

# Improving the Human Rights Dimension of the Fight against Corruption

## How UN Treaty Bodies address the issue of corruption?



## Introduction

Experts and practitioners alike now widely recognize that corruption inhibits the enjoyment of civil, political, and socio-economic rights. Corruption continues to undermine justice and accountability reforms and remains both a driver of human rights abuse and a barrier to States' implementation of treaty-based human rights obligations.

Concern over the role of corruption has now been raised several times by UN Treaty Bodies with oversight of human rights treaties. UN 2030 Sustainable Development Goal No. 16, to "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels", explicitly names corruption in the sub-goal 16.4: *"by 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime to corruption"*.

However, despite being widely recognized as connected to human rights, corruption is rarely directly addressed by UN Treaty Bodies. A rare exception is the UN Human Rights Committee, which has historically linked corruption to judicial independence under the International Covenant on Civil and Political Rights (ICCPR) art. 14. More generally, the concept of a victim of corruption, and how such remedy and restitution to victims should be granted, is insufficiently addressed. This is particularly true regarding the process of asset repatriation, which stands on the intersection of human rights and anti-corruption initiatives. Stolen asset return has not been addressed by UN Treaty Bodies.

The Centre for Civil and Political Rights (CCPR) organized an international conference on 19 and 20 February to address these issues. The conference provided a venue to further discuss how the issue of corruption, in particular through the lens of victims of corruption, could be taken into consideration by UN Treaty bodies, in particular the Committee on Economic, Social and Cultural Rights (CESCR), and how this issue could be addressed under International Covenants on a) Civil and Political Rights and b) Economic, Social and Cultural Rights.

# Outcome document and plan for action

This chapter is based on the input that was given during the conference by all participants.

## 1. Usefulness of the conference and importance of the issue

All participants stressed the importance of the link between corruption and human rights violations, since both, grand and petty corruption<sup>1</sup> have a negative influence on the enjoyment of human rights.

## 2. Current challenges

Corruption is rarely directly addressed by UN Treaty Bodies. The Human Rights Committee does address the issue regularly, but almost always analyzes corruption under the angle of article 14 of the International Covenant on Civil and Political Rights (ICCPR), judicial independence. More generally, the concept of a victim of corruption, and how such remedy and restitution to victims should be granted, is insufficiently addressed. This is particularly true regarding the process of asset repatriation, which stands on the intersection of human rights and anti-corruption initiatives. Stolen asset return has not been addressed by UN Treaty Bodies at all.

## 3. Suggestions and proposals for UN Mechanisms to better address corruption

Several actions can be undertaken to improve the way in which UN Human Rights Mechanisms address corruption in their recommendations:

- Mapping: analyze how the Treaty Bodies and the Universal Periodic Review (UPR) address corruption today. Focus on what provisions are referred to by which Committees, which provisions are not referred to, although they might also be affected by corruption.
- Action plan for NGOs and anti-corruption bodies: make sure that more NGOs submit specific reports on the issue of corruption to the UN Treaty Bodies and the UPR and that those reports refer to findings of the United Nations Convention against Corruption (UNCAC). In that regard, improve the participation of anti-corruption groups to the above mentioned mechanisms so

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<sup>1</sup> According to Transparency International, the definitions of the notions ‘Grand corruption’ and ‘Petit corruption’ are as follow:

“‘Grand corruption’ consists of acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good. (see [http://files.transparency.org/content/download/2033/13144/file/GrandCorruption\\_LegalDefinition.pdf](http://files.transparency.org/content/download/2033/13144/file/GrandCorruption_LegalDefinition.pdf))

‘Petty corruption’ refers to everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.

A third type of corruption – which was not addressed in the context of this conference is the ‘political corruption’ and is defined by Transparency International as follow:

‘Political corruption’ is a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.”.

See more generally: <https://www.transparency.org/what-is-corruption>

that the Committee members are better aware of the issue and how to tackle it.

- Action plan for the Committees:
  - Harmonize the approach to corruption within each Committee, and among the Treaty Bodies. Develop a common language that can be used by all Committees when referring to corruption and use the same wording in the recommendations.
  - Develop a systematic approach or engagement on corruption issues so as to address the issue under all relevant articles of the Conventions, and not just regarding the judiciary.
  - Increase the country focus and ensure that corruption is systematically addressed in the context of the UNTB's reporting procedure.

## Summary of the panels and debates

### Opening remarks

During the opening remarks, many examples were given to show how corruption and human rights are linked. In Uzbekistan, journalists are detained and tortured because they exposed corrupt authorities, businessmen are extorted by bribes, and the access to health care and education is hampered by corruption. Persons with low income are often victim of corruption, especially since they are more reliant on social services than upper classes.

The end goal of the conference is to issue recommendations and proposals on how to better address the issue of corruption in the UN Human Rights Mechanisms, for the mechanisms themselves as well as civil society.

### Opening Session I: The Necessity of a Comprehensive Approach including UN Human Rights Mechanisms and UN Anti-Corruption Mechanisms - José Ugaz

The reality shows that human rights of people are directly impacted by corruption. However, the debate to tackle both issues at the same time is quite new.

The Corruption Perception Index, created by Transparency International, is a well-known instrument to measure the perception of the levels of corruption in a given country. It is based on several surveys and results in a scale of 0 to 100. A State receives 0 when it is completely corrupt, and 100 if there is no corruption at all. Two thirds of the countries in the world are affected by severe problems of corruption today, and those also include Northern countries. There is no country with a grade of 100, meaning that there is corruption in every country in the world.

For example, Honduras is considered the most violent country in the world. Twenty-one assassinations take place there per day. It is now taken over by Venezuela. Both countries have serious human rights issues, that are due - among other thing - by a political instabilities and high levels of organized crime, as well as corruption issues. There is an extended network of corruption in services that are not offered by the State, which shows that corruption is a basic driver of negative impacts on human rights.

In the last 15 years, the features of corruption have significantly changed. For example, corruption is much more present in the news, in particular grand corruption is reported on regularly in the press. Moreover, grand corruption impacts several countries at the same time.

The definition of corruption is very brief: it is an abuse of entrusted power for personal gain. This does not describe the complexity of the problem, and only captures public corruption. Nowadays a debate is arising on private corruption. Transparency International developed two definitions of corruption, one for legal and one for lay persons. Grand corruption has three features: authors have a considerable amount of power, it mobilizes an immense amount of resources that goes up to billions of dollars, and it has a decisive impact on the human rights of the people. Grand corruption kills and denies housing, education, health care, etc. As an example, some years ago a building collapsed in Bangladesh, where people were working to make clothes because someone paid a bribe to receive a license without respecting the conditions for it. This shows how grand corruption generates human rights violations.

Furthermore, corruption remains unpunished. Traditional judicial systems are not prepared, nor do they have the capacity to bring justice for the victims. This is because the authors of corruption are usually powerful and have the capacity to bribe the judges and to buy their sentence.

Corruption denies human rights: countries with high levels of corruption usually have a poor human rights record. This has to do with the poverty and the weakness of institutions. Corruption increases poverty and has serious consequences on good governance. So, there is a direct negative relation between corruption and human rights.

Corruption affects the three generations of human rights: civil and political rights like the right to life and the right to liberty, economic, social and cultural rights like the right to education, health, and work, and the third generation of human rights like the right to peace and environment. For example, big construction companies in Brazil were obtaining contracts from the Brazilian government and other countries, which had an impact on the right to work. Those companies were paying bribes to obtain infrastructure contracts and their work was overpriced. There was a scheme of bribes to public officials to obtain important contracts and once they received them, they started to funnel money into political parties. At this moment, many presidents and high-level politicians are in prison in Latin-America. As a consequence, thousands of people lost their job due to this corruption, and it had an impact on the budget of those countries. So, the relation between this grand corruption and the impact on the people is obvious.

Concerning the third generation of human rights, violence and war derive from cases of corruption, impacting the right to peace. The environment is also impacted negatively: tons of square meters of illegal logging in Peru with countries in America and Europe as the wood destination. All those cases are possible because there is corruption involving the officials of the Peruvian State giving certificates to the illegal wood. This has a huge impact on the native communities that live where the wood is taken. Now people are taking this case to the Inter-American system of human rights to try to make a case on Human Rights starting from corruption.

Corruption not only affects human rights, but also development. The link with the 16<sup>th</sup> SDGs, namely: 'Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels', of which one target is to reduce corruption and bribery. A

lot of money disappears into corruption and bribes, and that money could be used to improve the human rights situation in many countries.

What is the responsibility of the State in that regard? There are three obligations for States: respect, protect and satisfy human rights. These also apply regarding corruption. To respect these obligations, we can use several UN mechanisms as part of an anti-corruption strategy:

- Human Rights Council
- Special procedures
- UN Treaty Bodies
- OHCHR
- UNCAC
- UNDP
- Etc.

How can we draft an anti-corruption strategy?

