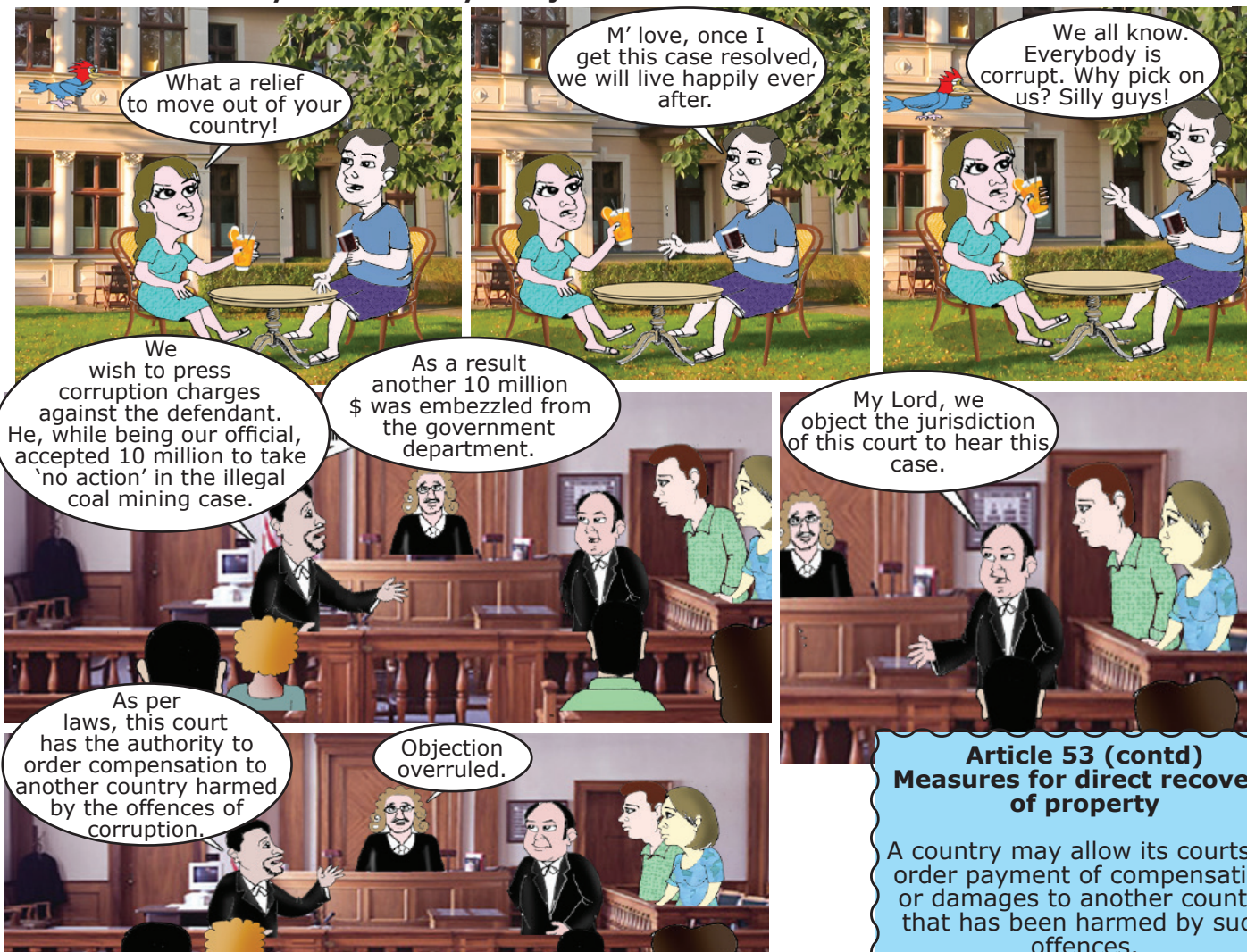


**Article 53  
Measures for  
direct recovery of  
property**

A country may allow another country to initiate civil action in its court to establish title or ownership of property acquired through Convention offence.



**Scene 2: Court may order payment or compensation to another State Party that has been harmed by offences committed by those currently in its jurisdiction.**



**Article 53 (contd)  
Measures for direct recovery  
of property**

A country may allow its courts to order payment of compensation or damages to another country that has been harmed by such offences.

**Scene 3: Courts allowed to order confiscation of property on behalf of legitimate owners in another country.**



On behalf of our clients, the Attorney General of XYZ country, I request the Court to order confiscation of 10 million and return it to my client.

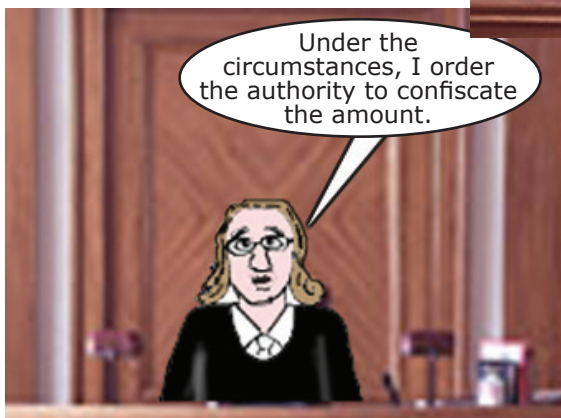


Your Honour, my learned friend has not established his client's legitimate right to 10 Million.



I present the papers that show that the alleged amount was acquired through corruption. The charges are proved in our courts.

Under the circumstances, I order the authority to confiscate the amount.



