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United Nations Convention against Corruption: The vital role of Parliamentarians in its ratification and implementation

By Dr. Naser Al Sane, MP (Kuwait)

Parliamentarians can become champions of anti corruption reform and initiatives by exercising their power in overseeing the ratification and implementation of the UNCAC. However, merely working towards the ratification of the UNCAC is not enough as governments might push for the ratification of international conventions to please its donors, or for enhancing their image, while not having a genuine will to implement the convention. As a result, parliamentarians are required to carefully follow the progress of UNCAC implementation by the executive.

As the Team Leader for the UNCAC Global Task Force, I participated in the second Conference of the States Parties (COSP) to the UN Convention Against Corruption, held in Nusa Dua,

Anti-corruption policy making – Implications for UNCAC

By Hannes Hechler, U4 Anti-Corruption Resource Centre

Anti-corruption policies are particularly complex undertakings as they cut across different sectors and multiple institutions of a country's governance system. These policies are usually created by a variety of actors with multiple, often conflicting and at times changing political objectives. The United Nations Convention against Corruption (UNCAC) provides guidance for national anti-corruption policies, as it asks states to "develop and implement or maintain effective, coordinated anti-corruption policies" promoting

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Indonesia 28 January to 1 February 2008. During the forum, my colleagues and I discussed the difficulties faced with the ratification and implementation processes of the UNCAC – especially as many countries in the world have initiated neither.

Sharing the same concerns, and facing the same difficulties, we parliamentarians called for the

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the participation of society and reflecting the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability (Article 5). However, together with the comprehensive provisions of the Convention this might tempt states to undertake too many anti-corruption measures at the same time.

In the past, broad national anti-corruption strategies have been a popular response by governments to wide-spread corruption in many Please see *Anti-corruption Policy Making* on page 5

UNODC's assistance to promote the UN Convention against Corruption

By Giovanni Gallo, UNODC

The United Nations Office on Drugs and Crime (UNODC) is in high demand as it handles three of the greatest threats to humanity: drugs, crime and terrorism. The successful management of these issues can only be accomplished with the cooperation of the international community. This is particularly true in relation to the United Nations Convention against Corruption (UNCAC), the first and only instrument designed to deal with the problem at the global level. Signed by 140 countries and ratified by 117 (as of 27 May 2008), the treaty introduces groundbreaking measures in four areas: prevention, criminalization, international cooperation and asset recovery, thus providing for a framework to effectively prevent and combat corruption worldwide. In this context, UNODC's delivery of technical assistance is driven by the need to match needs and priorities with concrete action. This is done by assisting states in the accession to, ratification and subsequent implementation of the Convention.

UNODC conducts pre-ratification assessments to help countries identify the normative requirements to be met in order to become parties to the Convention. Following ratification or accession, UNODC helps countries build normative and operational frameworks to implement the treaty. In particular, UNODC offers legal advisory services to draft legislation in line with the Convention. Subsequent to legislative adaptation is the empowerment of national authorities to enact the new laws. In this context, UNODC's technical assistance focuses on institution and capacity-building which includes assistance to the formulation of national anti-corruption strategies and the establishment or strengthening of anti-corruption authorities responsible for the implementation of such strategies.

Corruption practices cross boundaries, and so must the response to them. UNODC helps countries promote international cooperation notably in extradition and mutual legal assistance.



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Ultimately, the Office helps countries develop mechanisms for asset recovery by building the necessary knowledge-base and developing legal expertise for countries to recover public funds looted by corrupt leaders or administrators.

Concrete examples of assistance rendered by UNODC to support the implementation of the Convention are the Stolen Asset Recovery (StAR) Initiative and large anti-corruption project in Nigeria. The former, jointly launched by the Office and the World Bank in September 2007 includes assistance to developing countries for recovering assets, building capacity to deter new flows and global advocacy to lower barriers to asset recovery. The latter, also illustrative of the integrated approaches that the Office takes to tackle often interrelated problems, is a \$30 million project launched in Nigeria in 2002 and designed to address drugs and crime as impediments to security and development in Africa. As an operation extension of the Convention, this project aims at strengthening the ability of Nigerians authorities to prevent and combat economic crime, including corruption.

