

THE NEGATIVE IMPACT OF CORRUPTION ON THE ENJOYMENT OF HUMAN RIGHTS

SUBMISSION BY OHCHR

1.1. From your experience, what are the human rights that are most affected by corruption?

Empirical research analysing the impact of corruption on human rights¹ as well as an analysis of the practice of United Nations human rights mechanisms do not reveal any hierarchy among rights affected by corruption.²

From OHCHR's experience, corruption negatively impacts the enjoyment of all human rights – civil, political, economic, social and cultural, as well as the right to development, which underscores the indivisible and interdependent nature of human rights.

The impact on the realization of human rights depends on the level of pervasiveness, the different forms and levels of corruption. Corruption can affect human rights as an obstacle to their realization in general and as a violation of human rights in specific cases.

Corruption in the public and private spheres and its proceeds are not confined within national borders, nor is its impact on human rights.

It typically diverts funds from state budgets that should be dedicated to the advancement of human rights. It therefore undermines a State's human rights obligation to maximize available resources for the progressive realization of rights recognized in article 2 of the International Covenant on Economic, Social and Cultural Rights.

Corruption undermines the fairness of institutions and processes and distorts policies and priorities. As a result, corruption damages the legitimacy of regimes leading to a loss of public support and trust for state and government institutions.

Corruption impacts on the ability of the State to protect and fulfil its human rights obligations and to deliver relevant services, including a functioning judiciary, law enforcement, health, education, and social services.

In countries where corruption pervades governments and legal systems, law enforcement, legal reform and the fair administration of justice are impeded by corrupt politicians, judges, lawyers, prosecutors, police officers, investigators and auditors.

Corruption in the rule of law system weakens the very accountability structures which are responsible for protecting human rights and contributes to a culture of impunity. Since illegal

actions are not punished, accountability may be diverted to innocents, redress may be frustrated and laws not consistently upheld.

1.2. What specific negative impact can corruption have on the enjoyment of human rights by vulnerable groups such as women, children, elderly, persons with disabilities, indigenous people and others?

Disadvantaged groups and vulnerable persons suffer disproportionately from corruption. They are often more reliant on public services and public goods and have limited or no means to look for alternative private services. Disadvantaged sectors of society typically have fewer opportunities to participate meaningfully in the design and implementation of public policies and programmes. They often lack the resources and knowledge to seek redress and remedies.

As concerns indigenous peoples, corruption involving the illegal exploitation of land and natural resources affects indigenous peoples in particular ways, given the importance of land, forests and natural resources to sustain the singularity of their culture and survival.³ Exploitation of natural resources through corrupt practices may involve environmental degradation and threaten the traditional modes of indigenous life. The benefits from the exploitation of natural resources may not be shared equitably. Corruption can undermine the right of indigenous peoples to participate in decisions related to natural resource extraction.

With regard to women, a recent study highlighted the gendered impact of corruption, such as in access to public services and resources, the specific vulnerability to sexual extortion and the impact of corruption on reducing women's access to markets and credit. Corruption has the effect of reinforcing marginalization in economic life.⁴

Recent studies also indicate a strong correlation between corruption, poverty, and inequality.⁵ The literature tends to agree that the poorest segments of the population are those who suffer the most from corruption, as they tend to be more vulnerable to bribe extortion and the amount of bribes represent a higher share of their income.

2. Do you have any experience in integrating a human rights perspective in combating corruption? What are the best practices and what are the challenges in this respect?

Human rights principles and institutions are essential components of successful and sustainable anti-corruption strategies. Anti-corruption efforts are more likely to be successful if they approach corruption as a systemic problem rather than a problem of individuals alone. A human rights-based approach to corruption calls for a comprehensive strategy to promote effective institutions, appropriate laws, good governance, and the participation of all concerned stakeholders.

A human rights-based approach to anti-corruption means putting the international human rights entitlements and claims of the people (the 'right-holders') and the corresponding

obligations of the State (the 'duty-bearer') in the centre of the anti-corruption debate and efforts at all levels, and integrating international human rights principles including non-discrimination and equality, participation and inclusion, accountability, transparency, and the rule of law.

There are a number of human rights which are instrumental in the fight against corruption, in particular the rights to information, freedom of expression and assembly, an independent judiciary, and participation in public affairs. It is equally important to protect those involved in combatting corruption from persecution or reprisals and to build or maintain an environment in which corrupt practices can effectively be addressed. This includes human rights education, witness and victim protection, a free press and protection of anti-corruption activists, including by recognizing them as human rights defenders.

A human rights-based approach will make anti-corruption efforts more sustainable and effective. Such an approach can help to identify who are the victims of corruption, who has a specific obligation to address corrupt practices and consequently to devise effective remedies which can provide for reparation of the harm caused, including civil, criminal and administrative avenues. Domestic, regional and international human rights mechanisms can play an important role in addressing corruption.

