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**Note by the United Nations High Commissioner for Human Rights
transmitting to the Human Rights Council the report on the
United Nations Conference on anti-corruption, good governance
and human rights (Warsaw, 8 and 9 November 2006)* ****

The High Commissioner for Human Rights has the honour to transmit to the members of the Human Rights Council the report of the United Nations Conference on anti-corruption, good governance and human rights organized pursuant to Commission on Human Rights resolution 2005/68.

* The annexes to this report are circulated as received in the language of submission only.

** The late submission of the report was due to the proximity with the Conference dates.

Summary

The present report, submitted in accordance with Commission on Human Rights resolution 2005/68, contains a summary of proceedings and the Chairperson's statement of the Conference on anti-corruption measures, good governance and human rights, organized in Warsaw on 8 and 9 November 2006 by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in collaboration with the Government of the Republic of Poland and with the financial support of the Government of Australia. Participants included representatives of States, national human rights institutions, intergovernmental and non-governmental organizations, and invited experts and panellists. The Conference was a follow-up to a joint OHCHR-UNDP Seminar on Good Governance Practices for the Promotion and Protection of Human Rights, which took place in Seoul in September 2004 (E/CN.4/2005/97).

The objective of the Conference was to deepen the understanding of good governance practices which contribute to the fight against corruption by focusing on human rights approaches. The Conference identified, explored and clarified the linkages between corruption, human rights and good governance, and provided an opportunity for participants to share concerns and experiences.

The Conference heard from experts, anti-corruption and human rights practitioners, public officials, civil society and private sector actors. Eleven panellists presented case studies and three experts provided overall perspectives during four substantive sessions on the impact of corruption on human rights; how human rights and good governance principles can help in fighting corruption; the role of civil society, the private sector and the media; and fighting corruption while safeguarding human rights.

Panellists, experts and participants recognized that corruption impedes the realization of human rights in multiple ways. They stressed the importance of combating corruption in its various forms (petty and grand), as well as its motivations (need and greed) and impetus (supply and demand). They also insisted that anti-corruption measures should be effective without compromising human rights.

Participants also identified various ways to improve and strengthen anti-corruption efforts, by developing better data and indicators; involving all sectors of society, not just governments; improving and expanding international collaboration to address the supply side of corruption, to support asset recovery and the implementation of judgements; providing technical assistance to strengthen the capacity of State agencies and institutions and the private sector to carry out anti-corruption work in a manner that is consistent with human rights; and developing new rules and clearer guidelines to inform efforts to curb corruption while protecting human rights.

**REPORT ON THE CONFERENCE ON ANTI-CORRUPTION,
GOOD GOVERNANCE AND HUMAN RIGHTS
(WARSAW, 8 AND 9 NOVEMBER 2006)**

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Introduction

1. In accordance with Commission on Human Rights resolution 2005/68, the Office of the United Nations High Commissioner for Human Rights (OHCHR) organized, in collaboration with the Government of the Republic of Poland, the Conference on anti-corruption, good governance and human rights, held in Warsaw on 8 and 9 November 2006 and chaired by Ms. Anna Fotyga, Minister of Foreign Affairs of Poland. More than 240 participants from 102 countries attended the Conference, including representatives of Member and Observer States, national human rights institutions (NHRI), intergovernmental organizations, non-governmental organizations (NGOs) and invited experts and panellists.
2. The Conference built on the sharing of good practices and experiences to generate debate with a view to identifying and clarifying the main conceptual issues related to each of the four sessions (see annex I to the present report). The approach was to start from the specific and to move on to the general, with experts drawing general observations from the presentations. An open discussion at the conclusion of each session further illustrated and elaborated on the key elements debated by the panel. At the end of each day, the Rapporteur presented conclusions and recommendations.
3. The present report contains a summary of proceedings, expert comments and discussions, and the Chairperson's statement (contained in annex II). It also draws on remarks by the Rapporteur, Robert Archer. Introductory statements on the relationship between anti-corruption measures, good governance and human rights are summarized in section II. Section III deals with the impact of corruption on human rights. Section IV explores how human rights and good governance principles can help in combating corruption. Section V looks specifically at the role of civil society, the private sector and the media in efforts to stem corruption. Section VI presents the possible conflicts between human rights principles and anti-corruption measures, and ways to safeguard human rights while fighting corruption. Section VII contains the conclusions of the Conference in the form of recommendations and proposals for consideration by relevant agencies and bodies. The list of participants to the Conference is contained in annex III.
4. OHCHR would like to thank the Government of Poland for hosting the Conference, the Government of Australia for its financial support, and the Governments of Chile, South Africa and Republic of Korea, the other cosponsors of resolution 2005/68 for their substantive support. OHCHR would also like to thank the United Nations Development Programme (UNDP) in Poland for providing logistical and other local support for the Conference.

I. ANTI-CORRUPTION MEASURES, GOOD GOVERNANCE AND HUMAN RIGHTS

5. In her introductory remarks, the Chairperson, Anna Fotyga, stressed the importance Poland has attached to the fight against corruption since 1995. She reviewed the major changes to the country's legal system introduced by the former and current prime ministers, and the recent establishment of the Central Anti-Corruption Office.

6. The statement of Sergei Ordzhonikidze, Director-General of the United Nations Office at Geneva, delivered on his behalf by David Chikvaidze, described the damaging effects of corruption, which drains resources needed for services and infrastructure, perverts the rule of law, discourages external investment and aid, undercuts public confidence, feeds inequality and disenfranchises large segments of the population. He also noted the challenges corruption poses to security through trafficking, money laundering and illicit transfers that can be used to finance terrorism, and encouraged States to sign, ratify and implement the United Nations Convention against Corruption (UNCAC), which entered into force in 2005. He concluded by noting that, because violations of human rights compromise anti-corruption efforts, eventually rendering them less effective, the principles and institutions of human rights promotion are indispensable elements in successful anti-corruption strategies.

7. In her opening remarks, María Francisca Ize-Charrin, Director of Operations, Programme and Research Division at OHCHR, underscored the vital role played by other United Nations agencies, intergovernmental organizations and NGOs in anti-corruption efforts, and the contribution of UNCAC, which has been signed by 140 Member States and ratified by 70. Ms. Ize-Charrin acknowledged that, although the Convention does not directly refer to human rights, it includes several references to rule of law and “there can be no rule of law without protection of human rights”. She observed that the anti-corruption movement can benefit from the experience of the human rights movement and, by removing impediments to the realization of human rights, contribute to it. Although the international movement against corruption is relatively young, it has made important strides since the days when addressing corruption was seen as an improper intrusion into domestic affairs of sovereign States and foreign bribery was a tax-deductible expense for companies in certain developed countries. She proposed that anti-corruption work, like rights-based development and poverty reduction strategies, should rely on principles of empowerment, transparency, participation, accountability, non-discrimination and rule of law. She concluded by affirming that anti-corruption measures must be compatible with human rights and should not lead to violation of the rights of those involved, including the perpetrators, witnesses and whistleblowers.

8. Param Cumaraswamy, former Special Rapporteur on the independence of judges and lawyers of the Commission on Human Rights, opened his keynote address by reaffirming that “good governance should be seen as a prerequisite for the protection and promotion of human rights”. Central to good governance are ethics, the moral values and principles that guide conduct, and integrity, the correspondence between what is said and done. Integrity of public officials requires that they fulfil their responsibilities to the public, refrain from using their power for personal gain, uphold the public’s interest as paramount when conflicts of interest appear, and maintain transparency and accountability. He noted the concern expressed by the United Nations General Assembly in 1996 regarding the prevalence and seriousness of corruption around the world and welcomed the adoption of the International Code of Conduct for Public Officials. Mr. Cumaraswamy denounced the pervasiveness of the problem across institutions - public administrations, corporations and professions throughout the world - from which neither the most developed countries nor the United Nations are immune. He then reviewed the experience of South-East Asia where restrictions to civil and political rights were

often justified by government leaders as necessary for economic growth. Although several countries did experience economic booms during the “Asian miracle”, they often did so at great cost to human rights and the rule of law. Mr. Cumaraswamy observed that today there is both greater awareness of human rights in the region and greater respect for human rights by Governments than before. Both public and private institutions are experimenting with structures and procedures to enhance good governance and since the Asian financial crisis, financial institutions are carefully monitored. States in the region are responding to the United Nation’s call to establish NHRIs; whereas there were only 5 such institutions in the Asia Pacific region in 1993, today there are 18. Mr. Cumaraswamy credited civil society groups for their vigilance and commitment to accelerating the process of reforms in the region. Towards that end, he noted the value of the right to access to information and whistleblower protection legislation, independent anti-corruption mechanisms, like ombudsman offices, and better resourced NHRIs. However, he singled out the judiciary as the “pivotal institution” for dealing with both corruption and human rights and insisted that proper attention should be given to strengthening it.

