

# EFFECTIVE MEASURES TO PREVENT AND COMBAT CORRUPTION IN THE REPUBLIC OF SOUTH SUDAN

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## I. OVERVIEW OF CORRUPTION

### A. Introduction to Corruption

Corruption is a cancer, which every nation and leader must strive to cure. Many new leaders when they come into power declare their determination to eradicate corruption, but soon they themselves become corrupt and start amassing huge wealth.

Corruption is defined as the abuse of entrusted authority, power and position for private gain<sup>1</sup>. It is the abuse of entrusted power and/or position and above all abuse of public resources to enrich or giving unfair advantages to individuals and their families or friends. It means that the gain is no longer to the public for whom the office is held in trust. Therefore, corruption is the illegitimate use of public power to benefit a private interest.

Corruption is a phenomenon derived from a penal concept similar to the civil concept of illicit enrichment. The difference is that while corruption includes illicit enrichment, illicit enrichment does not automatically involve corruption. Therefore, responsiveness, accountability and transparency are a must for a clean system. Bureaucracy, the backbone of good governance, should be made more citizen friendly, accountable, ethical and transparent.

### B. Terminology Synonymous with Corruption

Corruption is an act done with intent to give some advantage inconsistent with official duty and the rights of others. It includes bribery, embezzlement, theft and fraud, extortion and blackmail, favoritism, and nepotism; but it is more comprehensive because an act may be corruptly done, though the advantage to be derived from it may not be offered by another. Sometimes corruption is understood as something against law: such as, a contract by which the borrower agreed to pay the lender usurious interest. In such a case, it is said that it was corruptly agreed etc. Corruption can occur in different sectors, whether they are public or private or even non-governmental and international organizations.

The following terminology is synonymous with corruption.

- (i) Bribe: Is considered to be a reward given to pervert the judgement or conduct of a person. According to Wikipedia<sup>2</sup>,

.... **Bribery** is an act of giving money or gift giving that alters the behavior of the recipient. Bribery constitutes a crime and is defined by Black's Law Dictionary as the offering, giving, receiving, or soliciting of any item of value to influence the actions of an official or other person in charge of a public or legal duty.

- (ii) Extortion: This is considered to be the act of getting something by use of threat according to the Merriam-Webster Dictionary.<sup>3</sup> It is an unlawful demand for money or things of value by force or intimidation.

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<sup>1</sup> <<http://www.transparency.org/>>.

<sup>2</sup> <<http://www.wikipedia.com/wiki/bribery>>.

<sup>3</sup> <<http://www.merriam-webster.com/dictionary/extortion>>.

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- (iii) Fraud: This is the act of deceiving somebody so as to get money or goods illegally. In most countries, it is a crime and a police case.
- (iv) Embezzlement: Diversion of money or goods to one's personal use. It is simply stealing money or goods that you are responsible for or that belongs to your employer. According to Wikipedia<sup>4</sup>, "*... **Embezzlement** is the act of dishonestly withholding assets for the purpose of conversion (theft) of such assets by one or more individuals to whom such assets have been entrusted, to be held and/or used for other purposes...*"
- (v) Nepotism: This is the act of favouring relatives of self or friends, e.g. in a recruitment drive. I believe this form of corruption exists in the Republic of South Sudan and many other places.
- (vi) Patronage: In this case, supporters especially in political appointments, e.g. appointing staunch supporters of the ruling party as an office manager for a Minister. Wikipedia<sup>5</sup> put it as,  

... **Patronage** is the support, encouragement, privilege, or financial aid that an organization or individual bestows to another. In the history of art, **arts patronage** refers to the support that kings, popes and the wealthy have provided to artists such as musicians, painters, and sculptors. It can also refer to the right of bestowing offices or church benefices, the business given to a store by a regular customer, and the guardianship of saints...
- (vii) Cronyism: Favouring friends. Wikipedia<sup>6</sup> defined cronyism as partial to long-standing friends, especially by appointing them to positions of authority, regardless of their qualifications. Hence, cronyism is contrary in practice and principle to meritocracy.
- (viii) Sexual Harassment: This is the use of rewards in exchange for sexual favours often from the opposite sex, such as in exchange for a job or promotion at the workplace.
- (ix) Discrimination in the workplace: This is where an employee is discriminated against based on race, ethnic origin, sex, colour, gender, age, political opinion and so on.

