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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**Corruption and its impact on the full enjoyment of human rights,
in particular, economic, social and cultural rights**

Progress report submitted by the Special Rapporteur, Christy Mbonu

Summary

This progress report is submitted in accordance with Sub-Commission resolution 2003/2. It focuses on those institutions that were identified during the Sub-Commission's debates as being more prone to corruption that were not dealt with in the preliminary report. The progress report, therefore, deals with the effect of corruption on those institutions necessary to sustain democracy, such as political parties and parliaments. Political parties are often seen to abuse their powerful positions to extort bribes and provide members and followers with lucrative positions in the public sector, while corruption among parliamentarians compromises their legislative, oversight, financial control and representational roles. The report highlights the problem posed by party corruption, especially in the developing countries and countries in transition.

The crucial role played by the judiciary and the law enforcement agencies in the fight against corruption makes a further analysis of corruption in these institutions and its negative impact on the full enjoyment of human rights a necessity. Realizing that if corruption is not effectively tackled the goals contained in the United Nations Millennium Declaration will not be achieved, the progress report focuses on the devastating effect of corruption on procurement, in the public sector as well as in international organizations, and of capital flight suffered in particular by the developing countries as a result of corruption.

Since the debate is no longer on the grave and devastating effects of corruption on the enjoyment of human rights but rather on how to turn the tide against the perpetrators of corruption, the report deals with the value-added of partnerships established to fight corruption. How effective are the mechanisms at the international, regional and national levels put in place to fight corruption? What is the value-added of the national mechanisms put in place by States to fight against corruption, their achievements made and the obstacles encountered?

In its conclusion and recommendations the report underscores the violation of all regimes of rights by corruption, the universality of corruption, its institutionalization in some countries, and the fact that it remains one of the major obstacles to honest and transparent government, consolidation of democracy and, promotion of sustainable development. It calls for a refocusing of the international community on turning the tide against the perpetrators of corruption.

Referring to a new global opinion survey carried out by Transparency International in which political parties were adjudged the most corrupt institution, the report calls for the strengthening of measures by States to ensure the elimination of corruption among political parties and the parliaments; strengthening of existing legislation and, where none exists, the enactment of adequate legislation to tackle corruption in procurement; and for the international financial institutions, such as the World Bank, to assist States in designing economic policies that include transparency in procurement.

The report highlights the importance of ratifying and incorporating into domestic laws, the United Nations Convention against Corruption; the importance of international cooperation in the repatriation of the funds of illicit origin siphoned off from the coffers of the developing countries to the developed countries and the crucial roles of the civil society and the media in the fight against corruption.

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Introduction

1. By decision 2002/106, the Sub-Commission on the Promotion and Protection of Human Rights decided to entrust Christy Mbonu to draft a working paper on the question of corruption and its impact on the full enjoyment of all human rights in particular economic, social and cultural rights.

2. The working paper (E/CN.4/Sub.2/2003/18) submitted to the Sub-Commission at its fifty-fifth session took into consideration the discussion held on this issue at the fifty-fourth session which, *inter alia*, noted that corruption should be condemned and that those guilty of corruption should face international justice if they escaped national jurisdiction. The paper also took note that the Economic and Social Council, having been concerned with the serious problems posed by corruption, which might endanger the stability of societies, undermine the values of democracy and morality, and jeopardize social, economic and political development, had adopted resolution 2001/13 entitled “Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and in returning of such funds”.

3. In resolution 2003/2, the Sub-Commission recommended that the Commission on Human Rights endorse the decision to appoint Ms. Mbonu as Special Rapporteur with the task of preparing a comprehensive study on corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights. The Commission, in its decision 2004/106, endorsed the Sub-Commission’s decision.

4. The preliminary report (E/CN.4/Sub.2/2004/23), submitted in accordance with Sub-Commission resolution 2003/2 on the issue of corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights, built upon the working paper. It highlighted the universality of the phenomenon of corruption and explored some general and specific manifestation of corruption, including cases of corruption in the private sector. The report also dealt with the identification of victims of corruption, the poor being the most vulnerable, and elaborated on the socio-economic and civil and political consequences of corruption in human rights terms, linking the undermining effects of corruption to the development efforts of developing countries. The report further looked into national and international mechanisms against corruption.

5. The conclusions and recommendations of the report, *inter alia*, underlined the importance of political leadership in the fight against corruption; of ratifying and incorporating the United Nations Convention against Corruption into domestic law, highlighting the role of asset-recovery provisions; of adopting national anti-corruption mechanisms and legislation; and of cooperation among countries in fighting corruption, including prevention, investigation and the prosecution of offenders.

6. The need for built-in safety-net mechanisms to protect citizens from corporate corruption, the importance of companies adhering strictly to their codes of conduct, the role of the civil society and the media, as well as the need for effective law enforcement were also underscored.

7. The present report is submitted pursuant to Sub-Commission resolution 2004/4, for the purpose of further preparing a comprehensive study on corruption and its impact on the full enjoyment of human rights.

I. PRELIMINARY CONSIDERATIONS

8. One of the aims of the present study is to focus on those institutions that were identified during the Sub-Commission's debates as being more prone to corruption, but were not dealt with in the preliminary report; those institutions necessary for sustaining democracy, i.e. the political parties and the parliaments that should be guided by the rule of law and ethics in the conduct of their mandates. Other institutions were also identified during the debates for deeper analysis due to the crucial roles they play in the fight against corruption, i.e. the judiciary and law enforcement agencies. Aware of the importance of an untainted judiciary in the fight against corruption, a columnist, Joel Obura, has stated that "a corrupt judiciary is indeed a malignant cancer whose effect can be felt across the land".¹ In the view of Hon. Justice S.O. Uwaifo,² "a corrupt judge is more harmful to the society than a man who runs amuck with a dagger in a crowded street. He can be restrained physically. But a corrupt judge deliberately destroys the moral foundation of a society and causes incalculable distress to individuals through abusing his office, while being referred to as 'Honourable' ".³

9. It has been observed that corruption, though a universal problem, is more present in some societies than in others, causing monumental devastation on the development efforts of these societies. Corruption therefore remains one of the deadliest enemies of the translation into visible reality of all the potential with which humanity is endowed. If the hydra-headed monster called corruption is not destroyed, the goals, enunciated in the United Nations Millennium Declaration, to "halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger and, by the same date, to halve the proportion of people who are unable to reach or to afford safe drinking water" will remain a pipe dream.