### **Article 53 (contd) Measures for direct recovery of property**

A country may allow its courts or competent authorities to order confiscation by recognizing another country's claim as a legitimate owner of property acquired through offences under convention.



### Mechanism for recovery of property through international cooperation in confiscation.





**Article 54**  
**Mechanism for recovery of property through international cooperation in confiscation**

In assisting one another, a country must allow its competent authorities to implement an order of confiscation issued by a court of another country in relation to property acquired through offences specified by the Convention.









**Article 54 (contd)  
Mechanism for  
recovery of  
property through  
international  
cooperation in  
confiscation**

A country may permit its competent authority to order confiscation in order to preserve property such as foreign arrest or criminal charge related to the acquisition of such property.



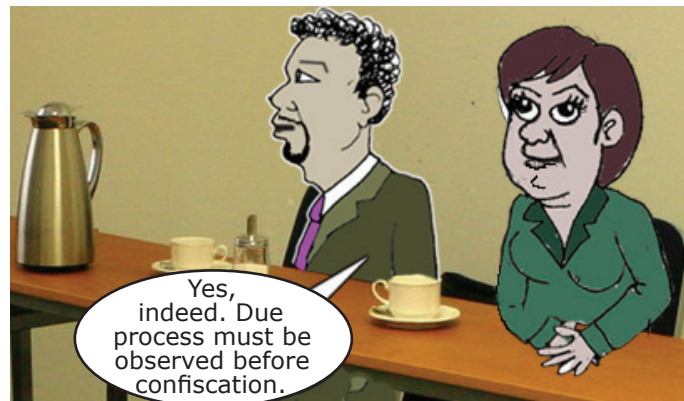
### Article 55 International cooperation for purposes of confiscation

Proceeds of crime, property, and equipment shall be identified, traced and seized upon request from another country for the purpose of eventual confiscation.

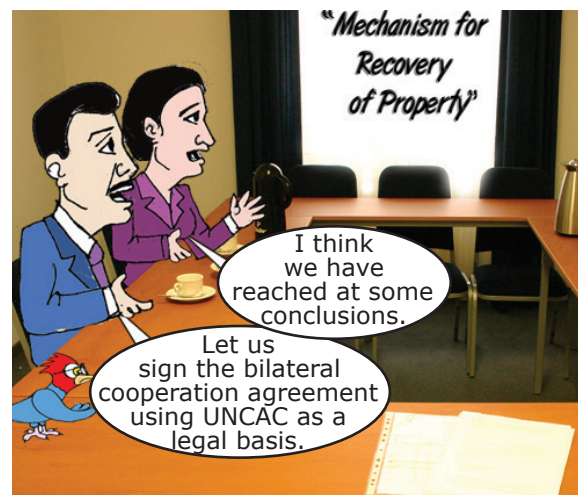
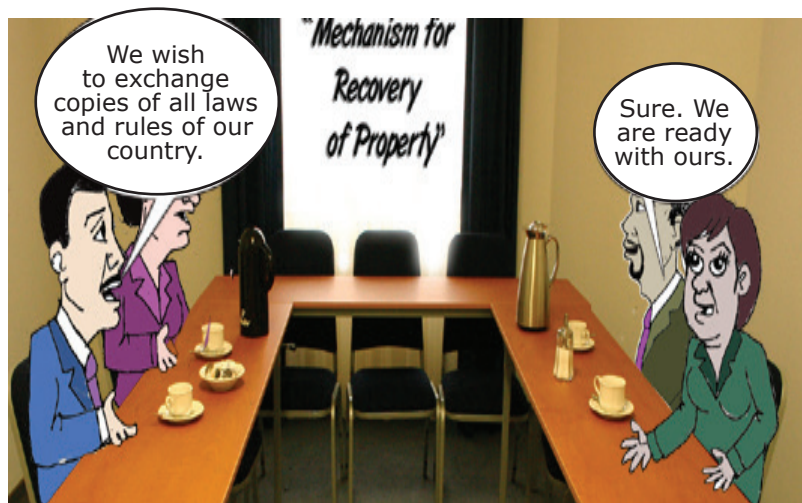
Cooperation under this mechanism may be refused if the country does not receive sufficient and timely evidence or if the property is of small value.





