



## **Corruption and human rights**

### **Concept note**

In recent years, a number of relevant UN bodies and mechanisms have acknowledged the negative effects of corruption on the protection of human rights and on development.

Human rights are indivisible and interdependent, and the consequences of corrupt governance are multiple and touch on all human rights — civil, political, economic, social and cultural, as well as the right to development. Corruption leads to violations of States' human rights obligation 'to take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the [International] Covenant [on Economic, Social and Cultural Rights].'

The corrupt management of public resources compromises a government's ability to deliver an array of services, including health, educational and welfare services, which are essential for the realisation of economic, social and cultural rights. Also, the prevalence of corruption creates discrimination in access to public services in favour of those able to influence the authorities to act in their personal interest, including by offering bribes. The economically and politically disadvantaged suffer disproportionately from the consequences of corruption, because they are particularly dependent on public goods.

Corruption may also affect the enjoyment of civil and political rights. Corruption may weaken democratic institutions both in new and in long-established democracies. When corruption is prevalent, those in public positions fail to take decisions with the interests of society in mind. As a result, corruption damages the legitimacy of a democratic regime in the eyes of the public and leads to a loss of public support for democratic institutions. People become discouraged from exercising their civil and political rights and from demanding that these rights be respected. Electoral fraud and corruption in the funding of political parties are other, more direct corrupt practices related to the enjoyment of civil and political rights.

In countries where corruption is pervasive in the rule-of-law system, both the implementation of existing legal frameworks and efforts to reform them are impeded by corrupt judges, lawyers, prosecutors, police officers, investigators and auditors. Such practices compromise the right to equality before the law and the right to a fair trial, and especially undermine the access of the disadvantaged groups to justice, as they cannot afford to offer bribes. Importantly, corruption in the rule-of-law system weakens the very accountability structures that are responsible for protecting human rights and contributes to a culture of impunity, since illegal actions are not punished and laws are not consistently upheld.

## **UN human rights machinery and corruption**

UN human rights bodies and mechanisms are increasingly mindful of the negative impact of corruption on the enjoyment of human rights. The Human Rights Council, its Special Rapporteurs and the Universal Periodic Review mechanism, as well as human rights Treaty Bodies (notably the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child) have addressed issues of corruption and human rights on numerous occasions.

In 2003, the former Sub-Commission on the promotion and protection of human rights appointed a Special Rapporteur with the task of preparing a comprehensive study on corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights. As requested by the then Commission on Human Rights, in 2004 OHCHR organised a joint seminar with UNDP on good governance practices for the promotion of human rights, including anti-corruption, in Seoul, the Republic of Korea.<sup>1</sup> Subsequently, OHCHR in 2007 published a booklet on Good Governance Practices for the Protection of Human Rights (HR/PUB/07/4). In 2006, OHCHR organised a conference on anti-corruption measures, good governance and human rights in Warsaw, Poland.<sup>2</sup> In follow-up to this conference OHCHR developed, jointly with UNODC and UNDP, a guidebook on human rights and anti-corruption for practitioners.

Since its establishment in 2006, the Human Rights Council has continued to promote work on human rights and anti-corruption. In 2011, the Council stressed that States should promote supportive and enabling environments for the prevention of human rights violations, *inter alia*, by fighting corruption (resolution 18/13). Furthermore, the Council considered the issue of the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights (e.g. resolutions 17/23, 19/38 and 22/12).

At the 20<sup>th</sup> session of the Council in 2012, a cross-regional statement on corruption and human rights was delivered by Morocco, on behalf of 134 States. The statement called for deepening reflection on the close connection between human rights and corruption and urged the anti-corruption and human rights movements to work together. Subsequently, the Council convened a panel discussion on the negative impact of corruption on the enjoyment of human rights in March 2013.<sup>3</sup>

In 2013, the Council requested its expert Advisory Committee to submit a research-based report to the Council at its 26<sup>th</sup> session (June 2014) on the issue of the negative impact of corruption on the enjoyment of human rights, and to make recommendations on how the Council and its subsidiary bodies should consider this issue (resolution 23/9). The Advisory Committee submitted its final report on the issue of the negative impact of corruption on the enjoyment of human rights in 2015 (A/HRC/28/73).