- Civil society can draft specific reports on corruption and its impact on human rights.
- Strategies should be coordinated with UNDP, which has people in the field.
- Criminal law approach: lower the malice, the required intent. There should be no need to have the specific intent to violate human rights. The intent related to corruption crimes is often to take money for yourself, but it has a consequence on human rights.
- There should be no need to prove a concrete result. It should suffice that that the act is absolutely dangerous for the enjoyment of human rights of the people.

## Opening Session II: The fight against Corruption in Tunisia and the role of the Truth and Dignity Commission - Sihem Bensedrine

Sihem Bensedrine, President of the Truth and Dignity Commission (TDC) of Tunisia, spoke about the role of the Commission in the fight against corruption. The objective of the Commission is to find the truth about human rights violations that took place in Tunisia for the last 60 years.

Tunisia's legislation is progressive in the sense that the **organic link between human rights violations and corruption is explicitly mentioned in the law**. It is one of the few legislations where this link is made explicit.

The **definition of victims** in the TDC is broad and can be an individual, a group, a legal person, a region or the State itself. An **arbitration mechanism** was set up to encourage those who have been the beneficiaries of corruption to present themselves voluntarily. They will then be offered an arbitration procedure. Once the agreement is signed, legal proceedings against the party concerned will be suspended. An apology is a clear condition before the arbitration agreement can be valid.

An **institutional reform** and the set-up of a **vetting mechanism** aims at dismantling the system of corruption and to guarantee the non-repetition of violations. The reform will include revising legislation, vetting, etc. However, there is no political will in Tunisia today to organise this reform. Even more, a law was adopted in September 2017 that limits the mandate of the TDC. It banalizes corruption and turns criminals into victims, who then remain unpunished.

## Current approach of UN Human Rights Mechanisms addressing corruption

### 1. UN Human Rights Committee - Marcia Kran

Corruption is a barrier to implementation of human rights, and the links between both can be broken down into three categories:

- **Direct violations:** when a corrupt act is used deliberately as a means to violate a right or when a state official acts or fails to act in a way that prevents individuals from having access to a right. For example, if a judge receives a bribe, the right to a fair trial is violated.
- **Indirect violations:** when corruption contributes to an event that leads to a violation of human rights. For example, a state official allows the importation of toxic waste after being bribed. The violations would not have occurred without the bribe.
- **Remote violations:** when, for example, a State violently suppresses protests after a corrupt election has taken place, and violated the right to life in that suppression.

Corruption can be linked to human rights violations in various ways, as recognized by practitioners. However, it is rarely addressed by the Treaty Bodies.

As for the Human Rights Committee (hereinafter HR Committee), corruption was raised in 39 **individual communications** between 1999 and 2015. 16 of them dealt with corruption in the justice system, 13 dealt with discrediting those who expose corruption, five cases discredited political opponents through charges of corruption and five cases are about general allegations of corruption against governments.

Of those 39, 11 cases were found to be inadmissible. Of the 28 admissible cases, the HR Committee addressed corruption in only five communications.

The first case was about the vice-president of a bank in Venezuela who was a victim of government retaliation because he financed opposition politicians. However, there was no express discussion of the corruption as a casual factor. The second case was about an Algerian whistle-blower who was wrongfully prosecuted: he made allegations of corruption and those were the reasons behind his criminal conviction, which violated his right to a fair trial. In a third case, Kyrgyzstan used an anti-corruption campaign to prevent a political opponent from participating in elections. The HR Committee mentioned the alleged corruption, but did not address it in the decision. The fourth case was a similar one against Algeria, where the Committee again did not discuss the alleged corruption. Lastly, in a case against Uzbekistan, the Committee found violations of due process. It noted the allegations of corruption but did not link the violations to corruption.

These communications illustrate that there is only a very limited number of cases where the Committee has considered acts of corruption in its views. Moreover, the analysis is superficial and did not link the human rights violations with the allegations of corruption.

The HR Committee also deals with corruption in its **Concluding Observations (Cobs)**. Between 2007 and 2017, the Committee reviewed 182 State parties. In 39 Cobs, the Committee mentioned corruption as a concern or problem. Of those 39, the overwhelming majority is about corruption related to article 14 ICCPR, judicial corruption and the right to a fair trial (32). Most of them were related to the lack of independence of judges.

The Committee made recommendations on corruption to 27 out of the 39 countries where corruption was found to be a concern. Of those, 21 were about corruption in the judiciary. Four were about corruption within prison or penitentiary facilities, all differently worded.

In Uzbekistan, the Committee noted that corruption in the registration system resulted in a violation of the freedom of movement. In Bosnia and Herzegovina, the Committee stated that corruption among public officials resulted in a violation of effective participation in public life. In both Uzbekistan and Kazakhstan, the Committee expressed concern about corruption in relation to human trafficking.

We can derive several conclusions from this information:

- When the HR Committee is concerned about corruption, it is mainly focused on corruption within the judiciary.
- The wording of the recommendations on corruption is not systematic.
- Most of the recommendations are broad and general, like 'combat corruption'.
- If there is further specification, the Committee tends to focus on investigations, prosecutions and punishment of the perpetrators, including of complicit judges or judicial officers.
- Only once did the Committee recommend that the subject fighting corruption should be included in the training curriculum for judges.
- Almost one third of the concerns about corruption do not correspond to an accompanying recommendations. It is not clear why.

## 2. UN Committee on Economic, Social and Cultural Rights - Dzidek Kedzia

For the time being, CESCR has no comprehensive interpretation of the impact of corruption. There is no comprehensive approach to human rights in fighting corruption, neither in the form of a General Comment (GC), nor in COBs.

The Committee's position on this issue reflects two dimensions:

- It has a negative impact on the enjoyment of economic, social and cultural rights. The Committee points to the following factors in that regard: grand and systemic corruption undermines the State's capacity to use the maximum available resources. Corruption renders it impossible to provide services and may lead to discrimination. Only those who can afford it to pay, receive services. Corruption is one of the major causes of the lack of the rule of law.
- The Human Rights standards must be respected while fighting corruption. This is not only the case for whistle-blowers, but also regarding perpetrators of corruption.

Can corruption as such be recognized as a violation of human rights? This has its importance for the individual complaint mechanism, which has been active since 2013. Or is corruption merely an aggravating factor? These questions need to be answered to handle individual communications. It is probably easier to see corruption as a direct violation of human rights where it leads to discrimination, for example regarding access to medical care. The illegal payment leads to the exclusion of care.



It is important to note that the Treaty Bodies have tremendous time constraints. So if concerns have to be selected, this is based on which criteria? Which forms of corruption should draw the attention of the Committees? Should issues related to corruption, like illicit transfer of funds, be included? Or just corruption as such? These questions have to be answered.

The CESCR did not adopt any individual communications related to corruption yet. The General Comments were silent on corruption until GC 24 was adopted in 2017, on States' obligations in the Covenant in the context of business activities.

Concerning the Cobs, there has been a change: corruption is increasingly addressed in the last 7-8 years. It is mentioned in the following categories:

- As a general formula: this is important because it provides the Committee with the legitimation to ask questions about corruption during the next periodic review.
- As a recommendation to analyse the root causes of corruption, to improve the transparency in public affairs, to monitor the distribution of funds, to combat impunity through laws and prosecutions of cases.
- There is a need for cooperation between anti-corruption and human rights institutions, and a need for protection of victims and those involved in combating corruption.
- Anti-corruption strategies should be enhanced, including training of the judiciary.
- We need to focus on specific areas related to corruption: health care, education, etc.

To summarize, the Committee will remain seized with the impact of corruption. Gradually the recommendations will provide the CESCR with the basis for a conceptual synthesis, for a future General Comment on corruption and human rights.

Comments from the floor suggested that the Committee has been dealing with issues of corruption in the different phases of the periodic review as an obstacle to the enjoyment of ESC rights by asking countries like Tanzania, Equatorial Guinea, Albania, Rwanda, China, Djibouti, Egypt, Armenia, etc., to provide information on these matters. These questions asked to the different states remained nevertheless vague and general.

Sharing the example of the United Kingdom recent examination, the expert stressed that the Committee is improving its work by addressing more systematically the transnational dimensions of corruption. For instance, hiding assets and grand corruption was mentioned as a big problem in the UK and territories under their jurisdiction with no appropriate answer from the state during its evaluation.

Concluding Observations of the Committee on the Elimination of Discrimination against Women on Switzerland were also mentioned:

*"Undertake independent, participatory and periodic impact assessments of the extraterritorial effects of its financial secrecy and corporate tax policies on women's rights and substantive equality, and ensure that such assessments are conducted in an impartial manner with public disclosure of the methodology and finding" (para. 41).<sup>2</sup>*

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<sup>2</sup> CEDAW/C/CHE/CO/4-5, November 2016

Interesting attempts to identify the international responsibility of all states to work collaboratively towards elimination this form of corruption were also underlined.

