

## A Detailed Look at the UNCAC

### *Context*

Following the completion of the *UN Convention on Transnational Organised Crime* in 2000, the United Nations recognised that there was a need for a more effective legal instrument aimed at combating corruption. The *Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century*, issued at the Tenth UN Congress on the Prevention of Crime and the Treatment of Offenders (April 10-17, 2000), called for a new tool in the fight against corruption. The Declaration stressed the urgent need to develop, under the auspices of the United Nations, a new and effective international legal instrument against corruption that would be distinct from the *United Nations Convention against Transnational Organized Crime*. This call was echoed by member states at the ninth session of the United Nations Commission on Crime Prevention and Criminal Justice, which immediately followed (April 18-20, 2000).

In response, the United Nations General Assembly adopted resolution 55/61 (December 4, 2000), requesting the Secretary General to prepare a report analyzing relevant international legal instruments and other documents and recommendations addressing corruption, for consideration at the Crime Prevention and Criminal Justice Commission's tenth session. The General Assembly also asked the Secretary General to convene an intergovernmental open-ended group of experts from UN member states to prepare draft terms of reference for the negotiation of the future legal instrument against corruption. In addition, in resolution 55/188 (December 20, 2000), the General Assembly proposed that the group of experts examine the question of illegally transferred funds and the repatriation of such funds to the countries of origin.

Accordingly, the Crime Prevention Commission's tenth session (Vienna, May 8-17, 2001) addressed the theme "Progress made in the global action against corruption" and considered the Secretary General's Report. The Commission agreed that the group of experts would meet in Vienna, July 30 - August 3, 2001, to consider possible items for the draft terms of reference, including strengthening international cooperation in preventing and combating the transfer of funds of illicit origin and promoting ways and means to be able to enable the return of such funds.

### *Key Issues of the Convention*

- The Convention seeks to cover: criminal law, transparency, technical assistance and preventative measures.
- The Draft Convention is 85 Articles long and covers the following areas:
  - Part I: General Provisions (articles 1-4);
  - Part II: Preventive Measures (articles 5-14, articles 15-18 are deleted at the moment);

- Part III: Criminalization, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witnesses and victims and law enforcement (articles 19-50);
  - Part IV: Promoting and strengthening international cooperation (articles 50-59);
  - Part V: Preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds and returning such funds (articles 64-69);
  - Part VI: Technical assistance, training and collection, exchange and analysis of information (articles 73-75);
  - Part VII: Mechanisms for monitoring implementation (articles 76-77);
  - Part VII: Final Clauses (articles 78-85)
- The Draft Convention defines ‘corruption’ as follows (**Article 2-1**): *Notwithstanding the acts of corruption generally recognized in various legal jurisdictions, the use of the term “corruption” in this Convention shall include such acts as are provided in this Convention and are criminalized pursuant to chapter III, whether attributed to a public or private official, and in any other acts that the State Party may have criminalized or defined as acts of corruption under its domestic law or may so criminalize or define in the future. Nothing herein shall limit the future criminalization of further acts of corruption or the adoption of measures to combat such acts.*
- The Draft Convention defines ‘Public Official’ as follows (**Article 2-a**): *(i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law that State party; (iii) any other person defined as a “public official” in the domestic law of a State Party. However, for the purpose of some specific measures contained in Chapter II [Preventive Measures] of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.*
- The Convention - for the first time - provides a framework, albeit not mandatory, for criminalizing bribery in the private sector, for measures to improve business integrity, and provisions to criminalize *inter alia* trading in influence (so called ‘indirect corruption).

### ***Issues of Concern***

- The Convention includes groundbreaking provisions on the return of assets to their country of origin, prefaced by a statement that this is a "fundamental principle" of the Convention. Provisions are also included for enhanced international co-operation in extradition and mutual legal assistance in relation to corruption offences and money laundering. **However, many developed countries are insisting on dual criminality before such assistance is available - that is, that both the requesting and requested country must have comparable offences in their criminal law.** This is particularly so in the case of the US, which has 110 such agreements. At the same time, many developing states indicate that the differences in legal systems, cultural diversity and the different stages of development of States should be taken into account when seeking appropriate harmonization in that area.
- While national public officials come under the jurisdiction of their home country courts, **there is no comparable tribunal for officials** of the United Nations and other public international organisations.
- Under the Convention, governments have a large degree of leeway to decide if and how far to incorporate the Convention's provisions into their national law. The need to ensure implementation of mandatory provisions makes effective monitoring of the Convention essential, in particular independent monitoring by civil society organisations in the signatory countries. Procedures for this have largely been left for decision until after the Convention comes into effect.

#### ***What Transparency International Says...***

- TI stresses that the Convention must address **private sector bribery**, since tolerance of corruption in this sector undermines public confidence in the private sector and can thwart sustainable development. According to TI, the convention should also criminalize private sector corruption just like corruption in the public sector.
- On **political corruption**, TI urges governments to support and strengthen Article 10 of the Convention, requiring declarations of all significant financial donations to political parties, and argues that this article should be extended to include candidates as well as parties. TI also points to a need for the Convention to recognise the role of **civil society** in fighting corruption - both in the preamble and in the chapter on preventative measures.
- TI argues for **mandatory prevention measures** to be included in the Convention. Such legally binding provisions are key to reducing levels of corruption and should address independent anti-corruption bodies; recruitment; hiring and promotion of civil servants; codes of conduct for public officials; public procurement and public financial management; and funding of political parties.