In conclusion, UNODC's efforts to promote the implementation of the Convention can rely on a catalogue of activities consistent in contributing to the criminal justice response to corruption. While UNODC's assistance can be rendered only upon request, the increasing number of such requests, coupled with the growing number of parties to the Convention, are a clear indication that countries not only have become more aware of the damaging consequences of corruption but they regard the Convention as the most effective response to the problem.

Supporting the UNCAC: The UNDP's Global Program for Parliamentary Strengthening

By Diane Sheinberg, UNDP

The United Nations Development program is the lead UN agency on democratic governance, present in 166 countries around the world. UNDP brings people together within nations and around the world, building partnerships and sharing ways to promote participation, accountability and effectiveness at all levels. The major strategy of UNDP when engaging in anti-corruption activities is to ensure that fighting corruption furthers UNDP mandates of poverty reduction, realization of Millennium Development Goals and promoting sustainable development. The linkages between corruption and development clearly highlight that UNDP's niche in fighting corruption is for development effectiveness.

The UN Convention against Corruption (UNCAC) has now been ratified by 117 countries (as of 14 May, 2008) and UNDP recognizes that many of the Millennium Development Goals (MDG) cannot be achieved without seriously tackling corruption.

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adoption of resolutions that will enhance countries' and MPs' role in achieving UNCAC goals. The Forum's resolution included an appeal to States' parties to adapt their domestic legislation and regulations to comply with the UNCAC requirements, while welcoming efforts made to enact laws, and pressing countries to take other positive measures leading to prevent and combat corruption in all its forms.

In the coming months, the Task Force will be publishing a Handbook for Parliamentarians on the UNCAC. The Handbook will be divided into two main parts. The first part will address parliamentarians of countries that have already ratified the UNCAC and provide them with tools to monitor the implementation of the UNCAC by their governments. The second part will address MPs of countries that have not yet ratified, and provide them with tools and means to pressure the government towards ratifying the convention.



Additionally, combating corruption and promoting gender equality are vital forces when it comes to development effectiveness.

Under Article 5 of the Convention, state parties to UNCAC are under an obligation to develop and maintain effective anti-corruption policies and to periodically review relevant legal instruments for adequacy in preventing and fighting corruption. The importance of parliamentarians in this effort is increasing, and UNDP experiences' demonstrate the importance of the legislative and oversight role of Please see *Supporting the UNCAC* on page 6



Dr. Al Sane speaks at the First Conference of States to the UNCAC in Jordan.

How the OECD Anti-Bribery Convention Supports The UNCAC – And Vice Versa

By Patrick Moulette, OECD

The OECD Convention on Combating Bribery of Foreign Public Officials (hereafter the OECD Anti-Bribery Convention) celebrated its 10th anniversary in November 2007. A decade after it came into force, the aim of the Convention – to fight against the supply side of bribery – is as pertinent as ever.

International instruments drive country-level anti-corruption efforts: the OECD Anti-Bribery Convention requires its parties to implement a comprehensive set of legal, regulatory and policy measures to prevent, detect, prosecute and sanction bribery of foreign public officials. The Convention is the first, and so far the only, international instrument dedicated to the fight against bribery of foreign public officials. In addition to establishing criminal sanctions and corporate liability for foreign bribery, the Convention requires Parties to confiscate bribes and any profits obtained as a result of bribes. Parties to the Convention must also work together to ensure that it is applied effectively, for example, by gathering and exchanging evidence, or through extradition.

The OECD Anti-Bribery Convention's rigorous peer review mechanism distinguishes it from other anti-corruption initiatives and conventions. Countries' enforcement of the above-mentioned provisions is systematically monitored to ensure that the Convention is being implemented effectively. This international, mutual evaluation and the peer pressure it has generated over the last decade have stimulated governments to take concrete action to promote business integrity, prevent corruption, and investigate and prosecute cases of foreign bribery. The United Nations Convention against Corruption (UNCAC), which was adopted on 31 October 2003 and entered into force on 14 December 2005, represents a major milestone in the international fight against corruption. Because UNCAC is open to all States for signature, it adds significant momentum to the anti-corruption movement. It

complements and strengthens some of the requirements under other anti-corruption conventions, supporting international organisations (*e.g.* OECD, Council of Europe, OAS) by giving their work more credibility and validity, and increasing awareness of their international standards. UNCAC tackles issues not addressed in other international legally binding instruments such as asset recovery, integrity in the public service, transparency of political parties' funding, and reporting of corruption by public officials. Its holistic approach to combating corruption also includes bribery of foreign public officials.