As mentioned by several studies, there is not only a political commitments but also human rights obligations to address corruption:

- Research-based study on the impact of flow of funds of illicit origin and the non-repatriation thereof to the countries of origin on the enjoyment of human rights, including economic, social and cultural rights - Progress report of the Advisory Committee of the Human Rights Council (A/HRC/36/52) (9 August 2017).
- Final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky (A/HRC/ 31/61) (15 January 2016), para. 42: "While the ICESCR refers in particular to economic and technical assistance and cooperation, international assistance may comprise other measures, including provision of information to people in other countries or cooperation with their State, for example, to trace stolen public funds".

On the other hand, as a preliminary attempt to become more systematic and impartial, he also shared that at the Committee on Economic, Social and Cultural Rights 61st Pre-Sessional Working Group (8-13 October 2017), they tried to agree on the series of questions regarding to corruption that in the future, they could use.

### 3. Universal Periodic Review - Hans Fridlund & David Ugolor

The recommendations adopted in the context of the UPR are divided into 56 themes. Corruption is ranked 48. Only 307 recommendations since the beginning of the UPR deal explicitly with corruption and corruption related affairs. A worrying trend is that these recommendations are getting less specific, less action-oriented than the average UPR recommendation. Corruption related issues might be seen as sensitive and controversial, and States shy away from that during the UPR.

There are also positive trends: there has been an increase of recommendations related to corruption in the second cycle, and hopefully that continues throughout the third cycle. Moreover, the acceptance level is 71% which is very high. However, that matters little if the recommendations are not implemented, or if they are vague and not specific.

Recommending States are primarily developed countries, while the States receiving recommendations on corruption are particularly developing countries.

The Western European group is making more recommendations than receiving, while the other geographical groups are more at the receiving end of the recommendations.

Concerning the specificity of the recommendations on corruption, they are vague and not specific, while specific recommendations are more likely to contribute to change. Implementation is difficult to assess when a recommendation is very general. A good,

specific recommendation is one where we can extract an indicator, monitor progress and is limited to one issue.

The point of departure is to look back at the recommendations that were adopted during the previous cycles. Recommending States recycle recommendations that have not been implemented yet, or modify past recommendations to strengthen them with the SMART formula. This is important because otherwise cycles are looked at like they are isolated, while they are not.

There is a need to involve in-country and judiciary implementation. It is absolutely necessary to structure follow-up in the country. This could also be a joint structure that frequently meets, where all recommendations are clustered.

Turning to a specific country, experience was shared regarding the engagement of the Election Monitoring and Democracy Studies Center successfully advocated in the context of UPR to raise the issue of corruption in Azerbaijan. The Center submitted a report, looking at previous UPR Recommendations and reports, other reports and their own observations in the field. The advocacy strategy was based on the States usually recommending about corruption. One of the main challenges was to develop a large coalition on this issue and to involve several NGOs that participated in the UPR process.

## Challenges

First of all, there are **inconsistencies in the approach** and the wording of the recommendations related to corruption. Inconsistency is not a fault per se, because the Committees have to be context-specific. The level of priority of corruption will vary according to the country. So, it is important to distinguish between consistency and context-specificity.

Another issue is the fact that this ad hoc approach results in **gaps**. For example, the only country in the Middle-East where the Committee has a recommendation on corruption, is Yemen, while in other regions, in more than 1/3 of the countries is corruption addressed. This issue is somewhat dependent on the concerns of the individual members of the Committee.

Furthermore, the Committee **focuses disproportionately on article 14** of the ICCPR, the right to a fair trial. In certain countries it is combined with other articles, and in others it is not. Sometimes there is no explanation given as to why the article is mentioned. Word limits might play a role there, but COBs have to make sense to readers.

Moreover, the Committee **does not always explain the link** between corruption and a violation of a human right. In Bosnia and Herzegovina, for example, the Committee mentions corruption and then concludes that article 25 of the Covenant is violated, but it is not clear how corruption has led to this violation.

Another gap is the **role of private actors**. The only time this was addressed by the Committee, was in Bulgaria's COBs regarding corruption in the prison system. There is a need for a more consistent approach on this issue.

Moreover, there is a **mismatch between the concerns and the recommendations**. It is important to keep track of the fact that all concerns have a corresponding recommendation.

As a positive point, the **topic has gained importance**. The Committees are paying more and more attention to it and this will translate in the work. For example, in the Committee's session of October 2017, the Committee was concerned about corruption in three countries: Romania, Dominican Republic and Cameroon. In Romania, the concern was framed under article 2 and 14, as usual. But it goes beyond that, looking into harassment of the head of the anti-corruption directorate. In the Dominican Republic, the Committee needed more information to be able to show the link between corruption and non-discrimination to be able to be explicit.

Cameroon is an interesting example of where the Committee could be heading. Anti-corruption is a separate heading, very early on in the Cobs which shows the importance of the concern. It is linked to articles 2, 14, 25 and 26. This broad area of concerns is new, to health care and education for example. It is also notable that the recommendation follows the concern. This is something to build on.

The Human Rights Committee and the Committee against Torture both have the most **individual communications** related to corruption. The Committee on the Elimination of Discrimination against Women had two cases, but corruption is more mentioned on the side. Many do not go into the analysis of corruption, but merely mention it. Often the cases are about authors that are accused of corruption and then end up in procedures that are problematic or arbitrary detention. There are also several cases on the freedom of expression where whistle-blowers and people who report on corruption have been harassed, detained and prosecuted. This is an important development to take on board. Many individual communications have been deemed inadmissible, mostly because the domestic remedies were not exhausted. This is a difficult issue in corruption cases because often authors do not get that far.

The Committee members stressed that they **need to receive information** to use in a credible way during the dialogue. It is important to make materials available to the Committees. The role of NHRIs and of civil society is crucial in that regard. There is a need for more specific research: data on itself is not enough, we need to investigate the connection between corruption and human rights.

**To conclude**, there are articles where the link between the violation and corruption has to be clarified. There are missing articles: article 19, the freedom of expression for example, has been addressed in individual communications but not in Cobs when it comes to corruption. The Committees have to step up the efforts regarding article 27 that guarantees the rights of minorities. Indigenous people for example experience direct effects from corruption regarding land resources and licensing. The gender dimension comes in under discrimination.

**David Ugolor, Executive Director of Africa Network for Environment and Economic Justice in Nigeria**, gave the point of view of the national NGO in this regard. He spoke about the thematic approach and whether there is a difference between petty and grand corruption.

According to him, there is no difference between petty and grand corruption. They cannot be separated because they influence each other. A challenge for victims is access to information and asset recovery because citizens are not aware of the possibility to recover assets.

Another challenge is the anti-corruption agency. It has to be independent to operate in the country, but in Nigeria government is very strong and influences the anti-corruption agency. The international mechanisms are an opportunity when the national system is failing.

Thirdly, it is important to consider how to get local citizens involved to use the international instruments. This is an issue of capacity and transparency that is fundamental at the national level.

It was mentioned that there is a lack of coordination between the different mechanisms and national judiciaries. The UN mechanisms lack enforcement power, while national mechanisms do not. Is this perspective realistic to maximize the effects of the judgements? Is there coherence between the cases?

In the subsequent dialogue with the audience, ESCR Committee member stressed that the HR Committee would certainly benefit from being fed with much more information concerning the reality of corruption. Since, by definition, this type of information is not going to be provided in the states' periodic reports. In this sense, the Committees depend on the inputs of CSO and victims of corruption.

## **The concept of victims of corruption and possibility of litigating corruption issues before the UN Treaty Bodies - Carmen Rueda & Kristian Lasslet**

The session focused on the concept of victims and explored the possibility for victims of corruption to litigate and engage treaty bodies, particularly in the context of the Optional Protocols to the Covenants. The panel also explored how justice for victims of corruption can be approached in a participatory manner.

### **Carmen Rueda (Former OHCHR - petition team)**

This presentation tackled the concept of victims and the issue of corruption in the jurisprudence of the Committee on Economic, Social and Cultural Rights (CESCR) and the Human Rights Committee (HR Committee) under the individual complaint's mechanisms.

#### **UN Committee on Economic, Social and Cultural Rights:**

- It has not yet had the opportunity to adjudicate individual complaints involving issues of corruption.
- The Optional Protocol provides CESCR with the function of dealing with individual complaints, nevertheless it is a very recent instrument.
- It entered into force in 2013, has been ratified by 23 countries and, up to now, only nine cases have been decided by the Committee. None of them involved issues of corruption.

#### **UN Human Rights Committee:**

- By contrast, the practice and jurisprudence of the Human Rights Committee is extensive, since the Committee has been examining individual complaints since 1976 (when the Optional Protocol to the ICCPR entered into force).

- Yet, very few complaints have raised issues of corruption and not in a direct manner.
- Consequently, the Committee has not have the opportunity to make determinations in this area, regarding questions such as State responsibility for the conduct of its agents, the status of victims of corruption or the measures of reparation for the victims.

It was also raised that, in order for the Committees to address the issues of corruption as such, the complainant has to be able to show the existence of a link between an act of corruption and the violation of an individual's rights under the Covenants. An example was given in regards to how the complainant in a case did not argue the issue of corruption *per se*. In the case *Kingue v. Cameroon* the complainant main claim before the Committee was that, despite the fact that the charges against him had been dropped as a result of the Supreme Court's rulings, he had not received any compensation for his arbitrary detention. His request was that the Committee urge the State to provide him with such compensation.