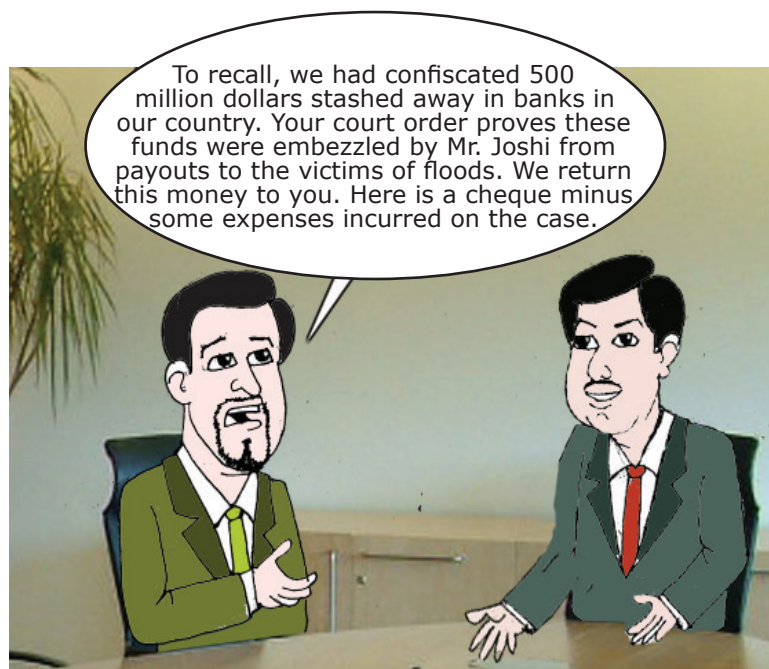




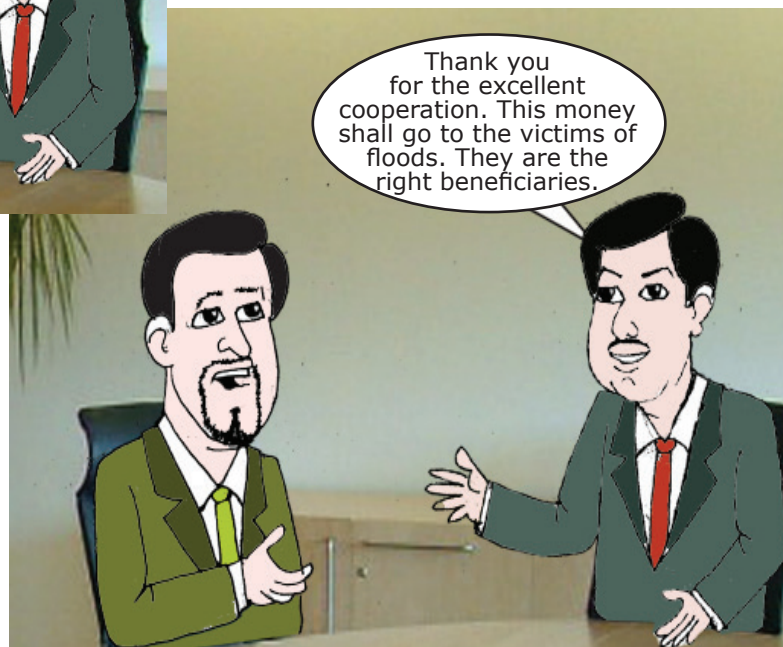


### **Article 56 Special cooperation**

Even without prior request a State Party shall forward its own information for investigation, prosecution or judicial proceeding on the same, if disclosure of this assist another State Party.



At the bilateral conference of two countries, the confiscated amount is returned to the country from where embezzled.

**Article 57****Return and disposal of assets**

Competent authorities shall be allowed to return confiscated property (including embezzled public funds) to the country that made the request after considering the rights of bona fide third parties.

Priority may be given to compensate prior legitimate owners or victims of the crime.

The requested country may deduct reasonable expenses before returning the confiscated property.

**Article 58**  
**Financial Intelligence Unit**

State Parties are required to consider establishing a financial intelligence unit that will be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

**Article 59**  
**Bilateral and multilateral agreements and arrangements**

State Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken to further the objectives in relation to asset recovery.







## Chapter -6

### Technical Assistance & Information Exchange

#### Technical Assistance and Information Exchange

This chapter provides for technical assistance and information exchange to facilitate training programmes for those responsible for preventing and combating corruption, with a view to support the efforts of developing countries to implement the Convention.

**Technical assistance to be made available in different areas:****Article 60  
Training and technical assistance**

Specific training made available for personnel responsible for preventing and combating of corruption.



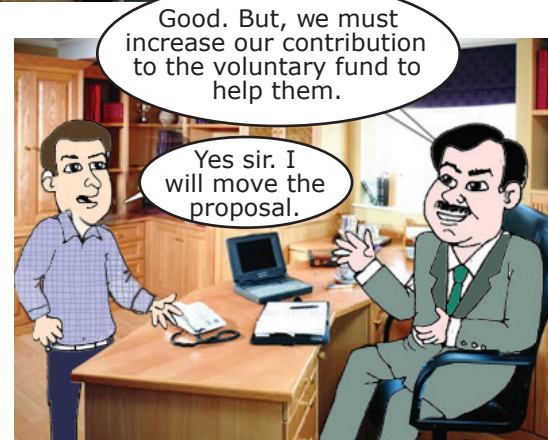
## Training and information exchange among member states are important

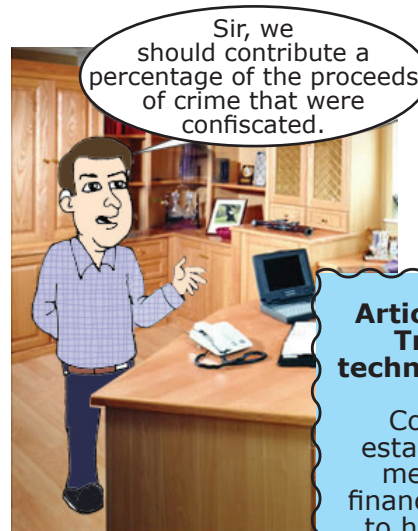
### Scenario 1



### Article 60 (contd) Training and technical assistance

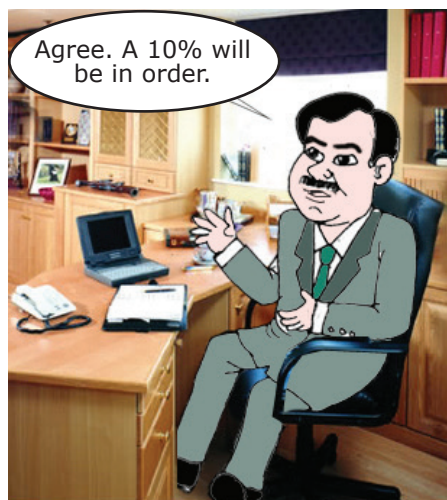
Countries shall consider assisting one another in conducting evaluations, studies and research to understand types, causes, effects and costs of corruption in order to combat corruption.