### C. Types of Corruption

Corruption can occur on different scales. Petty corruption is where corruption occurs as small favours between a small numbers of people within established social frameworks and governing norms. Grand corruption, on the other hand, affects the government on a large scale occurring at the highest levels of government in a way that requires significant subversion of the political, legal and economic systems. Systemic corruption, which is primarily due to the weaknesses of an organization or process, is so prevalent that it is part of the everyday structure of society, including corruption as one of the symptoms of organized crime. It can be contrasted with individual officials or agents who act corruptly within the system.

Corruption can be analysed from the extent and nature of corruption in the society or from the country point of view.

- (i) Incidental/Petty: This is corruption practiced on a small scale involving individuals and very junior public officials such as customs and tax officials, policemen, etc.;
- (ii) Systematic/Grand: In this case corruption is viewed as present on a larger scale and affecting government more than individuals;
- (iii) Transactive: This refers to mutual arrangements between the donor and recipient to the advantage of an activity pursued by both parties;

<sup>4</sup> <<http://en.wikipedia.org/wiki/Embezzlement>> (updated 25 Jun. 2014).

<sup>5</sup> <<http://en.wikipedia.org/wiki/Patronage>> (updated 8 Jul. 2014).

<sup>6</sup> <<http://en.wikipedia.org/wiki/Cronyism>> (updated 7 May. 2014).

- (iv) Extortive: In this type of corruption, the donor is compelled to give a bribe in order to avoid harm to his/her person, his/her interests or to a person dear to him/her.
- (v) Defensive: This is a type of corruption deemed to be in self-defence. This is because in offences such as bribery both the donor and recipient of the bribe commit a corrupt act.

#### **D. Causes of Corruption**

Corruption is a complex phenomenon. Its roots lie deep in bureaucratic and political institutions, and its effect on development varies with country conditions.

In South Sudan corruption is an issue of great concern for the government and the public as well. Both petty and grand forms of corruption are prevalent in South Sudan. The presence of corruption is one of the major causes of the poor delivery of services to the ordinary citizens in the country. Corruption benefits a few, leaving the vast majority of people inaccessible to the national resources. The failure to deliver services as expected by all South Sudanese before and immediately after the independence of the country was a big disappointment.

When the country became independent in 2011, all South Sudanese had expectations and hopes that after the independence of South Sudan, the issues of corruption, reform of rule of law sectors, poverty, illiteracy, disease, tribal conflict and ignorance would become issues of the past. However, immediately after independence, the country was faced with a myriad of governance and poverty challenges aggravated by continued hostilities. Such numerous challenges were not without cost. As a result, these challenges affected the equitable allocation of resources, as the issue of insecurity dominated all the development fora and took the greatest percentage in the allocation of the national budget, leaving other sectors with fewer resources.

Corruption exists in the Republic of South Sudan because the conditions are rife for it to exist and until those conditions significantly change, it is likely to continue more or less unabated. There was apparently no measure in place to investigate and expose the corrupt other than the ill-equipped Police force. Like a Ugandan proverb says, “. . . . *When the master is absent, the frogs hop into the house. . . .*” The following are seen as the main causes of corruption:

- (i) Lack of Political will;
- (ii) Bad/poor governance;
- (iii) Misuse/abuse of public office, power or authority;
- (iv) The “ism” effect: tribalism, nepotism, favouritism, etc.;
- (v) Lack of integrity, accountability, transparency;
- (vi) Absence of the rule of law;
- (vii) Greed: The desire to get rich quickly and continue to get more!

#### **E. Impact of Corruption**

Since the formation of the Government of Southern Sudan in 2005 after signing of the Comprehensive Peace Agreement in 2005 within the united Sudan and its independence on July 9, 2011, corruption has become an issue of great concern nationally and internationally with mixed reports, allegations and scandals involving top government officials. Since then, many perceive corruption as the norm and the attitude of most of the top government officials with corrupted officials getting away unpunished. Corruption is perceived to be rampant because of poor leadership and poor law enforcement. The poor law enforcement may arise from non-investigation of all corruption cases and those investigated not being prosecuted. The poor leadership may be attributed to nepotism and favouritism, which allows for employment of relatives and those one favours.