Although there were many issues that could have been examined by the Committee from the point of view of the corruption phenomena, the case was examined by the perspective of compensation, since it is was the only issue litigated by complainant itself.

Additional information was shared on the following issue:

*With regard to representation:*

- The individual who brings a complaint before a committee claims to be a victim of a violation by the State concerned of any of the rights set forth in the respective Covenant. It should be submitted by the individual (alleged victim) personally or by that individual's representative (a lawyer, an NGO, a family member, etc.), in which case written consent must be signed by the alleged victim. A complaint submitted on behalf of an alleged victim without written consent may be accepted when it appears that the individual in question is unable to provide it. An explanation in this regard must be given (for instance, the person is in prison without access to the outside world).
- It is not necessary to have a lawyer prepare the case, though legal advice may improve the quality of the submissions and increase significantly the prospect of success.
- Proceedings before the Committees are free of charge. However, the UN does not provide legal aid under these procedures.
- The Committees welcome the submission of third party interventions (for instance *Amicus Curiae*).

*With regard to contents of the complaint:*

- The complainant must explain why he or she considers that the facts described constitute a violation of the Covenant in question. In this respect, it is highly recommended that complainants should specify the provisions and Covenant rights alleged to have been violated. It is also advisable to indicate the kind of remedies that the complainant would like to obtain from the State party, should the Committee conclude that the facts before it disclose a violation. Such indication may guide the Committee in identifying the most effective and significative reparation for the victim, although the Committee is not obliged to follow this request.

*In regards to identification/status of the victim:*

- It has to be shown that the alleged victim is personally and directly affected by the law, policy, practice, act or omission of the State party which constitutes the object of the complaint. It is not sufficient simply to challenge a law or State policy or practice in the abstract (so-called *actio popularis*), without demonstrating how the alleged victim is individually affected.
- The person who submits the complaint must be an “individual” and not a “legal entity”. The HR Committee has developed extended jurisprudence on this matter. Ms. Rueda affirmed that is not an easy task to differentiate the rights of the individual and the ones of the legal entity and this analysis has to be done in a case by case basis.
- The complaint can be submitted not only by an individual complainant but also by a group of persons with similar or identical claims. However, the members of the group must be clearly identified by their names and circumstances. If no clear link is shown between the facts amounting to an alleged violation and the specific damage caused to those who submit the complaint the case will, most likely, be declared inadmissible.
- The issue of consent is important when submitted on behalf of individuals or groups of individuals, unless the author/s can justify acting on their behalf without such consent under the Optional Protocol and the rules of procedure. In its current practice, CESCR seems to follow the jurisprudence of the HR Committee regarding the need for members of a group to be clearly identified. For instance, in a case of inadmissibility “Alarcon Flores et al v. Ecuador”, the complaint was submitted by 117 individuals, all of which were identified by their names in the Committee’s final decision.

*In regards to burden of proof:*

- Very often complainants build their cases on general assertions based, for instance, on information from the press or in the public domain, but without necessarily showing the existence of a link between the events described and the breach of their individual rights under the Covenants. This type of claims can easily lead to a conclusion by the Committees that the complaint is inadmissible for lack of substantiation, or that the information provided is not detailed enough for the complaint to be registered and transmitted to the State concerned for observations.
- Likewise, States often respond to the allegations of the complainants also in a very general manner, or even merely denying the allegations. In these situations, the Committees give credit to the allegations of the complainant, provided that these allegations are sufficiently substantiated.
- The burden of proof is therefore, is shared by both parties. Both have the obligation to provide the Committee with sufficient elements and information (facts and law) allowing it to reach an informed decision.

*In regards to the measures of reparation:*

- CESCR has a very insipid jurisprudence in which they distinguish between individual and general measures. No jurisprudence on the substance is available.
- On the contrary, the HR Committee has developed guidelines specifying that when a complaint reveals violations of the Covenant it sets out measures designed to make full reparation to the victims (in the form of restitution, compensation, rehabilitation and measures of satisfaction), as well as measures aimed at preventing the recurrence of similar violations in the future (i.e. guarantees of non-repetition).

- When deciding which measures of reparation are appropriate, the Committee takes into consideration elements such as the position of the parties in the complaint in question, or the specific circumstances surrounding the case. The tendency in the jurisprudence is to be as specific and targeted as possible when identifying the measures.

**As a conclusion, some tips were suggested to the CSOs:**

- NGOs wishing to submit complaints to the Committees may identify cases involving conducts related to corruption by public servants irrespective of considerations as to whether those servants were acting as “private persons” or in their “official capacity”. This will provide the Committees with the opportunity to develop its jurisprudence on the scope of State responsibility under the human rights treaties and the circumstances under which an act can engage the responsibility of just the individual who committed it or contributed to its commission, or the responsibility of the State, which the individual in question “represented”. Submitting complaints may also provide the Committees with an opportunity to examine whether legal notions such as “indirect malice” or “acts of abstract danger” could be used in human rights law with a view to establish the responsibility of the state and protect victims of corruption.
- In selecting cases for international litigation, NGOs may focus not only on the substantive issue but also on any possible breach of the State obligation to provide victims of human rights violations with an effective remedy determined by competent authorities and that such remedies are enforced when granted (an obligation enshrined in article 2.3 ICCPR.).

**Kristian Lasslet (Professor and Head of the School of Applied Social and Policy Studies -Ulster University)**

As an expert investigating grand corruption, the speaker approached the subject from a different and instrumentalist approach: victims and transformative justice. He introduced his research on corruption in Papua New Guinea and Uzbekistan, countries heavily impacted by grand corruption. The type of conduct analysed includes bribery, market rigging, price fixing, fraud, extortion rackets, asset-raiding, misappropriation, tax evasion, to name a few examples. Once the data on these activities was aggregated, underpinning structural processes could be observed, that were not apparent by looking at single cases alone.

In these political economies, a specific “power” could be observed. This power is concentrated in a small number of people that are often interconnected as network of affiliation.

This has created a context where a number of things, can be facilitated such as elite actors using growing disparities in political and economic power, in order to manipulate control over economic resources, and the distribution of revenues. As a consequence of this activity, the wider population is inhibited from gaining access to resources, goods and services essential to realising their human capabilities. Furthermore, it was explained that another advantage is gained by manipulating markets to shift prices so goods and services trade at a lower or higher price than they otherwise would, leading to a diversion of revenues into the profits of a kleptocratic elite; a process that can be further augmented through tax evasion. Meanwhile, the benefiting elite attempts to protect the levers used to ratchet up, in their favour, the share of national economic resources and revenues, by insulating political power from democratic control.



It was stressed that an anti-corruption practice, of course, should not only be about public integrity. That said, it must devote much more attention to how we address the serious imbalances of power in our society, which enable an insulated class of elite actors, to exploit the political landscape, to rig in various degrees, the distribution of economic resources and revenues. This means, trying to build more socially inclusive vehicles for a much wider public to share in power and exert direct control over these resources and revenues.

This approach would serve to the critics on anti-corruption which include it being:

- Elitist;
- Technical;
- Focused on institutional reform; and,
- Victims are not part of the solutions in a sustainable way > it disconnects from the people that have suffered harm (since it does not seem to mobilise them, just trying to do justice in their name but not in collaboration with them).

In this sense, the author explained that at this point is when a victims of corruption approach is important, since it provides a powerful hook where one can begin to create a space where people who suffered real abuse and harm, can build their capacity and to become part of the democratic accountability mechanisms that will act as a buttress against future corruption.

Besides, it was argued that there are very different concepts of victims and there is no agreement. The variation in approaches allude to the potential for confusion, but also highlights the importance of specifying the exact sense in which a victims-centred approach can have a democratising role. Victims can be think as:

Ø **Tortious category** designed to identify those who have suffered harm as a result of specific conduct, who in turn have standing to seek remedy in the courts or other negotiated forums. Ø **Analytical category** which focuses on how the deviant activity harms individuals and communities, i.e. the victimisation process. Harm here denotes direct forms of violence that result from corruption (theft of personal assets, gouging of consumers, torture, imprisonment, etc.), or structural forms of violence (reduced access to health, education, social services, etc.) which diminishes the capacity of affected peoples to fully realise their human potential (Meng and Friday, 2014). <sup>L</sup><sub>SEP</sub>

Ø **Constructionist category** that captures the complex negotiated ways in which individuals and communities begin to define themselves through the lens of victimhood, and then leverage this status to publicly pursue contentious claims. <sup>L</sup><sub>SEP</sub>

Ø **Transformative category** which focuses on organising a socially inclusive response to victimisation, which ensures that those deleteriously effected by corruption, have a <sup>L</sup><sub>SEP</sub> role to play in diagnosing the problem, designing the solution, and participating in any subsequent remedial/reformative process.