OHCHR is working at the international and domestic level to integrate human rights into anti-corruption work.

OHCHR for example commented on a resource guide under preparation by UNDP and UNODC on Integrating Anti-Corruption into the United Nations Programming Process.

OHCHR participated in a meeting to discuss a set of “Principles for Anti-Corruption Agencies” to promote and strengthen the independence and effectiveness of Anti-Corruption Agencies, which led to the adoption of the Jakarta Statement on Principles for Anti-Corruption Agencies.⁶

In Cambodia, OHCHR is actively working on addressing corruption, working with duty-bearers and rights holders. An example of its activities is the printing of an Arrest Rights Card. The text of the card includes “It is also a crime for anyone to ask you or your family to pay for your release. You should not give money to the police.” Similar language will be contained in a poster on the rights of prisoners for display in prisons. The Office in Cambodia also worked with the Ministry of Justice to revise the form used by judges to place a defendant in pre-trial detention so as to include mandatorily a reasoned decision to justify pre-trial detention. One of the objectives of this measure is to make it more difficult for judges to demand bribes from pre-trial detainees. The Office has also provided training on human rights to the Anti-Corruption Unit with a view to building its capacity to combat corruption in accordance with human rights standards.

In Guatemala, OHCHR provided support and technical assistance to the Congressional Commission on Legislation and Constitutional Affairs in the revision of two legislative initiatives concerning anti-corruption legislation, to ensure that they complied with international human rights obligations. The Office emphasized the need to respect the principles of legality, proportionality and of the presumption of innocence in defining certain crimes.

The Human Rights Adviser in Kenya, jointly with UNODC and the Ethics and Anti-corruption Commission worked to build capacity of County Government Officials on how to mainstream anti-corruption strategies into their county integrated plans as well as their structures.

The United Nations Joint Human Rights Office in the Democratic Republic of the Congo published a report in March 2013 in which it condemned the close link between corruption and poor prison conditions, which contributed in numerous cases to the death of inmates.

3. What measures can be taken by the Human Rights Council and its subsidiary bodies or by States to combat corruption with specific consideration of the negative impact of corruption on the enjoyment of human rights?

The Human Rights Council and its subsidiary bodies

The Human Rights Council at present is seized with a few corruption-relevant items, namely the negative impact of corruption on the enjoyment of human rights (resolution 23/9), the role of good governance in the promotion and protection of human rights (resolution 19/20), human rights, democracy and the rule of law (resolution 19/36) and the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, and the importance of improving international cooperation (resolution 22/12). The Human Rights Council also recognized the importance of fighting corruption for the prevention of human rights violations (resolution 18/13).

The Human Rights Council may wish to consider examining specific topics related to corruption and human rights (for example on whistle-blower protection; human rights in the fight against corruption (for example special investigative techniques; asset disclosure; confiscation); protection of the necessary environment and actors involved in the fight against corruption (for example human rights activists as human rights defenders) or private sector complicity in corruption).

The Human Rights Council may wish to consider referring to the crucial link between corruption and human rights more systematically in its country and thematic resolutions, where appropriate, in particular in following up to recommendations of country and thematic rapporteurs.

Member States

Building on a survey of recommendations made by the United Nations Treaty Bodies, the UPR Mechanism and the Special Procedures, the following measures can be taken by States:

- Ratify and implement relevant international and regional anti-corruption instruments
- Adopt and implement anti-corruption legislation, policies and action plans
- Adopt strong, efficient and time-bound measures to prevent and combat corruption
- Combat attitudes in society so that corruption is not perceived as unavoidable
- Raise awareness of politicians, parliamentarians, judges, national and local civil servants and law enforcement officers on the negative impact of corruption on the enjoyment of human rights
- Ensure full investigation of corruption cases, as well as accountability for those responsible
- Increase salaries of public servants as one of the causes of corruption
- Establish and adequately resource independent national anti-corruption bodies
- Provide training and capacity building on anti-corruption standards and relevant professional codes of ethics, such as the Bangalore Principles on Judicial Conduct
- Step-up anti-corruption measures relating to the management of public funds
- Contain detailed information on anti-corruption measures and statistics on corruption and penalties imposed in reports to treaty bodies and report back on progress achieved and difficulties encountered in combatting corruption
- Establish a programme of victim, witness and whistle-blower protection to assist in ensuring confidentiality and to protect those who lodge allegations of corruption, and ensure that sufficient funding be allocated for its effective functioning
- Adopt an asset declaration act for authorities
- Make available judicial remedies and other control mechanisms, internal oversight bodies and confidential complaint mechanisms
- Integrate human rights principles, such as participation, access to information, equality and non-discrimination, transparency, monitoring and accountability into development and anti-corruption policies
- Ensure freedom of expression, personal security of anti-corruption advocates and a free and independent media, in order to maintain an enabling environment for civil society involved in anti-corruption efforts

4. How can the United Nations human rights mechanisms be utilized for anti-corruption efforts?

Thematic and country mandates may wish to consider paying systematic attention to corruption and human rights in their work or devoting special thematic reports on this topic. The Human Rights Defender mandate may wish to consider measures for the protection of anti-corruption activists, in particular whistle-blowers.