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Corruption adversely affects society politically, economically, administratively and socio-culturally. Corruption erodes the moral fabric of the society and violates the social and economic rights of the poor and the vulnerable. It subverts the rule of law and retards development. It is so destructive that it maims the human soul and spirit. The defects can be summarized as follows:

- It cripples development hence seen as development enemy number one,
- Reduces public revenues as most of it is embezzled,
- Creates instability and can lead to government downfall,
- Marginalizes people by creating income inequality,
- Deprives the citizens of the dividends of peace,
- Undermines management, e.g. wrong recruitments, promotions, harassments,
- Lack of or poor social services—hospitals, roads, etc.,
- Delays justice—erodes rule of law, undermines good governance,
- It is a global threat—money laundering, drugs/human trafficking, gun smuggling and damage to the environment. Damage of the environment in one country is a threat to all.

## II. SSACC MANDATE TO PREVENT/COMBAT CORRUPTION

The South Sudan Anti-Corruption Commission (SSACC) was established by the decree of H.E. General Salva Kiir Mayardit, President of the Republic of South Sudan, on 26 June 2006, appointing the Chairperson, Deputy Chairperson and three other Commissioners. SSACC created five Directorates<sup>7</sup> as part of the management. The mandate handed down to manage the Commission, which was later modified in the Interim Constitution,<sup>8</sup> are:

- (i) Protect Public Property: The Commission has created a new Directorate of Investigation and Assets Tracing whose mandate under the guidance of the Commission is to identify all government Assets, Bank Accounts, Vehicles, Land, Buildings, etc. and to ensure that they are not abused. The Commission has already recovered over five government vehicles and more than 60 million dollars that were on the verge of being turned to personal property;
- (ii) Investigate and Prosecute Only Cases of Corruption: The Commission investigated and handed over cases to the Ministry of Justice, as was the requirement of the law before July 2011. In the meantime, however, it is in the process of creating a new Directorate of Prosecution and Assets Recovery to be in charge of prosecution and attracting qualified and experienced lawyers. This may now be possible after the austerity measures that have just been eased after two years and passing of the proposed Anti-Corruption Bill.

The Processes of Investigation at SSACC takes the following steps:

- The desk office must fully fill out the registration form with a summary of the allegation and some information for attention of the Director for Investigation,
- A fully registered complaint must be routed to the Director for investigation with a summary (it takes one working day maximum),
- The Director shall try to take a statement from the complainant and refer the file (with suggestions) to the Director General of the Directorate (it takes two working days maximum),

<sup>7</sup>The South Sudan Annual Reports 2009, 2010 and 2011 as per the GoSS website: <<http://www.goss.org/commissions>>.

<sup>8</sup>The Interim Constitution of South Sudan, 2011, Article 144.

- The Director General shall study the file and route it to the Deputy Chairperson for comments and routing (it takes three working days maximum),
  - The Deputy Chairperson shall study the file and route it to the Chairperson/Commissioners with a suggestion on how it should be handled — (it takes three working days maximum),
  - The Chairperson/Commissioner shall study the file and the Chairperson shall direct investigation on the allegation and route it back to the Deputy Chairperson to route it down the ladder — (it takes three working days maximum)
  - Then the allegation is distributed to the Permanent Investigation Committee, which is chaired by one of the five Commissioners (the five Commissioners are: the Chairperson, Deputy Chairperson and the Three Commissioners) and technical staff as per section 25 of SSACC Act 2009,
  - The investigation committee assigns technical staff to draw an investigation plan under the supervision of the lead investigator, broken down as follows:
    - i. Title of work plan — e.g. *A work plan of investigation into the allegation of . . . .*;
    - ii. Background/allegation — *summarize the allegations*;
    - iii. Objectives of investigation — *what to find out, suspect/accomplices, recommendations — (Objectives to be **SMART**)*;
    - iv. Source documents for examination;
    - v. Action plan specifying activities, time frame and numbers of officers required to carry out the tasks;
    - vi. Budget required;
    - vii. Approval by the Chairperson of the Committee and the lead investigator.
  - Work plan is reviewed by the lead investigator before presentation to the Committee for approval and execution,
- (iii) Combating administrative malpractice in public institutions: The Commission has been handling this mandate alongside the Directorate of Corruption Prevention and Education. It has been in charge of dissemination of programmes, creating awareness and community mobilization on corruption and its effects on the public institution and the country at large. The Directorate has been using different methods, including among others print materials, video and audio media in addition to workshops. As we speak, the level of corruption allegation reporting has reduced dramatically implying that some successes had been recorded. The Directorate of Corruption Prevention and Education (CPE) is made up of three departments: Preventive Services and Department of Education and Awareness Creation. The key functions (mandate) of the Directorate are as follows:
- Introduce appropriate measures to prevent corruption in South Sudan;
  - Promote good governance in South Sudan; and
  - Administer declaration of income, assets and liabilities forms.
- (iv) Require all persons holding such public offices to make confidential formal declarations of their income, assets and liabilities: The responsibility to implement this mandate has been bestowed on the Commission and annually, the Commission gives out declaration forms and the specified