Professor Lasslet focused on the analytical (victimization) and the transformative categories. He also quotes a number of UN guidelines in respect to victims and the rights they are entitled to such as the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. The latter framework is important he explained, because it prescribes holistic set of rights to

those victimised through gross human rights violations can expect to enjoy including the right to restitution, compensation, rehabilitation, satisfaction (cessation of violations, truth, judicial and administrative sanctions against perpetrators, memorialisation), and guarantees of non-repetition (effecting democratic controls, enhancing rule of law, protection of civil society, public education, legal reform, on-going social monitoring).

Likewise, Lasslett quotes the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, provides a definition of victims:

Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

Nevertheless, the problem with the UN guidelines and discussions surrounding the subject is that they do not guarantee that facilitated forms of empowering victims and retaking their resources, are created. This is when a new paradigm of justice known as transformative justice is worth considering. It is proposed by transitional justice scholars to address such shortcoming and it is an approach that can enliven the rights of victims set out in the above criteria, so they are genuine pathways for challenging the disparities of powers and structural drives that stimulate grand corruption.

## National experiences with the fight against corruption

### The victim of grand and petty corruption: Experiences

CASE	SPEAKER/S
Practical cases of BOTA Foundation in assisting victims in Kazakhstan	Aaron Bornstein (Former Executive Director of BOTA Foundation / USA) and Yevgeniy Zhovtis (Director of the International Bureau for Human Rights and Rule of Law/ Kazakhstan)
Victims of corruption in the cotton in Uzbekistan	Umida Niyazova (Director, Uzbek-German Forum for Human Rights)
Fighting corruption in Azerbaijan": without genuine CSOs, free media and independent court system	Gubad Ibadoghlu (Senior analyst for social and economic studies at Azerbaijan's Economic Research Center)

### Practical cases of BOTA Foundation in assisting victims in Kazakhstan (KZ) - Aaron Bornstein & Yevgeniy Zhovtis.

BOTA is the prime example of a non-state actor returning funds accountably and transparently. This presentation explained how it was done, what BOTA achieved, and had not achieved, and the lessons learned from this unique undertaking. It was not a legal search or punishment but what they have in place is a rational pragmatic approach.

BOTA foundation emerged as result of the so-called Kazakhgate scandal about money stolen by high-ranking officials that were and are in power, from public funds. It all

started in 1999 with an investigation in Switzerland where bank accounts were found in relation to said corruption scandal involving a person called James Giffen, a US American person that assisted in this crime, later arrested but then released. Reports about Giffen and high-ranking officials from Kazakhstan appeared in the media and the US opened a criminal case. The assets of Giffen were seized in Swiss bank accounts. Discussions between Switzerland, the USA and Kazakhstan resulted in a memorandum of the World Bank about the return of those funds, with the requirement that no official or State structure could have access to this money that belonged to the people of Kazakhstan. This is where the need for an independent foundation emerged, and BOTA was created to assume this role. Five persons of Kazakh origin should set up the BOTA foundation with the involvement of an international NGO to decide upon how these funds should be invested. Zhovtis was nominated by the Swiss Government, others by the other stakeholders. Save the Children and IREX won the bid as the international partners to start this project. In 2014, BOTA closed its doors.

The presenters explained that one of the challenges was the prohibition to work with the Government. But how to conduct a project, which is about providing social services, without involving the Government? In reality BOTA had to work with the Government in many ways. However, it was clear that it had to avoid that the Government would influence the decision on how to spend the money or to avoid them to get any of the money for that matter. There were clear red lines, as outlined in the memorandum. For this, it was necessary for the World Bank and the three governments to monitor the process.

Why BOTA's Focus on the Poor and how do they do it?

First of all, it was a fundamental founding principle agreed to by the Parties, supported by the World Bank, enshrined in the Memorandum.

For instance the U.S. indicated that if it were to give up claim to funds, "it would restore forfeited property to victims of the underlying criminal violation...for the benefit of poor children and youth in KZ". The Government of Kazakhstan - if it had access to the funds, "would use them to benefit the people of KZ and all Parties agree that the Funds should benefit "the most needy people of KZ".

On the other hand, the Swiss government was supportive of a settlement assisting the poor, especially with World Bank technical and fiduciary oversight.

In this sense, BOTA's mission was to improve the health, education, and social welfare of children, youth and their families suffering from poverty in Kazakhstan.

Mr. Bornstein presented some challenges of BOTA's Focus on the Poor:

- Prohibition of working directly with the GoK.
- How to reach the target population, given need to be independent of GoK, in the world's 9<sup>th</sup> largest country? In this line, they worked with the government getting free advertisement on the TV, radio, etc. They partnered with NGOs, universities.
- Qualifying/validating deserving beneficiaries - not enough resources for all: For this matter, they developed a proxy test (computerised survey) based on statistics of poverty. Thanks to this test they could characterise households and qualify people within 30 minutes and sign them up to the BOTA program.
- Finding capable NGO partners, especially to work with beneficiaries in remote regions.

- Bureaucratic delays in receiving approvals for drawing down funds, especially from US. Department of Justice, which is not an aid agency and had other priorities.

Mr. Zhovtis explained the governance and controls:

- BOTA had five Kazakh founders (Kazakh citizens), whose responsibilities were transferred to the Board of Trustees (BoT) and they became members of the Board;
- US and Swiss Governments also were represented on BoT;
- In 2008, Management of BOTA tendered to partnership between two international NGOs (IREX and Save the Children);
- Executive and Finance Directors were employed by IREX;
- BOTA Foundation supervised technically and financially by the World Bank;
- BOTA was also subject to annual internal audit (from IREX) and external audit (from international standard firm);
- Annual work plans, budgets, drawdown cash requests were approved by the BoT, World Bank and founding governments.

After this, Mr. Bornstein explained the Unique Features of BOTA, focusing on the Zero Tolerance philosophy they had towards corruption since there was a hypersensitivity about any of the funds going missing again (which usually happens in asset recovery processes in the world):

- Hyper controls: multiple sets of controls on the foundation and how money spent and accounted for, e.g., money dispensed in tranches twice a year.
- No conflict of interests:
  - GoK could not influence how funds spent, or benefit from them;
  - All vendors, potential employees & grantees screened;
  - Hybrid organisation - locally founded, but governed by international treaty: 7 Trustees - 5 local - 2 international “super trustees” - 3 Governments had final say in all “substantial matters”; additional conditionalities imposed - EITI and Accounting Reform.
- International program manager.
- Supervision by the World Bank.
- Internal and external annual audits.
- BOTA was a “Spend-Down” Foundation.

Mr. Bornstein also stressed that BOTA had implemented 3 programs. The biggest one was the Conditional Cash Transfer. It had 150,000 beneficiaries. This World Bank’s idea was to directly transfer cash (\$59 million) to 95,000 households and link it to GoK services plus individual trainings.

BOTA also had a Social Service Program. It was a grant program that involved 600 projects of 300 NGOs funded & capacity development and networking with around 53,000 end beneficiaries.

Another program was the Tuition Assistance Program (TAP) that gave 841 full scholarships and support for poor youth from remote areas:

**General Tuition Assistance Program statistics**

Number of TAP grantees	2009 cohort	2010 cohort	2011 cohort	2012 cohort	Total	%
University students	78	208	268	136	690	82
College students	9	29	60	53	151	18

Total	87	237	328	189	841	100
Total number of Grantees	841			%		
Male	244			29		
Female	597			71		
People with disabilities	16			2		
Orphans (with parents> they were abandoned)	137			16		

It was explained that BOTA transferred about \$80 million of \$115 million back to poor families in Kazakhstan (69%) directly (86%) or through NGO grants (14%). The rest went to training, administrative issues, etc.

It was indicated that there also put in place the Cash to Access State Services (CCT). Its objectives were:

- Decreasing of anemia level among pregnant and lactating women, to improve health of new-born children;
- Quality improvement of home based care for children with disabilities through involvement parents in development of their children;
- Expansion of access to early child development services for children aged 4-6; and,
- Expansion of employment opportunity for youth aged 16-19.

The BOTA NGO Social Service Grants by Sectors (632 in total) was distributed as follows:

- Mother and Child Health (20/3%)
- Early Childhood Development (64/10%)
- Youth Livelihoods (18/29%)
- Child protection (364/58%)

To conclude, the panellist shared the key lessons learned from the BOTA experience:

- BOTA was the “Proof of Concept” of the “non-state actor managed” corruption asset repatriation mechanism. BOTA succeeded in returning around \$80 million in corruption assets to “corruption victims”, the poor, in Kazakhstan effectively, accountably and transparently, in a limited time period (5 years).
- Important success ingredients included: close cooperation with civil society and the NGO sector; close cooperation of the GoK/media; World Bank involvement as an honest broker; and a reputable international NGO overseeing BOTA’s operations.
- Corruption risk always exists. There were mitigation strategies needed from the outset and to be vigilant all the time. Not one cent was lost.
- BOTA’s top-heavy supervisory structure should be avoided, if possible, for future corruption-related asset return schemes.
- The success and lessons of BOTA needs to be more widely understood and mainstreamed as an optimal solution for returning stolen and stranded assets.

