

# United Nations Convention against Corruption & action by Sri Lanka ?

© Nihal Sri Amersekere

*Member, International Consortium on Governmental Financial Management*

*Member, Association of Certified Fraud Examiners*

*Member, International Association of Anti-Corruption Authorities*

For the reasons recited in the Preamble (see Box), the United Nations General Assembly Resolution 58/4 referred to as the 'United Nations Convention against Corruption', was adopted on October 31, 2003, and came into force on December 14, 2005. Sri Lanka is a signatory to the Convention, amongst 104 countries, who have signed and ratified the Convention upto now, as being parties thereto.

Each country, as a signatory to the Convention, is obligated to adhere to and conform to the measures set out in the Convention for the prevention and combat of corruption, not only within the country, but also for trans-national corruption, involving two or more countries. Each country has to set up anti-corruption bodies to implement the stipulations in the Convention and periodically evaluate relevant legal instruments and administrative measures, with a view to determining the adequacy thereof to prevent and fight corruption. In the context of the stipulation in the Convention that Sri Lanka is bound by what progress has Sri Lanka made and what actions have been taken to effectively deal with the cancerous menace of corruption ?

Chapter I of the Convention – 'General Provisions', comprising Articles 1 to 4, sets out the purposes of the Convention, the terms used therein, the scope of its application, whilst protecting the sovereignty of nations, essentially to promote integrity, accountability and proper management of public affairs and public property, and to prevent and combat corruption, by facilitating international co-operation and mutual technical assistance for such purpose, including corporation to recover assets siphoned out to foreign countries by corrupt persons of a country.

Chapter II of the Convention – 'Preventive Measures', comprising Articles 5 to 14, sets out preventive anti-corruption policy and practices, the setting up of preventive anti-corruption bodies, corruption in the public sector, codes of conduct for public officials, the public procurement and management of public finances, public reporting, measures relating to the judiciary and prosecution services, corruption in the private sector, and measures to prevent money laundering.

'Public Official' is a person holding legislative, executive, administrative or judicial office, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, including any person, who performs a public function for a public agency or public enterprise, or provides a public service. The recruitment, promotion and retirement of non-elected public officials are to be based – a) on principles of efficiency, transparency, merit, equity and aptitude – b) adequate procedures for selection, training and rotation where vulnerable to corruption – c) adequate remuneration with level of the economy – d) proper performance of public functions with training to enhance awareness of risk of inherent corruption, with codes of conduct for public officers.

Codes of conduct for public officials shall promote integrity, honesty and responsibility for the correct, honourable and proper performance of public functions, facilitating the reporting by public officials of acts of corruption to appropriate authorities; requiring public officials to make declarations to appropriate authorities regarding their other activities, employment, investments, assets and gifts or benefits, giving rise to conflicts of interest; enforcing disciplinary and other measures against public officials, who violate codes of conduct.

Countries are also required to consider adopting legislative and administrative measures in accordance with fundamental principles to prescribe criteria concerning candidature for election to public office, and to enhance transparency in funding of candidates for elected public office, and funding of political parties, promoting transparency to prevent conflicts of interest.

Public procurement and management of public finances is to be based on transparency, competition and objectivity, preventing any corruption, by ensuring public dissemination of information of procurements, allowing potential parties sufficient time to process and submit offers, on the basis of selection conditions and criteria established in advance facilitating subsequent verification and recourse to legal remedies, including declaration of any conflicts of interest in the process.

There shall be appropriate measures to promote transparency and accountability in the management of public finance, such as – a) procedures for the adoption of the national budget – b) timely reporting of revenue and expenditure – c) accounting and auditing standards with proper supervision – d) effective and efficient systems of risk management and internal control – e) corrective action in case of failure to comply – and to ensure the preservation of accounting records, financial statements and documents related to public expenditure and revenue, and to prevent falsification of such records.

Each country shall enhance transparency in its public administration, functioning and decision making processes, allowing the general public to obtain requisite information, with due regard for privacy for security and legal implications; and facilitate public access to competent decision making authorities, including publishing information on risk of corruption.

Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each country, without prejudice to judicial independence, shall take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary, which may include rules in respect of the conduct of the members of the judiciary; and the same measures applied to state prosecution services also having independence.

Article 12 of the Convention focuses upon and deals with corruption in the private sector and the obligation of each country to deal with corruption in the private sector. For the stipulations in Article 12 of the Convention dealing with corruption in the private sector (see Box).

Each country shall promote the participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations, *et al* in combating corruption, raising public awareness of its existence, causes and the gravity and threat posed by corruption, by – a) transparency of public decision making processes, also involving the public – b) ensuring public has access to information – c) dissemination of information on non-tolerance of corruption, including education programmes – d) respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information on corruption, respecting the rights and reputations of persons and national security, public health or morals – and the public to be made aware of and given access to anti-corruption bodies and the right to report corruption, including anonymously.

Each country shall have a comprehensive regulatory and supervising regime for banks, financial institutions, including natural and legal persons, obligating such persons to report ‘suspicious transactions’, setting up Financial Intelligent Units (FIUs), as centres for collection of such ‘suspicious transactions’ reported for analysis and dissemination of information, for action to prevent and combat corruption and money laundering, including trans-national transactions, in respect of which, exchanging information with FIUs in the concerned countries, to facilitate action being taken by the law enforcement authorities in such countries; - promoting regional, inter-regional and multilateral organisations against corruption and money laundering with co-operation among judicial, law enforcement and financial regulatory authorities.

Chapter III of the Convention – ‘Criminalisation and Law Enforcement’, comprising Articles 15 to 59, mandates the making as criminal offences - bribery of national public officials, bribery of foreign public officials and officials of public international organisations, embezzlement, misappropriation or diversion of public property, trading influence, abuse of functions, illicit enrichment, bribery in the private sector, embezzlement of property in the private sector, laundering of proceeds of crime, concealment, obstruction of justice, including the participation in and attempting, with knowledge, intent and purpose, of any such offence set out in the Convention - defining the liability of persons for such offences and the criminal or non-criminal sanctions, including monetary sanctions, extending statute of limitations where an offender has evaded the administration of justice.

‘Bribery’, is a criminal offence committed intentionally, promising, offering or giving to a public official, directly or indirectly, an undue advantage for himself or another party, in order for him to act or refrain from acting, in the exercise of official duties; or the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage for himself or another party, in order for acting or refraining from acting in the exercise of official duties. ‘Embezzlement’, misappropriation or diversion of public property is criminal, when committed intentionally, by a public official for his benefit or for the benefit of another party, of any property, public or private funds or securities or anything of value, entrusted to him by virtue of the public office.

‘Trading in influence’ is criminal, when committed intentionally, promising, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person, abuses his real or supposed influence, with a view to obtaining from a public authority an undue advantage for the original instigator or for any other party; or solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or for another person, in order that the public official or the other person abuses his real or supposed influence, with a view to obtaining from a public authority an undue advantage. ‘Abuse of function’ is criminal, when committed intentionally, the abuse of functions or position, and the performance of or failure to perform an act, in violation of laws by a public official, in the discharge of his functions, for the purpose of obtaining an undue advantage for himself or another party. ‘Illicit enrichment’ is criminal, when committed intentionally, the illicit enrichment by a significant increase in the assets of a public official that he cannot reasonably explain in relation to his lawful income.

‘Bribery in the private sector’ is criminal, when committed intentionally in the course of economic, financial or commercial activities - in promising, offering or giving, directly or indirectly, of an undue advantage to any person, who directs or works, in any capacity, for a private sector entity, for the person himself or another party in order that he, in breach of his duties, acts or refrains from acting; or the solicitation or acceptance, directly or indirectly, of an undue advantage by any person, who directs or works, in any capacity, for a private sector entity, for the person himself or another party in order that he, in breach of his duties, acts or refrains from acting. ‘Embezzlement of property in private sector’ is criminal, when committed intentionally in the course of economic, financial or commercial activities, the embezzlement by a person, who directs or works, in any capacity, in a private sector entity, of any property, private funds and security or any other thing of value, entrusted to him by virtue of his position.

