



UNCAC and ANTI-CORRUPTION DILEMMAS in TRANSITION COUNTRIES

LONDA ESADZE

UNDP International Advisor to the
Kosovo Anti-Corruption Agency

Danger of Corruption

In 1993, when Luciano Violante, then President of the Italian Chamber of Deputies, was the Chairman of the Parliamentary Anti-Mafia Committee, he asked a State witness for information on the investments and money-laundering techniques used by his organization.

- *“He replied, ‘If you have some money to invest, what do you do?’*
- *“I answered, ‘I would ask an expert for advice.’*
- *“To which he replied, ‘And so do we. If investment proves sound what do you do?’*
- *“I go back to that same expert,’ was my reply.*
- *“Exactly like us. And if it turns out to be a bad investment, what do you do?’*
- *“I look for another expert, and go to someone else.’*
- *“So do we. Except that we first kill the previous expert and make sure the second one knows what we’ve done. That’s the difference between you and us.”*

But the really clever ones do not murder. Murder may remove an obstacle but it makes a lot of noise. Corruption is silent and wins an accomplice. That’s why it is more danger!

Current trends of fighting corruption in transition countries

- From Latin American and Africa to the Middle East and the former USSR, the scenario goes like this:
 - * The people elect a charismatic leader who promises liberty, equality and better lives. At first, he tackles the state's problems with enthusiasm. Then he collides with reality: The treasury won't cover all that must be done. Colleagues and relatives prove corrupt, robbing the state and peddling influence.
- As a result we are facing transformation from one more “pluralistic corruption system” to another “elite corruption system” i.e. from “petty corruption” to “grand corruption”
- Horizontal and vertical structures of corruption
- Petty corruption/bribery in many citizen-Government interactions in some transition countries reduced, but corruption has become more sophisticated and latent and has moved to the spheres where big money and power rest: budgeting, special funds, procurement, and privatization.
- “Patron-client” relations and informal networks create vertical, interrelated corruption pyramids.

Dilemma: “Anti-Corruption” or Democracy?

- Violations of Human Rights and principles of Democracy are often performed under “anti-corruption slogans”.
- “Anti-corruption” serves as main justification for many institutional failures
- Highly-publicized fight against corruption is politically motivated and is used to strengthen control over all sectors, and monopolize power.
- Despite of relatively well-developed framework of laws aimed at preventing conflicts of interest among public officials promotion in civil service remains plagued with nepotism and cronyism.
- Anti-corruption speculations should not become as the populist, legitimising messages of new leaderships regimes worldwide
- it is very important to study the relationship between foreign assistance and domestic corruption and ensure that “Donor Sponsored Anti-Corruption” not become commercialized industry.

The Development of International AC Standards before the UNCAC: Conventions

- **1996: The first regional convention, the Inter-American Convention against Corruption, is adopted.**
- **1997: The European Union Convention on the fight against corruption involving officials of the European Communities or officials of Member States**
- **1997: The OECD Convention against Bribery of Foreign Public Officials is adopted.**
- **1998-1999: The Council of Europe produces two anti-corruption treaties, the Criminal Law and the Civil Law Conventions on Corruption.**
- **2000: The UN Convention against Transnational Organized Crime is adopted.**
- **2000: recognizing the need for a global convention focused only on corruption, the UN General Assembly authorizes an ad-hoc group to negotiate a “broad and effective” treaty that takes a “comprehensive and multidisciplinary” approach to the problem.**
- **2003: The African Union Convention on Preventing and Combating Corruption is adopted.**

The Development of International AC Standards before the UNCAC: Soft Law

- **United Nation Declaration against Corruption and Bribery in International Commercial Transactions (1996)**
- **UN International Code of Conduct for Public Officials (1996):** principles concerning the prevention of conflicts of interest, the disclosure of assets, the acceptance of gifts, the handling of confidential information and involvement in political activity.
- **Council of Europe's Twenty Guiding Principles for the Fight against Corruption (1997):** General principles include - (a) raising public awareness and promoting ethical, behaviour; (b) ensuring a coordinated criminalization of national and international corruption; (c) guaranteeing the appropriate independence and autonomy of those in charge of the prevention, investigation, prosecution and adjudication of corruption offences; (d) taking appropriate measures for the seizure and deprivation of the proceeds of corruption offences, as well as for preventing legal persons from being used to shield corruption offences; and (e) limiting immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society.
- **Council of Europe's Model Code of Conduct for Public Officials (2000):** address *inter alia* use of official information and public resources for private purposes and the rules to follow when leaving the public service, especially in relations with former public officials.
- **Council of the European Union framework decision on combating corruption in the private sector (2003)**