9. The acting Mayor of Warsaw and former Prime Minister of Poland, Kazimierz Marcinkiewicz, affirmed Poland’s commitment to preventing abuse in public institutions and described the steps taken by Warsaw. In 2002 the Office of Internal Control and Audit was established to address corruption among municipal officials. Resident Service Departments in each of the city’s 18 districts were established and mandated to receive residents’ petitions. As a result of those measures, a 2006 survey of Warsaw residents revealed that those “who believe that corruption among officials is frequent” fell by 20 per cent in just two years.

10. In her statement, the Ambassador of South Africa in Poland, Ms. F.C. Potgieter-Gqubule, affirmed South Africa’s embrace of the values of good governance, rule of law and human rights following apartheid. South Africa’s Constitution and the Bill of Rights (1996) safeguard the full spectrum of human rights and an array of policies, laws and programmes have been adopted to give effect to these rights. Besides South Africa is party to a range of regional and international human rights and anti-corruption conventions and protocols. In April 2007 it will host the Global Forum V on Fighting Corruption and Safeguarding Integrity, which will showcase the African anti-corruption experience and good practices, like the *izimbizo*, a form of unmediated community meeting that provides citizens direct interaction with government leaders. As an emerging democracy, South Africa recognizes the immensity of the challenge of overcoming corruption to ensure the full enjoyment of human rights. Aware that the Government cannot do it alone, South Africa is working with the country’s vibrant civil society, the media and the private sector to address the problem comprehensively through the National Anti-Corruption Forum.

II. THE IMPACT OF CORRUPTION ON HUMAN RIGHTS

11. The moderator, Ms. Ize-Charrin, explained the objectives of the session which were to highlight the adverse effect of corruption on human rights and to identify the role of anti-corruption measures in protecting human rights and creating an environment conducive to the promotion of these rights.

12. Zbigniew Ziobro, Poland Minister of Justice, showed that corruption tends to create illegitimate interest groups with informal mafia-like structures of power that operate against the interest of the general public. To prevent or to counter corruption, legal mechanisms, transparency in the public arena and an efficient legal system are needed. Mr. Ziobro described how immediately following the end of communism, Poland pursued mistaken measures based on mistaken assumptions, namely the “naïve belief” that the free market would operate well without effective State structures and institutions, and that State intervention would be harmful. Polish citizens now recognize that the proper role of the State is to protect civil rights rather than the political order. In 2002, following a scandal involving public officials, a number of practices were reclassified as crimes. New measures that are proving effective in reducing corruption were introduced. For example, impunity is granted to the briber who notifies the Government ahead of the act; such a mechanism works by arousing fear in those who might consider accepting a bribe. Mr. Ziobro concluded by noting the need for international rules to allow for access to information about tax havens and the bribes being transferred there.

13. President Eduardo Rodriguez-Veltze, former President of Bolivia and former Chief Justice of the Supreme Court, drew on his experience to elaborate on the impact of corruption on human rights. Invoking the parallel debate on the relationship between rule of law and development, he questioned whether ending corruption was a prerequisite for or a product of the realization of human rights. He attributed the difficulty in answering this question to the fact that they involve “human attitudes”. Mr. Rodriguez-Veltze maintained that good governance can help provide solutions for both sources of corruption - people’s “needs” (for resources) and people’s “greed” (for power) - and that the Universal Declaration of Human Rights and the original human rights agreements should be the foundations of good governance. Turning to Bolivia’s experience, he noted that, despite nearly two decades of democracy, the country still has problems in the areas of good governance, corruption and respect for human rights. Mr. Rodriguez-Veltze attributed this poor record to the difficulties of reconciling majoritarian democracy and universal values with the claims of interest groups. He expressed concern regarding the collision of “claims by groups” and the way they make those claims (e.g.: blockades, strikes) with the “rights of individuals” who must deal with the results. Mr. Rodriguez-Veltze concluded by expressing scepticism regarding the usefulness of indices that rank countries, like Transparency International’s index on perception of corruption, for challenging governments and suggested the need for indices that capture what countries have done well or best.

14. Fredrik Eriksson, Managing Director, Integrity Management and Programme for Accountability and Transparency, addressed the damage that clientelism in public administration does to human rights and how regulatory transparency can prevent it. He observed that the experience of Scandinavian countries demonstrates that access to information and transparency can prevent corruption. The centrality of access to information derives from the fact that it is a prerequisite for accountability. Mr. Eriksson explained how, by undermining competence and control over resources, clientelism weakens the capacity of the public administration to formulate and implement policies, thereby depriving the public, particularly the weakest and most vulnerable, of the fulfilment of their needs. Furthermore, when officials are promoted despite their lack of competence, they become beholden to their patrons whose interests they come to serve. Mr. Eriksson then turned to two examples of regulatory transparency that address the problem of clientelism. Following the end of communism, Poland had a weak and highly politicized public administration rife with clientelism. The situation changed with the adoption

of Poland's Civil Service Act (1998) which introduced clear criteria and a competitive procedure for the recruitment of civil servants, thus allowing scrutiny over appointments and accountability of public servants, while providing them with protection against pressure to follow a patron's personal or illegal interests. In New Zealand, a different approach was pursued. The responsibility of appointing public service chief executives was given to the State Service Commission to reduce the risk of favouritism and conflicts of interest. Mr. Eriksson concluded by noting that in both cases, open and competitive recruitment with transparent criteria reduced opportunities for clientelism and, in the process, contributed to stabilizing the public administration and strengthening the rule of law, which, in turn, contributed to developing the capacities needed to realize human rights.

15. Nihal Jayawickrama, Coordinator of the United Nations-sponsored Judicial Integrity Group, former Executive Director of Transparency International and former Permanent Secretary to the Ministry of Justice of Sri Lanka, acting as an expert, addressed the interconnection between corruption and human rights. First, he noted the surprising absence of any reference to corruption in the principal human rights instruments (and the lack of mention of human rights in the treaties and resolutions on corruption) despite the fact that “practically every protected human right can be eroded by corruption and it is the already vulnerable who are victimized”. Mr. Jayawickrama distinguished between “petty corruption”, which takes the form of a lowly public official taking a bribe for doing something that is already required/prohibited by law, and “grand corruption”, which is carried out by well-placed officials who seek payment for exercising their discretionary powers. Petty corruption originates in “human need” while grand corruption is rooted in “human greed”. In the developing world, Mr. Jayawickrama maintains, “corruption caused by human greed at the highest levels of Government invariably leads to corruption dictated by human need”. An example of the latter was noted in statistics from Bangladesh on the percentage of households that have paid bribes to secure basic services, such as admission into school, admission into hospital, a bank loan, and electricity connection. Mr. Jayawickrama noted that where corruption is pervasive, all human rights suffer: the prevalence of corruption requires that civil and political rights be restricted, and when national resources are diverted from public use, Governments become unable to fulfil their social, economic, and cultural rights obligations. Mr. Jayawickrama observed that corruption exists in one form or another in every State. He added, however, that countries appear to be better able to contain corruption when they possess functioning legal and institutional mechanisms, enjoy governance that is participatory, transparent and accountable, and respect human rights. Welcoming the recent establishment of the Judicial Group on Strengthening Judicial Integrity, he noted their preference for human rights language (“right to a fair trial”) over “anti-corruption” language.

16. During the discussion, the difficulty encountered in implementing UNCAC and the stress it placed on State officials who struggle to deal with an ever-widening circle of officials that need to be held accountable, was noted. A number of essential reforms to improve the capacity to carry out anti-corruption work were identified: foremost among them is the reform of the legal system to ensure the independence of judges and transparency in their election. There was a call for sharing of information and experience on how to establish an effective, independent and autonomous judiciary that is credible and accessible to citizens. Participants insisted on the

need to simultaneously move forward on four fronts - anti-corruption, good governance, human rights and economic development - and that a failure to do so might result in terrible distortions of the kind that had occurred in Rwanda. The need for development to reduce corruption was echoed in several comments that pointed to poverty among poorly paid government officials as a reason for “petty corruption”. It was noted, however, that development itself may also be part of the problem if international financial institutions and donor governments do not control the allocation of their funds which may be misused to pay off corrupt officials. Therefore, any discussion of corruption should include the “corrupted”, the “corrupting”, and the “intermediaries”. Donor countries need to be more transparent and to monitor more carefully the activities of their multinationals.