10. In the course of this study, it was established, and echoed by Dr. O. Ezekwesili,⁴ that "openness, transparency, information, competition, sanctions, incentives, clear rules and regulations that are strictly enforced are enemies of corruption". Corruption is inherently an activity that thrives on secrecy; it takes advantage of unequal access to information by parties to a transaction and thus becomes widespread, especially where the cost of corrupt conduct is low and the profit high. The elimination of corrupt practices therefore goes beyond a mere moral campaign or sloganeering, as is the case with some Governments. It requires political will from leaders backed up by tough legislation for, according to Justice Aaron Ringera,⁵ "corruption always fights back".

11. Consequently, the nations of the world suffering from the devastating effects of corruption that seek to enthrone a new paradigm of transparency and accountability to replace the corrupt order must adopt institutional, structural and systemwide reforms that redefine the inefficient ways in which business is conducted, in particular procurement, in all sectors of the society. This study will be based on the premise that if procurements are handled transparently, whether in the health sector or the education sector or elsewhere; that if

contracts are bid on and awarded transparently, after due process, to the most competent local or multinational company, the incentive for corruption and the environment for the promotion of corruption will be drastically reduced. It will further block the avenues for capital flight, through which corrupt officials from developing countries loot and siphon off public funds to the financial institutions of the developed countries.

II. EROSION OF DEMOCRATIC INSTITUTIONAL STRUCTURES THROUGH CORRUPTION

A. Corruption versus the integrity of the judiciary

12. “It has become clear that corruption is one of the main obstacles to peace, stability, sustainable development, democracy, and human rights around the globe. The ‘quality counts’ discussion amongst economists has recently concluded that the key to reducing poverty is to undertake an integrated approach to development- one that addresses quality growth, including education, health, environment and governance. Good governance invariably is the key determinant among these variables. Good governance, among other things, requires trust between the State and the people, integrity, transparency, rule of law, checks and balances, and total involvement of all stakeholders.”⁶

13. “International, regional and even national human rights instruments recognize as fundamental the right of everyone to due process of law, including to a fair hearing and public hearing by a competent, independent and impartial tribunal established by law. The importance of this in the protection of human rights is underscored by the fact that the implementation of all other rights depend to a large extent upon proper administration of justice. An essential element of the right to a fair trial is an independent, impartial and untainted Judiciary. If the judicial system is corrupt, no such elements will exist. Judicial corruption influences unduly access to and outcome of judicial decisions. The decision will remain unfair and unpredictable and consequently the rule of law will not prevail.”⁷

14. Article 26 of the International Covenant on Civil and Political Rights (ICCPR) stipulates equality “all persons are equal before the law and entitled without any discrimination to the equal protection of the law”. If, however, a party to a dispute compromises a judge, or other court officials for that matter, and thereby obtains through bribery documents to which the other party has no access, or if documents vital to the dispute “disappear”, there can be no equality before the law. A compromised judge cannot be independent, impartial or fair. When a party to judicial proceedings offers a bribe to a judge or other court official, and the bribe is accepted, that party automatically acquires a privileged status in relation to other parties who have not offered, or are not in a position to offer, a bribe or inducement. The preferential treatment secured and the attendant discrimination, which article 26 aims at thwarting, violates the latter party’s human rights. Such preferential treatment obliterates the objectivity and neutrality required from the judicial process. Little wonder, then, that the citizens often lose faith in the judiciary and resort to instant justice in resolving disputes that ordinarily would have been resolved by the court. The result can be anarchy.

15. A corrupt judiciary also means that the legal and institutional mechanisms designed to curb corruption have been compromised. The judiciary is the public institution that is mandated to provide essential checks on other public entities, including political parties, law enforcement agencies and public officers. While a corrupt judiciary is a cancer whose effects can be felt across the land, a fair and efficient judiciary is the key to anti-corruption initiatives, which are necessary pillars for the strengthening of democratic institutions.

16. Corruption in the judiciary is a global problem, as it is not restricted to a specific country or region. Though the challenges to and the corruption in the judiciary noted in the preceding paragraphs can be found in developed societies with long traditions of judicial independence and strong laws, many developing countries and countries in transition seem to have many more basic problems. In the case of Africa, decades of colonial domination and exploitation which engendered weak political and democratic institutions and the attendant military interference in the political domains of these countries have had monumentally adverse effects on all the institutions necessary to entrench a corruption-free society and strong institutions, including the judiciary. Regretting the effects of weak institutions inherited from the colonial era, an African leader thus laments, "some of the contradictions and challenges bequeathed by the colonial administration have continued to pose problems to us (Africans) today".⁸ But more succinctly, "the problems are endemic; lack of trained personnel, inadequate payment, a tradition from colonial times of dialogue about cases with the Ministry of Justice, apparently predetermined outcomes of trials".⁹

B. The law enforcement agencies

17. The Code of Conduct for Law Enforcement Officials adopted by the General Assembly in resolution 34/169 of 17 December 1979 stipulates in article 1 that "Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession" and in article 7, "Law enforcement officials shall not commit any act of corruption. They shall also *rigorously* oppose and combat such acts" (emphasis added). It was a fundamental idea of the framers of this resolution that the role of the law enforcement agencies in building a State's capacity for developmental purposes is very crucial and that institutionalized corruption is a serious impediment to that process. This study will not tire of repeating and re-echoing that corruption has devastating effects on nation-building. Institutionalized corruption remains a major obstacle to honest and transparent government and thus to the consolidation of democracy and the promotion of sustainable development, especially in many developing countries. Corruption threatens both democracy and development because it erodes the capacity of States to ensure sustainable livelihood for their citizens.

18. According to the *Human Development Report 1997*,

"Corruption in Government increases poverty in many ways. Most directly, it diverts resources to the rich people, who can afford to pay bribes and away from the poor people, who cannot. But it also skews decisions in favour of capital-intensive enterprise... and away from labour-intensive activities more likely to benefit the poor.