UNCAC is both a legal and political
manifestation of international
consensus



United Nations
Convention
against
Corruption

UNCAC ratification status

- **2003: The UN Convention against Corruption is adopted.**
- **2005: The UN Convention against Corruption comes into force after its 30th ratification in December.**

Signatories: 140

Ratifications/Accessions: 103

Summary of the status of signing / ratifying UNCAC in the countries of Eastern Europe and the CIS (as of December, 2007)

- **UNCAC is in force in 22 countries: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Hungary, Kyrgyzstan, Latvia, Lithuania, Montenegro, Poland, Romania, Russian Federation, Serbia, Slovakia, Tajikistan, Turkmenistan, Turkey and Ukraine.**
- **UNCAC is signed, but needs to be ratified to come into force, in 1 country: Moldova.**
- **UNCAC is not signed nor ratified, but joining UNCAC is included in the government anti-corruption strategy, in 2 countries: Georgia and Kazakhstan.**
- **No concrete advances towards signing or ratifying UNCAC in 2 countries: Slovenia, Uzbekistan.**

UNCAC highlights

- covers *all regions*;
- tackles the responsibilities of *developed, as well as developing* countries;
- focuses on the *prevention of* corruption, not just its criminalisation;
- covers *private as well as public* sector corruption: bribe-payers and bribe-takers;
- outlaws the payment of bribes to foreign public officials, going beyond a similar prohibition in the OECD Convention and covering new trading powers such as India and China;
- identifies as a priority the *return of stolen assets* to their country of origin and requires the prevention and punishment of corruption-related money laundering;
- strengthens *transparency, accountability and participation in public decision-making*;
- calls for *financial and technical assistance to developing countries* for UNCAC implementation.

Major Achievements

- The diversity of preventive measures, criminalization of corruption in both public and private sectors, broadening of the concept of liability of legal persons, extension of the statute of limitations on corruption crimes, enhancement of the role of civil society and access to information, reinforcement of anti-money laundering measures, and encouragement of mutual legal assistance among states.
- The biggest UNCAC innovation has to do with asset recovery, which consists of measures for direct recovery of property, international cooperation for purposes of confiscation, and return and disposal of assets.

Some Weaknesses and Fears

- Lack of concrete provisions on a monitoring mechanisms and lack of resources for implementation.
- A mixture of mandatory and discretionary provisions.
- As with many international agreements, the devil is in the details: while the Convention requires signatories to take specific steps in various areas, the language is often notably vague in many areas and the parties are often given great discretion in how (and whether) to apply particular provisions. Therefore the Convention should not be used as a political tool: it is important that State Parties avoid using it principally to attack political opponents especially in less democratic countries

UNCAC and its Potential to the Situation in Transition Countries

- Technical Assistance and Information Exchange: donor's help in building capacity in the development and planning of strategic anticorruption policy, training authorities, enhancing financial and material assistance to support the anticorruption efforts
- The public sector measures: anticorruption bodies, merit-based systems for selection of civil servants, codes of conduct for public officials, prevention of conflicts of interest, transparent procurement systems, the transparency and accountability of public finances.
- Preventing corruption in the judiciary and prosecution services
- Public access to information, and opportunities for the public to participate in government decision-making

Gaps analyses and legislative harmonization process

- Drafting aspects of primary and secondary legislation in line with UNCAC
- Guidelines and tools when interpreting the UNCAC provisions
- Preventive legislation and penal legislation aspects
- Gaps analyses report on the compliance of domestic legislation with UNCAC: methodology, article-by-article review, recommendations and follow up.

Implementation and Monitoring: CSOs key Role

- **Civil society has to play a key role in the monitoring process to permit dialogue and public accountability thereby promoting the transparency and credibility of the implementation process;**
- **Establishing a review mechanism for the UNCAC, including peer and expert reviews of convention implementation. It should be considered how to coordinate such a mechanism with already existing monitoring processes and systems, in order to avoid duplication and overlap and to ensure that different monitoring processes and systems enhance each other.**
- **Current monitoring mechanisms include both instrument based and non-instrument based mechanisms. The latter can offer a more informal and less costly type of monitoring and can include, for example, the use of surveys and/or questionnaires.**
- **Civil society inputs and access to key documents: it is important that civil society organisations be given and take advantage of the opportunity to feed their independent evaluations into the intergovernmental process and be given access to documents including government self-evaluations and final reports of the review body.**

Corruption is dead, Long Live Corruption!(?)