**Article 60 (contd)  
Training and  
technical assistance**

Countries shall establish voluntary mechanisms for financial contribution to help developing countries to implement Convention.





**Collection, exchange and analysis of information on corruption are important to understand trends in corruption and circumstances in which corruption offences are committed.**

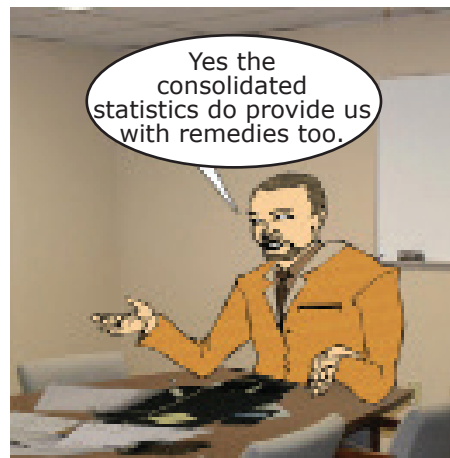
### Scenario 1



### Article 61 Collection, exchange and analysis of information on corruption

Analysing corruption scenarios, and international and national statistics lead to developing common methodologies to prevent and combat corruption.



**Scenario 2****Article 62  
Other measures:  
implementation  
of the Convention  
through economic  
development and  
technical assistance**

Countries shall take adequate measures to implement the UNCAC and take into account the negative aspects of corruption especially on sustainable development.









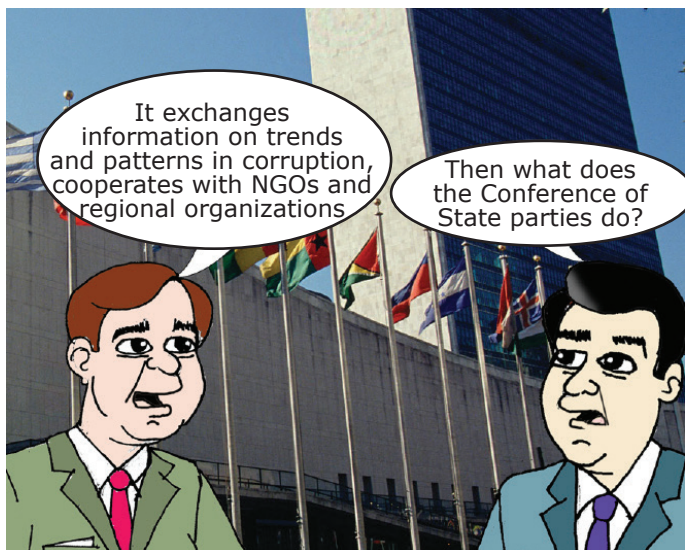
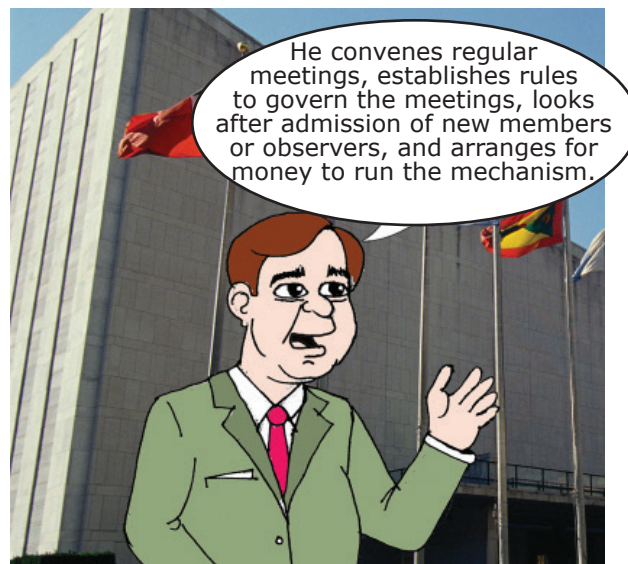
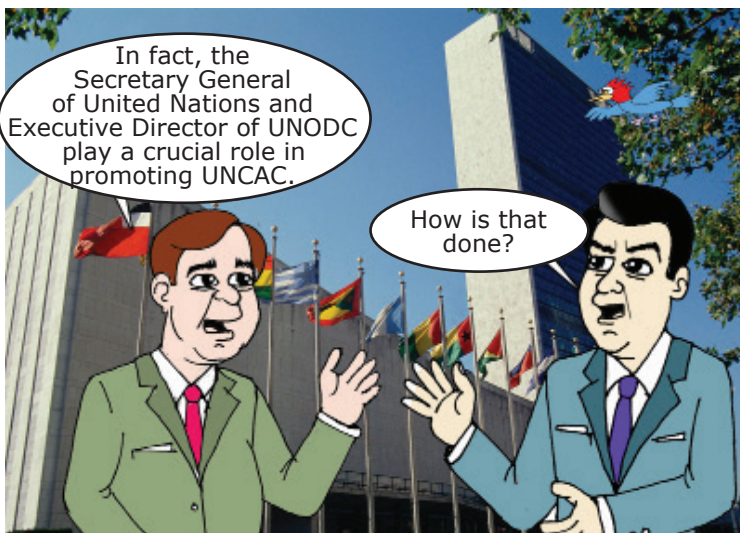
## **Chapter -7**

### **Mechanism for Implementation**

The following articles deal with the establishment of the Conference of States Parties, and the Secretariat for stronger implementation of UNCAC.