17. Another area that requires attention is the weakness of civil society in developing countries, which prevents them from fighting corruption. A question was raised regarding what weak civil society organizations can do when the institutions that exist to fight corruption are appointed by or connected to the government. Another question was how to improve the role of civil society in the fight against corruption in a country that gives importance to human rights, but where corruption remains. It was observed that most government anti-corruption measures focus on “petty corruption” rather than “grand corruption”. In his response to the questions raised, Mr. Rodriguez-Veltze noted the importance of ensuring full access to the judiciary, including in the rural areas where delivery is generally poor. He also noted that many countries still need to update their legislative systems, often inherited from colonialism. He welcomed a number of new trends, such as speedy trials, oral accounting, and others, but noted that there was still a long way to go. Civil society has become an important actor that is getting the ear and attention of political parties, yet some unions and groups have corporatist rather than public interests and, in a representative democracy, the balance is crucial. He concluded by noting that promoting democratic culture is the best practice on a day-to-day basis and for the long-term promotion of both “respect for the rule of law and respect for neighbours”.

18. The session moderator drew the following conclusions. First, the human rights-based approach to fighting corruption appears to be very promising in addressing the complexity of the issues. Second, a correlation exists between the level of corruption and violations of human rights, although more data is needed to assess it. Third, corruption leads to violations of human rights, but the legal consequences need further elaboration. The moderator suggested including as conference recommendations: (a) the need to collect evidence to show the positive work that has been done in fighting corruption and its impact on human rights and to develop indicators to capture this correlation; and (b) the need to develop more rules regarding access to information and related areas.

III. HUMAN RIGHTS AND GOOD GOVERNANCE IN THE FIGHT AGAINST CORRUPTION

19. Robert Archer, Executive Director of the International Council on Human Rights Policy, introduced the session on the usefulness of applying human rights principles and practice to strengthen, improve and reinforce anti-corruption policies.

20. Sandra Coliver, Senior Legal Officer at the Open Society Justice Initiative (OSJI), stressed the importance of the right of access to information held by public authorities, and the need for the United Nations to further develop, codify, protect and promote this right. She noted the growing recognition of the value of access to information laws since out of 68 countries currently with such laws, 56 have adopted them since 1992 and 36 since 2000. Ms. Coliver cited the findings of OSJI's recent survey of 14 countries. The analysis of over 1,900 requests for information revealed that all governments provide information erratically: in many cases the same request received a different answer when filed by a different requestor; 47 per cent of requests yielded no response at all; and requests from disadvantaged groups (e.g.: Roma, the disabled, etc.) were ignored at a rate twice that of other requestors.

21. Ms. Coliver cited several examples where access to information produced significant and concrete results in addressing corruption around the world. Following a 2003 Mexican law requiring that information be published automatically by certain institutions, the new director of a publicly-funded university made the payroll public, thus exposing rampant misappropriation, which resulted in dismissals and the recovery of 400 million pesos (\$40 million). In Japan, private lawyers used local government access to information laws to secure the release of local officials' expense accounts between 1995 and 1997; the disclosure resulted in cuts in the food and beverage budgets of Japan's 47 prefectures by the equivalent of more than \$100 million. In the Indian State of Rajasthan, where no access to information law existed, public pressure was used by an NGO to force local government officials to provide an account of all expenditures made in relation to development work. The revelations of fraud and diversion of monies led to the return of some misappropriated funds, one arrest, and a national campaign demanding an access to information law, which eventually was passed. Ms Coliver also cited examples where information was disclosed, despite objections on the grounds that the documents contained commercial secrets. In the light of those examples of how the right to information has enabled informed and meaningful public participation and exposed corruption and mismanagement, she recommended greater United Nations attention to this right and noted that the Human Rights Committee has never addressed the right to information and that few United Nations bodies have taken up its content. Besides no norm-creating body has affirmed its existence. She observed that although UNCAC affirmed the importance of access to information in promoting public participation and combating corruption, it does not refer to a "right of access".

22. Anna Bossman, Acting Chair, Commission on Human Rights and Administrative Justice of Ghana, spoke about the Commission's anti-corruption mandate. Established in 1993, the Commission combines three institutions under one umbrella: a human rights institution, the ombudsman and an anti-corruption agency. Its anti-corruption mandate consists of investigating an array of complaints that include alleged abuses of power, unfair treatment and misappropriation of public monies by public officials. Since it was established, the Commission has investigated over 125 corruption cases throughout the country, including very high profile cases. In 2005 the country was rocked by two such cases, one involving the President of the Republic and the other the Minister of Transport. The public outcry and debate that ensued were particularly strident as the Government had been elected on a platform of zero tolerance for corruption. The Commission took up the cases on its own initiative. By highlighting the principles of accountability and integrity in public service, and publicly affirming the principle

of equality before the law, the cases contributed to raising public awareness regarding corruption. The President's acceptance of the Commission's jurisdiction to investigate further enhanced the Commission's stature as an independent agency. Summing up the challenges before the Commission in its fight against corruption, Ms. Bossman cited the need to upgrade the legal and institutional framework, political will on the part of Government, a responsible media, independent and adequate resourcing, and better retention of staff through improved working conditions.

23. Maina Kiai, Chair of Kenya National Commission on Human Rights, acting as an expert, reviewed human rights and good governance approaches that are effective for fighting corruption, and emphasized the value of "bottom-up" and "demand driven" strategies where citizens themselves advocate for change and hold political elites accountable. Mr. Kiai recommended that similar approaches be used in anti-corruption efforts and pointed to human rights and good governance principles that are vital for such efforts: access to information; equality under the law; asset recovery as a deterrent; a well resourced, independent and efficient judiciary; an accountable police force; effective electoral administration; an active civil society capable of counterbalancing the power of the State; effective oversight and ombudsman offices; and a free and pluralistic media that enjoys freedom of expression. He suggested that a comprehensive system of accountability for combating corruption can be drawn from human rights. For example, tackling the "circle of issues" in a holistic manner would call for addressing: both users and suppliers; exposing the lawyers, accountants, bankers, and others who facilitate corruption and concealment of funds; exposing the international linkages that fuel and sustain corruption; and holding countries hosting the sources of money accountable. Other components of a system of accountability rooted in human rights and good governance include: the principle of separation of powers; campaign finance laws to prevent the buying of votes; dealing with impunity for past human rights violations to signal that a new chapter has been opened; use of "smart" or "targeted" sanctions; and stringent corporate social responsibility.

24. In the discussion that followed the presentations, questions were raised regarding the best way to prevent petty corruption among inadequately paid public servants in poor countries; whether the return of money or a conviction is most important when pursuing a bribery case; and what can be done in response to Governments' refusal either to recognize the right to access to information or to implement existing access to information laws. With regard to the level of income of civil servants, one panellist acknowledged that low pay was an important factor but cautioned against "bribing them to not take bribes". Another noted that a study that looked at salaries and judicial independence found that there is a minimum salary that employees need to live in dignity, but once that is reached, other incentives or opportunities, such as training or pensions, are equally valued. The panellist added that because increasing salaries can also entail problems, each country has to find its own balance. Similarly, with regard to the preference between getting the money back from corrupt officials or punishing them, a panellist ventured that ideally it should be both, if it can be done, otherwise each country must decide for itself. She cited an example of a country where everyone knew that corruption was illegal but did not know they would be prosecuted, so prosecution became important in itself. With regard to what can be done to secure access to information, another panellist insisted on the need of having

good law on paper and good implementation. Since the adoption of access to information laws around the world is quite recent, greater attention should be paid to the provision of resources, political will and institutions to ensure their implementation. The same panellist injected a note of optimism by saying that as more support is obtained from Governments, better implementation may follow. She added that some of the best advocates for access to information are found in health and education ministries which have discovered that, as they make more information available, citizens become more engaged, which in turn helps them secure more resources (larger budgets), in the process of building an important partnership around access to information.

