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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**

**Working paper submitted by Ms. Christy Mbonu in accordance
with Sub-Commission decision 2002/106**

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 2	3
I. GENERAL CONSIDERATIONS	3 - 10	3
II. CORRUPTION: ITS FORMS AND CAUSES	11 - 12	5
A. Forms of corruption	11	5
B. Causes of corruption	12	6
III. VICTIMS OF CORRUPTION	13 - 14	6
IV. ACTIONS AGAINST CORRUPTION	15 - 20	7
A. At the State level	15 - 18	7
B. At the regional/intergovernmental level	19	8
C. At the multilateral/international level	20	9
V. REMEDIES AGAINST CORRUPTION	21 - 22	9
A. National mechanisms	21	9
B. International mechanisms	22	10
VI. CONCLUSIONS AND RECOMMENDATIONS	23 - 24	11

Introduction

1. In decision 2002/106 contained in document E/CN.4/2003/2, the Sub-Commission on the Promotion and Protection of Human Rights, guided by the Charter of the United Nations and the Universal Declaration of Human Rights, the United Nations Convention against Transnational Organized Crime as well as other relevant human rights instruments, decided to entrust me with the task of preparing, without financial implications, a working paper on the impact of corruption on the realization and enjoyment of all human rights in particular economic, social and cultural rights.

2. The decision to entrust me with this mandate also took into consideration the discussion held during the forty-fourth session of the Sub-Commission that corruption should be condemned and that those guilty of corruption should face international justice if they escaped national jurisdiction. The Economic Social Council, having been equally concerned by the serious problems posed by corruption, which may endanger the stability of societies, undermine the values of democracy and morality and jeopardize social, economic and political development, 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."

I. GENERAL CONSIDERATIONS

3. The enjoyment of all regimes of rights, be they economic, social and cultural or civil and political, is seriously undermined by the phenomenon of corruption. It is perhaps not necessary here to waste time on the definition of corruption; corruption nonetheless can be defined in a broad sense to reflect the very many dimensions that corrupt practices may take. It can be defined in a narrower context with specific focus on certain expressions of corruption, i.e. the fraudulent acquisition by individuals, or groups of individuals who take advantage of their privileged position in the national polity to enrich themselves, or the international dimension such as organized crimes and money-laundering, of huge sums of money generated through arms smuggling, drug trafficking, human trafficking, terrorism, etc.

4. Corruption has been described as a cancer, a cancer festering within society, enriching a few and impoverishing many. Corruption unfortunately is universal as no country is spared this scourge. The draft OAU/AU Convention on Combating Corruption acknowledged the undermining effects of corruption on accountability and transparency in the management of public affairs as well as on the socio-economic development of the continent.

5. Economically, corruption leads to the inefficient allocation of resources, raises the cost of investment, decreases investors' confidence, promotes inequalities and inefficiencies in the private sector and raises the cost, and decreases the quality of, public-sector projects and services. Diversions of public funds into private pockets or bank accounts (whether foreign or local) by corrupt officials lead to the denial of rights, in particular economic, social and cultural rights. Corrupt public officials, having assumed their offices, usually overlook the shoddy executions of public projects with dire consequences. Invariably, there are often breakdowns of

facilities; citizens' rights to adequate water supply, electricity supply, hospital needs, shelter, etc. are violated. Supplies of fake and sub-standard drugs are commonplace in countries where endemic corruption subsists, leading to premature deaths, malformation of foetuses in pregnant women, etc.

6. Regrettably, many corrupt dictators in developing countries had stolen from their countries, even poor ones, only to invest such funds in developed societies that ask no questions about the origin of such funds which usually are known to them to be illicit. Equally worrisome has been the massive destruction of major institutions through corrupt practices. Developing countries are more adversely affected, as most institutions necessary for the building of a stable polity are not spared. The severely damaged bureaucracy and judiciary, incessant military incursions into the polity, politicized armed forces and police, de-robed legislature, distorted financial institutions and poor educational and health sectors are some of the fall-out of corrupt practices.

7. In many societies, bad leadership breeds corruption and poverty. Unfortunately, poverty itself induces corruption in the societies. Everywhere corruption is frowned at, yet, in many countries, corruption thrives, and becomes systemic or endemic; it becomes a way of life. In some it is blatant and crude; in others it may be refined and indeed camouflaged in public relations budgets. Whether open, endemic or systemic, blatant or polished, corruption has disastrous effects on society generally and on most vulnerable groups in particular.