### Victims of corruption in the cotton in Uzbekistan - Umida Niyazova

Umida Niyazova started her intervention by telling her own story as journalist: In 2006, when she started to write an article about Gulnara Karimova, then the most

powerful women in Uzbekistan, the secret service confiscated her computer alleging her information was a threat to the state. They also affirmed that this file, that was not even published yet, contains information affecting the identity of the former President of Uzbekistan. For these reasons, there were three criminal cases against her. After serving four months in a Tashkent prison, thanks to international organisations, she was released.

After this, she explained that Uzbekistan is the fifth largest producer of cotton in the world. It is produced affecting the population with forced labour, extortion, reduced service, penalties, fines, threats, etc.

It is known that officials at every level involved in implementing the forced labour system. Around 1 million citizens are involved in picking cotton.

Each year, according to the ILO, 2 and a half million people are involved in manual cotton harvesting. Due to the high rate of unemployment a lot of persons would be interested to work in the cotton field, if decent wages were granted. However, this is not the position of the authorities that try to limit the cost to keep the price of the cotton as low as possible.

Forced labour is thus widespread and systematic. Furthermore, reports on how local officials use very abusive language and insults to threaten population.

In the cotton fields, open extortion of entrepreneurs is key since the government uses threats and administrative pressure to make people support cotton production in hand with no transparency on where is this money going. In 2017, it became known that the prosecutor's office had launched an investigation on the disappearance of cash that have been extorted from entrepreneurs in the 3 major markets.

Umida Niyazova explained that people who cannot or do not want to work must pay for a replacement or pay bribes to the supervisors. The scale of bribery and various unreported payment is enormous.

Every year they report deaths which are associated with stress of the mobilization in the cotton harvest.

Umida Niyazova also shared some positive aspects. With the election of a new President there is some hope. It was announced that a number of cotton fields will be reduced and textile enterprises will take control of their own land. Nevertheless, the president himself has forced people to work for free. Now, at least, it's clear that he understands the problem.

She concludes by saying that in order to attract workers to the cotton sector and to harvest cotton, it is necessary to pay them a decent wage. It means the cost of cotton will increase and there will be less money for someone that controls its income. Changing the forced labour system is the only way to ensure people can earn a decent income for themselves and their families.

### [Fighting corruption in Azerbaijan: without genuine CSOs, free media and independent court system - Gubad Ibadoghlu](#)

Gubad Ibadoghlu introduced the audience to the situation in his home country Azerbaijan by citing a number of different corruption-related indexes and surveys, in order to substantiate what he believes to be a relatively high prevalence of corruption in the country. He first referred to the Transparency International's 2016 Corruption

Perceptions Index (CPI), which captures the perceptions of corruption in the public sector, and on which Azerbaijan scores 30 points on a scale from 0 (most corrupt) to 100 (least corrupt). This positions the country in the lower third of the index (rank 123 out of 176).

The World Bank's control of corruption indicator was also referred to during the presentation, which also reflects perceptions of both petty and grand forms of corruption but adds a component of "capture" of the state by elites and private interests, thereby confirming the CPI assessment: in 2015, Azerbaijan scored - 0.82 on a scale ranging from - 2.5 (most corrupt) to 2.5 (least corrupt), which puts the country among the top 20 per cent most corrupt countries in the world.

With regard to petty corruption, Gubad Ibadoghlu highlighted bribery as a prevalent issue in Azerbaijan. Transparency International's 2016 Global Corruption Barometer revealed that 38% of Azerbaijanis paid a bribe in the 12 months prior to the survey in order to obtain a given public service. Moreover, companies interviewed for the World Bank's 2013 Enterprise Survey corroborated the high bribery rates in the country. While only 16% of firms reported having paid a bribe, over 40% stated that bribes were expected to secure government contracts or obtain construction permits.

Thereafter, the presenter addressed the issue of grand and political corruption in the country. According to his analysis, political institutions are closely linked to clan structures and the ruling elite. He cited written sources to indicate that members of the ruling party often enjoy preferential treatment, especially in terms of their access to public positions. He revealed close links between members of the Parliament and so called "oligarchs", while civil service suffered from endemic cronyism and nepotism (e.g. Bertelsmann Foundation 2016). There are serious claims that ministers and other high-ranking officials have obtained their public functions thanks to payments made to persons in the power circles (e.g. International Crisis Group). Oil revenues have provided the government with further opportunities to sustain and expand patronage-based networks.

Interestingly, the legal framework against corruption in Azerbaijan is assessed as "strong" by Global Integrity, which gives it a score of 100% (Chêne 2013). Indeed, the Criminal Code criminalises major corruption offences, including active and passive bribery, extortion, attempted corruption, bribery of foreign officials, money laundering and abuse of office, and forbids public officials to receive gifts of a value exceeding US\$55. In terms of its international commitments, Azerbaijan ratified the Council of Europe Criminal and Civil Law Conventions in 2004 and the United Nations Convention against Corruption in 2005. Azerbaijan is also a state party to the United Nations Convention against Transnational Organized Crime since 2003. Azerbaijan was member country of the Extractive Industries Transparency Initiative from 2004 to 2017.

Governance challenges:

- The Commission on Combating Corruption
- Prosecutor general's office
- Courts
- The Chamber of Accounts
- Financial monitoring services
- Ombudsman
- Civil society
- The media

The following figures on the position of Azerbaijan in different corruption indexes were also presented:

Azerbaijan	2013	2014	2015	2016	2017	2018
Corruption perception index	127/177 28/100	126/174 29/100	119/167 29/100	123/176 30/100	-	-
Open budget index	42/100		51/100		34/100	
Civil Society Sustainability Index	4.7/7	5.1/7	5.8/7	5.9/7		
Freedom index	23/100	22/100	20/100	16/100	14/100	12/100
World press freedom index	156/100 47.73/100	160/180 52.89/100	162/180 58.41/100	163/100 57.89/100	162/180 56.4/100	

Several causes for corruption in the country were mentioned: absence of division of power in the governance; close ties between business and politics; a lack of judicial independence; a lack of civic and media participation; limited access to data on management of public funds as well as a lack of transparency in government.

With regard to the absence of division of power in the governance, he depicted Azerbaijan as an authoritarian political system, characterised, as others, by the large concentration of power in the hands of the ruling elite, and a blurred line between business and politics. In his analysis, the ruling power had extended its reach into virtually all-lucrative sectors of the economy. Oil and gas revenues sustained the ruling power for many years, contributed to impressive levels of economic growth, expanded the government's room for manoeuvre in both foreign and domestic policy and helped preserve a certain level of perceived stability in the country.

Moving to the issue of lack of judicial independence, the presenter emphasized that Azerbaijan's Constitution guarantees judicial independence. However, in practice, he saw strong links between the judiciary and the government. The selection of judges, for instance, is administered by the Judicial Legal Council, with the majority of its members appointed by the government. Moreover, the Council is presided by the Minister of Justice. These elements enables the government to exert significant control over the entire judiciary. Additionally, the judges of the Constitutional Court are selected by the President of the Republic. Furthermore, Gubad Ibadoghlu pointed to the use by the executive branch of the justice system to persecute journalists, human rights activists and political opponents. He denounced political decisions in courts being adopted through direct instructions from the presidential administration, whereas civil and business decisions are tainted by bribery.

Compounding the situation, the presenter described how the crackdown on independent civil society had a profoundly negative effect on the ability of NGOs and



civic activists to engage in, let alone promote the policy of anti-corruption in Azerbaijan. Bank accounts of independent CSOs, including personal accounts of senior staff were seized through court decisions without due process. Dozens of members of independent COSs groups were interrogated by the Prosecutor's Office, and criminal cases were opened against several NGOs, explained Mr. Ibadoghlu. As a consequence, a sizeable number of independent NGOs working on anti-corruption and environment issues were compelled to suspend their activities. At the same time, government had stepped up efforts in funding pro-governmental actors (so called GONGOs).

Another problem described by the speaker is the lack of free media in the country. According to him, the authorities in Azerbaijan, over the last three years, have conducted a crackdown on the media, imprisoning independent and opposition journalists as a reprisal for critical reporting. At least ten journalists and bloggers are currently in prison on politically motivated charges. Media professionals operate in a highly repressive environment, and freedom of the press is systematically violated. Besides jailing critical journalists, Azerbaijani authorities permanently block websites of some major media outlets critical of the government, including Radio Free Europe/Radio Liberty, Azadlig newspaper, and Meydan TV, and have proposed new legislative changes to tighten control over online media. The presenter did not omit to mention that Azerbaijan's President Ilham Aliyev gifted some 250 free apartments to journalists. In return, the Press Council, a local media organization, awarded him the title of a "friend of journalists," his third since 2013. Such awards seriously dissonate with the above mentioned shrinking free media space.

