

Distr.
RESTRICTED

A/HRC/11/CRP.1
18 May 2009

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Eleventh session
2 – 19 June 2009
Agenda item 5

HUMAN RIGHTS BODIES AND MECHANISMS

Report of Ms. Christy Mbonu, Special Rapporteur on corruption and its impact on the full enjoyment of human rights

The present report is being issued pursuant to decision 10/117 adopted by the Human Rights Council on publication of reports completed by the Sub-Commission on the Promotion and Protection of Human Rights.

Summary

This progress report is submitted in relation to Sub-Commission resolution 2003/2 and pursuant to the first progress report of the Special Rapporteur (E/CN.4/Sub.2/2005/18 dated 22 June 2005). The conclusions and recommendations of the first progress report were endorsed by the Sub-Commission in its resolution 2005/16. The current progress report focuses on the activities undertaken by the Special Rapporteur during last year and presents a questionnaire prepared by the Special Rapporteur for distribution to the Member States.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 – 3	3
I. RECENT DEVELOPMENTS	4 – 9	3
II. CONSULTATIONS AND PREPARATION OF A QUESTIONNAIRE	10 – 11	4
III. CONTENT OF THE QUESTIONNAIRE.....	12 – 16	4
IV. NEXT STEPS	17 – 18	5

Annex

Questionnaire on the fight against corruption		6
---	--	---

Introduction

1. The mandate of the Special Rapporteur on Corruption was established by Sub-Commission resolution 2003/2 of 13 August 2003, and was subsequently endorsed by the Commission decision 2004/106.
2. The Sub-Commission appointed Ms. Christy Mbonu as the Special Rapporteur with the task of preparing a comprehensive study on corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights based on the working paper E/CN.4/Sub 2/2003/18 as well as comment and the useful discussions that took place at the fifty-fifth session of the Sub-Commission. The above resolution further requested the Special Rapporteur to submit a preliminary report to the Sub-commission at its fifty-seventh session, and progress report at its fifty-eight session.
3. The Special Rapporteur has endeavoured to establish in the working paper (E/CN.4/Sub 2/2003/18), the preliminary report (E/CN.4/Sub.2/2004/23) and the first progress report (E/CN.4/Sub.2/2005/18) that the enjoyment of all regimes of rights, be they economic, social and cultural or civil and political, was seriously undermined by the phenomenon of corruption. The conclusions and recommendations of the first progress report were endorsed by the Sub-Commission in its resolution 2005/16.

I. RECENT DEVELOPMENTS

4. In executing her mandate, the Special Rapporteur took the definition of corruption in a broad sense to reflect the very many dimensions that corruption might take. Though she highlighted the expression of corruption in its narrower context i.e. the fraudulent acquisition by individuals, or group of individuals who might take advantage of their privileged position in the national polity to enrich themselves in the working paper, she has also highlighted the international dimension of corruption such as organized crimes and money-laundering, the huge sums of money generated through arms smuggling, drug trafficking, human trafficking, prostitution, terrorism etc in the subsequent reports i.e. the preliminary and the progress reports.
5. Furthermore the report has shown that economically, corruption could lead to the inefficient allocation of resources, raising the cost of investment, decreasing investors' confidence, promoting inequalities and inefficiencies in the private sector and raising the cost while decreasing the quality of public sector projects and services.
6. Corruption has been aptly described by the Special Rapporteur as a "festering cancer" which has devastating effects at different levels in the society. It undermines the rule of law and the administration of justice: it is completely subversive of any country's electoral system and the participatory democracy.
7. Realizing that the achievement of the goals contained in the United Nations Millennium Declaration would remain a pipe dream if corruption is not effectively tackled in all its ramifications, the Special Rapporteur has also stressed the enthronement of a new paradigm of transparency and accountability to replace the corrupt order, the adoption of institutional, structural and system wide reform that should redefine the inefficient ways in which business is conducted, in particular procurement in all sector of the society. This argument is premised on

the fact that if procurements are handled following due process, whether in education, health, housing, road construction, awarding contracts to the local or multinational companies, the incentive for corruption and the incentive for corruption would be drastically reduced.

8. The proliferation of various mechanisms at the national, regional and international levels designed to tackle the devastating effects of corruption has also attracted the attention of the Special Rapporteur. She has undertaken mission trips to two African countries to *inter alia* assess the impact of the mechanisms put in place to fight corruption, the achievements made by these bodies and their impact on the full enjoyment of human rights as well as the obstacles and challenges encountered by these bodies and the possible ways forward, including assistance from the office of the High Commissioner for Human Rights. The findings of the visits did not yield to country specific reports but were taken into account in the progress report of the Special Rapporteur.

