United Nations A/CONF.203/6

# Eleventh United Nations Congress on Crime Prevention and Criminal Justice

Bangkok, 18-25 April 2005

Distr.: General
16 March 2005

Original: English

Item 5 of the provisional agenda*
**Corruption: threats and trends in the twenty-first century**

## Corruption: threats and trends in the twenty-first century

### Working paper prepared by the Secretariat**

Contents



* A/CONF.203/1.

** Submission of the present document was delayed by the need for additional research and consultations.

V.05-82364 (E) 280305 290305

# I. Introduction

1. In the world of relative turmoil produced by the radical changes of the post-cold-war era, there are new opportunities and incentives to engage in corrupt practices. The assumption that "free" markets and non-interventionism are remedies against corruption is challenged by recent experience. It now appears that each socio-political and economic system produces its own type of corruption and that no system is completely corruption-free. However, poor countries tend to be more affected by corruption than others: corruption and poverty appear to be closely linked and mutually reinforcing, leading to a downward spiral often contributing to severe political as well as human crisis and violent conflict.[1]

2. While corruption has long been acknowledged as an obstacle to development,[2] there are some aspects of the phenomenon that, if not addressed as a matter of priority, may hinder all other efforts to successfully advance the anti-corruption agenda, at both the international and the national level. First and foremost the fight against corruption requires unconditional commitment of the political leadership. This is particularly important where corruption has been allowed to spread among the political elite. Another serious impediment to the fight against corruption can stem from corruption within the justice sector. A corrupt judiciary means that the legal and institutional mechanisms designed to curb corruption, however well-targeted, efficient or honest, remain crippled. Moreover, the supply side needs to be addressed—as long as bribery remains an acceptable business practice, the incentives to engage in corrupt practices continue to exist. Changing the incentive structure also means taking effective measures to deprive perpetrators of the proceeds of corruption and targeting such proceeds by rigorous international cooperation that will enable the freezing, seizing and recovery of assets diverted through corrupt practices.

3. Furthermore, conflict thrives on and is fuelled by corruption. Hence, the prevention and control of corruption must be recognized as a key aspect of conflict resolution, as well as post-conflict prevention and conflict management.

4. In response to the challenges posed by corruption, the United Nations has carried out much work over the years, including the development and adoption of the International Code of Conduct for Public Officials (General Assembly resolution 51/59, annex), and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (resolution 51/191, annex). The United Nations Convention against Transnational Organized Crime (resolution 55/25, annex I), which entered into force on 29 September 2003, includes provisions related to corruption of public officials. However, because of the focused nature and scope of the Organized Crime Convention, Member States agreed that the multifaceted phenomenon of corruption should be dealt with more appropriately in an independent instrument.[3] On 31 October 2003, after less than two years of intense negotiations, the United Nations Convention against Corruption was adopted by the General Assembly in its resolution 58/4 of 31 October 2003 and opened for signature from 9 to 11 December 2003 in Merida, Mexico. The Convention requires the establishment of a range of offences and includes extensive preventive measures. It also contains substantial provisions on strengthening international cooperation in criminal matters, as well as on specific aspects of international law enforcement cooperation. Finally, and in a major breakthrough, the

Convention includes innovative and far-reaching provisions on asset recovery, as well as on technical assistance and implementation.

5. In parallel with the development of the United Nations Convention against Corruption, the United Nations Office on Drugs and Crime (UNODC) launched a Global Programme against Corruption as a vehicle to provide technical assistance to Member States with a view to strengthening legal and institutional frameworks and enhancing integrity safeguards, to develop policy guidance and collect good practices and lessons learned through a series of publications,[4] and to enhance cooperation among agencies active internationally in anti-corruption policy as well as advocacy (see also http://www.igac.net).

6. The Eleventh United Nations Congress on Crime Prevention and Criminal Justice comes at a crucial moment, when the entry into force of the first global instrument in the fight against corruption is imminent. The new Convention will create considerable opportunities, but also significant challenges for Member States. Corruption has risen steadily on the development agenda of both Governments and international organizations in the last 10 years, with an array of relevant lessons that have emerged. It is in that context that the Eleventh Congress provides a unique opportunity for the review of strategies and policies geared towards further consolidating the advances made against corruption. The Congress will offer a useful forum for the exchange of information and experience with a view to further developing concerted action and fine-tuning practical counter-corruption mechanisms. In an effort to stimulate substantive debate and collective thinking on the occasion of the Congress, the present working paper highlights some of the most challenging aspects of the problem and offers information on recent developments.