Finally, the speaker stressed limited access to data on the management of public funds as another important factor to explain the prevalence of corruption in Azerbaijan. The budgetary documents adopted by the Parliament are not published in timely manner. Even members of parliament do not have access to data relating to up to 40 per cent of public spending. Founders of legal entities operating in Azerbaijan and taxes paid by them are considered commercial secrets, according to Gubad Ibadoghlu. There is widespread in transparency and safeguards, such as the beneficial ownership Road Map adopted under the Extractive Industries Transparency Initiative, have been removed.

The speaker concluded from this analysis on his country that, without an independent judiciary, corruption is likely to remain at similar levels. He sees corruption in Azerbaijan as endemic and systematic: present at all levels and domains of society. He underlined that corruption negatively impacts the enjoyment of fundamental human rights, civil and political rights as well as economic social and cultural rights. Only civil society actors and free media have had some impact on indirectly reducing levels of corruption and the State's response to the issue. The example of Azerbaijan highlights, in the eyes of the speaker, the key role free media can play in terms of preventing and combating corruption.

## **Strategic engagement with UN Human Rights Mechanisms and criminal justice on corruption issues**

### **Workshop I: Stolen assets and grand corruption - Alisher Ilkhamov, Richard Messick, Juanita Olaya and Ayush Bat-Erdene**

Asset recovery is an important aspect of the fight against corruption that was focused on during the second day of the conference.

Alisher Ilkhamov stressed that **conditionality** becomes more critical. There are two schools in this regard: some civil society advocate against any conditionality because this could be perceived as some form of neo-colonialism. The other group is in favor of responsible conditionality under certain conditions. The question is, what conditions.

Alisher Ilkhamov gave three case studies as examples. In the first case, businessmen were extorted and bribed by local officials. They were detained and tortured. The second case was about a journalist who exposed corruption that was imprisoned and tortured. He was released several days ago. The third case is about the daughter of a previous Uzbek president. We always see the same elements coming back: Bribes and extortion by big companies, money that is transferred to different destination countries across Europe. The assets of the third case are now frozen. Deals were made without any official present. This is not real justice, this is a scam. Unfair trial is common to the three cases. It is a key point that allows us to link the issue to different pillars of human rights.

Richard Messick spoke about **victim-centered remedies for kleptocracy**. There is no real law in the treaties governing corruption that tells us how to give the money back to the victims. It is the Human Rights framework that gives us the legal framework for a just return of stolen assets.

Kleptocracy is about large bribes and rule by thieves instead of democratically elected leaders. There is a victim State and a haven or destination State. The kleptocrat, a man in the majority of the cases, is ruling the victim State. He has money, but does not keep it in the home country. If the political wind would change, he wants to be sure the money is out of reach of their law enforcement agencies. That is why he puts the money in the haven State.

UNCAC was written at a time when several kleptocrats fell. After the fall, there was a burst of optimism to go and get the stolen assets. An entire chapter of the Convention is dedicated to asset recovery, and the starting point is that a democratic spring leads to a new ruler. The rule of law and due process prevail, so the victim State issues a confiscation order to the haven State to obtain the stolen assets. The order says that the money was taken in violation of the criminal and civil laws of the country, and is property of the victim State. The haven State then has to return the money to the government of the victim State.

However, the reality is different: instead of getting a new, democratically elected ruler, many kleptocrats are replaced by another kleptocrat. As a consequence, rule of law does not prevail, and article 14 of the ICCPR is not respected. But the new kleptocrat sends a confiscation order to the haven State anyway. The haven State then receives an order from a country where it is clear that the court proceeding was not fair. Are they then obligated to return the money? Can a State be an accomplice to a violation of article 14 when a haven State gets an order from a domestic court? What is the responsibility of the haven State under article 14? It should be to not observe the confiscation order.

Richard Messick illustrated his findings with the Uzbek case of Karimova. She owned property and invested money in several European countries. These countries will receive a confiscation order issued by Uzbekistan stating that she was convicted. However, Uzbekistan's new government is not the democratic wave that was hoped for. Do these countries have the obligation to return the money? The laws of Belgium, Switzerland and Luxembourg state that they will not honor court judgements issued in

violation of human rights. Ireland has a list of countries of which they will not recognize the court judgements. Apparently Uzbekistan is not on that list, but nobody can find that list anywhere.

Who has a claim on the stolen assets? These States cannot recognize the money, but giving the money back to the perpetrator once they are released from prison, does not strike as a just result. However, even perpetrators have rights. Moreover, most countries have laws prohibiting money laundering. This means, trying to disguise that the money comes from illegal activities, by investing in real estate for example. Once the kleptocrat puts that money on foreign bank accounts, he is guilty of money laundering. The laws of the foreign State have then been violated and it has a claim on the money. However, the haven State keeping the money does not feel like a just solution either. This is where we need the human rights community.

Sometimes a trial results in a judgement against a corrupt company that has paid bribes. This generates an enormous sum of money in fines, which the government of the haven State receives. Some people wonder how it is just that one population benefits from a fine, while another population, the one from the victim State, is the real victim. This discussion is ongoing.

We could construct a legal foundation so that in a country where a government is not cooperative, like Kazakhstan, the stolen assets can go back to the victims. However, the lack of political will is an obstacle. Kazakhstan was feeling political pressure and made the agreement to avoid more attention from the press. But other governments might not care about the media. That is why we need to point to their human rights obligations. Moreover, there is the concern of giving a neo-colonialism impression when the management of the funds is done by an international NGO. Human Rights obligations are the starting point, but legal guidance is needed because several governments are involved in one case, and they have to agree.

The development community is trying to figure out how to build reliable institutions. It is easier to look back on how a court system became independent in retrospect, but no one knows how to create an accountable institution for the future. The governments of the haven States, like Switzerland, do not want this on their plate. The reason that the World Bank was involved in the situation in Kazakhstan was because they have expertise on mechanisms of oversight and public financial management.

Article 54 UNCAC provides that the confiscation order has to be in accordance with the domestic law of the haven State. No State has made reservations on this issue because of this assurance.

In a General Comment of the CESCR, kleptocracy can be read as a clear violation of article 2.1. The remedy that is suggested for this violation is a return for the victims.

**Juanita Olaya, Chair of the UNCAC Coalition**, addressed four issues during her presentation. Firstly, the shortcomings of the Human Rights framework regarding corruption, secondly, the shortcomings of the anti-corruption framework regarding human rights and thirdly the role of civil society organisations (CSOs).

(1) As to the first issue, UNCAC was established in 2006 as an open network. It was hosted by Transparency International until 2015, and is since then an independent entity based in Vienna.

UNCAC foresees civil society involvement, but it is not as evident as in the Treaty Bodies. At the Conference of State parties, CSOs cannot participate in the negotiations of the resolutions that will develop the treaty. They can participate if they have been granted the specific status of observer. Civil society wants to influence governments, but the latter are negotiating, while CSOs are organising side events. This is a paradox: the very same treaty bodies are violating the treaty they are meant to implement. Every year the discussion of the participation of civil society is back on the table.

There is no follow-up to the recommendations. Moreover, those reviews reveal inconsistent information with respect to other mechanisms and initiatives, like the Human Rights Treaty Bodies, OGP, EITI, etc. Those bodies are not cross-referencing the information among them.

(2) The compensation of victims of corruption remains a challenge. Both grand and petty corruption has human rights consequences that are damaging. Another problem is the complexity of these problems: corruption is not separable from human rights, but we have to break down the issues in order to deal with them. Not all human rights violations are caused by corruption, but all corruption cases lead to human rights violations.

The question of compensation of victims has become very political, and that is where the conditionality issue comes in. Every kind of corruption creates a social damage. Our legal and criminal systems are more designed to deal with individual damages, but we should not forget these collective damages, which is always present in corruption cases.

The anti-corruption framework can benefit from the experience that the human rights framework has: there is no right without a remedy. The remedy depends on the situation. Sometimes, the best remedy is for the government to admit that assets were stolen. The damage is not only economic, but a relevant remedy can also be to restore the trust in institutions and social cohesion. An admission of guilt and the issuance of apologies can be done without money. This is where the expertise of human rights law can contribute to the fight against corruption.

The question is not whether to return the money or not, but how it has to be done. The right to reparation is established, but the modalities have to be decided upon.

(3) The role of civil society in asset recovery and generally in terms of redress is huge. CSOs can help to identify victims, supply information, provide evidence and share their expertise. They also ask questions, for example what can we do when the government is not responsible, when the institutions are weak, when kleptocrats are still in place? CSOs help to monitor the transfer and use of funds, and report to the relevant mechanisms.

**Ayush Bat-Erdene (OHCHR)** continued the discussion from the **perspective of the OHCHR**. UNCAC has very little room for CSO participation and for human rights considerations, unlike the Human Rights Council (HRC). It took 10 years for the Commission for Human Rights (now Human Rights Council) to accept the word corruption in a resolution. One of the first resolutions after the reform to Human Rights Council was about corruption, and it is one of the best resolutions ever adopted on the topic. Since then, the HRC adopted a number of resolutions on corruption. It is very flexible on CSO participation. Out of this exercise, we know that there is a need to ensure policy critics and to continue pushing this.