**Conference of the States Parties to the Convention (CoSP) is established to improve the capacity of and cooperation between countries to promote and review its implementation.**



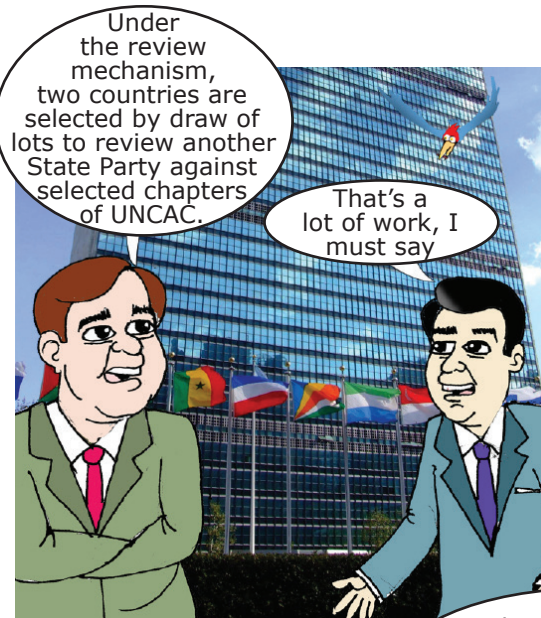


### **Article 63 Conference of the State Parties to the Convention**

Role of the CoSP to the Convention include improving the capacity of and cooperation between countries and to achieve convention objectives, and promote and review its implementation



### UNCAC review mechanism



### Article 64 Secretariat

Secretariat headed by the Secretary-General of the United Nations provides secretariat assistance to CoSP (including conference services and information) and ensures coordination with the secretariats of relevant international and regional organizations.









## **Chapter -8**

### **Final Provisions**

This chapter lays down provisions that regulate settlement of disputes, signature, ratification, acceptance, approval, accession, entry into force, amendments to UNCAC provisions and denunciation. Secretary-General is the depository of the Convention written in the official languages.

### Mechanism for UNCAC implementation

**Finger Lakes near New York: Hossam, a new hire, accompanies his boss Tom on a weekend fishing trip. It seems, Hossam has many questions.**

You say that UNCAC is a great tool to fight corruption. Why some countries have signed it so late?



Very good question. Generally, a country would first adjust its domestic laws before agreeing to UNCAC provisions.



What if some countries find their domestic laws stronger than UNCAC?



You mean what is the value addition in adopting it?



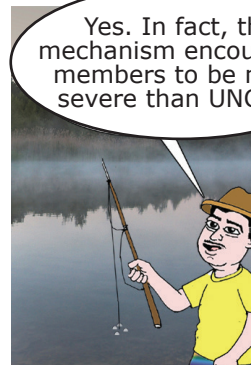
The value addition is international cooperation and in joining hands to support each other.



I see, Nobody is really an 'island' in this world!



Yes. In fact, the mechanism encourages members to be more severe than UNCAC.



#### Articles 65 to 71

Describe final provisions in regard to the implementation of the Convention, settlement of disputes, ratification and depository of UNCAC.

### Article 66 Settlement of disputes

For settlement of disputes arising between countries on the application of UNCAC, negotiation and arbitration are to be resorted to failing which the dispute could be taken to International court of Justice.



What happens if there is dispute among member states?



Simple! They must get into mutual negotiations.



Easy. A country may become party to the Convention without such provisions but must make it clear that these provisions are not acceptable at the time of becoming state party and not later. This is called 'reservation'.

What if any country does not wish to use these channels of dispute resolution?

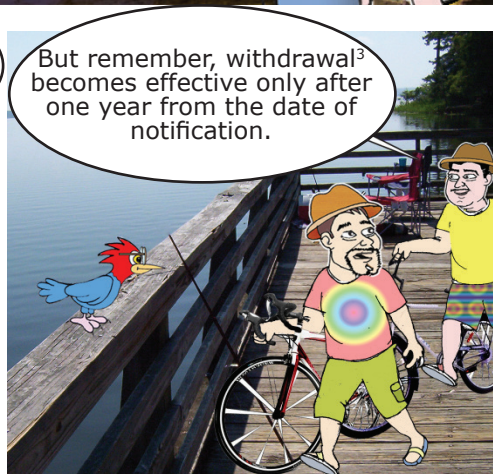
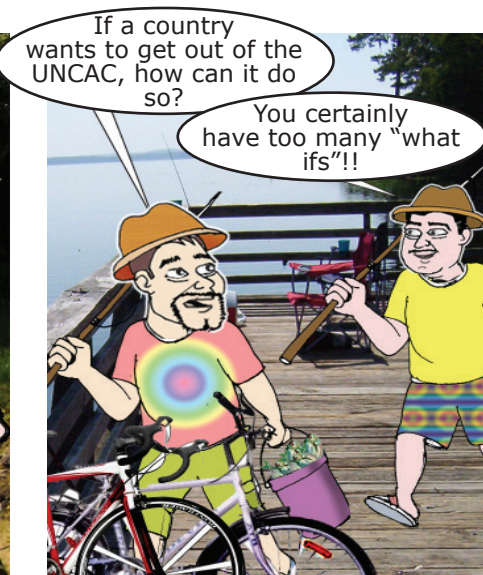


Next step is "Arbitration".

There is an option to go to International Court of Justice after six months.







<sup>3</sup> The technical word for withdrawal is 'denunciation' under UNCAC.