25. The session moderator highlighted the emphasis participants placed on calls for international support, action and cooperation if national strategies are to succeed. He noted the specific call for greater international work to set a standard regarding what access to information implies. A third recommendation was to give attention to the usefulness of borrowing the “bottoms-up activism” from the human rights experience for anti-corruption work. Similarly, the need to engage civil society in the drive for change and to raise awareness regarding Governments’ accountability and to do it with imagination was noted. Mr. Archer pointed out the value of sanctions for certain purposes. Finally, the issue of impunity and transitional justice was raised and the example was given of action taken after corruption had occurred on a large scale, in order to compensate for the damage it had caused.

IV. ROLE OF CIVIL SOCIETY, PRIVATE SECTOR AND THE MEDIA

26. The session moderator, Victoria Jennett, Research Coordinator, Transparency International, introduced the session on the role of civil society, the private sector and the media in fighting corruption. She explained that panellists would provide examples of how these three sectors draw on human rights principles in their anti-corruption efforts, describe how those efforts can serve to protect human rights and how Governments can learn from and support their anti-corruption initiatives.

27. Colm Allan, Director of the Public Service Accountability Monitor (PSAM) spoke about how PSAM has used social accountability to curb corruption in South Africa, particularly in the Eastern Cape Province. PSAM promotes social accountability, the right of citizens to obtain justifications and explanations for the use of public resources from those entrusted with their management, in order to tackle corruption and achieve the realization of social and economic rights. Mr. Allan emphasized the importance of a right to social accountability even in countries like South Africa that enjoy excellent constitutional provisions and a legislative framework, because of problems that occur in implementation. He described the methodology PSAM developed for monitoring five social accountability systems: (a) planning and resource allocation, (b) expenditure, (c) performance, (d) integrity, and (e) oversight. By monitoring the performance of four Government departments between 2000 and 2006, PSAM determined that corruption and ineffective use of resources start at the planning and resource allocation stage when an accurate analysis of citizens’ needs is missing. Without such an analysis, proper planning cannot be done and over- and under-spending become common. PSAM’s civic empowerment and advocacy in the Eastern Cape has, inter alia, resulted in greater awareness of the importance of accurate financial reporting by government departments, improved civil

society participation in governance processes, and strengthened Parliamentary oversight committees. Mr. Allan highlighted the need to support multipronged approaches to rights-based monitoring and advocacy and to develop corresponding advocacy strategies at the national, provincial and local levels. He added that attention must be given to strengthening both the capacity of duty-bearers to provide the information, explanations and justifications and of rights-holders to request, to access and to analyse information. Mr. Allan concluded by emphasizing the importance of securing United Nations recognition of social accountability as a right, with the long-term objective of rendering it justiciable.

28. Dejan Anastasijevic, a journalist, addressed the possible contribution of the media to the fight against corruption. First, he suggested that the role the media can play has been highly overstated, particularly in contexts where organized crime is rampant. He contended that the power of the media is an illusion nurtured by journalists, who like to believe they can influence events, and by politicians, who like to blame the media when things go wrong. As evidence of the press's powerlessness, he cited a number of examples, including disregard for calls from the international press for military intervention to stop the war in Bosnia in its early stages. Mr. Anastasijevic observed that if prosecutors refuse to prosecute or courts refuse to hear cases, and if no real consequences follow the exposure of corrupt officials, all the press can do is to inform audiences about the situation. Shedding some light on matters does help, because organized crime fears exposure. Under these circumstances, it is particularly important that law enforcement agencies be devoid of corruption and not infiltrated by organized crime. He observed that many Governments have difficulties accepting the media as watchdogs, because they have a tendency to perceive those who are not directly tied to them as enemies, which is rather unfortunate given that both the media and Government are intended to serve the public.

29. Roy Snell, chief executive officer, Society of Corporate Compliance and Ethics (SCCE), proposed that the "supply side" of corruption be also addressed by including the private sector in efforts to tackle corruption. Engaging the private sector is advisable both because it is often involved in corruption and human rights violations, and because it can contribute to fighting corruption, supporting good governance and promoting human rights. He introduced the work of SCCE, one of several compliance and ethics programmes designed to fight corruption and human rights violations "from within". While compliance programmes help organizations to conform to the rule of law, ethics programmes help them to achieve a higher standard than the rule of law. Mr. Snell described the professional certification that prepares compliance and ethics officers to provide oversight and to exercise their authority to investigate, to correct misconduct and to facilitate discipline in order to accomplish the change required to meet (or surpass) the law. He noted that this level of authority distinguishes compliance programmes from corporate social responsibility programmes, which can influence change but rarely have the authority to make it happen. He pointed out a variety of international compliance and ethics programmes, such as those of the Security and Exchange Board of India, the Global Compact, Transparency International and the Hong Kong Stock Exchange. Mr. Snell urged support for these programmes, because, among other things, change often comes easier when "the request for change comes from those who need to change".

30. Maina Kiai highlighted the need for political will to move the anti-corruption agenda forward and the role of various linkages in order to do so. He observed that Governments sometimes have to be enticed to tackle corruption, and the media and civil society can help make this happen. Political will is important even in the corporate world where markets can be used to get companies to do the right thing. Where markets are not capable of doing this, the human rights practice of adopting international standards is necessary. Other important linkages include those between human rights and anti-corruption efforts; the media, which can push the agenda forward, and civil society, which may pick up from there and pursue the issues; NHRIs and civil society; and the North, the locus of supply, and South, where demand is located. Mr Kiai observed that close linkages between anti-corruption bodies and civil society are particularly important, because the work of anti-corruption agencies need to involve and be complemented by the civil society to be effective; besides, a close relationship between anti-corruption agencies and the executive compromises the agencies' watchdog role. With regard to the media, Mr. Kiai emphasized the need for internal self-regulation to eliminate corruption, because the media cannot demand accountability and transparency from others if the same does not apply to them. Turning to lessons to be drawn from the human rights movement, "one of the most consistent and persistent movements", Mr. Kiai emphasized the value of persistence - in pushing the agenda forward, being creative, repeating the message, etc. - for anti-corruption work. A final linkage which according to Mr. Kiai needs attention is the one between armed conflict, human rights and corruption.

31. In the discussion that followed, participants contributed a range of illustrative examples and formulated recommendations focused on the contribution of civil society, the media and the private sector to anti-corruption efforts. Beginning with the private sector, one participant pointed to the part businesses can play in the field of workers' rights (e.g.: working conditions, fair pay) specifically. Another participant emphasized the need for corporate accountability and for the countries of the North to prosecute Northern companies and individuals involved in bribing officials in the South. The speaker cited examples of Northern governments that ignored convictions and did not enforce judgements, and recommended that this issue be raised at the meeting of the Conference of the States Parties to UNCAC. The importance of engaging civil society directly was repeatedly noted. Ecuador's anti-corruption commission was presented as an example in which the full spectrum of civil society organs are represented and which has made good progress in the fight against corruption as a result. Citing the case of bribery related to Tsunami relief in Sri Lanka, one participant stressed the need to develop a methodology to ensure the public's participation in speaking up about corruption and to adopt legislation that protects the rights of witnesses. A related point was made regarding the focus of the Sri Lankan media on "petty" corruption and relative neglect of the "grand" corruption by high-level government officials involved in diverting Tsunami aid for other purposes.

32. A number of additional comments were made in relation to the role of the media in the fight against corruption. Agreement was expressed regarding the importance of access to information and transparency in ending the impunity of corrupt officials, and the important role of the media in this regard. Echoing two of the panellists who referred to the powerful negative role the media can sometimes play, one participant described how the media rehabilitate the "old corrupt" as "new business people" and noted that it is as important not to write favourably about

them today as it was to write critically of them before. Also in relation to the limited power of the media, another participant noted that while Bangladesh enjoys a free media, the country is not free of corruption. The speaker cautioned against the illusion that the media and civil society alone can solve the problem of corruption and urged that attention be given to the supply side, particularly donors. Similarly, several participants highlighted the importance of the international community's concerted action in supporting efforts within specific countries to fight corruption. Because of the importance of international pressure in sustained efforts against corruption, a recommendation was made to convene recurring regional conferences to follow up on progress.

33. Other comments addressed a range of additional issues. The need to define corruption was raised, with one participant noting that this is necessary to enable people "to recognize it". Such recognition cannot be assumed as in some cultures people may not understand their practices as being corrupt. A related point is the need to develop indices of corruption that go beyond "perception", otherwise countries can simply hire public relations firms to improve their image without making real changes. Finally, a question was raised regarding how political will can be sustained in the face of repeated setbacks.