"Corruption also weakens governments and lessens their ability to fight poverty. It reduces tax revenue and thus the resources available for public services".¹⁰

19. An institution essential to effectively curb corruption in States is law enforcement, notably the Police, national and Interpol, Customs, Immigration, etc. It is one of the necessary pillars for the enhancement of capacity-building. Emphasis has always been erroneously placed on public sector reform and the training of a competent and reliable bureaucracy as a form of capacity-building crucial in curbing corruption without equally stressing the more important role of the law enforcement agencies. It is simply not feasible to wage a successful campaign against corruption with institutionalized corruption among the law enforcement agencies. Law enforcement must play a pivotal role in ensuring the protection of fundamental human rights in a democratic society. Corruption diminishes the ability of law enforcement to accomplish this mission and hinders the efficient and fair functioning of society as a consequence. A corrupt law enforcement officer who obstructs the pursuit of justice, like a corrupt member of the judiciary, can make law enforcement ineffective in the fight against crime in general and corruption in particular. This in turn can undermine public confidence and trust.

20. Another serious threat posed by corruption among law enforcement agencies is the facilitation of the nefarious activities of cross-border crimes, i.e. trafficking of human beings and narcotic substances and financial crimes. Those involved in these crimes are usually motivated by one thing: profit. The illicit monies are often laundered, creating the impression that they are the proceeds of legitimate business activities. Some of the most frequently targeted institutions are the law enforcement agencies, including Customs, the Police, passport-issuing officials and, of course, the judiciary and financial institutions. More worrisome is the fact that corrupt law enforcement may facilitate acts of terrorism, at great cost to humanity. It is therefore important to identify those sectors vulnerable to corruption and increase the likelihood of being caught and exposed. It is equally important to ensure that national and international systems are in place to curb corruption and to monitor and expose corrupt officials.

C. Corruption in political parties

21. Article 21 (1) of the Universal Declaration of Human Rights states: “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives” while article 21 (3) states: “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.” The importance of the right of every citizen to make a contribution to the leadership of his nation and to decide to whom he entrusts the running of matters that affect him and his family is further emphasized in article 25 of ICCPR, which states: “Every citizen shall have the right and the opportunity, without any ... distinction ... and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors....” Many other international human rights instruments have to varying degrees unequivocally stressed this fundamental right to which every citizen is entitled.

22. Political parties are necessary media through which representatives of the people are freely chosen, i.e. the executive and the legislative branches of government mandated to shape the political, economic and cultural institutions for the common good. Political parties play a vital role in democracies and perform valuable political and social functions. According to Verena Blechinger, “parties provide a link between citizens and the government, Parties mobilize voters on behalf of certain goals and interests, select and train candidates for public office, organize election campaigns, send representatives to parliament, organize legislatures, formulate political agendas and policies, manage policy processes and steer or, as opposition parties, monitor government activities”.¹¹ The crucial role political parties play in entrenching and sustaining democratic processes cannot therefore be overemphasized.

23. Unfortunately, this important and useful tool for the sustenance of democracy is always fraught with corruption. It is worth underscoring that as nothing that is human is perfect, so political parties are not perfect, nor are political actors. It would be utopian to expect a corruption-free political party anywhere in the world. However, when corruption among political parties and parliamentarians is endemic, it erodes public trust and confidence in leadership. As Blechinger states, “both in industrialized democracies and in the developing world, political parties are often seen as part of the corruption problem”.¹² The author further asserts that “[d]iscourses on corruption and anti-corruption strategies have identified parties as key actors who abuse their powerful positions in the political system, among [other things] to extort bribes, to supply their members and followers with lucrative positions in the public sector and related corporations, to shape political and economic institutions to the benefit of affiliated interest groups, or to channel public resources into the hands of party leaders, members, or supporters”.¹³

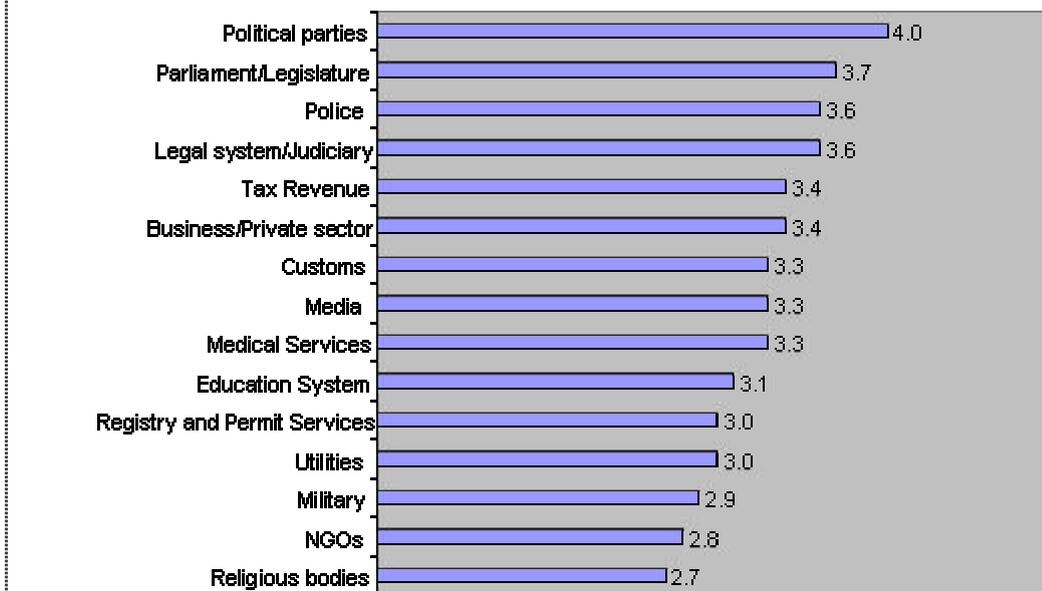
24. Various manifestations of corruption in the political parties exist in many countries that invariably violate the rights of citizens. A fundamental right is violated if, due to poverty, vote buying by political parties denies the electorate from voting for the best candidates. Commenting on this manifestation of corruption, Blechinger notes that “...vote buying has been a major problem for years, and it is still a widespread practice despite repeated reform efforts”.¹⁴ “... corruption can be used to persuade the election administrators to interfere in a partisan manner with, for instance, the registration of voters, the ballot papers, the ballot box, and the final protocol from polling stations”.¹⁵ In the view of Mr. Suki, corruption invariably distorts “at least one fundamental principle of political participation, namely the equality of the vote”.¹⁶ It equally “naturally affects the genuine character of the choice of the people as well as the free expression of the will of the people or the electorate”.¹⁷