# II. Threats and trends in corruption

## A. Political corruption

7. Political corruption covers a large range of corrupt practices ranging from illegal party and election financing, to vote buying and trading in influence by politicians and elected public officials. While many of these aspects may already be adequately covered by legislation in many States, the financing of political parties and election campaigns is rarely adequately regulated. Illegal party and election campaign financing undermines fair competition between parties and causes citizens to become disheartened and to drift away from politics, and ultimately to lose confidence in and respect for democratic institutions. Competition between political parties is a component of multi-party democracy and requires adequate funding. The conditions in which political parties operate have changed over recent years: in the age of mass media communication, political parties need substantial financial resources to reach out to citizens, to gain visibility and to inform them about policies, political ideas and concepts in order to win their support. Rising costs have forced political parties to seek additional funds to those allowed by the law. Sometimes this is accomplished by circumventing existing rules, seeking irregular funding sources or even resorting to outright corruption. Often, such practices are encouraged by the absence of effective laws and regulations governing the financing of political parties, their expenditure and the transparency of the political process. Recent cases of illicit party financing have raised awareness of the dangers involved

in political corruption and given rise to calls for more rigorous regulatory regimes. However, to date political party and electoral campaign financing has been regulated only in roughly a third of the countries around the globe.[5] There is an urgent need to address that situation in order to prevent abuses, encourage fair political competition, enable voters to make informed decisions and strengthen parties as effective democratic actors that work for the common interest.

8. Existing approaches to political party and election campaign financing differ significantly. They include state subsidies for political parties and candidates, limitations on campaign expenditures and a regulatory framework ensuring transparency of contributions and expenditures. Every State will need to develop its own system according to its political values and culture, its political and electoral system, its stage of development and its institutional capacity. Regardless of the difficulties involved in that process some good practices have begun to emerge.[6]

9. Many States have established specific regulations concerning private contributions to political parties as well as to entities under their control, including rules limiting the value of donations and measures to prevent established ceilings from being circumvented. Such regulatory frameworks often include bans on certain sources and donors, such as anonymous donations, donations from companies or other entities over which the public administration exercises a dominant influence or from companies that provide goods or services to the public administration, as well as donations from other political parties or foreign donors.

10. An approach widely adopted is that of state subsidies for parties or candidates and the reimbursement of election costs based on objective, fair and reasonable criteria. However, while state funding may increase fair competition between parties, it cannot obviate the need for private contributions. Many States have therefore attempted to prevent excessive funding needs of political parties by introducing of limits on electoral spending.

11. Transparency is another pillar upon which many national regulatory systems rest. Transparency means that the sources of funding, the amounts and nature of contributions, as well as appropriations and expenditures, are disclosed in an audited statement, monitored by an independent authority. Disclosure laws need to be supplemented by access to information legislation in order to ensure that political financing and expenditures are not only audited but also made subject to public and media scrutiny. Moreover, political candidates, as well as elected public officials, may be required by law to disclose their assets and interests as well as those of family members and associates on a regular basis.

12. A regulatory framework should be supplemented by the application, where appropriate, of relevant legislation and supported by adequate enforcement and meaningful sanctions, both for parties and politicians. For example, political parties and candidates implicated in illicit financing may face partial or total loss or mandatory reimbursement of state contributions and the imposition of fines. Where individual responsibility can be established, sanctions may include the annulment of elections and/or a period of ineligibility.[7]

## B. Corruption within the justice system

13. While corruption in the justice system has always been a concern, only recently have the implications for the rule of law been fully acknowledged. Respect for and enjoyment of all other rights ultimately depend upon the proper administration of justice. Corruption within the judiciary threatens its independence, impartiality and fairness and undermines the rule of law—a key prerequisite for economic growth and the eradication of poverty. Effective protection of human rights and human security require a well-functioning judiciary, with integrity, that is capable of enforcing the law and administering justice in an equitable, efficient and predictable manner. A fair trial, one of the most fundamental human rights, can only be achieved through an impartial tribunal and the procedural equality of parties. Within a corrupt judicial system none of these elements exist.

14. Judicial corruption appears to be a global concern. It is not restricted to a specific country or region. Yet manifestations of this type of corruption seem to have their worst effects in developing countries and countries with economies in transition. According to the Centre for the Independence of Judges and Lawyers, of the 48 countries covered in its annual report for 1999, judicial corruption was "pervasive" in 30 countries.[8] Evidence is increasingly surfacing of corruption in the judiciary in many parts of the world.[9]

15. An in-depth assessment of justice sector integrity conducted by UNODC in Nigeria drew an equally discouraging picture.[10] On average, more than 70 per cent of the lawyers interviewed had paid bribes in order to expedite court proceedings. Most of the bribes were paid to court staff, enforcement officers and police. As has been highlighted by other studies,[11] the less privileged, in terms of both economic means and education, as well as ethnic minorities, tend in particular to have worse experience and perceptions of the justice system. They are more likely to be confronted with corruption, encounter obstacles when accessing the courts and experience delays. Furthermore, a strong link between corruption and access to justice emerged, confirming that corruption mostly occurs when proceedings are being delayed and adjourned. Another finding was that corruption within the justice system had a negative effect on economic development and discouraged direct foreign investment.

