

Chairperson's Statement
United Nations Conference on Anti-Corruption Measures,
Good Governance & Human Rights
Warsaw, Republic of Poland, 8-9 November 2006

Introduction

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

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

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

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

Main issues

The main objective of the Conference was to identify concrete ways in which governments' efforts to fight corruption are assisted by and contribute to human rights protection. The Conference built on the increasing awareness within the international community about the detrimental impact of widespread corruption on human rights both through the weakening of institutions and the erosion of public trust in government as well as through impairing the ability of governments to fulfil human rights, particularly the economic and social rights of the most vulnerable and marginalized. The Conference also addressed the abuses and

derogations to human rights made in the name of the fight against corruption, limiting, inter-alia, the rights to privacy, due process and freedom of expression.

Accordingly, the Conference focused on three themes:

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

1- Impact of corruption on human rights

The following problems were drawn from the presentations:

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

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

The following points were raised during the presentations:

- Potential positive role of national human rights institutions with anti-corruption mandates: the experience of Ghana, which has incorporated anti-corruption into its mandate
- Value of human rights experience, methods, advocacy, etc. for anti-corruption efforts
- Bangalore Principles of Judicial Conduct (2003) was a valuable exercise and showed where use of human rights mechanisms can be useful
- Importance of engaging different actors and building alliances between them on anti-corruption policies

- Importance of separating the political and administrative spheres to protect integrity and ensure accountability
- Poverty is caused by both “need and greed” that require different strategies
- There is also a need for judicial reforms: extending number of acts that are criminal; replacing old laws that facilitate corruption; providing clear rules of evidence that allow prosecution to take place; developing effective sanctions (such as seizure of assets and prevention of travel). Justice should be accessible, rapid and efficient, and the judicial system should be subject to public scrutiny
- Several examples of value and use of access to information laws around the world were presented.

3- Role of civil society, private sector and media

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

- Crucial role of civil society in addressing corruption issues and its ability to use human rights principles in fighting corruption (e.g. through access to information laws)
- Need to broaden anti-corruption efforts beyond governments to include focus on the supply side of corruption. One way to do this is to look for and correct problems from “the inside” of companies; change is often easier if the request for change comes from those who need it as opposed to from outside (like UN)
- Importance of private sector in fighting corruption. In private sector, corporate social responsibility and corporate compliance are separate methods within corporations. The first one deals with human rights and environmental protection issues while the second one is related to handling corruption issues
- Gap between excellent constitutional and legislative frameworks and weak implementation systems: example of South Africa
- Monitoring public expenditures in provinces – site of actual service delivery
- Effective participation of citizens goes beyond mere consultation.
- Corruption and ineffective use of resources starts at the planning and resource allocation stage when there is a lack of accurate analysis of citizens’ needs. Without effective planning based on the assessment of needs effective reporting and monitoring are impossible
- Need to pursue multiple approaches to rights-based monitoring and accountability to service delivery, each with a corresponding advocacy strategy at the macro and micro levels
- Need to ensure a balance between supply and demand aspects of corruption and accountability
- Need to strengthen capacity of duty-bearers to provide the information, explanations and justifications as well as capacity of rights holders to demand, access and analyze information
- Media have a crucial role in exposing both human rights violations and corruption cases but there are also risks involved
- In the context of absence of rule of law and accountability the potential role of the media is very limited and can even be negative unless internal self-regulation and accountability are applied. In such cases the best that can be done is to shed light on these issues and make them known to citizens. In some cases mass media may also help bring pressure to bear on politicians who lack political will to act

- Importance of close linkages between a variety of sectors and actors: national human rights institutions and civil society, civil society and anti-corruption agencies, pressure on supply side in North and demand side in South, etc.
- Need to learn from human rights movements' notable persistence and consistency
- Importance of cultivating a culture of transparency. People do not necessarily see certain acts as corruption.

4- Fighting corruption while safeguarding human rights

The presentations raised the following points:

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

Recommendations

The following recommendations emerged from the panel presentations and discussions:

1- Impact of corruption on human rights

- States should sign, ratify and implement the United Nations Convention Against Corruption (UNCAC)
- Government reforms are a necessary part of any strategy but many other actors must be involved
- Indicators need to be developed to clearly demonstrate the correlation of corruption and human rights to facilitate further legal analysis on the links between them
- Need for transparency indices that show positive developments, not just negative
- Need to look at “grand” corruption also; most states, for political reasons, focus on “petty.”

- Need to examine the role of actors abroad who participate in or incite corruption, including companies, third party governments, donors, lawyers who give legal cover, etc.

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

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

3- Role of civil society, private sector and media

- Support implementation of corporate compliance programs in fighting corruption
- Expand rights-based understanding within UN to include the recognition of social accountability as a right not merely as a constitutional principle
- Address link between armed conflict, human rights and corruption
- Need to develop common definitions
- Need to develop a methodology to ensure participation of the public in anti-corruption efforts and holding government officials to account.

4- Fighting corruption while safeguarding human rights

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

Follow-up

Actions proposed by participants included:

- Encourage states, international organizations and other actors to integrate the recommendations from this Conference into their work

- Office of the High Commissioner for Human Rights should present a report containing these conclusions to the UN Human Rights Council which may consider further steps in tackling this subject, including: disseminate the conclusions of the Conference nationally and internationally and create a working group to focus on this question and make recommendations in relation to the role of the OHCHR in dealing with the linkage between corruption and human rights.