8. Corruption creates poverty, which in turn engenders denial of economic, political, social, civil and cultural rights. This paper does not want corruption to be seen as a moral issue but rather as one that affects the very survival of people and their ability to enjoy fully the basic rights enshrined in the International Bill of Human Rights.

9. The genesis of funds of illicit origin is corruption. The events of 11 September 2001 have brought money-laundering and illicit money transfers to the forefront of global issues. First, let us attempt to understand the concept of funds of illicit origin, sometimes called "dirty money". The concept refers to funds laundered from bribes, kickbacks, drug trafficking, commodity smuggling, misappropriation of public funds by public officials, human trafficking and other transnational activities. Illicit funds could "belong" to individuals or organized criminal groups. The important point to note is that there is always a need to launder the proceeds of these illegal and corrupt practices. Illicit funds laundered are often employed to subvert national or international interests.

10. Left unchecked, illicit money can erode a nation's economy by changing the demand for cash, making interest and exchange rates more volatile and causing high inflation in countries where criminal elements are doing business. The corrupt practices of siphoning away of billions of dollars erode the concept of good governance and the rule of law. Siphoning away of such monies by corrupt officials from the developing countries and illicit enrichments through organized crimes, regrettably, are always facilitated by the receiving States on the ground of bank secrecy laws. Since long-term foreign direct investment depends on stable conditions and good governance, funds of illicit origin can effectively close doors to foreign investment and long-term growth, invariably impacting negatively on the enjoyment of human rights by the citizens of the affected country or countries.

II. CORRUPTION: ITS FORMS AND CAUSES

A. Forms of corruption

11. It is possible to identify few interrelated forms of corrupt practices in many countries, though they may vary in intensity, depending on the country as well as during certain phases of national life such as military dictatorship, depression, war, etc. The following list of various forms of corruption is by no means exhaustive.

(a) **Looted funds and wealth kept secretly abroad.** These include ownership of coded secret bank accounts from money and property stolen from developing countries. In terms of size, looted funds kept abroad are probably the most important and most devastating form of corruption in the developing countries, especially in Africa, as they account for hundreds of billions of dollars of stolen money stashed abroad by corrupt political and military leaders and officials. With their tradition of coded secret bank accounts Switzerland and Liechtenstein are among the safe havens for such looted wealth abroad;

(b) **Misappropriation of public funds.** This form of embezzlement, swindling and looting of public treasury is related to the first because some of the stolen funds may be kept/spent locally or siphoned abroad. The main distinguishing feature of these thefts of public funds is that they are simply identified as stolen public funds by political leaders and officials; their destinations are not emphasized as foreign, even though some of them may end up abroad. It is therefore safer to confine this second type of corruption to locally based corrupt funds looted from public coffers;

(c) **Money-laundering.** This involves extralegal as well as illegal transfer of funds across national borders by officials by avoiding controls over such transfers, even breaching those official controls. In most cases, the corruption involves both the nature and sources of the funds (usually illegitimate, e.g. stolen, swindled, drug money, gratification, illegal arms deals, dupe, etc. As in the case of (a) above, this has a basic international dimension;

(d) **Gratification.** This involves monetary, pecuniary, material or physical favours as a condition or reward for performing official duties. This form involves the giving and receiving of bribes in order to influence official decisions and behaviours, e.g. conflicts of interests where senior government officials use their position to get advantage, extortion of money by tax and customs officers for reducing fees to be paid by the public, bribing auditors, extortion of money by the police to cover up crimes and bribing judges to ensure that judgements are delivered in one's favour, etc;

(e) **Abuse of office.** This embraces both political and official corruption, in which an incumbent official violates an oath of office, debases official procedures for personal financial and non-material gains, for political advantage over opponents, for obstructing the course of justice, due process or rule of law, and for offering himself and others undeserved advantages or favours.

B. Causes of corruption

12. The main causes of corruption can be summarized as follows:

(a) **Dictatorship and lack of democracy.** Wherever there is a dictatorship, there would be neither transparency nor public accountability. This could explain how President Mobutu of the then Zaire could pay the entire export proceeds of his impoverished country into his personal bank account abroad, or how the late dictator Abacha of Nigeria could siphon off billions of United States dollars from the coffers of the Government of Nigeria into some bank accounts in the developed countries with devastating effect on the citizens;

(b) **Poor law enforcement.** This makes it difficult to impose sanctions against corrupt practices. A State whose law enforcement agents are infected by corrupt practices lacks the capacity for effective criminal investigations, judicial proceedings and physical enforcement of sanctions. There is the basic problem of maintaining law and order in such States;