16. In that context, under the guidance of an international group of chief justices and senior judges the United Nations Office on Drugs and Crime (UNODC) supports several countries in strengthening judicial integrity and capacity. Technical assistance focuses on improving access to justice, enhancing the quality and timeliness of justice delivery, strengthening public trust in the judiciary, establishing safeguards for professional ethics and facilitating coordination across justice sector institutions.[12] UNODC has also supported the above-mentioned group in a process that led to the development of the Bangalore Principles of Judicial Conduct and other tools providing technical guidance to judiciaries around the globe.[13]

## C. Corruption and the private sector

17. For many years, businesses have generally portrayed themselves as the unwilling victims of greedy public officials rather than as accomplices in illegal

transactions designed to obtain unfair advantage. However, the private sector has come to realize the risks of corruption, which distorts fair competition and the rules of a free market economy, has a negative impact on the quality of products and services, weakens the prospects for economic investment and undermines business ethics. Bribe payments shift money away from potentially productive investments. Non-economic transaction costs keep the level of enterprise development low in relative terms.[14] Corruption is detrimental to business for all types of company—large and small, multinational and local. It is, however, the smaller businesses that are more likely to be affected.

18. Recent scandals have shown that in the long run business cannot prosper without appropriate and responsible corporate governance. Large off-the-books payments to public officials or intermediaries can throw a company's finances into turmoil and call into question the performance of its duties versus its stakeholders. The negative impact on the company's reputation following adverse publicity after exposure is incalculable.[15] Even if the corrupt deals remain undiscovered, however, short-term gains are made at the cost of long-term profitability. Over time, companies that spend their resources on financing corrupt deals rather than investing in the development, manufacturing and marketing of quality products and services will increasingly lose their competitiveness, thus becoming even more dependent on bribery as a means of maintaining their market share.[16]

19. Private-to-private sector bribery has become particularly dangerous in recent years, since Governments have started to privatize many functions and services that had previously been carried out by public sector agencies. Also, just as in the public sector, if individual employees take decisions that are not in the best interest of their company, the internal decision-making process is being distorted, with detrimental effects for the company and its shareholders.

20. The International Chamber of Commerce has for more than two decades been promoting the anti-corruption agenda in the corporate world, starting first with the so-called Shawcross Committee,[17] which in 1977 called for rules of conduct to serve as a basis for corporate self-regulation. Since then numerous initiatives by international organizations and advocacy groups have led to an array of international instruments addressing in particular the role of the private sector in corrupt practices, such as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted by the Organization for Economic Cooperation and Development in 1997, and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, as well as the production of guidelines and manuals providing businesses with the necessary tools to ensure that employees comply with both regulatory frameworks and principles of sound business practices.[18] Council of the European Union framework decision 2003/568/JHA on combating corruption in the private sector and the United Nations Convention against Corruption, which is the first global legally binding instrument explicitly requesting State parties to consider criminalizing bribery in the private sector, also feature prominently.

21. At the same time, several other initiatives have emanated from the corporate world itself. In 2000, the Conference Board, a global business membership organization, asked companies worldwide about their anti-corruption programmes. The survey found compliance-style programmes in 42 countries, with 40 per cent of the respondents being based outside North America and Western Europe.[19]

The Extractive Industries Transparency Initiative of 2002, involving Governments, companies and civil society, aims to increase transparency concerning payments made by companies in the extractive industries and revenues received by Governments. The Equator Principles of 2005 provide a common baseline for financial institutions in determining, assessing and managing environmental and social risks involved in project financing, while the Wolfsberg Anti-Money-Laundering Principles for Private Banking of 2000 were adopted by a number of the largest commercial banks, which committed themselves to the principle of due diligence and a code of conduct based on compliance with international anti-money-laundering standards. The International Council on Mining and Metals adopted in 2002 a Sustainable Development Charter, which expresses the commitment of its members to principles of sustainable development in four key areas: environmental stewardship; product stewardship; community responsibility; and general corporate responsibilities.

22. In connection with the involvement of the private sector in the fight against corruption, the role and potential of other international initiatives, such as the Global Compact, must be highlighted. In an address to the World Economic Forum on 31 January 1999, the Secretary-General invited business leaders to join an international network, the Global Compact, that would bring companies together with United Nations agencies, labour and civil society to support certain principles in the areas of human rights, labour and the environment. The operational phase of the network was launched in New York on 26 July 2000. During the first Global Compact Leaders Summit, held in New York on 24 June 2004, the Secretary-General announced the addition of a tenth principle in the agenda of the network, according to which businesses should work against corruption in all its forms, including extortion and bribery, as part of the broader movement of corporate social responsibility (see also http://www.unglobalcompact.org/Portal/).