Both the UNCAC and the OECD Anti-Bribery Convention – the two main international anti-corruption instruments – require signatories to work to minimise the supply side of bribery of foreign public officials in international business transactions. However, these instruments differ in three key areas.

–The UNCAC addresses various forms of corruption, whereas the OECD Convention is focused only on the supply side of the bribery of foreign public officials in international business transactions (*i.e.* the acts of bribers, not the parties who are bribed).

–The UNCAC, with its broad mandate, is open to accession by all countries. Because the OECD Convention targets the supply side of foreign bribery, its membership includes those countries whose companies are more likely to be involved in international business transactions.

–Implementation of the OECD Convention has been monitored through a rigorous peer-review process for almost 10 years (since it came into force in February 1999). A review process for the UNCAC is under development, and a pilot project is in place.

Where the conventions have common provisions, co-operation between the OECD Working Group on Bribery in International Business Transactions and the Conference of State Parties (COP) to the UNCAC is

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countries. The results have, however, been mixed, as a recent report of the U4 Anti-Corruption Resource Centre concludes after having looked at the experiences of six countries. A recurrent problem was that not enough attention has been given to the political dimension of anti-corruption policies. Throughout all phases of a policy cycle, commitment, leadership, coordination, monitoring and institution's capacity have proven to be weak to non-existent. Above all, such strategies have often been without realistic prioritisation or sequencing. Partly, this can be attributed to the fact that mechanisms for continuing participation throughout the full policy cycle are missing, anti-corruption strategies focus on norms and institutions rather than performance and results, and policies are not based on adequate diagnostics of what causes the problems. Furthermore, integration with other core governance policies and reforms takes place on paper, but not in practice.

The report was first presented and discussed at a parliamentary forum organised by GOPAC during the 2nd UNCAC- Conference of the States Parties conference in January 2008. This occasion was chosen to contribute to the discussions around UNCAC-implementation, since the design of anti-corruption policies will be decisive for a country's way to tackle corruption. More importantly however, tapping into the parliamentary sphere acknowledged parliamentarian's key role in policy making. In this context, it is important to note that addressing corruption (especially by demanding updates on implementation. As success of anti-corruption reform seems to be linked to wider public support, parliamentarians can also support the creation of a national "political or societal agreement" to fight corruption as well as the creation of a realistic "vision" on how to achieve this (possibly via UNCAC). Parliaments, however, can as well play an important role in the developing, budgeting and overseeing of any public policy aimed at reducing corruption, and certainly parliamentarians should also lead by example. For more information on the U4 report see:

www.u4.no/themes/uncac

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**MARK YOUR CALENDARS!****GOPAC's 3rd Global Conference:
Kuwait, November 2008**

GOPAC, in partnership with its Arab Regional Chapter (ARPC), is pleased to announce that the National Assembly of Kuwait has offered to host the 3rd GOPAC Global Conference in Kuwait City November 17th – 20th, 2008. More information is available at

www.gopacnetwork.org or
www.arpacnetwork.org



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parliamentarians and most notably the importance of an integrated, multi-disciplinary and broad-based approach involving a variety of stakeholders during both the ratification and implementation phases of UNCAC.

UNDP has supported parliamentary strengthening and anti-corruption in the past years through capacity development of parliamentarians who will then become champions of UNCAC and engage in its ratification and implementation in their respective countries. Under the Global Programme for Parliamentary Strengthening (GPPS), UNDP Parliamentary development and anti-corruption efforts led to the development of a regional parliamentary anti-corruption group in the Arab region (ARPAC, the Arab regional chapter of GOPAC) and awareness raising activities were organized in an effort to raise MPs' awareness about the principles of the UNCAC and how the Convention could be used as a powerful tool to fight corruption and limit its impact at the economic, social, political and institutional levels.

