

LAW OPINION

Confiscation of illegal assets abroad

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Bangladesh is party to the United Nations Convention against Corruption (UNCAC). On ratification, the UNCAC created legal obligations which have to be enforced by the executive branch and/or the judiciary of the state parties. Under the UNCAC Article 31, state parties have a duty under international law to confiscate the proceeds of crime. Article 51 of the UNCAC makes the return of assets which are proceeds of crime a fundamental principle of the UNCAC. As such, all proceeds of crime acquired by any citizen through the use of a corrupt scheme are to be returned to the state of such citizen.

Article 53 mandates provisions for the direct recovery of corruption-acquired assets, including laws permitting private civil causes of action to recover damages owed to victim states and the recognition of a victim state's claim as a legitimate owner of stolen assets. Article 54 requires state parties to give effect to any confiscation order for corruption proceeds issued in another state party, and to "consider taking such measures as may be necessary to allow confiscation...without a criminal conviction."



agreed with the following: "in perusal of UN Convention Against Corruption indicates that the state had responsibility to develop and implement or maintain effective, coordinated anticorruption policies; to take measures to prevent money laundering; to take measures for freezing, seizure and confiscation of proceeds of crime, derived from offences established in accordance with the Convention, or the property the value of which corresponds to that of such proceeds, property, equipment or other

of proceeds of crime as the following: "If a subject acquires property by means which are not legally approved, sovereign would be perfectly justified to deprive such persons of the enjoyment of such ill-gotten wealth. There is a public interest in ensuring that persons who cannot establish that they have legitimate sources to acquire the assets held by them do not enjoy such wealth. Such a deprivation, in our opinion, would certainly be consistent with the requirement of Article 300A and 14 of the Constitution which prevent the State from arbitrarily depriving a subject of his property."

The Court also observed that politically influential persons and government officials who illegally enrich themselves through the abuse of power, and unscrupulous investors who facilitate such corruption, deprive the respective State of its property and hinder the economic development of the country.

instrumentalities used in or destined for use in offences established in accordance with the Convention; State parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption; as well as affording to one another the widest measure of mutual legal assistance in investigations, prosecutions, and judicial proceedings in relation to the offences covered by the Convention; prevention and detection of transfers of proceeds of crime." In *Biswanath Bhattacharya v. Union of India* (UOI AIR (2014) SC 1003, the Supreme Court of India discussed the confiscation

The Bangladesh High Court Division's bench of Ms. Justice Naima Haider and Mr. Justice Abu Taher Md. Saifur Rahman in the Writ Petition No. 5673 of 2016 have expressed the same view that Bangladesh has a duty under international law, as laid out in Article 31 of the UNCAC, to confiscate the proceeds of crime. Article 51 of the UNCAC makes the return of assets, which are proceeds of crime, a fundamental principle of the UNCAC. The Court also observed that politically influential persons and government officials who illegally enrich themselves through the abuse of power, and unscrupulous investors who facilitate such corruption, deprive the respective State of its property and hinder the economic development of the country. The laws of Bangladesh envisage the creation of a fair and just society in which crime does not pay.

It is now up to policy makers whether Bangladesh will perform its legal duty as signatory of UNCAC and as per the observation of High Court of Bangladesh to use UNCAC to recover the assets shifted to other countries by many citizens.

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LAW NEWS

Fighting disinformation

While addressing the Human Rights Council in Geneva on June 28, 2022, Michelle Bachelet, the UN human rights chief, raised an important point on the rise in disinformation across societies, remarking that systemic inequality has helped fuel a rise in the deliberate spreading of falsehoods. Michelle Bachelet observed that disinformation should be underscored as a symptom of diseases such as of systemic inequality, along with fragile institutions, a loss of trust in effective governance, and constrained rule of law.

She perceptively commented that disinformation spreads when people feel that their voices are not being heard. "It arises in contexts where political disenchantment, economic disparity or social unrest flourish", she noted.

In her view, the evil of disinformation flourishes when civic space is limited or closed and when the human rights to freedom of expression and access to information are threatened. She therefore warned governments against trying to officially dictate what is false and what is true, and then attach legal consequences to those determinations. Because, the human right to access and impart information, is not limited to only what is deemed by the State as true or false and official dictations might engender further vulnerabilities.



According to her, the international response has to be consistent with universal rights obligations. She urged the States to uphold their international obligation to promote and protect these rights, whatever the social ill they seek to confront and mitigate. Maintaining a vibrant and pluralistic civic space will be crucial in this endeavor, she noted.

She called for policies that can support independent journalism, pluralism, and digital literacy, which can help citizens "navigate" the complexities of the online world and harness critical thinking in analysing the contents they come across. States must, she observed, ensure wide and free access to information so that it reaches all communities across intersections because trust can never be achieved without genuine government transparency.