9. The coming into force of the international mechanism against corruption, the UN Convention against Corruption has added a new impetus to the fight against this cancer while the noble role of reputable civil society as the "watch dogs" and the "whistle blowers" has been emphasized in the reports.

II. CONSULTATIONS AND PREPARATION OF A QUESTIONNAIRE

10. The Special Rapporteur being guided by the very useful contributions made by the Expert members of the Sub-Commission and other interested parties on the reports submitted especially the progress report during which she was requested to prepare draft Guidelines and Principles on Corruption as a way forward, decided to address a questionnaire to member States of the United Nations, NGOs, Community-Based Organizations dealing with the issues of corruption. The replies to the questionnaire will form the basis for the final report.

11. In the preparation of the questionnaire, the Special Rapporteur held important meetings with the officials of the Office the High Commissioner for Human Rights in Geneva, in February this year, members of the civil society i.e. the Director of Transparency International Switzerland, Ms. Ann Schwobel and the Representative of the FIDH Ms. Simia Ahmadi. In accordance with the Sub-Commission resolution 2005/16, she held discussions with representatives from the Permanent Missions of China and Brazil, two regions, Asia and Latin America, that the Special Rapporteur might want to under take mission trips in the course of her mandate, similar to mission trips she undertook to two African countries, Nigeria and Kenya in 2005.

III. CONTENT OF THE QUESTIONNAIRE

12. After a section comprising definitions which are borrowed from the UN Convention against Corruption adopted in 2003, and which came into force in December 14th 2005, the questionnaire is drafted and prepared in four sections.

13. **Part I** relates to the legal framework and the definition of corrupt activities under domestic laws of member States.

14. **Part II** deals with measures adopted and institutions established at national levels to combat corruption.

15. **Part III** covers the measures related to international co-operation in the fight against corruption and finally,

16. **Part IV** explores the linkage between anti-corruption measures and the realization of human rights in particular economic, social and cultural rights.

IV. NEXT STEPS

17. The questionnaire which has been translated in French and Spanish was prepared for transmission to State members of the United Nations and all the relevant stakeholders for their reactions. However, due to the uncertainty accompanying the transition from UN Commission on Human Rights to the Human Rights Council, and pending the decision of the Council on extending the mandate of the Sub-Commission it was not distributed. As a result of these circumstances the Special Rapporteur is submitting a second progress report.

18. Subject to the decision of the Human Rights Council on the mandates of the Sub-Commission, the Special Rapporteur appeals to Member States and the civil society to reply to the questionnaire so as to enable her to complete her mandate.

Annex

QUESTIONNAIRE ON THE FIGHT AGAINST CORRUPTION

Background

In resolution 2003/2, the UN Sub-Commission on the Promotion and Protection of Human Rights recommended that the Commission on Human Rights endorse a decision to appoint Ms. Christy Mbonu as Special Rapporteur with the task of preparing a comprehensive study on corruption and its negative impact on the full enjoyment of human rights, in particular economic, social and cultural rights. The Commission, in its decision 2004/16 endorsed the Sub-Commission's decision.

To conclude her mandate, pursuant to a preliminary report (E/CN.4/Sub.2/2004/23), a progress report (E/CN.4/Sub.2/2005/18) and a working report (E/CN.4/Sub.2/2003/18) the Special Rapporteur has deemed it necessary to prepare and send out a questionnaire to Member States and NGOs active on issues related to corruption. The replies to the questionnaire will form the basis for the final report to be presented to the Sub-Commission this year.

Structure of the questionnaire

Contents

After a section on definitions which are drawn from the UN Convention against Corruption (UN Convention) adopted in 2003, and which entered into force on 14 December 2005, this questionnaire is prepared in four sections. Part I is related to the legal framework and definition of corrupt activities under domestic laws of member states. Part II addresses measures adopted and institutions created at national level to combat corruption. Part III covers the measures related to international co-operation in fighting corruption. Finally, Part IV explores the linkage between anti-corruption measures and the realization of human rights in particular economic and social and cultural rights.