25. Civil societies in many countries, especially the developing democracies, have undertaken to sensitize citizens on the effect of selling their votes. In some countries, voters expect presents and gifts from political parties and candidates and make their decisions on the basis of the amount and quality of gifts. Little wonder that in those countries, mediocrity is knowingly entrenched. It is important to recall the sensitization carried out by some vibrant members of the civil society in Nigeria prior to the return of democratic rule in 1999. A massive campaign, “Value your vote”, was undertaken whereby citizens were warned that selling their votes was a poor trade-off. More such campaigns are necessary to sustain new and fragile democracies in the developing countries.

26. In a recent publication by Transparency International (TI), political parties topped the list of institutions most affected by corruption in many countries. In 36 of the 62 countries surveyed, political parties were considered the institution most affected by corruption:

Sectors and institutions most affected by corruption

(1 – not at all corrupt...5 – extremely corrupt)



Source: Transparency International Global Corruption Barometer 2004

27. Having established a direct correlation between corruption in society and lack of democracy, a weak institutional framework necessary for strengthening democratic principles, bad leadership, etc. (E/CN.4/Sub.2/2004/23, para. 14), this study will also focus on the role, or lack thereof, of parliamentarians in the fight against corruption. Also having established that corruption exacerbates poverty, citizens who bear the heavy economic and social burden of corruption should look up to the Parliament, i.e. the parliamentarians, to set the framework of law, oversee its implementation and ensure that the rights of the citizens are not only promoted but are protected, including through legislation that will help reduce the impact of corruption.

28. Parliament as an essential institution in a democracy is crucial to the extent that corruption among parliamentarians has a negative impact on the enjoyment of all rights by citizens, be they civil, economic, political, social or cultural rights. In the view of Justice Niki Tobi, "corruption in the legislature is inimical to democracy. Both cannot operate in the same boat. If the system of lawmaking is corrupted, legislation will not command the respect of the polity. Society will be exposed to putrid legislation and that will affect the societal equilibrium".¹⁸

29. The roles of parliamentarians include the following: (a) legislative role, which includes establishing rules for the ordering of social and political activity and empowering

Governments to enforce these rules; (b) financial control, which includes empowering the executive to collect tax and other revenues, to spend those revenues for specific purposes and to record and report actual expenditures and achievements; (c) oversight, which includes those parliamentary activities undertaken to help make the actions of Government transparent to the electorate and holding the executive publicly accountable; and (d) representation, which is an important parliamentary instrument for building integrity in public governance, empowering citizens to reject corrupt practices and expose politicians and officials who engage in corrupt activity.¹⁹

30. Since financial integrity is so crucial to anti-corruption efforts, the present study will also focus on the role of Parliaments in financial management, i.e. financial control and oversight, and how a corrupt Parliament that abdicates from these crucial responsibilities will invariably promote and nurture corruption. The “power of the purse”²⁰ provides for parliamentarians to be heard on how much money is to be obtained, its allocation, what results are to be pursued and what was actually spent and achieved. They are to make laws to ensure that the budgets are used for the common good. Unfortunately, some parliamentarians, especially from the young democracies, are still trying to cope with learning the rules in carrying out this function. In budgetary matters, “an enormous amount of money is being processed, the expertise and detailed information on its application and use rests within the executive, extremely complex financial instruments are used, and pressures to use shortcuts to respond to crises are compelling”.²¹

31. For this reason, and perhaps many others usually adduced by the parliamentarians in some democracies, the parliamentarians struggle to understand the application and use of public resources, to influence their use, and to communicate information about financial matters and any concerns to their constituents. The oversight function of parliamentarians is an important tool in checking corruption and corrupt practices in the executive, the civil service, the judiciary, etc. However, where Parliament itself is corrupt and is not monitored by an independent and vibrant media, corruption thrives. Of equal import is the fact that a self-serving and corrupt Parliament, instead of enacting laws favouring the progress of the society and against inappropriate behaviour by citizens, businesses and other organizations, enact laws to further the personal interests of the parliamentarians. Such laws invariably encourage lack of transparency, subvert due process and sustain corruption. It is to forestall abuse that various Parliaments have established their own code of conduct manuals for their members.

III. ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND CORRUPTION

A. Corruption in procurement and its impact on the enjoyment of human rights

1. Public sector procurement

32. Ida Elisabeth Koch, arguing on the indivisibility of human rights, notes: "It has for several years been a generally accepted view that economic, social and cultural rights are fundamentally different from civil and political rights. Not only have the two sets of rights been divided into two covenants with different and not equally strong supervisory bodies, but the character of the rights is also different. In international human rights protection and in many national human rights catalogues, a distinction is made between the so-called negative

rights indicating the areas in which States are not allowed to interfere (personal liberty, freedom of speech, freedom of assembly etc.) and so-called positive rights, the rights that States are obliged to provide for the citizens".²² She posits that "[a]lthough the principle of 'indivisibility' is often invoked, the two sets of rights each live their own separate lives, and the protection of economic, social and cultural rights is much weaker than that of civil and political rights".²³

33. Some practices, especially in the developed countries, have erroneously lent credence to the assertion that the two sets of rights are essentially different in nature. This assertion is further maintained to the effect "that positive rights are costly, while it is without economic consequences for the State to abstain from certain acts. Negative rights are to be respected now... while positive rights are to be respected, gradually and realised in a distant future. Negative rights are justifiable (i.e. the judiciary can enforce them), contrary to the positive rights that, while they may not be beyond the jurisdiction of the courts, are at least not well suited for judicial control".²⁴