Ms. Bachelet told the Human Rights Council that there are two "critical needs" in the battle against rising disinformation. Firstly, in order to deepen our understanding and knowledge, more research is required on how the digital sphere has transformed media and information flows; on how best to build public trust within this environment; and on how different actors can contribute to countering disinformation operations. Secondly, human rights norms needed to be mainstreamed into all discussions. Shortcuts do not work here, she cautioned. Censorship and broad content take-downs are an ineffective and dangerous response.

Compiled by Law Desk (SOURCE: UN.ORG).



As a legally binding international anti-corruption agreement, UNCAC provides a comprehensive set of measures to be implemented by state parties to prevent, combat, and prosecute corruption. UNCAC requires their state parties to enable confiscation of instrumentalities, proceeds, and property of corresponding value to proceeds of convention offences. UNCAC calls for national efforts to criminalise conduct and to prevent criminals from gaining profit, the most frequent motivation for the crime. An effective deterrent against corruption is the seizure, confiscation and return of the proceeds of corruption. UNCAC contains elaborate mechanism and procedure for seizure, confiscation and return of assets.

There are several court decisions in Bangladesh, Pakistan and India in support of confiscating the assets of the accused as per the principles laid down in UNCAC.

In the case of *Dr. Mobashir Hassan and Others v Federation of Pakistan* (PLD 2010 Supreme

Court 265), the Supreme Court of Pakistan, while discussing the corruption and confiscation,

LAW LETTER

On the Constitutional rights of flood victims

Heavy rains along with the continued onslaught of water from upstream locations in India marooned Sylhet and the neighboring districts jeopardising the residents' fundamental rights. It is incumbent upon the government to respect, protect and fulfill the obligations enumerated in the Constitution, sustenance of which have not been possible on these rainy days.

Fundamental rights, as specified in the Constitution, are non-derogable obligations that the government must uphold, and therefore, safeguarding them is the government's constitutional responsibility. Occasioning of a catastrophe does not extinguish the rights of the people. It is time to adopt a right based approach to disaster management with the likelihood of disasters growing more intense due to climate change.

Article 31 declares the right to protection from action detrimental to the life, liberty, body, reputation or property. The right to life is a fundamental right enshrined in Article 32 of the Constitution of the People's Republic of Bangladesh. At the 57th Session of the Commission on Human Rights in 2001, Klaus Toepfer, Executive Director of the UNEP, expressed that environmental degradation make it impossible to protect human rights and environmental conditions



clearly help to determine people's basic rights to life, health, food and housing etc. Environmental protection is thus within the purview of the right to life, as per a harmonious interpretation of the two clauses. It is the responsibility of the state to safeguard the environment in order to ensure the right to life.

The recent flood in the Sylhet division worsened the living conditions of the local inhabitants in almost every aspect.

According to the data given by Divisional Commissioner of Sylhet, Dr. Muhammad Mosharrar Hossain to The Business Standard published on June 19, 2022, 90% of the Sylhet division was submerged in water. Multiple incidents of robbery have been reported. Skyrocketing prices devastated the buying capabilities of the affected people. The Agriculture Minister reported the destruction of 22,000 hectares of cropland in the flood. More than 1.5 lakh

power subscribers in Sylhet and Sunamganj were completely cut off and left without access to the internet. The flood victims faced severe dearth of food and shelter. This cataclysm has made it more difficult for people to exercise their rights to freedom of movement, property, and the protection of their homes and correspondence, which is a clear infringement of the constitutional protections.

The Apex Court of Bangladesh has already

expanded its hitherto established limit of right to life and included environmental protection in it, in the case of *Dr. Mahiuddin Farooque v Bangladesh*, in which Justice Bimalendu Bikash Roy Chowdhury opined to include the protection and preservation of the environment under the protective umbrella of right to life.

The goal of protecting this right is to bring order to the chaos caused. International cooperation and collaboration should be the breakthrough in effectuating cross-border issues like flood. Moreover, inter-departmental coherence and communication should be strongly bridged. Adequate assessment and monitoring of disaster hazards and vulnerabilities should be introduced. Again, communication problems deterring outside assistance from getting to remote locations can be resolved by empowering local government under Articles 59 and 60 of the Constitution through allocating sufficient budget for prompt rescue and relief. UNEP's Adaptation Gap Report 2021 suggests increasing climate adaptation finance to deal with environmental catastrophe. As the last remedy, Professor Mathew Hall prescribes to hold the government accountable for the failure to prevent or reduce the disaster risk and damage caused.

Now, the flood victims are underprivileged communities regarding whom positive discrimination would be allowed. So the most significant contribution has to be made by the government with the help of NGOs and other organisations along with local community to remedy the miseries caused to the people. Otherwise, overcoming this and such crisis would be a long dream to cherish.

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