34. The moderator concluded the session by highlighting six additional recommendations: (a) international standards should be adopted to tackle private sector corruption; (b) there should be more international collaboration to support governments to penalize corruption-related crime; (c) the media, civil society and the private sector should themselves be accountable, particularly if they are asking Governments to be; (d) we should learn from each other on the issues of corporate compliance, media practices and civil society initiatives and share those experiences between our countries; (e) we should simplify the definition of corruption, make it understandable to everyone by drawing on approaches adopted by human rights activists, and develop indices offering clear measurements of corruption; and (f) we need to consider the use of information and communication technologies in enabling transparency and holding public authorities accountable.

V. FIGHTING CORRUPTION WHILE SAFEGUARDING HUMAN RIGHTS

35. The session moderator, Juan Martabit, Permanent Representative of Chile to the United Nations Office at Geneva, explained the panel's objective as highlighting the potential tensions between anti-corruption measures and the protection of human rights. Additionally, the panel would identify areas of potential conflict, solutions to avoid tension between the two areas, and remedies in case of violations of rights as a result of anti-corruption measures.

36. Drawing on his experience, Mr. McMillan, Commonwealth Ombudsman of Australia, described how ombudsman offices can help curb corruption in Governments while safeguarding human rights. Ombudsman offices handle complaints from members of civil society about shortcomings in government decision-making and service delivery, and occasionally investigate systemic problems occurring either within the Government or in specific agencies. Because it lacks intrusive powers and adequate resources, the fight against corruption is not the main role of the ombudsman office. Nevertheless, Mr. McMillan noted a number of ways in which the ombudsman office's impact on corruption "is subtle but significant over time". The very existence of ombudsman offices is a constant reminder to public officials to act legally and

ethically because their action can be complained about and investigated. Government agencies often establish their own internal procedures for handling public complaints that ombudsman offices address, thereby adding another layer of scrutiny and transparency within the Government. The possibility of an adverse finding by an ombudsman, which would damage a person's career and financial prospects, acts as a deterrent. Moreover, ombudsman offices often view themselves as champions of improving and strengthening Government and as such act as barriers to corrupt practices.

37. Mr. Romaszewski, member of the Polish Senate, maintained that the fight against "pathologies" like corruption always involves limiting, in one way or another, the human rights and freedoms of citizens. The challenge, according to Mr. Romaszewski, is "proportionality" between the anti-corruption measures and the hazards created by the corruption. He emphasized the importance of good laws and the need for ordinary citizens to understand and to know how to use them. He noted that often laws limit rights and liberties in some way. For example, Poland adopted an act that permits and regulates lobbying. Mr. Romaszewski noted, however, that lobbying per se is a violation of civil rights in a sense, because it permits those with financial means to hire professional lobbyists to seek more influence on parliament's decisions on the law. Another mechanism that has been instituted and which entails limits to rights is the obligatory declaration of incomes by public officials, which can be seen as violating the "presumption of innocence". A policy that Mr. Romaszewski believes Poland "got right" is the electoral campaign financing law, which, by placing caps on monetary contributions and requiring that they be proportionate to income, is aimed at preventing the purchase of influence over government policies. Noting that corruption takes a variety of forms, Mr. Romaszewski distinguished between high-level and low-level corruption, active and passive corruption, and the giver and taker of bribes and recommended that sanctions and measures correspond to the nature of the act. He further argued that, because it is rooted in greed, corruption should be subject to material sanctions and penalties should involve forfeiture of assets. As for the means used to detect corruption, Mr. Romaszewski observed that the privatization of enforcement techniques (e.g.: wire-taps, surveillance), which has made them available for use by others (e.g.: the media, employers), makes it difficult to limit Governments' use of these techniques.

38. Phil Matsheza, from the United Nations Office on Drugs and Crime (UNODC), which is mandated with implementing UNCAC and supporting Member States in their anti-corruption efforts, began by posing two questions: (a) whether the relationship between fighting corruption and protecting human rights is necessarily complementary, and (b) whether any inherent contradictions exist between them. Mr. Matsheza affirmed that corruption undermines human rights, particularly the principles of non-discrimination and the rule of law, and that it is rife where the rule of law is weak. He pointed to the many principles that human rights, good governance and anti-corruption work share: transparency, accountability, citizen participation, rule of law, freedom of expression, right to information, separation of powers, equality and non-discrimination, equity and fairness. Mr. Matsheza noted, however, the persistence of abuses despite consensus regarding the relationship between corruption and human rights, and the existence of shared principles. The question he then tackled was whether these abuses were a result of flaws inherent in the norms and standards, or whether they were produced during implementation by States. To answer this question he turned to State practices and the normative framework.

39. Mr. Matsheza began by identifying ways in which corruption is the outcome of State practices: the politicization of anti-corruption measures by government officials who level false charges against their predecessors or rivals; law enforcement agents who seek and then abuse special investigation powers. Mr. Matsheza then reviewed UNCAC for weaknesses that might create a potential for human rights abuses and concluded that its provisions provide for human rights protections. Mr. Matsheza continued, however, that UNCAC is considerably more complex than most human rights treaties, making it difficult for States to understand their obligations, to recognize that anti-corruption and human rights are not mutually exclusive, and to implement its provisions. He added that since the Convention came into force, UNODC has been inundated with requests for technical support in a variety of areas and that the requests indicated that some Member States are seeking quick fixes, while others are attempting to do too much in too short a time without developing necessary oversight and supervisory mechanisms. Mr. Matsheza cautioned that hastily developed legislation and national strategies have the potential to provide loopholes that could lead to human rights violations. He concluded by noting that UNODC is aware of these potential pitfalls and is developing a legislative and technical guide to assist Member States to unpack UNCAC's requirements.

40. Roberto Saba, Executive Director, Association for Civil Rights, acting as an expert, cautioned that anti-corruption measures that undermine the rule of law and violate human rights can be counterproductive. Although Governments and civil society complain about human rights and civil rights protections limiting anti-corruption policies, Mr. Saba believes that some of the best tools for fighting corruption are found in these very protections. By nature, corruption occurs in secret and while the measures used to penetrate that secrecy (e.g.: surveillance, wire-tapping) arguably inherently violate human rights, more often they do so because they are selectively applied, entailing discrimination and profiling. Mr. Saba identified four rights violations that are likely to be involved: (a) freedom of expression (of critics); (b) freedom of information (held by Government); (c) freedom from State interference in private life; and (d) due process of law. He contended that although they may be effective against corruption, in the long run even "minor" restrictions of rights can subvert the rule of law and, as a result, efforts to eliminate corruption. As such, disregard for rights in the name of combating corruption is both morally and strategically wrong. Drawing from Argentina's experience, Mr. Saba noted the significance of fair trials in the country's transition to democratic rule in 1983. By holding trials widely recognized as just, the Government demonstrated to the people that the rule of law had been re-established and would apply to everyone. This was vital as the selective application of law is the essence of corruption. Moreover, to do otherwise undermines the moral authority, credibility and effectiveness of the fight against corruption, and provides to those who commit corrupt acts the opportunity to present themselves as victims of discrimination and persecution.

41. The discussion that followed affirmed that corruption compromised human rights. The appropriation of public money impairs a country's development and welfare and, as a result, the human rights of its citizens. However, participants expressed the need to protect human rights in the course of combating corruption. One participant emphasized the need to prevent the victimization of innocent people via entrapment, surveillance and other special investigative techniques. Another participant commented that although UNCAC addressed this issue there was a need for detailed guidelines on how to protect human rights while working against corruption. A related point was raised regarding the implications of a weak judiciary that is poor at achieving a balance between protecting the rights of the accused and carrying out justice, and

that becomes bogged down for many years, in the process feeding the cynicism of the public who see nothing happening to individuals they believe to be guilty. This view was echoed by another participant who noted courts becoming mired in procedural matters which result in lengthy and costly delays. The need to build the capacity of the judiciary to effectively implement anti-corruption legislation while upholding human rights was affirmed. In this regard the international community also has responsibilities. Referring to the case of the Philippines, one participant observed that thousands of human rights victims of the Marcos era have filed cases in United States courts but have yet to receive redress. He noted that the international community has an obligation to help recover the wealth amassed by dictators and stashed in the financial institutions of developed countries and called upon the United Nations to institute measures to accomplish this. Participants were briefed about the Helsinki Process's joint initiative between Finland and Tanzania, involving 20 countries in reviewing and discussing UNCAC prior to the December meeting of the Conference of the States Parties in Jordan. Participants were also briefed on developments in Cameroon, Cambodia, Jordan, UNDP Liberia, Nepal and Nigeria.