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leaders have declared their incomes, assets and liabilities. However, the mechanism of verification is still the hurdle. Hopefully with the assistance of donors, verification will now be possible.

### III. SOUTH SUDAN'S EFFORTS TO FIGHT CORRUPTION AND RECOVER ASSETS

The Government of South Sudan (GoSS) is committed to fighting corruption with her zero tolerance for corruption policy visibly seen at different levels as below:

- (i) The Presidency: Speeches made by the President at public rallies and State of the Nation addresses have always indicated the direction of the country. H.E. the President of the Republic General Salva Kiir Mayardit has always emphasized zero tolerance for corruption and has always been quoted as saying that, "... *Whoever has taken what does not belong to him will be forced to disgorge it...*". Just like the Kenyan proverb, "... *If a leader limps, all the others start limping too...*"
- (ii) Decentralization: This is the devolution of power from the centre to the local governments so as to increase points of decision-making. This is the situation in the Republic of South Sudan where the Commission is present at the state government level;
- (iii) Strengthening of the Private Sector: Strengthening of the private sector minimizes corruption due to strong supervision mechanisms as they are always driven by profit motives as opposed to the government.
- (iv) Establishment of Watchdog Institutions: The establishment and strengthening of the watchdog institutions such as the Auditor General and the Anti-Corruption Commission and ensuring their effectiveness is a good means to get rid of corruption;
- (v) The Parliament: The voice of the people against corruption reaches the law-makers in the Parliament and with political will strong laws are made which, when well implemented, help to minimize corruption.
- (vi) The Government of South Sudan Anti-Corruption Strategy and Action Plan 2010-2014<sup>9</sup>: The government came up with the strategy and action plan of how to fight and prevent corruption in the Republic of South Sudan. The strategy suggested the key actors, laws and regulations that must be passed and the institutions tasked with their implementation.
- (vii) The Pre-conviction Recoveries: Where investigation has revealed that public assets have been stolen, South Sudan has always pursued, as the first option, pre-conviction recoveries from the suspect and thereafter, disciplinary action would follow especially with civil servants and proceeds returned to the rightful owner. For political appointees, it is evident that such persons would not be given such sensitive positions again. This however has never been a waterproof decision.
- (viii) Post-Conviction Recoveries: Again where investigations have revealed that the suspect(s) stole public assets, such suspect(s) is/are taken to court and upon conviction, shall be sentenced to imprisonment for a term not exceeding five years or with a fine or with both. The process of recovery would still be pursued. The stolen asset is then returned to its legitimate owner as provided for in the UNCAC.<sup>10</sup>

### IV. INTERNATIONAL EFFORTS TO PREVENT AND COMBAT CORRUPTION

The international efforts in the fight against corruption include the following:

- i. **Prevention**: According to the UNCAC<sup>11</sup>:

<sup>9</sup> The GoSS Strategy 2010-2014 and the GoSS Action Plan 2010-2014 produced by GoSS in 2009.

<sup>10</sup> The UNCAC, Chapter V: Asset Recovery, Article 57(1).

Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that 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.

This involves establishment of model preventive policies such as the establishment of Anti-Corruption agencies and enhanced transparency in the financing of election campaigns and political parties.

The government of South Sudan set as one of the mandates<sup>12</sup> of the South Sudan Anti-corruption Commission to “(d) combat conducts which tend to promote or encourage corrupt practices in public affairs; (e) combat administrative malpractices in public institutions such as nepotism, favoritism, tribalism, sectionalism, gender discrimination, bribery, embezzlement and sexual harassment”. The Commission then established and delegated the whole Directorate to handle this mandate called, the Directorate of Corruption Prevention and Education. Several programmes have been produced on print materials, video and audio media and disseminated messages against the danger of corruption across the country.

