

UN Convention against corruption: A gallant move for corruption free world Md. Saiful Karim

Corruption is a dangerous epidemic that has wide-ranging and horrific adverse effects on societies and states. It undermines democracy, good governance and the rule of law and leads to violations of human rights, hinders the process of sustainable development, erodes the quality of life and allows widespread exploitation and insecurity in the life of people specially people of the marginalised segment of the society. This evil phenomenon is very much common in all countries developed and least developed, big and small. There was a long standing demand from global community for a balanced and pragmatic international instrument which will introduce a comprehensive set of standards, measures and rules that all countries could apply in order to strengthen their legal and regulatory regimes to fight corruption. For satisfying this long-standing demand of world community, United Nations General Assembly unanimously adopted The United Nations Convention against Corruption on 31 October 2003. It was open to all States for signature from 9 to 11 December 2003 in a high-level political Signing Conference in Merida, Mexico, and thereafter it will remain open for signature at United Nations Headquarters in New York until 9 December 2005. The Convention shall also be open for signature by regional economic integration organisations providing that at least one Member State of such organisation has signed this Convention. The Convention requires ratification by 30 countries for its entry into force. As of January 17, 2005 thirteen states have ratified the Convention. These include: Algeria, Benin, El Salvador, Kenya, Madagascar, Mexico, Namibia, Peru, Romania, Sierra Leone, South Africa, Sri Lanka and Uganda. Unfortunately Bangladesh is yet to sign this Convention.

Purpose of the Convention

According to Article 1 of the Convention the basic purposes of this Convention are:

- *To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- *To promote, facilitate and support international co-operation 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.

Salient features of the Convention

The Convention consists of eight chapters and seventy-one articles. It covers topics that include public procurement, bribery, illicit enrichment, embezzlement, misappropriation, money-laundering, protecting reporting persons (including witnesses, experts, victims), freezing of assets and co-operation between States.

Preventive measures

Corruption can be prosecuted after the fact, but first and foremost, it requires prevention. Under Article 5 of the Convention, each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, co-ordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. Chapter II of the Convention comprehensively deals with the preventive measures of corruption. This chapter includes provisions for preventive

anti-corruption policies, practices, and establishment of preventive anti-corruption body or bodies. It also includes provisions for efficiency, transparency, codes of conduct and merit based recruitment of public servant. This chapter also formulates the guidelines for transparency and accountability in matters of public services and public finance. It also elaborates specific requirements for the prevention of corruption, especially critical areas of the public sector, such as the judiciary and public procurement. The Convention calls on countries to promote actively the involvement of non-governmental and community-based organisations, as well as other elements of civil society, and to raise public awareness against corruption. Apart from these this chapter provides specific measures to prevent money laundering.

Criminalisation and law enforcement

Under chapter III of the Convention each State Party is required to adopt such legislative and other measures as may be necessary to define criminal offences to cover a wide range of dimensions of corruption including inter alia not only basic forms of corruption, such as bribery, the embezzlement of public funds, but also trading in influence and the concealment and "laundering" of the proceeds of corruption.

International co-operation

Chapter IV of the Convention is dedicated for international co-operation. States Parties shall where appropriate and consistent with their domestic legal system, consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption. Parties are bound to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders and transfer of sentenced persons. State parties are also required to undertake measures that will support the tracing, freezing, seizure and confiscation of the proceeds of corruption. Article 43 says "In matters of international co-operation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties".

Asset recovery

Chapter V of the Convention declares explicitly asset-recovery as "a fundamental principle of the Convention". This is an 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 development of states. This chapter incorporates provisions for prevention and detection of transfers of illicitly acquired assets, the recovery of property, and the return and disposition of assets. According to Transparency International "The UN Convention also raises hopes that funds transferred abroad by corrupt leaders (most famously, charges have been made against Abacha, Taylor, Mobutu, Fujimori, Bhutto and Suharto) can be brought back to the countries from where they were looted and used for the well-being of the people. The Convention is groundbreaking in including for the first time in an international legal instrument the concept, description and processes for international co-operation in the recovery of such stolen assets. The Convention also establishes the right of people who have suffered damage from corruption to initiate legal proceedings against responsible parties."

Technical assistance and information exchange

Chapter VI of the Convention outlines specific norms for initiation, development or improvement of specific training programmes for the personnel responsible for preventing and combating corruption. As per this chapter States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international co-operation, taking into account the negative effects of corruption on society in general, in particular on sustainable development. This international co-operation will be ensured through collection, exchange and analysis of information on corruption. Besides this states will be bound to take initiative for implementation of the Convention through economic development and technical assistance.

Concluding remarks

Adoption of new international convention is not and in no way can be a panacea; the main challenge will be the proper implementation of this Convention. At present the most important task for all concerned people of the world, is to urge states to ratify the Convention as soon as possible so that it becomes an active, legally binding instrument.

Corruption, poverty and human rights abuses are indivisibly interlinked with each other. For fuller realisation of economic, social, environmental and political rights, state should be open, accountable and transparent. In this context I may venture to conclude with some words of United Nations Secretary-General, Kofi Annan, "Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid".

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