42. Panellists took up the questions and issues raised by the participants as follows: Mr. McMillan noted the tension and need for a balance between the desires to suppress corruption and to safeguard human rights. One way to strike the balance is to have efficient and effective oversight agencies and a judicial process "that are marked by fairness and integrity". Mr. Romaszewski concurred regarding the difficulty of finding the point of balance and suggested that it is likely to vary according to the conditions and history of each country. Mr. Matsheza observed that the instruments on human rights and law enforcement provide for such balance. He noted the problem of law enforcement agencies seeking a "blank cheque" for dealing with corruption and the need for capacity-building programmes to enable investigators and prosecutors to observe human rights while combating corruption. Mr. Saba attributed the weakness of the judicial system in addressing corruption to the decades-long process of erosion of the legitimacy of the judiciary in Latin America, where a survey revealed that approximately 85 per cent of the people do not trust the judiciary. He observed the need to strengthen the judicial system to enable it to resist the multiple pressures from the Government, the inditees, and the people who clamour for punishment. Mr. McMillan noted that there are times when those on trial use human rights claims "to cloak, avoid or delay prosecution", requiring that each human rights claim be tested for substance. Mr. Matsheza emphasized that claims for human rights protection should not be treated as an "irritation" for law enforcement; legitimate human rights claims are a valid basis for throwing cases out. He added that the solution is for law enforcement officials to do their jobs without resorting to extraordinary measures. Echoing this position, Mr. Saba noted the importance of framing: if anti-corruption work is framed with a view that human rights are an obstacle, then the result will be a betrayal of human rights values. He maintained that "we can do both" - fight corruption and protect human rights - and cautioned against presenting them "as either or". Mr. Saba also drew attention to the paradox of "saying that our Governments are often very corrupt and then also being willing to endow them with extraordinary powers to fight corruption". With regard to asset recovery, Mr. Romaszewski stressed the need for transparency of banking systems and tax havens but also noted that the recent recovery of Holocaust victims' assets indicated that it can be done. Mr. Matsheza informed participants that UNODC has developed a training module on asset recovery and will be engaged in providing technical assistance in this area.

43. The moderator concluded the session by noting the prevalence of corruption despite the enormous differences and variety around the world. He reaffirmed Mr. Saba's contention that "Human rights are not a barrier to fighting corruption". He maintained that Governments should do all that is necessary to fight corruption but that human rights must not be compromised or treated as an obstacle. He emphasized the importance of international cooperation in fighting corruption and in asset recovery, and the need to create international institutions that enjoy the support of civil society, government and the private sector.

VI. CONCLUSIONS

A. Rapporteur's feedback

44. At the conclusion of each day's deliberations, the Rapporteur, Robert Archer, identified and discussed the principal issues and concerns raised by the panellists, experts and conference attendees.

45. Mr. Archer began by observing that participants spoke of corruption generally as "the misuse of public authority to pursue private benefits", but had no consensual definition beyond this. He noted that, while the lack of common definition did not appear to pose a problem during the deliberations, developing an international programme of work on this issue may, however, require a universally accepted definition. Mr. Archer then turned to the importance that meeting participants placed on a range of issues to be taken into account for the development of effective anti-corruption measures:

- The need to involve many different institutions beyond Governments;
- The corresponding need for complex policy approaches that consider multiple participants and institutions;
- The implications of context (social, political, historical);
- The vital importance of the law, both its nature and form, and its equal application to everyone;
- The role of attitudes, both of the public and officials, and the impact of institutional cultures;
- The necessity of reconciling different claims (e.g.: public and private; human rights and efficient anti-corruption measures; interests of the accused and public interest; access to information and right to privacy).

46. Mr. Archer then pointed to the list of values and principles that had emerged in relation to different strategies:

- Human rights: non-discrimination; access to information; need to develop participatory models that engage different actors; freedom of expression and other process rights, like freedom of association; and accountability and enforcement;
- Governance: transparency; accountability; participation; and access to information (with a link to administrative reform or practice);
- Ethical approaches: public interest should override private interest; transparency; accountability; and enforcement;
- Administrative reform: separation of the political and administrative spheres; establish and promulgate ethical standards; develop effective lines of accountability within administrations; develop good rules of disclosure of information; and have competitive and transparent appointments;
- The Bangalore Principles of Judicial Conduct (although no explicit list cited) (E/CN.4/2003/65, annex).

47. While being mindful that different discourses use concepts differently, Mr. Archer suggested that at some point it may be useful to identify what those concepts have in common and to what extent they can be reconciled. He concluded by identifying the following key challenges suggested by the meeting participants' interventions:

- Recognizing “the slipperiness of language” and that different terms work for different audiences and institutions;
- Addressing areas of tension between anti-corruption work and human rights, because a failure to do so “may prove demoralizing”;
- Being practical and providing the tools and means that can be applied directly to “make it real on the ground”;
- Addressing “issues of scale” and the possibility that institutions, particularly new ones, may be overwhelmed;
- Securing adequate national and international resources to support programmes and Government departments.

48. At the end of the second day, Mr. Archer noted the importance participants attributed to a range of issues. He began by pointing to the repeated calls for greater international cooperation in anti-corruption efforts by tackling the “supply side” of corruption, assisting with asset recovery and implementing judgements in corruption cases in third countries. Emphasizing the range of actors that need to be involved in anti-corruption work, Mr. Archer described the specific issues and concerns that were raised for each sector:

- Business sector: the inclusion of businesses in anti-corruption efforts is important because they are often involved in corruption. Compliance programmes offer a promising approach by generating internal processes of accountability. These programmes help create a culture of respect for human rights and anti-corruption that is parallel to, yet consistent with, external compliance mechanisms;
- The Media: the “nuanced discussion” of the role of the media identified a range of issues requiring attention, including: the powerlessness of the media under certain circumstances; their potential to do great harm (e.g.: in Rwanda); respect for the rule of law and judicial independence as well as the existence of good laws for a free press to operate; ensuring that the media itself is accountable and free of corruption;
- Independent official monitoring authorities: the unique contribution of monitoring authorities, such as national human rights institutions and ombudsmen offices, was noted, particularly their provision of a helpful interaction between civil society and government accountability agencies;
- Parliament: regarding the importance of the parliament’s role, a number of areas of concern were identified, such as direct bribery designed to influence the drafting of law; the potentially harmful influences of lobbying practices; and election abuses in the form of manipulation of results and campaign financing;
- Public participation: engaging the public and expanding its participation in anti-corruption efforts called attention to various issues such as the entitlement of all citizens to lodge complaints with an independent body and expect that they will be investigated; the importance of long-term education, advocacy and information in order to change attitudes; the need to cultivate a “culture of service rather than entitlement”; and the need to distinguish in gift cultures between acceptable sharing and acts of corruption.

49. Concerns regarding capacity and technical assistance accompanied discussions of each sector’s potential contribution to anti-corruption efforts. Mr. Archer noted that participants called for building and strengthening the capacity of all those involved in bringing corruption cases to court (judges, prosecutors, law enforcement agents, etc.). They pointed to the need for technically sophisticated judicial mechanisms to:

- Enable courts and judicial officials to deal with the unique features of corruption cases (e.g.: invisibility of victims, secrecy, no paper trail); and
- Ensure the successful prosecution of cases without violating human rights.

50. With regard to monitoring and enforcement mechanisms, Mr. Archer noted the importance of clear performance measures and objectives which should be appropriately designed (local, provincial, national, etc.) with similarly appropriate strategies for empowering communities to take action, and the long and complex process involved in building the capacity of both. Ultimately, the public must be able to trust its institutions, therefore rebuilding trust is paramount and, in turn, requires that institutions not only be well constructed, transparent and independent, but also effective and efficient. Finally, attention has been given to:

- The challenge of using technology to enhance anti-corruption work without infringing on human rights;
- The need to include armed conflict and war, which are associated with the worst abuses of power, in the global agenda on corruption and human rights;
- The importance of addressing the complex issue of access to information held by Governments.

B. Closing remarks

51. In the closing session Ambassador Juan Martabit from Chile and Mr. Hoonmin Lim from the Republic of Korea speaking on behalf of the participants thanked the Government of Poland and OHCHR for organizing the Conference.

52. In her concluding remarks Ms. Fotyga presented an introduction to the Chairperson's statement and gave the floor to a member of the Secretariat of the Conference to present the various elements contained therein (attached in annex II to the present document). Ms. Fotyga then indicated that a report of the Conference would be submitted to the Human Rights Council at its fourth session and thanked the participants and organizers and closed the Conference.