23. The proliferation of such major initiatives by the private sector is a welcome development that demonstrates increased awareness of the importance of concerted action against corruption and a willingness of the private sector to be engaged and play its part. It is a welcome development also because it demonstrates a shift in attitude on the part of the private sector away from considering action against corruption as the sole responsibility of Governments towards an approach that views such action as a task to be shared with civil society and the private sector itself. The merit of such initiatives is significant, despite the scepticism voiced by some as to whether they reflect real commitment or are designed to obtain public relations dividends, pre-empting or deflecting more rigorous government regulation. Such initiatives also introduce two interrelated issues that are key to the debate about the private sector. The first issue is how to achieve an appropriate balance between government regulation and an environment that fosters the proper functioning of a free market; the second is how much one can rely on such initiatives when formulating an effective set of measures to prevent and control corruption. The outcome of that debate will naturally depend on a number of factors and the particular attributes of a national economy. Suffice it to say, however, that striking the appropriate balance should be based on a critical evaluation of the initiatives, the consistency of their application and the effectiveness of their results. It should also be based on recognition of the fact that voluntary initiatives cannot be considered a panacea, nor replace broader regulatory regimes.

# III. Asset looting and laundering of the proceeds of corruption

24. Significant challenges are created for the international community by embezzlement and transfer abroad of financial assets and state properties. While empirical evidence on the extent of the phenomenon is scarce, recent cases suggest dimensions that are able to destroy national economies and undermine development.[20] Such problems require swift and decisive preventive measures, addressing insufficient compliance with international anti-money-laundering standards, imposing dissuasive sanctions and helping to overcome difficulties in international cooperation. Asset looting and laundering of the proceeds of corruption have a number of severe consequences for the affected countries: they undermine foreign aid, drain currency reserves, reduce the tax base, harm competition, undermine free trade and increase poverty levels. The harm caused to countries is tremendous in both absolute and relative terms. For instance, it has been reported that the former President of the Republic of Zaire, Mobutu Sese Seko, looted the treasury of some $5 billion—an amount equal to the country's external debt at the time. According to the Government of Peru, some $227 million was stolen and transferred abroad under the Government of Alberto Fujimori (A/AC.261/12, para. 10). The former Ukrainian Prime Minister Pavlo Lazarenko is alleged to have embezzled around $1 billion from the State. Now under arrest in the United States of America on charges of laundering some $114 million, Lazarenko has admitted to having laundered $5 million through Switzerland, which has returned almost $6 million to Ukraine. The macro-economic dimension of the looting and its impact on the economic development of a country becomes evident, for example, in the case of Nigeria, where the late Sani Abacha and his associates are estimated to have removed funds of up to $5.5 billion. Further, the Government of Nigeria estimates that during the past decades $100 billion has been looted from the country (A/AC.261/12, para. 11). This is particularly worrisome, given that the country's foreign debt amounts to approximately $28 billion, with an estimated gross domestic product of around $41.1 billion in 2003. Looted assets typically derive from two types of activity, bribery and the embezzlement of state assets. Bribes and kickbacks are often, although by no means exclusively, the preserve of relatives and close associates of leading public figures. The second type of grand corruption involves the embezzlement of state assets, ranging from the direct transfer of funds from the public treasury to personal accounts, to the physical theft of the State's gold stocks, as well as of natural resources, and to the misappropriation of revenue and loans from international financial institutions. International banks play a key role in this context. In late 2000 and early 2001, the British Financial Services Authority and the Swiss Federal Banking Commission found severe control weaknesses in many of the banks involved in handling the monies diverted by Sani Abacha and his associates.[21]

25. The return of assets diverted by top-level public officials and politicians through corrupt practices has become a pressing issue to many Member States, both those which have been victimized by their political leadership, as well as those where assets have been diverted. The inclusion of ground-breaking provisions on asset recovery in the United Nations Convention against Corruption is proof of the priority accorded to the problem by the international community. However, the legal framework is only one element—even though perhaps the most important one—needed in order to ensure successful recovery. Other difficulties may hinder

successful recovery, such as: (a) the absence or weakness of the political will in the country of origin as well as in those countries to which the assets have been diverted; (b) the lack of capacity of States to improve their national institutional and legal anti-corruption framework, which may lead to an exacerbation of the problem; (c) insufficient technical expertise of judicial and law enforcement authorities in the country of origin to prepare the ground at the national level, by successfully pursuing the offenders and adequately formulating mutual legal assistance requests; (d) limited specialized technical expertise to pursue recovery actions in the countries to which the assets may have been transferred. Since at present such expertise is provided mainly by private lawyers, whose services are very expensive and who normally do not have any interest in helping build the necessary capacity in developing countries, alternative solutions may have to be devised under the guidance of the Conference of the States Parties to the United Nations Convention against Corruption once the Convention enters into force.