(c) **Pervasive poverty.** This contributes to corrupt behaviour in conditions of extremely low salaries and wages and high unemployment and the difficulty of physical survival. Servicing of debts, some bogus, supposedly owed by many developing countries invariably rob those countries of funds that would otherwise have been used to provide the basic necessities of life to the citizens. Each of these problems can prompt officials to misappropriate public funds and receive gratification in order to make both ends meet;

(d) **Morbid greed and materialism.** Some have argued that the capitalist system panders to corruption; this however is debatable. The argument goes that corruption is partly due to the traditional practices of capitalism; and partly to its cherished values - accumulation, materialism, wealth, etc. In the developing countries that are on the periphery of the world capitalist system, accumulation takes the predominant form of "primitive accumulation of capital" by theft, looting, graft, expropriation, enslavement, etc. On account of this culture of primitive accumulation, even the Governments of these developing capitalist societies are not too eager to probe the sources of doubtful personal wealth. This promotes corruption with impunity, and the classical capitalist work ethics (the dignity of labour) is replaced by a debased and permissive get-rich-quick mentality;

(e) **Cultural backwardness and moral decay.** At the aesthetic and spiritual level, corruption is a form of debasement. It reflects retardation in social development, a cultural backwardness, and an ethical fall or moral degradation. This lends credence to the general belief that pervasive corruption in any society is a very serious problem - a symptom of a fundamental moral and cultural crisis. Corruption erodes societal values.

III. VICTIMS OF CORRUPTION

13. The victims of corruption can be the individuals in a society, the institutions that should engender orderliness in that society or the society itself. The negative impact of corruption on the enjoyment of all rights is therefore all-encompassing and should be dealt with in a holistic manner. I have established in this paper that corruption does not only increase poverty; it breeds poverty. It diverts resources, unfortunately from the poor developing countries to the rich developed ones. The resources that would otherwise be used to improve the living standard of

the people by the provision of quality education, adequate shelter, living wages and quality health care, including reduction of the incidence and impact of HIV/AIDS, malaria, tuberculosis and other infectious diseases, are either stashed away by corrupt officials in some safe havens abroad or invested in the purchase of palatial mansions abroad. Those deprived of these rights as enshrined in the International Bill of Human Rights can best be described as victims of corruption. Equally damaging is the endemic or systemic corruption, which invariably closes the door to foreign investments, denying the country the much-needed foreign exchange.

14. Corruption poses a serious threat to sustainable democracy. The political stability of a country is eroded when the institutional framework for the installation of a democratic government is not in place due to corruption. Dictatorship is enthroned with all its negative impact on the enjoyment of human rights. There would neither be transparency nor accountability; the law enforcement agents can easily be bought over while the independence of the judiciary is sacrificed. The sum total is a society that loses its self-esteem, with little or no integrity.

IV. ACTIONS AGAINST CORRUPTION

A. At the State level

15. Although it can be argued, and rightly so, that to date, there is no global international convention to combat corruption along the lines of the United Nations Convention against Organized Transnational Crime, adopted by the General Assembly on 15 October 2000, serious efforts are being made at the State, regional, and intergovernmental levels to combat this scourge. At the international level, the international community is poised to achieve a breakthrough in globalizing anti-corruption laws worldwide to combat corruption. NGOs are not left out of the fight against corruption. This is why I think that the Sub-Commission should not be left out of this all-embracing fight against corruption.

16. Take the case of Nigeria, a country that has battled to contain the menace of the advance fee fraud code-named "419"¹ and has waged persistent wars against those corrupt leaders who looted the treasury. The country had to enact a law against corruption, which critics now even consider very draconian in the sense that the law expanded and clarified the scope of corruption, leaving little room for manoeuvre. The Corrupt Practices and Allied Offences Act 2000 is also considered draconian because corruption is defined not only in terms of stealing, defrauding and offering and accepting bribes; even nepotism is considered as corruption and is sanctionable.

17. As noted by Mr. J. S. Warioba, a Tanzanian national, in his paper,² the United Republic of Tanzania introduced a mechanism to combat corruption at the national level. The Public Leadership Code of Ethics Act, enacted in 1995, was amended in 2001 to introduce an enforcement mechanism to make it effective as well as to make public leadership as transparent as possible. Under the Act, leaders (political, administrative and judicial) are required to declare their assets at the beginning of their term of office, each year and at the end of the term. The Public Finances Act 2000 was enacted to strengthen the management of public finances by giving increased power and resources to the controller and auditor general and increased power to Parliament to control government expenditure.