Annex I

AGENDA

Day 1: Wednesday, 8 November 2006

Morning: 08:30-13:00

08:30-09:30 *Registration of participants and distribution of documents*

09:30-10:50 *Opening session*

Nomination of the Chairperson

- H.E. Jaroslaw Kaczynski, Prime Minister of the Republic of Poland
- Mr. Sergei Ordzhonikidze, Director-General of the United Nations Office in Geneva
- Ms. Maria-Francisca Ize-Charrin, Director of Operations, Programme and Research Division (Office of the United Nations High Commissioner for Human Rights)
- Keynote speech on “Integrity and Ethics” by Mr. Param Cumaraswamy (Malaysia), former United Nations Special Rapporteur on the Independence of Judges and Lawyers
- Welcome statement by Mr. Kazimierz Marcinkiewicz, Acting Mayor of Warsaw, former Prime Minister of Poland

10:50-11:00 *Break*

11:00-13:00 *Session 1: Impact of corruption on human rights*

Moderator: Ms. Maria-Francisca Ize-Charrin, Director of Operations, Programme and Research Division, OHCHR

- Expert-panelist - Mr. Zbigniew Ziobro (Poland), Minister of Justice of the Republic of Poland
- Panelist - President Eduardo Rodriguez-Veltze (Bolivia), former President of Bolivia and former Chief Justice of the Bolivian Supreme Court
- Panelist - Mr. Fredrik Eriksson (Sweden), Managing Director of Integrity Management and Programmes for Accountability and Transparency
- Expert - Mr. Nihal Jayawickrama (Sri Lanka), former Executive Director of Transparency International

Plenary discussion (12:05-13:00)

13:00-14:30 *Lunch hosted by the Ministry of Foreign Affairs*

Afternoon: 14:30-18:00

14:30-14:55 *Session 1 (continued)*

Plenary discussion (14:30-14:45)

Summary of discussion (14:45-14:55)

14:55-15:50 *Session 2: How human rights and good governance principles can help in fighting corruption*

Moderator: Mr. Robert Archer (United Kingdom), Executive Director, International Council on Human Rights Policy

- Panelist - Mr. Michel Hunault (France), Member of Parliament, Global Organization of Parliamentarians Against Corruption (GOPAC)
- Panelist - Ms. Sandra Coliver (USA), Senior Legal Officer of the Justice Initiative, Open Society Institute
- Panelist - Ms. Anna Bossman (Ghana), Acting Commissioner of the Commission on Human Rights and Administrative Justice
- Expert - Mr. Maina Kiai (Kenya), Chair of the National Human Rights Institute

15:50-16:15 *Break*

16:15-17:35 *Session 2 (continued)*

Plenary discussion (16:15-17:25)

Summary of discussions by Moderator (17:25-17:35)

17:35-18:00 *Wrap-up session for Day 1*

Presentation of discussions results by Rapporteur

18:30 Reception and concert hosted by Acting Mayor of Warsaw

Day 2: Thursday, 9 November 2006

Morning: 09:00-12:30

09:00-9:50 *Session 3: Role of civil society, private sector and the media*

Moderator: Ms. Victoria Jennett (Ireland), Research Coordinator, Transparency International

- Panelist - Mr. Colm Allan (South Africa), Director of the Public Service Accountability Monitor
- Panelist - Mr. Dejan Anastasijevic (Serbia), Journalist
- Panelist - Mr. Roy Snell (United States), CEO of the Society of Corporate Compliance and Ethics
- Expert - Mr. Maina Kiai (Kenya), Chair of the National Human Rights Institution

9:50-10:05 *Break*

10:05-11:25 *Session 3 (continued)*

Plenary discussion (10:05-11:15)

Summary of discussions by Moderator (11:15-11:25)

11:25-12:30 *Session 4: Fighting corruption while safeguarding human rights*

Moderator: Ambassador Juan Martabit (Chile), Permanent Representative of the Republic of Chile to the United Nations Office, Geneva

- Panelist - Mr. John MacMillan (Australia), Commonwealth Ombudsman
- Panelist - Senator Zbigniew Romaszewski (Poland)
- Panelist - Mr. Phil Matsheza (Zimbabwe), United Nations Office on Drugs and Crime
- Expert - Mr. Roberto Saba (Argentina), Executive Director of Association for Civil Rights

12:30-14:00 *Lunch hosted by the Ministry of Foreign Affairs*

Afternoon: 14:00-17:30

14:00-15:25 *Session 4 (continued)*

Plenary discussions (14:00-15:15)

Summary of discussions by Moderator (15:15-15:25)

15:25-15:40 *Break*

15:40-16:10 *Wrap-up session for Day 2*

Presentation of discussions results by Rapporteur

16:10-17:00 *Closing session*

Moderator: Chairperson of the Conference

Presentation of elements for final statement/declaration by Rapporteur

17:00-17:30 *Conclusions (Chairperson)*

Annex II

CHAIRPERSON'S STATEMENT

United Nations Conference on Anti-Corruption Measures, Good Governance and Human Rights

Warsaw, Republic of Poland, 8-9 November 2006

Introduction

The United Nations Conference on Anti-Corruption Measures, Good Governance and Human Rights was convened in Warsaw, Republic of Poland, from 8-9 November 2006. It was organized by the Office of the United Nations High Commissioner for Human Rights in cooperation with the Government of the Republic of Poland. The Conference had a practical orientation and was structured in a manner that could lead to the discussion of practical and concrete recommendations. There were more than 240 participants from more than 100 countries, including anti-corruption and human rights experts, Governments' representatives, public officials, civil society and private sector actors involved in leading national anti-corruption efforts. The Chairman of the Conference was H.E. Anna Fotyga, Minister of Foreign Affairs of the Republic of Poland.

The Conference was organized in response to the United Nations Commission on Human Rights resolution 2005/68, which requested the Office of the United Nations High Commissioner for Human Rights "[...] to convene a seminar in 2006 [...] on the role of anti-corruption measures at the national and international levels in good governance practices for the promotion and protection of human rights".

The Conference was a follow-up to the joint OHCHR-UNDP Seminar on good governance practices for the promotion and protection of human rights, which took place in Seoul in September 2004. The conclusions of that Seminar emphasized the mutually reinforcing, and sometimes overlapping, relationship between good governance and human rights. It was also underlined that human rights and good governance are affected by corruption on the one hand and can contribute to the fight against corruption on the other hand.

There were opening addresses by H.E. Ms. Anna Fotyga, Minister of Foreign Affairs, Republic of Poland, Ms. Maria Francisca Ize-Charrin, Director of Operations, Programme and Research Division from the OHCHR who delivered a statement on behalf of the High Commissioner for Human Rights, Mr. David Chikvaidze from the United Nations Office in Geneva who delivered the statement of the Director-General. The keynote address on integrity and ethics was delivered by Mr. Dato Param Cumaraswamy, followed up by a welcome statement by the Acting Mayor of the City of Warsaw, Mr. Kazimierz Marcinkiewicz.

MAIN ISSUES

The main objective of the Conference was to identify concrete ways in which Governments' efforts to fight corruption are assisted by and contribute to human rights protection. The Conference built on the increasing awareness within the international community about the detrimental impact of widespread corruption on human rights both through

the weakening of institutions and the erosion of public trust in government as well as through impairing the ability of Governments to fulfil human rights, particularly the economic and social rights of the most vulnerable and marginalized. The Conference also addressed the abuses and derogations to human rights made in the name of the fight against corruption, limiting, inter alia, the rights to privacy, due process and freedom of expression.

Accordingly, the Conference focused on three themes:

- Impact of corruption on human rights;
- How human rights principles and approaches can help in fighting corruption - this theme was discussed in two panels:
 - the first panel focusing on general issues related to this problem;
 - the second panel focusing on the role of the private sector, civil society and media;
- Fighting corruption while safeguarding human rights.