# IV. Corruption and conflict

26. Corruption fuels and thrives on conflict. Corruption leads to crises of state legitimacy, failures of governance and economic dislocation. It fosters social, political and economic inequalities, often giving rise to grievances among politically and economically marginalized groups and ethnic minorities. Corrupt practices may also cause warring factions to prolong conflict, using it as a cover to loot natural resources, misappropriating or diverting humanitarian aid or deriving other benefits from the war economy. In that connection, countries that suffer from high levels of corruption are likely to undergo severe—often violent—political and/or ethnic conflict.[22]

27. While corruption by itself is not necessarily the main factor in the outbreak of civil war and internal conflicts, it can precipitate conflict by delegitimizing the political leadership (see A/55/985-S/2001/574). Where political elites survive thanks to coercion and corruption, undermining the political and human rights of large sections of the population and limiting fair access to economic opportunities, including the protection of property rights, radical demands for political and economic change from marginalized groups may be the result. If not addressed, this may generate violent social and political conflict, especially when horizontal inequalities coincide with perceived group identities.[23]

28. In many cases, corruption and related practices have been found to prolong ongoing conflicts (see S/2001/357 and S/2000/992). Conflict may provide the cover for belligerents to loot natural resources, as one of the main sources of funding. As a consequence, warring factions seek to maintain or expand their control over territory and its inhabitants, often forcing them to work in slave-like conditions in the extraction of natural resources (see S/2003/1027 and S/2002/537). Other opportunities for corruption and related practices extend to the illicit arms trade, the black markets, the misappropriation of state assets and international aid. In such situations, the incentives for peace or even for winning the conflict may evaporate, to be easily replaced by the new opportunities of the war economy.[24]

29. All too often outsiders play an important role (see S/2002/1146). There have been cases of foreign countries or companies interested in securing for themselves

lucrative contracts or direct access to natural resources that have been bribing government officials and rebels. In such cases where corrupt practices are fuelled by outside interests, successful action to resolve conflict may not be possible without initiatives such as embargos or licensing for certain natural resources coming from the country concerned and perhaps also neighbouring States.[25]

30. Where the illegal exploitation of natural resources is fuelling conflict, specific measures are needed in order to change the incentive structures.[26] Such measures could include the disclosure of payments made by domestic and foreign companies involved in the exploitation and trading of the natural resources concerned. Moreover, international stock exchanges could consider including the mandatory disclosure of payments made by companies as a listing requirement. At the same time, Governments should consider the cancellation of concessions for the exploitation of natural resources, as well as the establishment of a natural resource fund, and disclose all payments received by companies. Further, international lending institutions could consider making the implementation of such "publish-what-you-pay" initiatives a precondition for further grants and projects (see S/2003/1027).

31. Corruption has also been found to be a serious impediment to post-conflict management. Unless post-conflict interventions reduce the horizontal inequalities that led to the political instability in the first place, conflict is likely to re-emerge. Installing justice, security, human rights, the rule of law and good governance is therefore key to successful conflict resolution (see S/2004/3/Add.1 and S/2004/616).

# V. The way forward

32. The development of effective strategies against corruption requires as a first step the establishment of an adequate legal framework. Such a framework is now available in the United Nations Convention against Corruption. Its negotiation in a highly participatory process in record time and its adoption by consensus are powerful manifestations of the collective political will of the international community to put in place a benchmark and a source of aspiration. The challenge facing the international community now is to ensure that the Convention does not remain a mere aspiration but becomes a functioning instrument. In order to meet that challenge, no effort should be spared to bring the Convention into force as soon as possible. At the time of writing, there were 118 signatories to the Convention and 18 States parties. Judging by the steady pace of ratifications, the Convention will probably enter into force before the end of 2005.

33. UNODC has given high priority to the promotion of the expeditious ratification of the Convention. A centrepiece of its activities has been the development of a legislative guide for the ratification and implementation of the Convention. Following the successful experience of the *Legislative Guides for the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*,[27] UNODC has established a group of experts from all regions who were involved in the negotiation process and thus possess intimate knowledge of the Convention. With the support of the United Nations Interregional Crime and Criminal Justice Institute, the group met in July 2004 and February 2005 to review a first draft of the legislative guide, which will be circulated as widely as possible to

obtain comments from Governments and ensure maximum transparency. The strength and usefulness of the guide will be in its inclusive nature so as to reflect the requirements of States of all regions, regardless of legal system or level of development.