## ***Why Should Parliamentarians Be Involved?***

- Without the sustained and committed action of Parliamentarians, only nominal progress can be made.
- Many of the key provisions of the convention require parliament to not only draft and implement new legislation but to ensure that legislation is complied with. Moreover, that after ratification the Convention will become part of the national legislation and, according to the constitutions of major states that it prevails over other domestic law. That means that a national law that does not comply with the norms of the Convention is deemed invalid while enforcement of mechanisms under the legislation. Parliamentarians should also bear in mind that, in the case of lack of willingness and/or resistance from colleagues and state authorities in drafting legislation that is in compliance with the Convention – and -in the case of the absence of relevant provisions in national legislation, the Convention can automatically be used by the judicial system.
- Much of the convention will have a direct impact on the work and activities of parliamentarians. The following is a list of items with a specific impact on parliamentarians:

- Chapter II: Preventive Measures

- Article 6 bis, Elected Public Officials*

- “Each state party shall also consider taking appropriate legislative and administrative measures...to prescribe criteria for the appointment of public officials to public office by a process of election.”

- Article 7, Codes of Conduct for Public Officials*

- Of interest is item 6 which states “Each State Party...to establish measures and systems requiring public officials to make declarations to appropriate Authorities regarding inter alia, employment, investments, assets and Substantial gifts or benefits that may constitute a conflict of interest with Respect to their functions as public officials.”

- Article 10, Funding of Political Parties (in its entirety)*

- Article 11, Private Sector*

- “(f) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment related directly to the functions held or supervised by those public officials during their tenure.”

- Chapter III: Criminalization, Sanctions and Remedies, Confiscation and Seizure, Jurisdiction, Liability of Legal Persons, Protection of Witnesses and Victims and Law Enforcement.

*-Article 19, Bribery of National Public Officials (in its entirety).*

*-Article 19 bis, Bribery of Foreign Public Officials of a Public International Organisation (in its entirety).*

*-Article 21, Trading in Influence (in its entirety).*

*-Article 22, Embezzlement, Misappropriation or other Diversion of Property by a Public Official (in its entirety).*

*-Article 23, Concealment (in its entirety).*

*-Article 24, Abuse of Functions (in its entirety).*

*-Article 25, Illicit Enrichment (in its entirety).*

*-Article 26, Improper Use of Classified or Privileged Information (in its entirety).*

*-Article 28, Improper Benefits (in its entirety).*

*-Article 40, Prosecution, Adjudication and Sanctions*

Item 7, “Where warranted by the gravity of the offence, each State Party...shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of person convicted of offences covered by this Convention from (a) Holding public office...”

*-Article 48, Cooperation Between National Authorities (in its entirety)*

**GOPAC/UNCAC Working Group**

**CONTACT LIST**

**CO-CHAIRS**

**Senator Edgardo Angara  
Esadze**

Senator, Phillipines  
[Edgardo\\_angara@hotmail.com](mailto:Edgardo_angara@hotmail.com)  
Rm 505, GSIS Building  
Financial Center, Pasay City  
Philippines  
Tel: (632) 552-6601  
Fax: (632) 552-6601

**Dr. Londa**

MP, Georgia  
[londaesadze@hotmail.com](mailto:londaesadze@hotmail.com)  
8, Rustaveli Ave.  
380017-Tbilisi.  
Georgia  
Tel: (995 32) 23 28 95  
Fax: (995 32) 92 22 24

**WORKING GROUP MEMBERS**

**Mary Kathleen King**

Senator, Trinidad and Tobago  
c/o Mary King and Associates Ltd.  
Cmn. Deane and Warner Sts.  
St. Augustine  
Trinidad and Tobago  
West Indies  
Tel: +1 011-868-662-9535  
Fax: +1 (-011) -868-663-4252

**Inder Jit**

Retired MP, India

[inderjit@infapublications.com](mailto:inderjit@infapublications.com)

Jeevan Deep Building, Parliament Street

New Delhi 110001

India

Tel: +91 11-374-6766

Fax: +91 11-374-6788

**Shafqat Mahmood**

Retired MP, Pakistan

[shafmahmood@hotmail.com](mailto:shafmahmood@hotmail.com)

**Willibrod Peter Slaa**

MP, Tanzania

[wslaa@hotmail.com](mailto:wslaa@hotmail.com)

P.O. Box 119

Karatu Tanzania

Tel: 027-0744-36695

Fax: 027-253-4526

**Tom Levitt**

MP, UK

[tomlevittmp@parliament.uk](mailto:tomlevittmp@parliament.uk)

House of Commons

London, England

SW1A 0AA

**Naser Al-Sane**

MP, Kuwait

P.O. Box 716

Safat Kuwait

13008

[naser@alsane.com](mailto:naser@alsane.com)

Tel: (965) 243-9295 or 2455422

Fax: (965) 246-0959