34. Reacting to the devastating effect of corruption on the enjoyment of basic rights, a Somali elder succinctly expressed his views thus: "Development is about human beings. They need four things. First is water. It is the first thing needed to live. Without it a plant, an animal or a baby dies. Second is food. Without enough of it life is miserable and short. Third, once water and food are won, is health - otherwise human beings become sick. Fourth is education. Once a human being has water, food and health he needs to learn to open new horizons and unlock new possibilities. And there is a fifth - peace and order. Without these none of the four basic needs can be sustained."²⁵

35. Experts have identified procurement as one of the areas most prone to corruption and constituting a huge obstacle to States in meeting their obligation to gradually provide those rights adjudged to be "positive rights" to their citizens. This portion of the study will therefore examine how corruption affects public contracting and procurement, be it corruption in health-sector procurement, in the education sector, and in the provision of social amenities (e.g. road construction, procurement of goods and services, etc.). "Corruption in procurement engenders bad choices, affects the efficiency of public spending and donors' resources, creates waste and, ultimately, affects the quality of health and education services and the opportunities they present to improve quality of life".²⁶ Corruption also harms companies that produce goods and services in these areas as it increases operating costs and reduces competitiveness. In the view of Dr. Ezekwesili, corruption is in fact the greatest impediment to any nation's development; it is a challenge to the national integrity that corrodes the economic, social, political and entire value spectrum of the country. It is the deadliest enemy to the translation into visible reality of all the potential with which any country is endowed".²⁷

36. Procurement refers to the acquisition of goods and services by any individual or organization (public, private, international, etc.). Corruption in procurement thrives in the absence of openness, transparency, information, competition, incentives, clear rules and regulations that are strictly enforced, and in the presence of sanctions. Mr. Byungtae Kang, Director-General for Planning and Management, Public Procurement Services of the Republic of Korea, noted that corruption in procurement, among other things, allows preferential

treatment for certain firms, provides preferential access to tender information, limits competition unnecessarily, etc.²⁸

2. Procurement at international organizations

37. In April 2004, United Nations Secretary-General Kofi Annan appointed an independent, high-level inquiry to investigate the administration and management of the Oil-for-Food Programme in Iraq. The Independent Inquiry Committee, composed of internationally known and respected experts, was chaired by Paul Volcker. Its terms of reference were to collect and examine information relating to allegations of corruption on the part of United Nations officials in the management of the Oil-for-food Programme in Iraq, and specifically to determine whether any such official had engaged in any illicit or corrupt activities in carrying out their duties. The interim report of the Committee, issued on 3 February, focused, *inter alia*, on the activities of Under-Secretary-General Benon Sevan. The Committee found that Mr. Sevan had acted improperly and unethically and had "seriously undermined the integrity of the United Nations" (p. 26). The report also found "convincing and uncontested evidence that the selection process for each of the three United Nations contractors selected in 1966 (namely, Banque Nationale de Paris, Saybolt Eastern Hemisphere BV and Lloyd's Register Inspection Ltd.) did not conform to established financial and competitive bidding rules." Those selections had been made or influenced, respectively, by former Secretary-General Boutros Boutros-Ghali, Mr. Allan B. Robertson and Mr. Joseph J. Stephanides (p. 109).

B. Capital flight through corruption

38. In the international instrument to combat corruption, i.e. the United Nations Convention against Corruption, the States parties to the Convention in the third preambular paragraph expressed concern "about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States". In the seventh preambular paragraph the States parties, "convinced that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law", included among the purposes of the Convention "to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery" (art. 1 (b)).

39. The devastating effect of capital flight brought about by corruption can never be overstressed. Capital flight through corruption is one of the main causes of poverty in the South, i.e. the developing countries. More than half of the Southern countries' debts are in the form of private capital deposited in tax havens controlled by the banks of the North. Over several decades, a succession of civilian/military dictatorships in third world countries incurred massive debts, which are currently crippling these countries. Most of these debts were entered into by many of the discredited leaders. Debts and debt servicing, regrettably, are steadily eroding the financial base of these countries, systematically preventing them from providing, and their citizens enjoying, the basic rights contained in the human rights instruments. Many African countries under democratically elected Governments are grappling with the repayment of these debts, which the President of Nigeria once described as "dubious

and immoral". Tax evasion and illegal export of capital are the two most common practices constituting capital flight.

40. Many of the defrauded countries have undertaken to recover the looted assets for repatriation and for social development. Article 46 of the United Nations Convention against Corruption, on mutual legal assistance, provides the necessary framework. It is heartening that the Group of eight (G-8) has committed itself to providing no safe havens for stolen assets and the perpetrators of diverting capital acquired through corruption. An unrelenting effort by the Government of Nigeria to repatriate the assets siphoned off and sent abroad by the corrupt regime of the late General Abacha has led to a welcome development: a judgement of the Swiss Federal Court, which ruled that the "Swiss authorities may return assets of obviously criminal origin to Nigeria without a court decision in the country concerned". The judgement would pave the way for the repatriation of US\$ 458 million, the bulk of the US\$ 505 million in public funds stashed away in private bank accounts in Switzerland by General Abacha and his family. Commending the resoluteness of the countries affected to repatriate their stolen funds, the Nigerian Minister of Finance stated that the looted funds had been distributed for rural electrification, roads, primary health care, vaccination programmes, education, potable water and irrigation.

IV. VALUE-ADDED PARTNERSHIP IN THE FIGHT AGAINST CORRUPTION: HOW EFFECTIVE?

41. The debate is no longer on the grave and devastating effect of corruption on the enjoyment of human rights; rather, the emerging consensus all over the globe is how to destroy the cancer that corruption has become and bring to account the perpetrators, no matter how highly placed. It is therefore a very welcome development for the international community to witness the first-ever United Nations Anti-Corruption Day, which was marked on 9 December 2004, coincidentally, a day before the celebration of Human Rights Day, bringing the issue of corruption to the fore.

United Nations Convention against Corruption

42. In a bid to counter the negative effect of corruption and the devastation of this scourge on the enjoyment of all human rights, the international community, in December 2003, in Mérida, Mexico, signed the landmark United Nations Convention against Corruption. The treaty, among other things, requires Governments to pass criminal laws against the bribing of their own and foreign officials, and other corruption-related acts such as embezzlement and money-laundering. The pact also requires Governments to take preventive measures against corruption, facilitates cooperation among States for the purposes of extradition and asset recovery, etc. Article 68 of the Convention states, "[t]his Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, [or] approval..." The effectiveness of any treaty in meeting the set objectives of that treaty depends, to a large extent, on the political will of leaders to commit their nations to sign and implement the provisions of the treaty.