## Status of the Articles of UNCAC

### PREVENTIVE MEASURES

Prevention of corruption

Art. 5(1)(M) - Development, implementation, maintenance of coordinated anti-corruption policies

Art. 5(2)(O) - Establish and promote effective anti-corruption practices

Art. 5(3)(O) - Periodic evaluation of legal instruments & admin measures

Art. 5(4)(M) - Collaboration of States Parties with each other and int'l/regional organizations

Art. 11(1)(M) - As applied to judiciary

Art. 11(2)(M) - As applied to prosecution services

Anti-corruption body or bodies

Art. 6(1)(M) - Establishment

Art. 6(2)(M) - Independence and necessary resources

Public officials, finances and reporting

Art. 7(1)(C) - Establishing systems for civil servants

Art. 7(2)(C) - Prescribing criteria for candidature for and election to public office

Art. 7(3)(C) - Transparency in funding for candidates/political parties

Art. 7(4)(C) - Transparency in general and prevention of conflicts of interests

Art. 8(1)(M) - Promotion of integrity, honesty, and responsibility among public officials

Art. 8(2)(C) - Codes/Standards of Conduct

Art. 8(3)(M) - Note relevant initiatives of regional, interregional, multilateral organizations

Art. 8(4)(C) - Reporting of corruption

Art. 8(5)(O) - Reporting of outside activities, employment, investments, assets, etc.

Art. 8(6)(O) - Disciplinary measures for public officials

Art. 9(1)(M) - Systems of procurement

Art. 9(1)(a) - Public distribution of information

Art. 9(1)(b) - Conditions for Participation in Tender etc.

Art. 9(1)(c) - Criteria

Art. 9(1)(d) - Review Process

Art. 9(1)(e) - Regulation of Personnel responsible for procurement

Art. 9(2)(M) - Management of public finances

Art. 9(3)(M) - Integrity of accounting

Art. 10(M) - Transparency in public administration

Private Sector

Art. 12(1)(M) - Accounting and auditing standards

Art. 12(2)(O) - Measures

Art. 12(3)(M) - Prohibiting fraudulent accounts, records, and documents

Art. 12(4)(M) - Disallow tax deductibility of bribes

Participation of society

Art. 13(M) - Promote participation outside public sector

Prevention of money laundering

Art. 14(1)(a)(M) - Domestic regulatory and supervisory regime for financial institutions

Art. 14(1)(b)(M) - Cooperation and exchange of information

Art. 14(2)(C) - Movement of finances across borders

Art. 14(3)(C) - Strict information gathering on fund transfers

Art. 14(4)(C) - Use relevant initiatives of anti-money laundering organizations as guidelines

Art. 14(5)(C) - Promote cooperation

Enhanced scrutiny: high-value accounts and accounts of prominent public officials

Art. 52(1)(M) - Financial institutions to verify identify of customers, owners of funds deposited into high-value accounts and to scrutinize accounts sought or maintained by individuals connected with prominent public functions

Art. 52(2)(M) - Advisories on types of and specific persons for enhanced scrutiny

Art. 52(3)(M) - Records on persons with enhanced scrutiny

Art. 52(4)(M) - Prevent banks without physical presence and not affiliated with regulated financial group; also relationships with such

Art. 52(4)(O) - Prevent banking relationship with banks defined above

Art. 52(5)(C) - Financial disclosure systems for public officials

Art. 52(6)(C) - Financial disclosure by public officials with foreign financial account

Financial intelligence unit (1)

Art. 14(1)(b)(C) - Establishment

*[M is mandatory, O is optional and C is obligation to implement if consistent with fundamental legal principles]*

## Status of the Articles of UNCAC

### CRIMINALIZATION

#### Bribery

- Art. 15 (a) (M) - Active, Bribery of National Public Officials
- Art. 15 (b) (M) - Passive, Bribery of National Public Officials
- Art. 16 (1) (M) - Active, Bribery of Foreign Public Officials and Officials of Intl Organisations
- Art. 16 (2) (C) - Passive, Bribery of Foreign Public Officials and Officials of Intl Organisations

#### Embezzlement, misappropriation, and other diversion

- Art. 17(M) - General, Public Officials
- Trading in influence
- Art. 18 (C) - General, Public Officials

#### Abuse of functions

- Art. 19(C) - General, Public Officials
- Illicit enrichment
- Art. 20(C) - Public Officials

#### Private sector

- Art. 21(C) - Bribery
- Art. 22(C) - Embezzlement

#### Laundering of proceeds of crime

- Art. 23(1)(a)(M) - Conversion/transfer of property;
- Concealment
- Art. 23(1)(b)(i)(M) - Acquisition, possession, use of property
- Art. 23(1)(b)(ii)(M) - Participation in, association with, conspiracy, attempt, abetting, facilitating, counselling
- Art. 23(2) - Predicate offenses

#### Concealment

- Art. 24(C) - General

#### Obstruction of justice

- Art. 25(M) - General

#### Participation and attempt

- Art. 27(1)(M) - Accomplice liability
- Art. 27(2)(O) - Attempt
- Art. 27(3)(O) - Preparation

#### Knowledge, intent and purpose

- Art. 28(M) - General

#### Prosecution, adjudication and sanctions

- Art. 29(M) - Statute of Limitations
- Art. 30(1)(M) - Sanctions/liability for offenses
- Art. 30(2)(M) - Balance between immunities/privileges and effective investigation/prosecution/adjudication
- Art. 30(3)(C) - Maximize discretionary legal powers
- Art. 30(4)(M) - Ensure presence of defendant
- Art. 30(5)(M) - Gravity of offense considered in relation to early release and parole
- Art. 30(6)(C) - Procedures to remove, suspend, reassign public official
- Art. 30(7)(a)(C) - Disqualification from public office
- Art. 30(7)(b)(C) - Disqualification from state-connected enterprise
- Art. 30(10)(C) - Promote reintegration of convicted persons