In West Africa, a large regional conference on the role of parliamentarians in anti-corruption was held in Accra in conjunction with Transparency International and Institute for Security Studies (South Africa) The workshop was timely in addressing the new global and regional conventions against corruption, involved important global and regional civil society actors in the field of anti-corruption, received encouraging feedback from parliamentarian participants, and laid

a framework for future anti-corruption activities. The workshop also resulted in the development and validation of two handbooks for parliamentarians and for civil society on conducting anti-corruption activities.

Finally, a series of UNDP country programmes have also focus on anti-corruption activities: drafting legislation and Anti-Corruption Act (Bhutan), working with parliament to analyze laws and regulations on anti-corruption (Tajikistan) or organization of seminars on the role of the national assembly in fighting corruption (Vietnam).

In the future, the Global Programme for Parliamentary Strengthening (GPPS) will focus on supporting regional parliamentary working groups on aspects of UNCAC implementation as part of the regional programs and support at the country level for UNCAC implementation, and would involve a number of partners, including UNODC and collaboration with GOPAC. Under the future UNDP Global Thematic Programme on Anti-Corruption for Development Effectiveness, training in parliamentary oversights and support for supporting anti-corruption activities of GOPAC will also be promoted.

For more information:

<http://www.undp.org/governance/>

GOPAC's Global Task Forces

GOPAC's international programming uses global working Groups composed of its members to develop tools and products, as well as to guide major initiatives. GOPAC is currently working on six such initiatives, identified at the 2006 GOPAC Global Conference and known as the *Arusha Agenda* — each being pursued by **Global Task Forces** (GTF) working with expert agencies. They include:

UN Convention Against Corruption
Anti Money Laundering Initiatives
Resource Revenue Transparency

Parliamentary Immunity
Parliamentary Ethics &
Codes of Conduct

Transparency & Media
Parliamentary Oversight

For more information: www.gopacnetwork.org

Momentum for Change Makes Corruption Far From Inevitable

By: Alan Boeckman, Chairman and Chief Executive Officer, Fluor Corporation Chairman, Partnering Against Corruption Initiative, World Economic Forum

Among the barriers to eliminating corruption is the belief that, like death and taxes, it is inevitable. That belief is contradicted by the growing momentum of a determined reform movement within the global business community. Each year that movement gathers strength and support, diminishing the world's tolerance for corruption and dramatically changing the stakes for all concerned.

Valuable work has been done by the public sector over the past 20 years to fight corruption, including efforts by the Organization for Economic Cooperation and Development, United Nations and Global Organization of Parliamentarians Against Corruption. And while this public sector activity is essential and accordingly welcome, in practice is not entirely sufficient. Any effective attack on corruption requires us to address the supply side as well as the demand side, and that requires involving global business. Such involvement began in 2003 when business leaders met at the World Economic Forum Annual Meeting in Davos, Switzerland, and formed a multinational task force of companies from Europe, Asia, the Middle East and North America to address the issue from the "supply side." With support from Transparency International and the Basel Institute on Governance, the group compiled a set of "Business Principles."

In agreeing to these principles, companies commit to maintain a zero-tolerance policy toward bribery and corruption and to develop and implement a broad-based, effective anti-corruption program to guide the behavior of their employees and affiliated third parties. When 19 companies signed these principles in 2004, the Partnering Against Corruption Initiative (PACI) was born. It was, and is, the only global anti-corruption initiative driven by the private sector.

Today there are over 140 signatory companies from the global energy, engineering and construction, mining and metals, professional services, food and

beverage, chemicals, consumer goods, logistics and transport, insurance and health care industries. Those signatories represent a global annual turnover of over US \$800 billion. Enhancing that involvement is a cooperative agreement with four important organizations: The International Chamber of Commerce, Transparency International, the Organization for Economic Co-operation and Development and the U.N. Global Compact. And to ensure that signatories translate their lofty words into concrete actions, PACI is working with the leading accounting firms to develop a system of third-party verification.