43. The enthusiasm that greeted the signing of the Convention has not been matched by ratifications so that the treaty can come into force. The importance of international

cooperation in the fight against corruption, money-laundering and transborder crime cannot be overemphasized. Chapter IV of the Convention, dealing with "International cooperation"; article 45 on "Transfer of sentenced persons", article 46 on "Mutual legal assistance", article 47 on "Transfer of criminal proceedings"; article 49 on "Joint investigations", etc. require the cooperation of Member States for their operationalization and effectiveness. It is therefore regrettable to note that this crucial international pact has been rendered ineffective as a result of inaction on the part of States. It is nonetheless heartening that all States Members of the United Nations had signed the treaty as of the time of the preparation of this report. Taking account of the universality of corruption, the devastation of corruption in all countries - albeit to varying degrees - and its negative impact on the enjoyment of human rights, it is worrisome that only 15 States have ratified the treaty, all of them developing countries.

44. It is, however, pertinent to note that other international and regional efforts at combating corruption, preceding the adoption of the Convention against Corruption, have been more effective and have made remarkable achievements. In December 1996, the General Assembly adopted two important resolutions in the fight against corruption, namely the International Code of Conduct for Public Officials (resolution 51/59, annex) and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (resolution 51/191, annex). Although it could be argued that neither of these instruments is binding, they are nonetheless politically relevant as they represent a broad agreement by the international community on these matters. In the same vein, the Declaration includes a set of measures that each country can implement at the national level in accordance with its own constitution to fight bribery and corruption in international commercial transactions.

United Nations Global Programme against Corruption

45. In early 1999, the United Nations Centre for International Crime Prevention (CICP) of the Office for Drug Control and Crime Prevention, now the United Nations Office on Drugs and Crime Control and Crime (UNODC), working with the United Nations Interregional Crime and Justice Research Institute, launched the Global Programme against Corruption (GPAC). The programme made considerable progress in raising awareness against corruption. It also served to increase the risks of involvement in corruption by increasing the probability of detection and the cost of participating in corrupt activities. This objective was to be achieved by providing reliable and current information on corruption trends and on strategies to reduce and control corruption. Technical assistance was to be provided to Member States for the prevention, detection and successful elimination of corruption. The value-added of this mechanism in the fight against corruption is remarkable, as many States have been positively impacted through its programmes.

Organization of American States

46. The Inter-American Convention against Corruption (OAS Convention) came into force in March 1997. The Convention has as its purpose the promotion and strengthening of the development of mechanisms needed to prevent, detect, punish and eradicate corruption. The Convention has assisted in the promotion and facilitation of cooperation among the States parties to ensure the effectiveness of measures and actions to prevent, detect, punish and

eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance (art. I). Commenting on the devastating effects of corruption in the States in the hemisphere, Dr. Enrique Lagos, the OAS Assistant Secretary for Legal Affairs, likened corruption to "a terrible cancer that undermines the legitimacy of institutions and the Rule of Law, and on this matter there is still a long road ahead to travel in the Americas".²⁹ According to Kathleen M. Hamann, "If the countries of the Americas are to grow and develop in accord with their potential, corruption must be reduced.... We must focus on prevention, detection, and prosecution of corrupt activities, because the battle against corruption is never over".³⁰ The OAS has added impetus to the elimination of corruption in the hemisphere.

Organization for Economic Co-operation and Development

47. OECD members adopted a Recommendation on Bribery in International Business Transactions in 1994. In 1997, the OECD Working Group on Bribery reviewed the 1994 recommendations and proposed a Revised Recommendation on Combating Bribery in International Business Transactions, which was adopted by the OECD Council on 23 May 1997. The document brought together analytical work on anti-corruption measures and commitments undertaken over a period of years in the elimination of bribery in international business transactions. The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was signed in December 1997 by 29 OECD members and 5 non-members (Argentina, Brazil, Bulgaria, Chile and Slovakia). The document, which came into force on 15 February 1999, provided a framework for criminalizing corruption in international business transactions. States parties to the Convention pledged to punish those accused of bribing officials in foreign countries with a view to retaining trust in international business.

Regional initiatives in Africa

48. An African regional ministerial workshop, organized in 1997 by the CICP, was held in Dakar. The workshop unanimously adopted the Dakar Declaration, in which the Ministers expressed their concern about the increase and expansion of organized criminal activities, corrupt practices and bribery in international commercial transactions. The 1998 Second Pan African Conference of African Public Service Ministers, held in Rabat, Morocco, adopted the Rabat Declaration which called for a number of measures to be taken at the national level to regenerate professionalism and ethics in public administration. In 2001, the African Public Service Ministers, meeting at the Third Pan African Conference of Public Ministers in Windhoek, unanimously adopted the Charter for the Public Service in Africa. The Charter affirmed the professional values of the public service in Africa, redefining its objectives and specifying the conditions required for strengthening its roles, competence, ethical values and image.³¹

49. The successes recorded in the 1990s were further reinforced when the member States of the African Union, identifying the high rate of corruption in the continent as the major cause of the continent's numerous problems, especially in the areas of development, adopted in July 2003 the African Union Convention on Preventing and Combating Corruption. The Convention in its preamble succinctly expresses the devastating effect of corruption on all

areas of life, stressing “the negative effects of corruption and impunity on the political, economic, social and cultural stability of African States and its devastating effects on the economic and social development of the African peoples”.

50. The continent evolved a home-grown approach in its fight against corruption through the African Peer Review Mechanism (APRM). APRM is an instrument that was acceded to by member States of the African Union (AU) as a self-monitoring mechanism. Its primary purpose is to foster the adoption of appropriate laws, policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated subregional and continental economic integration. This objective is to be achieved through the sharing of experiences and reinforcement of successful and best practices, including identifying deficiencies and assessing the needs for capacity-building. It is a welcome development, and many African countries have asked to join the APRM.