### LAW ENFORCEMENT

#### Identification, tracing, freezing, seizure and confiscation

- Art. 31(1)(a)(M) - Proceeds of crime
- Art. 31(1)(b)(M) - Property, equipment, other instrumentalities
- Art. 31(2)(M) - Measures to enable identification, tracing, freezing, seizure
- Art. 31(3)(M) - Administration of frozen, seized, confiscated property
- Art. 31(4)(M) - Liability of converted proceeds
- Art. 31(5)(M) - Intermingled proceeds
- Art. 31(6)(M) - Income or benefits derived from proceeds of crime
- Art. 31(7)(M) - Empower courts/authorities to seize bank, financial, or commercial records
- Art. 31(8)(C) - Offender to demonstrate lawful origin of proceeds of crime
- Art. 31(9)(M) - No prejudice of bona fide third parties

#### Protection of witnesses, exerts, victims and reporting persons

- Art. 32(1)(M) - Protection from retaliation and intimidation
- Art. 32(2)(O) - Measures
- Art. 32(3)(C) - Agreements with other States for relocation
- Art. 32(4)(M) - Applicable to victims
- Art. 32(5)(M) - Victim impact statements
- Art. 33(C) - Protection of reporting persons
- Art. 35(M) - Compensation for persons who suffer damage as result of act of corruption
- Art. 37(4)(M)

*[M is mandatory, O is optional and C is obligation to implement if consistent with fundamental legal principles]*



## Status of the Articles of UNCAC

### Liability of legal persons

- Art. 26(1)(M) - General
- Art. 26(2)(M to pick criminal, civil or administrative liability)
- Art. 26(3)(M)
- Art. 26(4)(M)

### Specialized Anti Corruption Authorities

- Art. 36(M)

### Private sector and other cooperation

- Art. 37(1)(M) - Supply of information to authorities
- Art. 37(2)(C) - Mitigated punishment for cooperative accused person
- Art. 37(3)(C) - Immunity from prosecution
- Art. 37(5)(O) - Mitigation or immunity via different States
- Art. 39(1)(M) - Cooperation between private sector and national authorities
- Art. 39(2)(C) - Cooperation between nationals and habitual residents with authorities

### Inter-agency cooperation

- Art. 38(M) - Cooperation between national authorities

### Bank secrecy

- Art. 40(M) - Overcoming bank secrecy laws

### Jurisdiction

- Art. 42(1)(M) - Jurisdiction in territory/vessel/aircraft of State Party
- Art. 42(2)(a)(O) - Applied to offense committed against national
- Art. 42(2)(b)(O) - Offense committed by national or stateless person with habitual residence
- Art. 42(2)(c)(O) - Offense outside territory with view to commission inside territory
- Art. 42(2)(d)(O) - Offense against State Party
- Art. 42(3)(M) - Offender present in territory but non-extraditable solely on ground that is a national
- Art. 42(4)(O) - Offender present in territory but not extradited
- Art. 42(5)(M) - Coordination of actions with other State Parties
- Art. 42(6)(O) - Non-exclusion of domestic criminal jurisdiction

### Special investigative techniques (cross-reference with international cooperation)

- Art. 50(1)(M) - Controlled delivery, surveillance, undercover operations

### Art. 50(2)(C) - Bilateral/multilateral agreements

- Art. 50(3)(O) - Case-by-case basis in absence of agreement
- Art. 50(4)(O) - Methods of controlled delivery

## INTERNATIONAL COOPERATION

### Extradition

- Art. 43 (1) (M) - Cooperation in criminal matters
- Art. 43 (2) (M) - Dual Criminality Requirement
- Art. 44(1)(M) - Extradition when offense punishable under domestic law of requesting and requested State Party
- Art. 44(2)(O) - Permissible extradition when offenses not punishable under domestic law
- Art. 44(3)(O) - Permissible extradition for non-extraditable offenses related to Convention in presence of at least one extraditable offense
- Art. 44(4)(M) - Offenses included as extraditable offence in extradition treaty; not political offense
- Art. 44(5)(O) - Convention as legal basis for extradition in absence of formal treaty
- Art. 44(6)(M) - Notify UN on legal basis for extradition/ conclude treaties on extradition
- Art. 44(7)(M) - Extradition in absence of reliance on condition of treaty
- Art. 44(8)(M) - Extradition subject to conditions of domestic law or treaties
- Art. 44(9)(C) - Expediting extradition procedures and simplifying evidentiary requirements
- Art. 44(10)(O) - Custody of extradited individuals
- Art. 44(11)(M) - Prosecution of non-extraditable individuals
- Art. 44(12)(M) - Discharge of obligation in previous section
- Art. 44(13)(O) - Enforcement of sentence in cases of refusal of extradition
- Art. 44(14)(M) - Fair treatment and enjoyment of rights
- Art. 44(15)(O) - No obligation to extradite in cases of prejudice
- Art. 44(16)(M) - No refusal on sole ground that offense involves fiscal matters
- Art. 44(17)(M) - Opportunity for requesting State Party to present opinions and information
- Art. 44(18)(O) - Encourage bilateral and multilateral agreements

### Transfer of sentenced persons

- Art. 45(C) - General

*[M is mandatory, O is optional and C is obligation to implement if consistent with fundamental legal principles]*