PACI is also collaborating with the World Bank and the regional development banks to require bidders to provide anti-bribery certificates on large contracts. Furthermore, the initiative is exploring a further requirement that bidders provide a code of conduct and anti-bribery policies as additional evidence of their commitment and ability to abide by the certificate. PACI signatories hope that one day every company will be required to submit anti-corruption policies with their bids to all development banks.

In addition, PACI is cooperating with specific companies, projects and industry sectors to demonstrate that major portions of development funds need not be lost to bribes and other corruption. Twenty Romanian companies working through the American Chamber of Commerce signed the PACI Principles. PACI is also collaborating with the Inter-American Development Bank to help prevent corruption on major projects in Latin America. And in other evidence of
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Paying for the Effective Implementation of the International Anti-Corruption Conventions

By: Bryane Michael and Habit Hajredini

The four main international conventions against corruption provide potentially powerful tools for the global fight against corruption. While they impose many obligations on signatories (such as to establish anti-corruption bodies, bolster investigative capacity and so forth), they don't provide states with means of financing these extra – and sometimes onerous – requirements. For example, we recently calculated that for Azerbaijan to set up an effective asset monitoring and anti-corruption co-ordination committee -- as required under article 6 of the *UN Convention Against Corruption* (UNCAC) – would cost the Azeri state treasury \$22 million per year! Recent estimates by the Crown Prosecution Service (obtained from UK budget data) shows that a simple corruption investigation costs the UK taxpayer \$45,000 and a complex case involving foreign travel and multi-jurisdictional co-operation can cost over \$25 million! Developing country law enforcement agencies often cannot afford to implement the obligations imposed by the international anti-corruption conventions. And even many OECD member countries (which include the richest countries in the world) receive bad peer reviews of their implementation of the OECD convention aimed at fighting corruption because certain measures cannot be financed. Governments must find ways to raise the revenue required to implement the international conventions against corruption. This brief will cover four ways of obtaining such funding – civil claims recovering corruption-related harms, *qui tam* rewards, confiscation and appropriation of illicit gains, and negligence fines.

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This brief will cover four ways of obtaining such funding – civil claims recovering corruption-related harms, *qui tam* rewards, confiscation and appropriation of illicit gains, and negligence fines.

The first way which governments implementing the international anti-corruption conventions can increase the funding available for fighting corruption consists of bringing corrupt officers and bribe givers to civil court. At the time of this writing, the corruption case involving Siemens (the large German manufacturer) could involve pay-outs by Siemens of almost \$2 billion. And, according to World Bank estimates, approximately \$1 trillion dollars may be available for governments to (re)claim in civil courts. Civil cases are easier to prosecute than criminal cases because the burden of proof is lower in many jurisdictions.

Qui tam rewards potentially provide a second arm in the fight against corruption. Few cases of corruption are successfully prosecuted because witnesses, plaintiffs, investigators, and prosecutors have few personal rewards (and many personal risks) for participating in legal actions against corrupt officials. However, *qui tam* rewards can encourage individuals to report cases of suspected corruption. The term *qui tam* derives from the Latin phrase “*qui tam pro domino rege quam pro se ipso in hac parte sequitur*,” meaning “he who sues for the king as well as for himself”. Like the bounties paid to the gunslingers of the wild west in the young days of the American republic, *qui tam* provisions allow individuals to sue those who harm the State and to claim a share of the damages paid by the offender. The damages that a whistle-blower can be awarded in a *qui tam* action concerning corruption may include the value of the bribes paid as well as the value of revenue the State loses due to corruption. In the United

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Attending to Instances: A Citizen's Perspective

By Prashant Kumar, India

Corruption stands as a major roadblock to the achievement of India's development objectives as the rot seems to have seeped into every possible organisational set-up. The debate – in regards to the manner in which it should be tackled – has been raging on for as long as one can remember. Despite all the efforts made to the contrary, the problem continues unabated and has gone on to attain unexplored heights of sophistication every time a new initiative is taken.