**ii. Criminalization and Law Enforcement:** The Convention requires countries to establish corruption and other offences to cover a wide range of acts of corruption, if these are not already crimes under the domestic law. States are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so. UNCAC<sup>13</sup> criminalized actions such as: “. . . bribery of national public officials; bribery of foreign public officials; embezzlement, misappropriation or other diversion of property by a public official; trading in influence; abuse of functions; illicit enrichment; bribery in the private sector; embezzlement in the private sector; laundering of proceeds of crime and concealment . . .” to mention but a few.

In our case in the Republic of South Sudan, some of these criminalized elements have been included in the Penal Code Act 2008<sup>14</sup> as well as the Anti-Money Laundering Law.<sup>15</sup> The latter though has not been put into implementation but it is a very good law with provisions of the UNCAC related to illicit enrichment and laundering of proceeds of crime.

**iii. International Cooperation:** Countries are encouraged to agree to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation and prosecution of offenders. Countries are bound by the convention to render specific forms of Mutual Legal Assistance (MLA) in gathering and transferring evidence for use of the Court, to extradite offenders. This is addressed by chapter IV of the UNCAC.<sup>16</sup>

The situations in South Sudan are as follows:

- The South Sudan Anti-Corruption Commission currently is a member of the East African Association of Anti-Corruption Agencies (EAAACA), Association of Anti-Corruption Authorities in Africa (AAACA), and International Association of Anti-Corruption Authorities (IAACA). SSACC has been attending most of their functions including trainings as well as securing investigation-related information on an informal basis;
- The Commission received MLA from a country in Eastern Europe and acted on it accordingly when a colossal sum of money was intercepted in an account of a company that was believed not to have done business in South Sudan.

<sup>11</sup> The UNCAC, Chapter II: Criminalization and Law Enforcement, Article 5.1.

<sup>12</sup> The Southern Sudan Anti-corruption Act, 2009, Section 9(d & e).

<sup>13</sup> The UNCAC, Chapter III: Criminalization and Law Enforcement, Article 15.

<sup>14</sup> The Penal Code Act 2008 of the Laws of South Sudan, Chapter VIII—Offences Relating to Public Servants.

<sup>15</sup> The Anti-Money Laundering and Counter Terrorism Act, 2012.

<sup>16</sup> The UNCAC, Chapter IV: International Co-operation.

**iv. Asset Recovery:** Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of crime. This is a particularly important issue for many developing countries where high-level corruption has plundered the national wealth and where resources are badly needed for reconstruction and the rehabilitation of societies under new governments. This has been covered under UNCAC.<sup>17</sup>

The Republic of South Sudan has not had any experience in this field since its independence three years ago. However, H.E. the President of the Republic, General Salva Kiir Mayardit, made an effort to open an account in Nairobi and wrote to all top senior government officials he suspected to have mismanaged public funds to return such amounts to that account. He mentioned that most of the stolen funds, according to the President, have been taken out of the country and deposited into foreign bank accounts, adding that some of these funds have been used for purchasing properties in Africa, the United States, the Middle East and Europe. According to the Sudan Tribune,<sup>18</sup> “*A letter was sent out last week to over seventy five former and current senior officials in an effort to recover stolen funds,*” reads a statement released by the Office of the President. However it is unclear now how successful this move has been to date.

## V. CONCLUSION

Corruption is an intractable problem. It can only be controlled, not totally eliminated. It may not be possible to root out corruption completely at all levels but it is possible to contain it within tolerable limits. Corruption has a corrosive impact on the economy. It worsens the national and international image of the country and leads to the loss of overseas opportunities. Corruption is a global problem that all countries of the world have to confront; however, solutions can only be home grown. Worldwide corruption is a serious problem that weakens societies, ruins lives, and impedes development.

As ever, it is the poor and marginalized who suffer most from corruption, but as a threat to the development and service delivery, fighting corruption becomes the shared responsibility of every citizen. In addition to anti-corruption measures and policies being made an integral part of all development strategies at the national, state and local levels, the private sector and civil society must assist Government in fighting the scourge. As a complement to these broader reforms, the careful and transparent implementation of enforcement measures, such as prosecuting some prominent corrupt figures, will be considered. Thus, this training seeks to contribute to the endeavours of which I am captivated—the fight against corruption.

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<sup>17</sup> The UNCAC, Chapter V: Asset Recovery.

<sup>18</sup> “President Kiir demands South Sudan officials return stolen money”, <<http://www.sudantribune.com>> (2 Jun. 2012).