34. Moreover, the Office plans to organize a series of pre-ratification seminars for policy makers and practitioners to familiarize them with the requirements of the Convention as well as the opportunities arising from it. The aim of those activities is twofold: firstly to make sure that the legislative and regulatory requirements of the Convention are clearly understood by drafters of legislation and policy makers and are met in a way that will enable States to make full use of the potential offered by the Convention to reform national systems and strengthen international cooperation; and, secondly, to sustain and reinforce the political will and commitment that made the negotiation of the Convention possible, in recognition of the fact that its ratification remains a primarily political decision. Parallel and with the aim of reinforcing this work, UNODC is making every possible effort to provide technical assistance to requesting countries, in line with the provisions of the Convention. A critical focus of the Convention is prevention—providing the institutional and regulatory framework to reduce the likelihood of corrupt practices in the first instance. Ensuring that such a preventive framework is in place constitutes the foundation for all other action against corruption. Assistance is aimed at helping requesting States create or strengthen institutions and regulatory regimes foreseen by the Convention and promoting a culture of reduced tolerance to corruption. More specifically, technical assistance will focus on developing national anti-corruption policies and mechanisms in accordance with article 5 of the Convention, which stipulates that States parties shall develop and implement effective and coordinated anti-corruption policies, which promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. UNODC has already assisted several countries in the development of anti-corruption strategies, supporting the establishment and institution-building of anti-corruption bodies, in Hungary, Lebanon, Nigeria and Romania. UNODC will concentrate its efforts on using the lessons learned and experience gained through the implementation of those activities to design further programmes and projects in other areas of the world, including Afghanistan and countries in Western Africa.

35. Another critical area is the justice sector. The Convention, in its article 11, recognizes the integrity of the justice system as a central component of any strategy to counter corruption, in particular among members of the judiciary and the prosecution service. With the judiciary constituting a relatively small group of individuals in many countries, promoting judicial integrity constitutes a clearly targeted action with a potentially high impact. Judicial integrity and capacity-building projects have already been implemented in Nigeria and are in progress in Indonesia, the Islamic Republic of Iran, Mozambique and South Africa.

36. Building a culture that is adverse to corruption is central to the integrity of both the private and the public sectors. Strategies to achieve this can never be short-term—they rely on awareness-raising and the securing of commitment from all sectors. In particular, the effective development and implementation of codes of conduct for the ethical and proper performance of public functions is critical. Key to the enforcement of such codes must be training in ethics, credible public complaints

systems, public awareness about the rights of both the public and public officials and appropriate disciplinary measures. Projects aimed at promoting integrity in public administration have been implemented in Colombia and South Africa.

37. The Convention places emphasis on effective mechanisms to prevent the laundering of the proceeds of corruption (art. 14) and on asset recovery (arts. 51-59). If there are few options for spending the illicit gains of corruption in the formal sector or transferring them to other jurisdictions, the incentive to commit corrupt practices is itself undercut. Specific projects on building local capacity in asset recovery are being designed for Kenya and Nigeria.

38. As mentioned above, ratifications are being received at a steady pace, demonstrating a continued commitment to the Convention and the principles it embodies. In fact, the instrument has been moving closer to entry into force at a faster rate than the Organized Crime Convention over a comparable period of time. However, examination of the ratifications deposited thus far reveals a lack of balance between developing and developed countries. To date, the Convention has been ratified by developing countries or countries with economies in transition. It is clearly understood that often ratification procedures may be longer and more complex in developed countries, involving long consultation processes and lengthy legislation drafting. That appears to be the only reason for the delay in ratification by developed countries. However, it would be advisable for those countries to redouble their efforts to set in motion and complete the procedures necessary for submission of the Convention to national legislatures for ratification as soon as feasible.

39. The entry into force of the Convention is doubly significant: it will signal a new era in the concerted action by the international community to prevent and control corruption; it will also set in motion the implementation mechanisms of the Convention, through the Conference of the States Parties. The Conference has considerable potential because of its comprehensive mandate and because of the fact that it approaches the complex issue of implementation in an inclusive manner, with the full involvement of States parties and in line with the spirit of cooperation and mutual respect that guided and lies at the root of the success of the negotiation process.

40. The effective functioning of the Conference of the States Parties will hinge on two factors: firstly, it will be effective if it enjoys the broadest possible participation by States, with the optimum equilibrium between developing and developed countries; and, secondly, it will manage to fulfil its demanding tasks if it unites the necessary support, both political and financial. The requisite components of that support are an adequately resourced secretariat and a pool of resources for technical assistance to States that require and request it to strengthen their capacity to fulfil the requirements of the Convention. Adequate resources will be necessary to support the Conference of the States Parties in building the knowledge base necessary to obtain an accurate picture of implementation challenges and requirements.