1. Impact of corruption on human rights

The following problems were drawn from the presentations:

- Violations of human rights are both a cause and an effect of corruption;
- There is a need to reconcile private claims and public interests, right to privacy and efficient investigation and access to information, human rights principles and some anti-corruption work, etc.;
- There is a wide range of human rights that are affected by corruption;
- Civil service appointment system is especially important. Although there is no perfect system - each has advantages and disadvantages - basic elements include: transparent procedure and criteria, competitive and non-political appointments, etc.;
- For corruption to prevail, civil and political rights must be curtailed, and when it happens, enjoyment of economic and social rights decline;
- Corruption is universal but it appears to be better controlled in countries that have adequate procedures, mechanisms and active public accountability;
- The importance of language: many values and principles are shared by people working on anti-corruption, good governance and human rights, but their use of the terms cannot be assumed to be the same. There is a question how far practitioners in different sectors can use a single set of principles. Another important issue is the sensitivity of terms, with an example of chief justice's willingness to work on the right to a fair trial by an impartial tribunal rather than talk about corruption directly;

- Access to information is fundamental to the elimination of corruption;
- Importance of bottoms-up efforts was emphasized.

2. How human rights and good governance principles can help in fighting corruption

The following points were raised during the presentations:

- Potential positive role of national human rights institutions with anti-corruption mandates: the experience of Ghana, which has incorporated anti-corruption into its mandate;
- Value of human rights experience, methods, advocacy, etc., for anti-corruption efforts;
- Bangalore Principles of Judicial Conduct (2003) was a valuable exercise and showed where use of human rights mechanisms can be useful;
- Importance of engaging different actors and building alliances between them on anti-corruption policies;
- Importance of separating the political and administrative spheres to protect integrity and ensure accountability;
- Poverty is caused by both “need and greed” that require different strategies;
- There is also a need for judicial reforms: extending number of acts that are criminal; replacing old laws that facilitate corruption; providing clear rules of evidence that allow prosecution to take place; developing effective sanctions (such as seizure of assets and prevention of travel). Justice should be accessible, rapid and efficient, and the judicial system should be subject to public scrutiny;
- Several examples of value and use of access to information laws around the world were presented.

3. Role of civil society, private sector and media

The presentations in relation to this theme focused on the following issues:

- Crucial role of civil society in addressing corruption issues and its ability to use human rights principles in fighting corruption (e.g.: through access to information laws);
- Need to broaden anti-corruption efforts beyond governments to include focus on the supply side of corruption. One way to do this is to look for and correct problems from “the inside” of companies; change is often easier if the request for change comes from those who need it as opposed to from outside (like the United Nations);

- Importance of private sector in fighting corruption. In private sector, corporate social responsibility and corporate compliance are separate methods within corporations. The first one deals with human rights and environmental protection issues while the second one is related to handling corruption issues;
- Gap between excellent constitutional and legislative frameworks and weak implementation systems: example of South Africa;
- Monitoring public expenditures in provinces - site of actual service delivery;
- Effective participation of citizens goes beyond mere consultation;
- Corruption and ineffective use of resources starts at the planning and resource allocation stage when there is a lack of accurate analysis of citizens' needs. Without effective planning based on the assessment of needs effective reporting and monitoring are impossible;
- Need to pursue multiple approaches to rights-based monitoring and accountability to service delivery, each with a corresponding advocacy strategy at the macro and microlevels;
- Need to ensure a balance between supply and demand aspects of corruption and accountability;
- Need to strengthen capacity of duty-bearers to provide the information, explanations and justifications as well as capacity of rights holders to demand, access and analyse information;
- Media have a crucial role in exposing both human rights violations and corruption cases but there are also risks involved;
- In the context of absence of rule of law and accountability the potential role of the media is very limited and can even be negative unless internal self-regulation and accountability are applied. In such cases the best that can be done is to shed light on these issues and make them known to citizens. In some cases mass media may also help bring pressure to bear on politicians who lack political will to act;
- Importance of close linkages between a variety of sectors and actors: national human rights institutions and civil society, civil society and anti-corruption agencies, pressure on supply side in North and demand side in South, etc.;
- Need to learn from human rights movements' notable persistence and consistency;
- Importance of cultivating a culture of transparency. People do not necessarily see certain acts as corruption.

4. Fighting corruption while safeguarding human rights

The presentations raised the following points:

- In his presentation Senator Zbigniew Romaszewski indicated that anti-corruption measures enhance good governance and human rights protection. On the other hand, it is inevitable that while combating corruption certain rights and freedoms might be limited. He also pointed out the importance of a coherent and stable legal system, as well as legal education and assistance in the context of preventing corruption;
- Rights which are in particular susceptible to violation as a result of anti-corruption measures:
 - Freedom of expression;
 - Freedom of information;
 - Freedom from State interference in private life;
 - Due process of law;
- Importance of the role of ombudsman institutions in ensuring protection of human rights;
- Disregard for human rights in fighting corruption is a moral and strategic mistake;
- Anti-corruption policies can use lessons from transitional justice against systematic and massive human rights violations experiences;
- Risk of political use of anti-corruption measures in dealing with political opponents;
- The collaboration between the United Nations Office on Drugs and Crime and the Office of the High Commissioner for Human Rights was emphasized. Reference was made to the guidelines being prepared by UNODC to facilitate interpretation of the United Nations Convention Against Corruption with due attention to safeguarding human rights.

RECOMMENDATIONS

The following recommendations emerged from the panel presentations and discussions:

1. Impact of corruption on human rights

- States should sign, ratify and implement the United Nations Convention Against Corruption (UNCAC);
- Government reforms are a necessary part of any strategy but many other actors must be involved;

- Indicators need to be developed to clearly demonstrate the correlation of corruption and human rights to facilitate further legal analysis on the links between them;
- Need for transparency indices that show positive developments, not just negative;
- Need to look at “grand” corruption also; most States, for political reasons, focus on “petty”;
- Need to examine the role of actors abroad who participate in or incite corruption, including companies, third party governments, donors, lawyers who give legal cover, etc.

2. How human rights and good governance principles can help in fighting corruption

- Developing international rules covering access to information. A potential leadership role for the United Nations;
- Meaning of right to access to information needs to be explicated in more detail, and there may be a case for setting a new standard to define this right in more detail;
- Importance of taking into account historical context when designing measures and reform programmes was underlined by Mr. Zbigniew Ziobro, Minister of Justice of the Republic of Poland. He referred to the examples of former communist States reacting to the previous systems, where the State acted as the protector of a political order rather than its citizens, by taking steps to weaken State controls, resulting in the unintended consequence of unbridled corruption;
- Laws are not self-executing. People and institutions must implement the laws to make them operational. Institutions and staff need resources to implement the laws. Strong commitment from all stakeholders, especially from Government is important;
- An independent national human rights institution, well resourced can effectively enhance and contribute significantly to the promotion and protection of human rights in combating corruption.

3. Role of civil society, private sector and media

- Support implementation of corporate compliance programmes in fighting corruption;
- Expand rights-based understanding within the United Nations to include the recognition of social accountability as a right not merely as a constitutional principle;
- Address link between armed conflict, human rights and corruption;
- Need to develop common definitions;

- Need to develop a methodology to ensure participation of the public in anti-corruption efforts and holding government officials to account.

4. Fighting corruption while safeguarding human rights

- UNCAC does not contain explicit human rights language. This should be redressed in the follow-up, including the upcoming conference of States parties;
- It is very important to develop an implementation programme for UNCAC that ensures protection of human rights;
- Institutions similar to ombudsman should be established.

Follow-up

Actions proposed by participants included:

- Encourage States, international organizations and other actors to integrate the recommendations from this Conference into their work;
- Office of the United Nations High Commissioner for Human Rights should present a report containing these conclusions to the United Nations Human Rights Council which may consider further steps in tackling this subject, including: disseminate the conclusions of the Conference nationally and internationally and create a working group to focus on this question and make recommendations in relation to the role of OHCHR in dealing with the linkage between corruption and human rights.

Annex III

LIST OF PARTICIPANTS¹

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¹ Within each delegation the list of participants is in English alphabetical order.

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UNICEF	Buzanski	Marcin
	Saab	Rhea
UNICEF Poland	Walorek	Jagoda
United Nations Office at Geneva	Chikvaidze	David
United Nations Office on Drugs and Crime	Matsheza	Phil
International Monetary Fund	Barnard	Geoff

Other intergovernmental organizations

European Commission, European Anti-Fraud Office	Pesta	Michal
	Priborsky	Martin
Organisation for Economic Co-operation and Development	Bartsch	Sebastian
Organization of Islamic Conference	Raza	Syed Hassan

National human rights institutions

Commission on human Rights and Administrative Justice, Ghana	Bossman	Anna
Kenya National Commission on Human Rights	Kiai	Maina
National Council of Human Rights, Egypt	Elbadrawi	Hossam

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