The Convention goes on to define the ‘laundering of proceeds of crime’, as a criminal offence, including conversion or transfer of property, for concealing or disguising the illicit origin, including helping any person in such act, concealing and disguising the nature etc., of the property knowing that such property is the proceeds of crime, or knowingly receiving such property; or associating with, conspiring, attempting, aiding, abetting, facilitating or counselling, the commission of any such offence. Convention stipulates in detail the components of these offences.

Each country in terms of the Convention has to provide for the prosecution, adjudication and sanctions in respect of offences including removing, suspending, disqualifying persons from holding public office; providing also for seizure and confiscation of the proceeds of crime, and assisting other countries to trace proceeds of crime, including when transformed or converted to or intermingled with other property.

The Convention also provides for measures to be taken for the protection of witnesses, experts and victims, to ensure proper prosecution, including the protection of persons reporting, ‘squealing’ or ‘whistle-blowing’, on acts of corruption. The Convention provides for the co-operation by law enforcement authorities, within and among countries, and for the procedure to obtain information from third party countries, overcoming obstacles that may arise out of bank secrecy laws.

Chapter IV of the Convention – ‘International Co-operation’, comprising Articles 43 to 50, stipulates international co-operation procedures for extradition from a country, and for the transfer of sentenced persons, procedure for ‘mutual legal assistance’ for investigation and prosecution, transfer of criminal proceedings, law enforcement co-operation, joint investigations, and for developing special investigating techniques, including electronic forms of ‘surveillance’ and ‘under-cover’ operations.

Chapter V of the Convention – ‘Assets Recovery’, comprising Articles 51 to 59, provides for international co-operation of the widest measure, for the prevention and detection of transfer of proceeds of crime, including monitoring customers and the identity of beneficial owners of funds, conducting enhanced scrutiny of accounts sought or maintained by or on behalf of individuals, who are or have been entrusted with prominent public functions, and their family members and close associates, referred to as ‘politically exposed persons’ (PEPs).

Provisions have been stipulated for measures for direct recovery of property, mechanisms for recovery of property through international co-operation in confiscation, international co-operation for purposes of confiscation and for the return and disposal of assets and funds embezzled to the original country, with co-operation between the FIUs in the respective countries, formally and informally, co-operating in such regard, with or without bilateral and multilateral agreements and arrangements to further enhance such co-operation.

Chapter VI of the Convention – ‘Technical Assistance and Information Exchange’, comprising Articles 60 to 62, provides for training and technical assistance, the collection, exchange and analysis of information on corruption, implementation of the Convention through economic development and technical assistance. Chapter VII of the Convention – ‘Mechanism for Implementation’ comprising Articles 63 and 64, provides for an Annual Conference of the countries, who are parties to the Convention to further promote and review the actions taken to prevent and combat corruption, receiving inputs even from non-governmental organisations, with the Secretary General of the United Nations providing a Secretariat to facilitate the implementation of the Convention. Chapter VIII of the Convention - Final Provisions” comprising Articles 65 to 71, provides for the implementation of the Convention, settlement of disputes, ratification and acceptance of the Convention and for any amendments thereto.

To support and supplement such international endeavours to combat fraud and corruption, under the aegis of the United Nations Convention against Corruption, the International Association of Anti-Corruption Authorities (IAACA) was established in October 2006, comprising 137 countries represented by State Agencies, International Organisations, Non-Governmental Organisations and Individual Professional Experts engaged in the combat of fraud and corruption, with Annual Conventions and proposed Regional Seminars and Workshops. The Annual Convention of IAACA makes recommendations to the Annual Convention of the nations held in terms of the Convention.

'Mega' fraud and corruption at the State level by the upper echelons of society, socio-politically powerful and influential, pillaging and plundering the resources of the people of the country, further impoverishing them, impeding the development of a just, equitable and civilised society, precipitates social injustice, catalysing social unrest and insurrection, developing fertile ground for terrorism. In addition to 'armed terrorists' it is a reality that there are 'economic terrorists', causing similar or worse devastation to humanity. Poverty alleviation or reduction programs only replaces a fraction of the resources of the poor, which have been pillaged and plundered through fraud and corruption; and in the absence of real and effective action to combat fraud and corruption, such programs are futile.