18. In his paper entitled “The Hong Kong model and other best practices in the fight against corruption”, Mr. Bertrand de Spevill posits that whether the anti-corruption agency answers directly or indirectly to the head of the executive or to the legislature, it should report regularly and publicly on its activities if the confidence of the community is to be won.³ The Pakistani President, Pervez Musharraf, noted that “politicians, bureaucrats, people of the armed forces and the businessmen have been indulging in corrupt practices in one form or the other and that is why PRs 3 trillion were eaten away during 1988 to 1999”. Interestingly, the President’s remark was made when he was inaugurating a seminar organized by Pakistan Chapter of the Transparency International.⁴ Governments are becoming increasingly aware of the dangers corruption poses to the developmental growth of the States and are not only willing to adopt measures to tackle the problem at the national level, but are reaching across to the regional, interregional and multilateral levels. If I have limited my examples to few countries, it is not to say that other countries not mentioned have not enacted various laws or introduced some laudable mechanisms to combat corruption. The study, if approved, will forward questionnaires to all States Members of the United Nations for information on the laws and mechanisms put in place for combating corruption.

B. At the regional/intergovernmental level

19. Over the years concerted efforts have been made at the regional and multilateral levels to combat corruption. The following are some of the recent regional instruments:

(a) The Criminal Law Convention on Corruption, adopted by the Council of Europe on 27 January 1999. The Convention deals with the active bribery of domestic public officials, passive bribery of domestic public officials, bribery of members of domestic public assemblies, bribery of foreign public officials, bribery of members of foreign public assemblies, active bribery in the private sector, passive bribery in the private sector, bribery of international organizations, bribery of members of international parliamentary assemblies, bribery of judges, trading-in influence, money-laundering of proceeds from corruption, etc. One of the most significant provisions of the Convention is article 23 (3) which states that “bank secrecy shall not be an obstacle to measures to facilitate the gathering of evidence and the confiscation of proceeds”. Mutual assistance is the cornerstone of the Convention;

(b) The 1997 Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions provides for much the same measures against corruption except that it is more focused on bribery of foreign officials. With regard to mutual legal assistance article 9 of the Convention provides that “ a party shall not decline to render mutual legal assistance for criminal matters within the scope of this Convention on the ground of secrecy”;

(c) The EU Convention on the Fight against Corruption involving officials of the European Communities or Officials of Member States of the EU provides for cooperation among member States of the Union in combating active/passive corruption, extradition and prosecution, penalties and jurisdiction;

(d) The United Nations Convention against Transnational Organized Crime, adopted by the General Assembly in November 2000, provides for the criminalization of corruption by States parties and measures to be taken against corruption (arts. 8 and 9). Article 12 (6) of the

Convention provides that “each State party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. State parties shall not decline to act ... on the ground of bank secrecy”;

(e) The draft OAU/AU Convention on Combating Corruption in article 15 provides for measures to endow its courts or other competent authorities to order the confiscation or seizure of bank, financial or commercial documents with a view to implementing this Convention. Article 15 (3) on bank secrecy provides that “States Parties commit themselves to enter into bilateral agreements to waive banking secrecy on doubtful accounts and allow competent authorities the right to obtain from banks and financial institutions, under judicial cover, any evidence in their possession”. Article 16 of the draft Convention deals with cooperation and mutual assistance;

(f) The Asian-African Legal Consultative Organization, an organization of lawyers from the two continents, is conscious of the problem posed by corruption in the developmental processes of the States and at its forty-first session, held in Abuja in 2002, decided to include in its agenda an item entitled “An effective international legal instrument against corruption”;

(g) The Heads of States members of the Africa Union also introduced the African Peer Review Mechanism in the New Partnership for Africa’s Development. The process is designed to enable the present African leaders, in cooperation with the development partners, to make a major difference to the character of governance in Africa. It is also meant to check the excesses of any African leader prone to corruption and bad governance.

C. At the multilateral/international level

20. The international community is currently seized with the drafting of an international instrument, the United Nations Convention against Corruption, which might be put before the United Nations General Assembly for approval at its fifty-eighth session later this year. Having underscored that the siphoning of billions of dollars by corrupt leaders impacted negatively on the rights of those individuals from the developing countries, it is hoped that asset recovery, which is a key issue in the Convention, would be adequately dealt with.