I am reminded of a friend's interview with a *Navratna* Public Sector Enterprise wherein he was asked the manner in which he would approach corruption – a phenomenon quite apparent in government organisations. His was the predictable response: Running to concerned higher-ups, complaining about officials indulging in such practices, and various others along similar lines. Though there is no evidence to suggest that such an approach won't work in a few cases, it would make a marginal difference to an entire culture of corruption practices that have taken root.

The idea that we all might play a part in the system of corruption seems to have eluded most of us. A phenomenon like corruption doesn't happen out of the blue just one fine morning. It entails an entire system of self-centered and opportunistic practices which have made their way into society. Individuals need to prioritize the overall wellbeing of society – an attitude of indifference towards issues concerning others (however iniquitous) should be unacceptable for a menace like corruption cannot survive in society without support from those who constitute it.

The mechanisms available to address the problem seem to be seriously flawed and we may be used to a system in which we respond in a restricted manner; rather than delving into the roots of the problem. Citizens buy into anti corruption initiatives only when it is convenient and only to find

themselves dumbfounded and dejected when it is ineffective. Anti corruption initiatives are aimed at exposing and incarcerating corrupt officials, which I would term as 'attending to instances' of a problem. Such initiatives barely have an effect as these 'instances' are a mere symptom of the problem which, no matter what, will continue to exist as long the problem persists. Any earnest effort towards reducing corruption should first address the structure in which corruption is allowed to flourish.



India was ranked 72nd out of 180 countries in Transparency International's 2007 Corruption Perception Index

The fact that corruption is the result of societies' abandonment of their responsibilities, coupled with opportunism exercised on the part of those in authority, needs to be realised. Small acts of unwarranted favors like bribery give rise to a 'culture' wherein they come to be considered as a right. By the time this realization dawns on us, we find our voice too insignificant to cause any perceptible harm to this new-formed culture.

Seeking a way out of such a predicament entails a much wider and concerted approach. A reawakening of the dormant sense of responsibility among those in power is needed in addition to awareness raising amongst citizens as to their rights. Further, a system needs to be instituted whereby the grievances of the people are addressed effectively. The creation of the office of *Lokayuktas* (Ombudsman in States) in

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progress, the World Economic Forum's Arab Business Council endorsed PACI, and PACI was invited to join the Organization Committee of the Brazilian Pact for Integrity and Against Corruption. In addition, PACI continues to work with its signatory companies to devise tools and best practices to strengthen corporate compliance programs. In 2007, the initiative conducted its first signatory progress survey to offer companies a benchmarking opportunity and to enhance public awareness of the ongoing improvements of corporate practice.

Through these actions and others, PACI has become a leader in the battle against corruption in global commerce.

It's important to remember that we are engaged in this cause not only because corruption carries a substantial cost to ethical companies but also because it often supports repressive regimes that breed discontent and poverty. It is a massive problem, involving billions of dollars and depriving less-fortunate societies from the investments they so badly need. Corruption depletes national wealth, undermines the rule of law, reduces trust in political systems and encourages exploitation of natural resources.

It's not enough to be against corruption. We need to be fully engaged in eradicating corruption on multiple levels: financially, by continuing to support leading advocacy groups; politically, by encouraging our governments to stay focused on corruption reform; intellectually, by contributing our knowledge and practical experience to the front-line efforts; and most especially, by changing the way we ourselves operate. Our commitment must start at home – with zero-tolerance policies on bribery and effective programs to combat corruption.

Is corruption in global business unavoidable? Absolutely not. Yesterday's tolerance for corruption is diminishing faster and more dramatically than is commonly appreciated, widely changing the stakes for all concerned.

Without a doubt, acts of corruption are criminal, and the fight against it is the right thing to do. What's more, it's increasingly clear that corruption can be eliminated. Through continuous public sector and private sector collaboration, there is hope. The continuing progress by PACI will ensure that.



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www.weforum.org

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beneficial, and essential, for both organisations.

In its January 2008 message to the second session COP to UNCAC, the OECD Working Group on Bribery established that the OECD Anti-Bribery Convention and UNCAC are mutually reinforcing and complementary. The Working Group committed to sharing the expertise and experience its members have gained through monitoring implementation of the OECD Anti-Bribery Convention and the OECD-led regional anti-corruption initiatives.