41. In that connection, it would be useful to consider the issue of collecting and analysing data and information on corruption under the guidance and supervision of the Conference of the States Parties. Efforts in that direction have been undertaken thus far mainly by non-governmental organizations and have relied predominantly on survey methods that emphasize perceptions. It is clearly understood that

perceptions may be important and, in many cases, relevant to approaching an issue as complex and multifaceted as corruption. However, those methods have clear limitations and have been the subject of increased scrutiny, especially regarding their reliability and accuracy. While there are significant challenges in developing and applying methods of data collection and analysis of a more scientific nature, the problems are not insurmountable. While the Convention provides the framework and conceptual certainty that are prerequisites to the development and application of methods for collection and analysis of information on the impact and nature of and trends in corruption, much more work will be required to sustain the required action for such initiatives at the global level, in close coordination with all the entities concerned.

42. Across all the areas outlined above and with a view to ensuring that the relevant activities have a wider impact, the Eleventh United Nations Congress on Crime Prevention and Criminal Justice may wish to recommend:

(a) Dissemination of good practices to facilitate implementation of the Convention;

(b) Development of a network of dedicated individuals and institutions committed to the objectives of the Convention and prepared to promote sustained action against corruption in their societies, as well as to assist others confronting similar challenges;

(c) Further strengthening of the work of the International Group for Anti-Corruption Coordination to enhance cooperation across organizations active internationally in anti-corruption policy, advocacy and capacity-building;

(d) Establishment of closer links with non-governmental organizations, civil society and the private sector so as to involve all relevant actors in more comprehensive awareness-raising campaigns.

*Notes*

[1] See the report of the African Regional Preparatory Meeting for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice (A/CONF.203/RPM.3/1 and Corr.1).

[2] See, for example, resolution 7, on corruption in government, of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (*Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.9).

[3] By its resolution 55/61, the General Assembly established an ad hoc committee to negotiate a broad and effective convention against corruption on the basis of a comprehensive and multidisciplinary approach.

[4] Including the UNODC Anti-Corruption Tool Kit (September 2004), the United Nations Guide on Anti-Corruption Policies and the United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators (September 2004).

[5] Only 40 out of 111 countries covered by a recent study carried out by the International Institute for Democracy and Electoral Assistance had regulations for the financing of political parties. Moreover, 47 per cent of the countries did not have provisions obliging political parties to disclose the contributions received; 86 per cent had no provisions for donors to disclose the contributions made; 71 per cent did not regulate a maximum amount for contributions to political parties; in 52 per cent of the countries political parties were not obliged to make public disclosure of their expenditure; and in 52 per cent of the countries there was no established ceiling for party election expenditure (Reginald Austin and Maja Tjernström, eds., *Funding of Political Parties and Election Campaigns* (Stockhom, International Institute for Democracy and Electoral Assistance, 2003)).

[6] See, for example, regulation No. 2004/2003 of 4 November 2003 of the European Parliament and the Council of the European Union on the regulation governing political parties at the European level and the rules regarding the funding; and the report on the proposals for a European Parliament and Council regulation on the statutes and financing of European political parties 1999-2003; recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe to member States on common rules against corruption in the funding of political parties and electoral campaigns; Parliamentary Assembly, recommendation 1516 (2001); and Venice Commission, *Guidelines and Report on the Financing of Political Parties*, 2001; the Convention on Preventing and Combating Corruption of the African Union, art. 10; resolution AG/Res.2044 of the Organization of American States on promotion and strengthening of democracy; and the United Nations Convention against Corruption, art. 7, paras. 2-4.

[7] See Carter Centre Financing Democracy in the Americas, *Political Parties, Campaigns and Elections*, 2003; and Council of Europe, Parliamentary Assembly, recommendation 1516 (2001) on financing of political parties.

[8] Centre for the Independence of Judges and Lawyers, *Ninth Annual Report on Attacks on Justice, March 1997-February 1999*.

[9] In a survey conducted in Mauritius, between 15 and 22 per cent of the interviewees stated that "all" or "most" of magistrates were "corrupt". According to a similar survey conducted in the United Republic of Tanzania in 1996, 32 per cent of the respondents who were in contact with the judiciary had actually paid "extra" to receive the service. In Uganda, in 1998, over 50 per cent of those who came into contact with the courts reported having paid bribes to officials. The number, however, decreased significantly over time, with only 29 per cent of the respondents claiming to have bribed the judiciary in 2002. In a survey carried out for the World Bank in Cambodia, 64 per cent of the interviewees agreed with the statement "The judicial system is very corrupt" and 40 per cent of those who had been in contact with the judiciary had actually paid bribes. A recent national household survey on corruption in Bangladesh revealed that 63 per cent of those involved in litigation had paid bribes either to court officials or to their opponent's lawyer and 89 per cent of those surveyed were convinced that judges were corrupt. In the Philippines, 62 per cent of respondents believed that there were significant levels of corruption within the judiciary. In a similar study conducted by the World Bank in Latvia, 40 per cent of the respondents who had had dealings with the court system reported that bribes to judges and prosecutors were frequent. In Nicaragua, 46 per cent of those surveyed who had had dealings with the court system stated that there was corruption in the judiciary; 15 per cent had actually received indication that the payment of a bribe was expected. In Bolivia, 30 per cent of the respondents to a service delivery survey had been asked for a bribe upon contact with the judiciary and 18 per cent had actually paid a bribe (See Petter Langseth and Oliver Stolpe, *Strengthening Judicial Integrity against Corruption*, Centre for International Crime Prevention, Global Programme against Corruption (http://www.unodc.org/pdf/crime/gpacpublications/cicp10.pdf), first published in *CIJL Yearbook, 2000*).