## Status of the Articles of UNCAC

Mutual legal assistance  
 Art. 46(1)(M) - General  
 Art. 46(2)(M)  
 Art. 46(3)(O) - Methods  
 Art. 46(4)(O) - Voluntary transmittal of information to other State Parties  
 Art. 46(5)(M) - Confidentiality  
 Art. 46(6)(M)  
 Art. 46(7)(M)  
 Art. 46(8)(M) - No declining on grounds of bank secrecy  
 Art. 46(9)(O) - Dual criminality  
 Art. 46(10)(O) - Transfer of sentenced individuals for purposes of identification, testimony, assistance  
 Art. 46(11)(M) - Issues involving transfer of sentenced individuals  
 Art. 46(12)(M) - No prosecution, detention, punishment, restriction of liberty for transferred sentenced individuals for acts prior to departure from country  
 Art. 46(13)(M) - Designation of central authority for mutual legal assistance  
 Art. 46(14)(M) - Requests in writing  
 Art. 46(15)(M) - Contents of requests  
 Art. 46(16)(O) - Additional information  
 Art. 46(17)(M) - Accordance with domestic law  
 Art. 46(18)(O) - Video hearings  
 Art. 46(19)(M) - No transmittal or use of information for other purposes  
 Art. 46(20)(O) - Confidentiality of request  
 Art. 46(21)(O) - Refusal of request  
 Art. 46(22)(M) - No refusal on grounds of fiscal matters  
 Art. 46(23)(M) - Reasons must be given for refusal  
 Art. 46(24)(M) - Celerity of fulfilling request  
 Art. 46(25)(O) - Postponement  
 Art. 46(26)(M) - Negotiation of request conditions  
 Art. 46(27)(M) - No prosecution, detention, punishment, restriction of liberty for witness/experts for acts prior to departure from country  
 Art. 46(28)(M) - Cost borne by requested State Party  
 Art. 46(29)(a)(M) - Provision of re-cords/documents/information available to general public to requesting State Party  
 Art. 46(29)(b)(O) - Records/documents/information not available to general public  
 Art. 46(30)(C) - Creation of bilateral or multilateral agreements

Transfer of criminal proceedings  
 Art. 47(C) - General

Law enforcement cooperation  
 Art. 48(1)(M) - General  
 Art. 48(2)(C) - Creation of bilateral and multilateral agreements  
 Art. 48(3)(C) - Use of modern technology

Joint investigations  
 Art. 49(C) - General

### ASSET RECOVERY

Direct recovery  
 Art. 53(M) - General

Mechanisms for recovery and international cooperation  
 Art. 54(1)(a)(M) - Confiscation via foreign court order  
 Art. 54(1)(b)(M) - Confiscation of foreign property via domestic law  
 Art. 54(1)(c)(C) - Confiscation of property without criminal conviction where offender cannot be prosecuted  
 Art. 54(2)(M) - Freezing, seizure of property  
 Art. 55(1)(M) - Requests for confiscation  
 Art. 55(2)(M) - Measures  
 Art. 55(3)(M) - Contents of requests  
 Art. 55(4)(M) - Subject to domestic law and agreements  
 Art. 55(5)(M) - Furnish copies of laws/regulations to UN  
 Art. 55(6)(C) - Convention as necessary and sufficient treaty basis  
 Art. 55(7)(O) - Refusal due to insufficient and untimely evidence  
 Art. 55(8)(M) - Opportunity for requesting State Party to present reasons of continuing measure  
 Art. 55(9)(M) - No prejudice to rights of bona fide third parties

Special cooperation  
 Art. 56(C) - Cooperation between State Parties regarding proceeds of offenses

Return and disposal of assets: agreements and arrangements  
 Art. 57(1)(M) - Return of assets  
 Art. 57(2) & (3)(M) - Requests of other State Parties  
 Art. 57(4)(O) - Deduction of reasonable expenses

*[M is mandatory, O is optional and C is obligation to implement if consistent with fundamental legal principles]*

**Status of the Articles of UNCAC**

Art. 57(5)(O) - Agreements/arrangements for final disposal of confiscated property  
 Art. 59(C) - Creation of bilateral and multilateral agreements  
 Financial intelligence unit (2)  
 Art. 58(C) - General

**TECHNICAL ASSISTANCE AND INFORMATION EXCHANGE**

Training and technical assistance  
 Art. 60(1)(M) - Training for anti-corruption personnel  
 Art. 60(2)(C) - Technical assistance for other State Parties  
 Art. 60(3)(M) - Strengthen efforts to maximize operational and training activities  
 Art. 60(4)(C) - Assistance between State Parties in conducting evaluations, research, studies  
 Art. 60(5)(O) - Information sharing on experts  
 Art. 60(6)(C) - Use of conferences and seminars  
 Art. 60(7)(C) - Voluntary mechanisms

Art. 60(8)(C) - Voluntary contributions to UN Office on Drugs and Crime

Collection, exchange and analysis of information  
 Art. 61(C) - General

Economic development and technical assistance  
 Art. 62(1)(M) - General  
 Art. 62(2)(M) - Cooperation with, financial/material/technical assistance to, and providing training programs/modern equipment to developing countries, including voluntary contributions to UN account designated for that purpose (specifically percentage of proceeds of crime confiscated)  
 Art. 62(3)(C) - No prejudice to existing foreign assistance commitments/financial cooperation arrangements  
 Art. 62(4)(O) - Creation of bilateral or multilateral agreements

*[M is mandatory, O is optional and C is obligation to implement if consistent with fundamental legal principles]*



**Join us in our fight against Corruption**



**9th December is the International Anti-Corruption Day**





**UNODC**

United Nations Office on Drugs and Crime

**Regional Office for South Asia**

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