Definitions

Public official:

Any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary whether paid or unpaid, irrespective of the person's seniority, [...] any other person who performs a public function, including for a public agency or public enterprise, or provides a public service. (see Article 2(a) of the UN Convention)

Official of a public international organization official:

An international civil servant or any person, who is authorized by such an organization to act on behalf of that organization. (see Article 2(c) of the UN Convention)

Property:

Shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets. (see Article 2(d) of the UN Convention)

Proceeds of crime:

Shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence. (see Article 2(e) of the UN Convention)

I. TYPES OF CORRUPT ACTIVITIES UNDER DOMESTIC LAW

Information to be provided	Types of corrupt activities defined under domestic laws
<p>In the case of each of the following types of corrupt activities please indicate if your domestic laws and regulations provide for:</p> <p>1- Definition; 2- Sanctions; 3- Basis for jurisdiction; 4- Statute of limitation.</p> <p>In each case, please provide the text of the relevant provision.</p>	<p>A. Bribery</p> <p>i. Active and passive</p> <p>ii. Domestic and foreign</p> <p>iii. International organizations</p> <p>iv. Other</p> <p>B. Trading influence</p> <p>C. Corruption in employment of civil servants</p> <p>i. Elected and non-elected public officials</p> <p>D. Irregularities in government procurement</p> <p>E. Embezzlement and illicit enrichment</p> <p>i. In illicit enrichment is there recovery of assets?</p> <p>F. Money Laundering related corruption</p> <p>i. Is it separate from receiving stolen goods?</p> <p>G. Offences related to financing of political parties</p> <p>H. Corporate corruption</p> <p>I. Other types of corrupt activities defined and sanctioned under your domestic laws, but not listed above.</p>

II. MEASURES AND INSTITUTIONS TO COMBAT CORRUPTION AT NATIONAL LEVEL

Information to be provided	Types of corrupt activities defined under domestic laws
<p>In each instance please explain the measures adopted (refer to and provide the relevant provisions). If possible please provide a recent (preferably from the past three years) example of application of such measures.</p>	<ul style="list-style-type: none"> A. Measures to ensure the independence of judiciary <ul style="list-style-type: none"> i. Provide empirical evidence (resource allocation, procedure of appointment, determination and security of tenure, and promotion and remuneration, etc.) ii. Sanctions for erring members B. National institutions to combat corruption (independent or governmental) C. Measures related to the civil service system <ul style="list-style-type: none"> i. Measures put in place, to maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants. ii. Incentives, measures and institutions to promote integrity, and training of public officials iii. Code of conduct for public officials D. Measures adopted in relation to government procurement <ul style="list-style-type: none"> i. What measures have been adopted to ensure transparency and fairness in procurement (e.g., guidelines, process, timeline, etc.)? ii. What are the remedies and legal recourses available to participants in the procurement in case of occurrence of irregularities? E. Measures to ensure transparency and accessibility of information (please explain the extent of potential limitations) F. The extent of civil society participation and measures adopted to raise public awareness in relation to corruption G. Whistleblower protection H. Measures related to regulation of activities of political parties <ul style="list-style-type: none"> i. Codes of conduct for political parties/political campaigns I. Measures to combat money laundering J. Measures related to regulation of financial institutions (e.g., banking secrecy laws) K. Measures to enhance the effectiveness of law enforcement agencies in combating corruption. L. Measures to promote integrity in the private sector <ul style="list-style-type: none"> i. Corporate code of conduct ii. Measures to re-instill confidence in the public, safety net mechanisms to protect citizens/customers/consumers in the event of bankruptcy.

II. MEASURES RELATED TO INTERNATIONAL CO-OPERATION

Information to be provided	Measures related to international co-operation
<p>In each instance please explain the measures adopted (refer to and provide the relevant provisions). If possible please provide a recent example of application of such measures.</p>	<ul style="list-style-type: none"> A. Please specify if and when the UN Convention against Corruption is signed and/or ratified by your country. B. Please list any other multilateral/bilateral/regional agreements signed and/or ratified by your country. C. Please specify the extent of application of extradition laws to cases of corrupt activities listed in section I. D. Please specify provisions on mutual legal assistance/law enforcement cooperation, including identifying, freezing and tracing the proceeds of crimes, on matters related to corrupt activities. <ul style="list-style-type: none"> i. Please specify if there are any limits on mutual legal assistance based on banking secrecy? E. Measures for repatriation of stolen funds and proceeds of embezzlement of public funds or laundering of public funds in other countries. F. Provisions and programs to expand jurisdiction over corrupt activities of officials/companies/entities committed abroad.

**III. LINKAGE OF ANTI-CORRUPTION ACTIVITIES/MEASURES ON THE
REALIZATION OF HUMAN RIGHTS IN PARTICULAR ECONOMIC
AND SOCIAL AND CULTURAL RIGHTS**

Please provide a concrete recent example (preferably in the past two or three years) to illustrate the impact of anti-corruption measures on realization of economic and social and cultural rights (please limit the answer to two pages).