51. Four of the five main financial contributors to the AU, Algeria, Egypt, Nigeria and South Africa, have all signed up for the peer review mechanism; this is in addition to many other countries that have submitted themselves for scrutiny. Reacting to the 80-page self-assessment questionnaires by the APRM panel testing countries' willingness to democratize institutions and fight poverty, corruption and underdevelopment, the President of Mozambique, a former Chairperson of the AU, said that the document had helped his country to identify loopholes and "a lot of deficiencies in our own policies, and we are improving on them".³² Chris Stals, former Governor of the South African Reserve Bank, an APRM member responsible for country reviews, welcomed the statement. According to Mr. Stals, "We have not even been to Mozambique and have not had specific discussions with them, and already they tell us that we are helping them to implement the right policies. That I think is the kind of results we would like to achieve with all the African countries participating in this".³³

52. African States, as part of the global community, have, through the establishment of a comprehensive international legal regime on human rights, charged themselves with the obligation of promoting and protecting the human rights of their citizens. A corrupt State will not be able to fulfil this obligation. According to Peter Eigen, Chairman of the Board of Directors of Transparency International, "corruption leads to a violation of human rights in at least three respects: corruption perpetuates discrimination, corruption prevents the full realization of economic, social and cultural rights, and corruption leads to the infringement of numerous civil and political rights".³⁴ It is therefore hoped that other African countries would volunteer to be peer-reviewed, as failure to do so would very likely influence negatively on much-needed investments. According to Mr. Stals, the private sector and businesses, not only in Africa but in the rest of the world, would carefully study the report of the APRM before deciding on where to invest in Africa.

The role of an engaged civil society

53. The role of an engaged civil society in the fight against corruption is a crucial one. Substantial achievements in bringing awareness of corruption in the society, and therefore curbing it, can be attributed to a large degree to a viable civil society, including an independent media. The growing influence of some of the organizations that constitute the

civil society are known. The new communications technologies have enabled many of these organizations to network across the nations, thereby strengthening their knowledge and influence. According to Professor E. Gyimah-Boadi, of the Centre for Democracy and Development of the University of Ghana, "anti-corruption work is often a lonely project". He has therefore advocated cooperation among civil society organizations, NGOs and other advocacy groups in their common efforts to combat corruption.

54. Many civil society groups have not understood the strategy of engaging in coalition-building with others in the fight against corruption. Their strategies are unfortunately confrontational towards other groups with similar purpose. Little wonder that the results are not being felt as they should. In the view of Peter Eigen, "many good national organizations can become still more international; many single-issue organizations can become more professional and more technically competent; and many civil society groups can demonstrate still greater willingness to work with other organizations to attain powerful global potential".³⁵

55. For the civil society groups to be effective in fighting corruption, they must adhere to credible codes of conduct and basic corporate good governance. They must ensure that they operate above board by regularly auditing their accounts, ensuring that rogue elements are disciplined so as to have the moral right to fight corruption. Credible self-regulation is a necessity. It is pertinent to install bridge-building mechanisms and cooperation among like-minded organizations fighting for the same cause. Taking into account the complex and sensitive nature of corruption and corrupt practices, especially high-profile corruption, emphasis must be placed on unity of purpose among these vital institutions, the media and the civil society, i.e. community-based organizations, NGOs, religious bodies, etc.

States actions against corruption

56. Bad leadership and lack of political will on the part of elected leaders and public officials breed corruption and poverty. Unfortunately, in what can be seen as a vicious circle, poverty itself induces corruption in the societies. Whether the corruption is described as acute, crude, endemic, systemic, refined or polished, corruption engenders the denial of all rights, in particular economic, social and cultural rights, impacting negatively mainly on the poor. Indeed, the worst victims of corruption are the poor. The establishment of various anti-corruption mechanisms at the national, regional and international levels, and the important role played by the media and the civil society have, however, led to the raising of awareness of the devastating effects of corruption in the society.

57. Successes have been recorded in the fight against corruption through these mechanisms, but at the same time many obstacles have impeded their effectiveness. Lack of adequate funding for the existing mechanisms is a case in point. Since corruption fights back, and most corrupt officials can afford to hire the best lawyers, adequate funding of anti-corruption mechanisms is therefore a sine qua non for their success. Proliferation of anti-corruption mechanisms in some countries, and in some cases overlapping of functions, are among the problems confronting some of these mechanisms. The importance of parliaments enacting laws that will not only establish anti-corruption mechanisms, but will ensure their independence, especially from any negative influence of the executive, cannot be

overemphasized. It is unfortunate that some anti-corruption mechanisms established by States, lacking the necessary legal basis to be independent, are mere instruments employed by States for propaganda and public relations.

58. On the other hand, in the course of this study it was noted - and it is important to repeat - that through these anti-corruption mechanisms, some developing countries have successfully pursued the repatriation of funds siphoned off from their treasuries and lodged in foreign banks, while many highly placed officials who engaged in corrupt practices and were caught have been prosecuted by competent courts and punished accordingly. For lack of space, this report will not discuss the various anti-corruption mechanisms established by States. Suffice it to say that in the course of carrying out research for the progress report, it was observed that remarkable achievements had been made by some States in their sincere desire to rid themselves of corruption. However, the momentum needs to be maintained as, according to Peter Eigen, "corruption robs children of their future, and it kills, but it is preventable".³⁶

V. CONCLUSIONS AND RECOMMENDATIONS

59. **This progress report continues to focus on the violations of all regimes of rights. There is no longer any doubt about the universality of corruption, or that institutionalized corruption remains one of the major obstacles to honest and transparent government, the consolidation of democracy, the promotion of sustainable development, etc. The focus of the international community is now on the need to turn the tide of corruption, making corruption very costly and risky by punishing those who engage in and perpetuate corruption, no matter how highly placed.**

60. **As suggested during the discussion among Sub-Commission members at the fifty-sixth session, the author has, in this report, dealt with corruption in political parties and amongst parliamentarians, areas not covered in the Special Rapporteur's preliminary report. Due to the essential roles played by the judiciary and the law enforcement agencies in the fight against corruption, the two vital institutions were re-visited in this report.**

61. **As succinctly demonstrated by a new global public opinion survey carried out by Transparency International (see in para. 26 above), political parties were adjudged to be the most corrupt institutions in the whole world. This is an unwelcome development, as politicians and public officials (parliamentarians) are not above the law and should be accountable. They are elected by the citizens and mandated to enact laws that will promote, respect and prevent the violation of the rights contained in the International Bill of Rights, individuals elected to make laws to advance the welfare of the citizens.**

62. **It is therefore critical for States, in addition to the Inter-Parliamentary Union, to make sure that parliamentarians adhere to the rule of law, and strengthen existing strategies and measures aimed at eliminating corruption in political parties by, for example, improving transparency and accountability, encouraging attitudinal changes and mobilizing political will.**

63. Having identified the negative impact of corruption in procurement on the enjoyment of human rights, in particular economic, social and cultural rights, States must strengthen existing legislation. Where none exists, adequate legislation must be put in place. The role of the relevant financial institutions, such as the World Bank, in assisting States to design and implement anti-corruption strategies, especially in enunciating appropriate economic policies that include transparency in procurement, must be stressed.