V. REMEDIES AGAINST CORRUPTION

A. National mechanisms

21. The solutions to the problems of corruption, to my own thinking, are fairly obvious at the national level and can be categorized thus:

(a) Political leadership and political will. Political leaders must be national examples of probity, integrity and self-esteem so as to give a decent moral direction to governance at all levels. They must find the political will to fight corruption. The leadership in any given country should vigorously pursue transparency and accountability, as well as the enthronement of good governance and enduring democracy;

(b) Legislation against corruption. Countries are expected to introduce national mechanisms to combat corruption through the establishment of specific anti-corruption legislation. Some countries already have those anti-corruption instruments in their statute books, while others have come up with different mechanisms;

(c) Law enforcement and the judiciary. Corruption in the law enforcement agencies and the judiciary must be aggressively combated and eliminated. This is because these bodies must be adequately equipped to maintain law and order and follow due process in the prosecution of corrupt practices;

(d) Provision of jobs, good pay and poverty eradication. Governments must endeavour to pay living wages to their citizens. Provision of jobs, payments of living wages and access to quality education, adequate health facilities and shelter, especially in the developing countries, would help to reduce corrupt practices. In order to fulfil these obligations the foreign debts weighing on these countries should be cancelled. In the same vein, funds of illicit origins and funds siphoned away from the coffers of the poor developing countries should, once traced, be repatriated to the country of origin;

(e) Tougher sanctions against corrupt practices. Criminalization of acts of corruption is essential for its elimination. To that effect, corrupters and the corrupted should be prosecuted and, if found guilty, should be severely punished and their loot confiscated; there should not be any sacred cow as this will serve as a deterrent to others. The United Nations Convention against Corruption should ensure that any corrupter who evades national punishment and flees to another country should be extradited to answer for his crimes;

(f) Civil society, the media and the citizen's duty against corruption. The role of the media and civil society in combating corruption cannot be overemphasized. The civil society comprising many notable NGOs such as Transparency International, Centre for International Crime Prevention (CICP), are already doing so much to help eradicate corruption. The citizens have a role to play in protecting public property from being looted. Sensitization and raising awareness as to the negative impact of corruption on a country should also be intensified by the media and civil society;

(g) Moral regeneration. Given that corruption is partly due to moral decay, moral regeneration is therefore required. This moral regeneration should take place at the spiritual, cultural and political levels. There should be campaigns in places of worships, schools and even at youth meetings.

B. International mechanisms

22. With the world becoming a global village, there should be concerted efforts at the international level to combat corruption and reduce its negative impact. In a paper presented by the Programme Manager of the United Nations Global Programme against Corruption, he stated that international measures were necessary to develop effective tools to reduce the risk, cost and possibility of national civil servants abusing public power for private gain; international civil servants abusing public power for private gain; and national and international private companies bribing civil servants.⁵ The question of the repatriation of assets/funds siphoned away by corrupt leaders should also be on the minds of the international community.

VI. CONCLUSIONS AND RECOMMENDATIONS

23. **The challenges of corruption now have to be faced with all the seriousness they deserve. In spite of past remedies, corruption is worsening and assuming an alarming proportion. It is heartening to note that at the national level many countries have put in place stringent anti-corruption mechanisms to deal with the problem. I urge all other countries to tackle this malaise by according it a priority place in the affairs of the nation. Regional and interregional efforts are also needed to arrest this scourge.**

24. **I strongly recommend that a full study of the problem be undertaken at the Sub-Commission level with the aim of contributing towards promoting transparency, accountability and good governance in Member States of the United Nations, which would make enjoyment of all human rights possible. It is also going to serve as a guide to all the bodies seized with the matter. The study, if approved, should examine in detail the general and specific manifestations of corruption. It should identify vulnerable groups and develop guidelines on respect for human rights, international complaints and sanction systems. The problems confronting the developing countries with the capital flight occasioned by the looting of the treasuries by their corrupt leaders will also be tackled. The question of finding a solution to the successful repatriation of the funds of illicit origins to their rightful owners should also be addressed.**

Notes

¹ Section 419 of Nigeria's Penal code dealing with advance fee fraud.

² Entitled "Fighting Corruption - the Tanzanian Experience", presented at a workshop held in Abuja on 11 and 12 July 2001.

³ UNDP Technical Workshop for "Designated Judges" on anti-corruption law, Nigeria, 11 and 12 July 2001.

⁴ *Dawn Islamabad*, Friday, 20 September 2002.

⁵ Commissioned Paper presented at the International Conference on Corruption and Organized Crime: Challenges for the New Millennium, organized by the Federal Republic of Nigeria/UNODCCP, Abuja, 7-11 May 2000 by Dr. Peter Langseth, Programme Manager, United Nations Global Programme against Corruption, Vienna Office, Austria.