[10] United Nations Office on Drugs and Crime, *Assessment of Justice System Integrity and Capacity in Three Nigerian States* (May 2004) (http://www.unodc.org/pdf/crime/corruption/Justice_Sector_Assessment_2004.pdf).

[11] For an overview, see M. Anderson, "Getting rights right", *Insights—Development Research*, No. 43, September 2002.

[12] For further information on the technical assistance provided by UNODC in the area of judicial integrity and capacity, see http://www.unodc.org/unodc/en/corruption.html.

[13] For further information on the work of the judicial group on strengthening judicial integrity and capacity, see http://www.unodc.org/unodc/en/corruption_judiciary.html.

[14] Gaeta Batra, Daniel Kaufmann and Andrew H. W. Stone, *Voices of the Firms 2000: Key Findings of the World Business Environment Survey 2000* (World Bank Group, 2003).

[15] Organization for Economic Cooperation and Development, *Fighting Bribery and Corruption: No Longer Business as Usual* (OECD, 2000).

[16] Russ Webster, *Corruption and the Private Sector*, prepared by Management Systems International for the United States Agency for International Development, November 2002.

[17] See Fritz Heimann, "The ICC Rules of Conduct and the OECD Convention", International Chamber of Commerce, *Fighting Corruption: a Corporate Practices Manual* (Paris, International Chamber of Commerce, 2003), pp. 13-21.

[18] International Chamber of Commerce, *Fighting Corruption ...*; OECD, *Guidelines for Multinational Enterprises*, 2003, and the *OECD Principles of Corporate Governance*, 2004; Transparency International and Social Accountability International, *Business Principles for Countering Bribery*, 2002.

[19] Ronald E. Berenbeim, *Company Programs for Resisting Corrupt Practices: a Global Study* (Conference Board, 2000) (http://www.conference-board.org). For an example of such a programme, see Peter Kidd, "Facing up: how a multinational tackles corruption", in United Nations Office on Drugs and Crime, *Global Action against Corruption*: *the Merida Papers*, 2004.

[20] The International Monetary Fund has estimated that the total amount of money laundered on an annual basis amounts to the equivalent of 3-5 per cent of the world's gross domestic product. According to the Nyanga Declaration of the Recovery and Repatriation of Africa's Wealth, an estimated $20-40 billion have been misappropriated and transferred abroad.

[21] Bola Ige, "Abacha and the bankers: cracking the conspiracy", *Forum on Crime and Society*, vol. 2, No.1 (December 2002) (United Nations publication, Sales No. E.03.IV.2), pp. 111-117.

[22] International Monetary Fund, *World Economic Outlook, October 1999*; P. Mauro, "Corruption and growth", *Quarterly Journal of Economics*, vol. 60, No. 3 (1995); Philippe Le Billon, "Buying peace or fuelling war: the role of corruption in armed conflicts", *Journal of International Development*, vol. 15, No. 4, pp. 413-426, Liu Institute for Global Issues, University of British Columbia, Vancouver, Canada, 2003.

[23] Frances Stewart, *Crisis Prevention: Tackling Horizontal Inequalities*, Working Paper No. 33, QEH, University of Oxford, 1999.

[24] Organization for Economic Cooperation and Development, Statement by Development Ministers and Heads of Agencies at the High Level Meeting of the Development Assistance Committee (DAC), April 2001; Department for International Development, "The causes of conflict in Africa" (London, 2001).

[25] The Kimberley Process Certification Scheme (see A/57/489) is one example. It is an initiative by Governments, the international diamond industry and non-governmental organizations to stop the trade of "conflict diamonds" by requiring that all diamond shipments are accompanied by special certificates, banning all trade in rough diamonds with non-participants and requiring all participants to respect certain minimum standards in diamond production and trade. The mechanism started in January 2003 and as at 30 April 2004 there were 43 participants, representing all major rough diamond producing, exporting and importing countries. (See also

Security Council resolution 1456 (2003) and document S/2002/1149; and General Assembly resolution 57/337.)

[26] United Nations Development Programme and the Cristian Michelsen Institute, *Governance in Post-Conflict Situations*, background paper (May 2004).

[27] United Nations publication, Sales No. E.05.V.2.