64. Corruption thrives when the education level is low, civil society is underdeveloped and the accountability of public institutions very weak. States should, therefore, continue to strengthen the independence and impartiality of the judiciary, including the training of judges and lawyers, to ensure the rule of law as well as to maintain viable and transparent law enforcement agencies. Members of law enforcement agencies must be adequately remunerated to counter the attraction of corruption.

65. International cooperation is needed for the repatriation of the funds of illicit origin siphoned off from the coffers of the developing countries to some developed countries. Some achievements have been recorded in this area through bilateral cooperation among the affected countries, and the entry into force and implementation of the United Nations Convention on Corruption as well as the United Nations Convention on Transnational Organized Crime will add more impetus to eliminate the fight to corruption in this areas.

66. The central role of the civil society, including a vibrant media, in combating corruption should not only be recognized and encouraged, it should be intensified.

Notes

- ¹ E/CN.4/Sub.2/2004/23, note 26.
- ² Justice Samson Uwaifo was a Justice of the Supreme Court of Nigeria, known for strongly criticizing corruption in the judiciary. The statement was part of the valedictory speech he made upon his retirement in January 2005.
- ³ Ibid.
- ⁴ Dr. Oby Ezekwesili, Heads the Budget Monitoring and Intelligence Unit (BMIU) an anti-corruption mechanism in Nigeria, usually referred to as Due Process designed to ensure full compliance with laid-down guidelines and procedures for the procurement of goods and services. Through this mechanism, Dr. Ezekwesili's BMIU, as of the time of preparing this study, has saved her country over US\$ 1 billion that would have been paid out in inflated contracts.
- ⁵ *Daily Nations* (Nairobi), 1 October 2000.
- ⁶ *Strengthening Judicial Integrity against Corruption*, United Nations Global Programme against Corruption, Centre for International Crime Prevention, Office for Drug Control and Crime Prevention, United Nations, Vienna, March 2001, p. 3.
- ⁷ Ibid.
- ⁸ "Strengthening the structure of democratic governance in Nigeria", speech by President Obasanjo of Nigeria at the inauguration of the National Political Reforms Conference, 21 February 21, 2005.
- ⁹ B. Fernando and T. Wickremasingh, "An absence of genuine courts - A fundamental obstacle to democracy in Cambodia", in Asia Human Rights Commission, *Human Rights SOLIDARITY*, vol. 7, No. 7, December 1997.
- ¹⁰ United Nations Development Programme, *Human Development Report 1997 – Human Development to Eradicate Poverty*, box 5.8
- ¹¹ Verena Blechinger, Sectoral Perspectives on Corruption, "Corruption and Political Parties", November 2002.
- ¹² Ibid., p. 3.
- ¹³ Ibid.
- ¹⁴ Ibid., p. 4.

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- ¹⁵ Marrku Suki, “Good Governance in the Electoral Process”, in *Human Rights and Good Governance: Building Bridges*, Hans-Otto Sano and Gudmundur Alfredsson (eds.) (The Hague: Martinus Nijhoff, 2002), p. 28.
- ¹⁶ *Ibid.*, note 47.
- ¹⁷ *Ibid.*, p. 218.
- ¹⁸ Lecture by Justice Niki Tobi, retired Justice of the Supreme Court of Nigeria, “The exercise of legislative powers in Nigeria”, 2002.
- ¹⁹ T. McAnthony, R. Stapenhurst and M. Ulrich, “Parliamentarians Fighting Corruption, A Conceptual Overview”, Global Organization of Parliamentarians Against Corruption – GOPAC, p. 2, available at www.parlcent.ca/gopac.
- ²⁰ *Ibid.*, p. 3.
- ²¹ *Ibid.*
- ²² Ida Elisabeth Koch, “Good Governance and Implementation of Economic, Social and Cultural Rights Human Rights”, in Sano and Alfredsson, *op.cit.*, p. 76.
- ²³ *Ibid.*, p. 77.
- ²⁴ *Ibid.*
- ²⁵ Quoted in UNDP, *Somalia 299 Human Development Report*, chap. 4.
- ²⁶ U4-Utstein Anti-Corruption Resource Centre, www.U4.no.
- ²⁷ Ezekwesili, *op. cit.*
- ²⁸ Paper presented at the Conference on Combating Corruption in the Asia-Pacific Region (Seoul, 11-13, December 2000).
- ²⁹ Remarks made at the National Conference on the Inter-American Convention against Corruption and its Implementation in Suriname, 15 December 2003.
- ³⁰ Kathleen Hamann, Anti-Corruption and Good Governance Team, United States Department of State, remarks before the OAS High-Level Meeting on Poverty, Equity, and Social Inclusion, fourth plenary session, Isla Margarita, Venezuela, 10 October 2003.
- ³¹ UNODC, Regional Office for Southern Africa, Country Corruption Assessment Report, at www.pmg.org.za/docs/2003/appendices/INTREG.htm.
- ³² Source: Bua News.

³³ Ibid.

³⁴ Speech delivered at the ceremony marking the first United Nations International Anti-Corruption Day, London, 9 December 2004.

³⁵ Address on the central role of civil society in combating corruption in the era of globalization, Carter Centre “Transparency for Growth” Conference, Atlanta, Georgia, 4 May 1999.

³⁶ Eigen, *op. cit.* at note 37.