International instruments like the OECD Anti-Bribery Convention and UNCAC enhance

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States, such *qui tam* rewards have allowed the government to reclaim over \$12 billion since 1986.

The confiscation and appropriate of “illicit gains” (as defined in the UN Convention Against Corruption) comprise a third means of funding anti-corruption work. Some countries have experimented with schemes whereby assets obtained or used in corrupt transactions may pass into state ownership where they may be sold and the proceeds used to fund further anti-corruption work. Using “tainted” assets rewards law enforcement agencies for their efficiency and ties anti-corruption efforts to the amount of corruption affecting a particular agency. Again, the United States probably represents the most advanced form of such a system where criminal assets are often auctioned to the public. Yet, such a system must be carefully designed – as such bounties can lead to “shake-downs” and more anti-corruption inspections than are economically, socially, or legally desirable. However, rewards to departments and civil servants – in the form of promotion prospects or perquisites such as social housing or subsidies on public services – can be used to create incentives for law enforcement officials without encouraging excessive shake-downs of public service users. Fines levied on companies even potentially engaged in corruption represent a fourth way in which cash-strapped prosecutors’ departments can raise the

frameworks and policies to fight international corruption. But establishing an effective framework is only the starting point – these standards and strategies must be thoroughly implemented by countries. Constant political will of governments and increased co-operation between international organisations are therefore essential to successfully fight bribery and corruption.

**Note:* The opinions expressed herein are the author’s alone.

“Thirty-seven countries have ratified the OECD Anti-bribery Convention. But complying with the Convention requires unwavering support from the OECD and its Working Group on Bribery. Country monitoring and extensive follow-up ensure that all 37 countries win the fight against bribery”
(www.oecd.org)

funds needed to continue investigating and prosecuting the corruption targeted by the international anti-corruption conventions. Because proving corruption remains difficult – mainly due to the high burden of proof in criminal cases and the difficulty in punishing legal persons – the imposition of fines on companies for failing to take sufficient precautions against corruption must be considered. Such “negligence fines” would punish companies for failing to engage in Please see *Effective Implementation* on Page 12

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activities that help prevent corruption in the course of their operations. Such a scheme encourages companies to remain vigilant against corruption and can be introduced without large changes to the country's company law or commercial code (as such fines are regulatory in nature). Such a scheme, in effect, transfers the burden of investigation and prosecution from the state to the private sector.

Obligations placed upon signatory states by the international conventions against corruption will ultimately prove to be ineffective unless anti corruption initiatives are adequately financed. This

article outlined possible avenues for pursuing additional funding for states to ensure compliance. Law suits in civil court, *qui tam* rewards, the confiscation and appropriation of "illicit gains" and negligent fines should be pursued at the national level by all states that are serious about combating corruption.

Readers seeking more details should consult the original paper Drafting Implementing Regulations for International Anti-Corruption. Conventions (Queen Elizabeth House Working Paper 150), available at: www3.qeh.ox.ac.uk/pdf/qehwp/qehwps150.pdf

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India, and the enactment of the Right to Information Act (2005) seem to be promising solutions. Nevertheless, much headway still needs to be made with these initiatives before the benefit trickles down to those it is intended for.

It is worth noting that Lokayuktas have still not been afforded their own independent investigative machinery making them heavily reliant on government agencies. This leaves enough scope for the politicians and bureaucrats to fiddle with the investigative process. In addition, most of the state's legislatures have been kept outside the purview of Lokayuktas jurisdiction. Further, the Right to Information Act is still in its infancy and needs massive popularisation before any perceptible change could be brought about.

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It is apparent that though we have started in the right direction, a long way is still to be traversed before any change can be perceived. The movement has been dishearteningly sluggish and short on enthusiasm and pragmatism.



GOPAC Vice Chair Naser Al Sane, GOPAC Chair John Williams and Parliamentary Oversight Team Leader César Jauregui at the 2nd Conference of the States Parties to the UNCAC