Treaty bodies may wish to consider including the impact of corruption on the enjoyment of human rights and anti-corruption measures in reporting guidelines, the list of indicators annexed to the harmonised reporting guidelines and list of issues.

Treaty bodies may wish to consider paying specific attention to how corruption affects human rights and the impact of anti-corruption measures.

Communications by or on behalf of an individual or groups of individuals claiming to be victims of a human rights violation caused by corruption should be considered carefully, given the difficulty to provide evidence and to establish a causal link between, for example misappropriation of funds and a violation of specific right in an individual case.

Treaty bodies may wish to consider adopting a general comment on corruption and human rights or holding a general day of discussion on corruption and human rights.

5. What other institutional mechanisms could be used to integrate a human rights-based approach in combating corruption or vice-versa at both, the international and national level?

At the international level:

UNCAC review mechanism

StAR initiative

UNDP

IACA

Other regional anti-corruption/human rights mechanisms:

European Court of Human Rights

Inter-American Commission/Court on Human Rights

African Commission/Court

ECOWAS-Community Court of Justice

GRECO

MESICIC

OLAF

OECD Working Group on Bribery

Domestic:

Domestic human rights litigation, including public interest litigation, before constitutional courts as well as criminal and civil law suits

NHRIs/ACAs

Parliamentary Human Rights Committees

6. Are there any other observations or suggestions you wish to provide regarding the topic?

Aligning anti-corruption efforts with human rights promotion and protection has the potential to create synergies and will be mutually beneficial. There is a need to increase synergy between inter-governmental efforts to implement the United Nations Convention against Corruption and international human rights conventions. This requires strengthened policy coherence and collaboration between the intergovernmental processes in Vienna, Geneva and New York, United Nations system agencies and civil society.

¹ For a study exploring the empirical relationship between corruption and human rights, see Todd Landman and Carl Jan Willem Schudel, *Corruption and Human Rights: Empirical Relationships and Policy Advice*, International Council on Human Rights Policy, 2007. The study concluded that the analysed indices support the hypothesis that higher levels of corruption are related to worse records of human rights protection. At the same time several countries had good indices on corruption and bad indices on human rights, and vice versa. Not all the measures of corruption were significantly related to human rights protection and variables other than corruption were also significantly related to human rights violations. Another study by Daniel Kaufmann, *Human Rights and Governance: The Empirical Challenge*, in *Human Rights and Development: Towards Mutual Reinforcement*, edited by Philip Alston and Mary Robinson, Oxford University Press 2005, found a significant correlation between the degree of civil and political rights violations and the prevalence of corruption, in particular in the form of state capture, and between state capture and the enjoyment of economic, social and cultural rights. The study found that corruption, among other things, is a mediating factor determining socio-economic development. At the same time, no causal relationship between the degree of socio-economic development and levels of corruption could be established.

² For a recent and detailed analysis of how corruption is addressed by the United Nations Treaty Bodies, the Universal Periodic Review Mechanism, selected thematic Special Procedures and the then existent country mandates see Martine Boersma, *Corruption: A Violation of Human Rights and a Crime Under International Law*, Intersentia, 2012. See also Mary Dowell-Jones, *Contextualising the International Covenant on Economic, Social and Cultural Rights: Assessing the Economic Deficit*, Martinus Nijhoff Publishers, 2004.

³ U4 Expert Answer, *Impact of corruption on indigenous people*, 2010.

⁴ UNDP and UNIFEM, *Corruption, Accountability and Gender: Understanding the Connections*, 2010. See also *Gender and Corruption: Understanding and Undoing the Linkages*, Transparency International, 2007 and U4 Expert Answer, *State of Research on Gender and Corruption*, 2009.

⁵ See for example *Corruption and Poverty: A Review of Recent Literature*, Eric Chetwynd, Frances Chetwynd, Bertram Spector, Management Systems International, 2003 and U4 Expert Answer *Literature review on costs of corruption for the poor*.

⁶ KAK, UNODC and UNDP, *Jakarta Principles for Anti-Corruption Agencies*, 2012.