At the 29<sup>th</sup> session of the Council in June 2015, States adopted resolution 29/11 on ‘the negative impact of

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<sup>1</sup> The report is contained in document E/CN.4/2005/97

<sup>2</sup> The report is contained in document A/HRC/4/71

<sup>3</sup> Report A/HRC/23/26



corruption on the enjoyment of human rights.’ After recalling relevant previous resolutions as well as the UN Convention against Corruption – ‘to which...175 States are Parties [and which is] the most comprehensive, and universal instrument on corruption,’ the resolution makes a number of useful observations about the relationship between corruption and human rights:

- That corruption has a deeply negative impact on the enjoyment of all human rights, including by reducing the resources available for all sectors in development;
- That, following on from this point, corruption is a key issue for the on-going negotiations on the post-2015 development agenda, ‘in particular the target on substantially reducing corruption and bribery in all their forms;’
- That good governance plays a central role in promoting and protecting human rights;
- That transparency, access to information, accountability, non-discrimination and meaningful participation are an integral part of sustainable and comprehensive anti-corruption measures;
- That UN heads of state have made, in 2005, the fight against corruption a priority at all levels; and
- That, under the auspices of the UN Convention against Corruption, States have begun to develop National Action Plans to strengthen implementation at domestic level, and have set up a Mechanism for the Review of Implementation of the Convention, ‘aimed at identifying gaps and assisting countries in meeting the objectives of the Convention;’

At an operational level, however, the resolution merely: ‘takes note with interest of the final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of all human rights;’ urges States that have not yet done so to ‘consider ratifying or acceding to the UN Convention against Corruption,’ urges improved coordination with stakeholders; underlines the importance of ‘preventative measures;’ recognises the importance of ‘anti-corruption education;’ encourages cooperation between national corruption authorities and national human rights institutions; invites the OHCHR and the UN Office on Drugs and Crime (as the secretariat of the Conference of States Parties to the UN Convention against Corruption) to ‘exchange views;’ encourages existing mechanisms of the Council (e.g. Special Procedures) to consider the issue of corruption within their mandates; and requests OHCHR to ‘prepare a compilation of best practices of efforts to counter the negative impact of corruption on the enjoyment of all human rights.’

The vagueness of these actions is noteworthy, especially when compared to the scale of the challenges posed by corruption. Therein lies the problem; how to move the international community from asserting the accurate but rather general understanding that corruption has a major negative impact on the enjoyment of human rights (especially of the most vulnerable in society); to a useful, practicable, forward-looking strategy through which the international community can leverage that understanding to support the fight against corruption – in a manner that complement the work of other relevant parts of the UN, including the UNODC - and thus promote and protect human rights.

### **Case study: Guatemala**

In 2007, faced with large-scale organised crime and organised corruption groups, which in some cases co-opted State institutions to operate with impunity and achieve their illicit goals, the Guatemalan Government reached an agreement with the UN to establish ‘The International Commission Against Impunity in Guatemala’ (CICIG)

The CICIG seeks to support Guatemalan institutions in investigating, prosecuting, and ultimately dismantling the networks of criminality and corruption that operate in the country. In contrast to other mechanisms of international cooperation for strengthening the rule of law, the CICIG is an independent investigative entity that operates under Guatemalan law and works alongside the Guatemalan justice system. As a result, it works hand-in-hand with the country’s judiciary and security institutions, building their capacities in the process.

The success of the *ad hoc* CICIG in helping to dismantle corruption networks, secure accountability and justice, and achieve redress for victims, while also building the State’s capacity to deal with corruption robustly in the future so as to avoid non-recurrence, has led observers (e.g. the Washington Office on Latin America think tank) believes that this innovative international-national mechanisms for strengthening rule of law, protecting human rights and tackling corruption, provides an interesting model that could be replicated in other countries facing similar challenges.

### **Questions for reflection and discussion**

1. What has been the Council’s approach / strategy, thus far, for contributing to the global fight against corruption? Has it been premised on raising awareness of the human rights impacts of corruption? Or on delineating and clarifying the relationship between human rights and corruption? Or on norm setting? Or on taking concrete steps to support primary global efforts to fight corruption – e.g. the UN Convention against Corruption and the work of UNODC?
2. **Have** the Council’s interventions thus far succeeded in achieving these or other goals? Has the Council had an impact?
3. What are the options available to the Council and the wider UN human rights system, in terms of making a meaningful contribution to the global fight against corruption?
4. What ‘value-added’ can the Council bring to the UN’s existing efforts in this area?
5. Would a ‘traditional’ thematic Special Procedures mandate make a meaningful contribution to wider international efforts to combat corruption and strengthen rule of law?
6. Is there scope to consider a new type of Special Procedure mandate, for example, a thematic item 10 mandate, that would be focused on providing capacity-building and technical assistance support to States faced with serious corruption challenges, and that seek international support=
7. Are there other options? For example, a treaty based mechanism, perhaps along the lines of the SPT.
8. Would a UN human rights mechanism or process complement and support existing UN approaches, such as the Corruption Convention, and its mechanism for reviewing implementation?