The anti-corruption CSOs are very active, but the intergovernmental debate is limited. It is important to continue this interaction and to share knowledge.

A **debate** about the **weight of the population** and the issue of the spending the returned assets. Who should decide how the money should be spent? How is this money different from any other money that the government has? It should already have a system in place to decide how public funds are used.

Some people believed that money should be distributed slowly, and that the society knows what it needs, so we should trust them instead of making decisions for them from Geneva. This social accountability initiative is called participatory budgeting.

The **Ukrainian example** was given as an illustration of this dilemma: the population wanted to spend the money on the defense budget. This will not strengthen the institutions, but is understandable given the conflict that is going on. However, the spending of the military budget is closed and classified, so this is neither accountable nor transparent. There is no way to monitor how the money will be spent, and it is already becoming clear that some of the money has been embezzled, but CSOs cannot assess how much of it was stolen. This is a tough debate between the social, security and transparency needs of society. As a State involved in an armed conflict, investing in the military was needed, but if it was stolen for military gain, this is a crime.

In **Kazakhstan**, a model was developed where the World Bank was working together with international CSOs to deal with the return of stolen assets. The money was spent wisely without any loss, but there was some disappointment regarding the limited participation of the population.

Several factors that influence the preferred scenario, were mentioned: an authoritarian regime, the fact that property was bought, the fact that society does not believe that it can influence how the budget is spent, etc.

It was stressed that there is a need for CSOs to monitor the spending of funds. The role of the World Bank was also under discussion: this institution has money, capacity and experience, but not regarding human rights. The OHCHR recommends the World Bank to integrate human rights in their activities, and assess the impact of their work on the human rights on the ground.

Even if there is money and political will, it is not clear what we should do with it: to invest in the human capital, to wait for stronger institutions, etc. This pragmatic approach requires case-by-case answers, depending on the political situation. It was agreed that there is no one size fits all solution, but paradoxically, governments will only be interested in the BOTA Foundation model if you come up with a set of rules and procedures valid for all cases.

Another participant remarked that we do need a country-by-country solution, but that good practices can lead to global guidelines which can be used by all member States of UNCAC. For example, a model treaty could be developed on extradition, with grounds for refusing extradition. The work of anti-corruption experts could result in a draft model procedure that States could resort to in order to address these situations. It would necessarily have ambiguous parts to make it fit to several situations. It can help to codify what we know today. However, some States are not interested in the issues related to corruption, and that is why we need the human rights community and its engagement.

The Conference of State parties (COSP) of UNCAC is working on best practices, but States are not jumping on this. NGO participation at COSP is happening, but is not formalized. However, it is not so important if CSOs cannot speak with an official voice; it is about visibility and contribution. Moreover, the conditionality idea is the reason why guidelines in UNCAC will not be adopted.

Switzerland has launched initiatives to coordinate asset recovery internationally. A guide is being developed on step-by-step asset recovery. It is one of the most forthcoming countries on asset recovery and a model leader on asset recovery laws.

**To conclude**, important elements of the discussion were the fact that conditions on the ground are so different country to country, the way to build up the capacity of existing institutions, the choice between an ad hoc approach for every asset recovery or the development of global guidelines and whether to include the concept of conditionality. Most participants were in favor of developing guidelines or principles that could point the direction where governments could turn to handle the recovery of assets.

## Petty Corruption

Petty corruption was also an important subject during the second day of the conference. In this vein, Bamariam Koita (HR Committee), Elias Issac (Angola) and Wendy Abbey (Ghana) dealt with the matter from their own perspectives and local realities. This workshop had two main objectives:

1. Look for the best way to address the issue of corruption in the HR Committee observations and how one can move from the format of general recommendation used by the Committee and can achieve more specific ones.
2. Find the kind of case to present to the Committee, what are the difficulties at the national level including exhaustion of domestic remedies; the proof and evidence needed and the different challenges surrounding strategic litigation.

Firstly, Bamariam Koita starts by saying that there is a new development in relation to the issue of corruption. For instance, the additional protocol and the covenant take into consideration the need to reinforce the interdependence and indivisibility of the rights enshrined in the covenant.

A second reflexion was to qualified grand scale corruption as a crime against humanity which gives competence to the International Criminal Court. Another idea is to establish a specific court which will deal with the issue of corruption and that determines the respective sanctions. Meanwhile, while we wait for this, it is necessary to take advantage of the mechanisms established by the treaty bodies.

In this sense, Bamariam Koita explained that the Human Rights Committee deals with corruption in respect to Article 14 linked to Article 2. It has been also evoked Article 25, 26 and 10. All this to indicate that the HR Committee follows the rules of procedure and the rules of the Committee and that is why is important to comply with the formalities.

He insisted on how important it is for activists to know the state report submission procedure in order to intervene and participate in an efficient way in all its phases since the HR Committee needs sufficient information from all stakeholders and not

only from the state). He reaffirmed that the role of NGOs is extremely important in order for the Committee to have good information (fiable, precise, factual, verified and verifiable) and realise what are the true concerns in respect to corruption.

Bamariam Koita explained that the aim of the state's examinations is to get final observations and recommendations from the HR Committee. As it was previously discussed, the HR Committee has not developed sufficiently on the issue of corruption in their recommendations. He gives one first explanation saying that perhaps it is linked to the calendar since the issue of corruption did not arise in the international agenda only until the eighties and the HR Committee dating back to 1966. Furthermore, the 2015 Human Rights Council resolution that deals with this matter, does not evoke directly the human rights violation as a consequence of corruption but stresses overall the negative impacts.

However, everyone recognises that the seriousness of corruption crosses the whole covenant. It is important that the NGOs and experts working on the issue, should formulate concise and feasible recommendations.

If states want to fight against corruption they have to take the law and criminal proceedings that protect from corruption and NGOs can contribute to this objective through their participation in the different phases of the report submission named above. Bamariam Koita suggested that NGOs should propose a "battery of measures" so they can verify the state's action against corruption. This can help measure the level of commitment and compliance of the state (for instance, regarding legislation, public officials' integrity, the transparency of procedures, information access, monitoring and oversight measures, and the financing of political parties and electoral campaigns).

On the whole, Bamariam Koita recommended NGOs to send sufficient, founded, credible and verifiable information to the HR Committee. Similarly, the partnership between international and local NGOs is important so they can add with their expertise and credibility.

On the other hand Elias Isaac (Angola), stressed that unfortunately, the discussion on corruption, has been focusing in grand corruption and petty corruption has been given little or no attention at all. He believes this is a mistake since they are "siamese twins" and they exist side-by-side. Petty corruption, Elias Isaac said, is stealing directly from the poor and depriving them from their basic rights, especially economic, social and cultural rights. Poor people have to pay for public services that are privatised. For instance, in Angola, education is a constitutional right and it is supposed to be free but is not since the poorest citizens cannot pay for an ID or a birth certificate, etc.

Another example he gave is that, because of grand corruption there are no medicines in Angola but because of petty corruption, poor people have to pay to have access to have the few medicines there are, that are supposed to be free. Unlike, you never get an invoice.

Isaac explained that both, grand and petty corruption are dangerous for the people. Somehow they have the same impact. Perhaps even petty corruption has nastier effects on the lives of people. It is necessary, he said, to make an analysis of the costing, impact and effects to see how much poor people pay for petty corruption.

He argued that, it is necessary for corruption experts to redefine their work. It is somehow much easier to tackle and investigate petty corruption since not much money is needed (it is locally based, it has a name and a face). He explained that lots of resources are needed to work on grand corruption and it is difficult to tell how much difference this has made in the lives of common citizens, the victims.

He affirms that, if we are able to address petty corruption, a mass of awareness will be created and it will be much easier to fight grand corruption. Now the opposite is being done. The base is being untouched for the top to collapse. Elias Isaac also indicated that it is much easier to conduct litigation with petty corruption than grand corruption. Since it is much easier to identify the people and the institutions where petty corruption is happening.

According to Elias Isaac, another important thing to be tackled is the issue of whistle-blowers and protecting activists that work on the ground. They exposed themselves and no mechanism assists for their protection.

He concludes by indicating that most countries have similar experiences regarding petty corruption. One can relate to the stories from other countries thinking it could easily be our own. Passing knowledge and sharing lessons could also help in this human fight of combating petty corruption. He suggested to draft reports for UN examinations on petty corruption by sectors (health, social security, etc.) in order to monitor each area and better evaluate the work.

Wendy Abbey began her presentation by stressing how much she relates to Mr Isaac's experience. She also indicated that it is important to talk about the population that are actually impacted by petty corruption and the different levels of vulnerabilities/intersectionalities of these populations.

Wendy Abbey explained that, in the context of Ghana, there is a lot of political will, institutional approach and initiatives towards the judiciary and strengthen the legal framework to deal with different scenarios of grand corruption. For example, since Ghana returned into a Republic in 1992, the National Human Rights Institution, is one of the few institutions that have an anti-corruption mandate. The Constitution and the law enshrine provisions on this, including criminal provisions and even a fast track court.

At the moment, the current government recently set up an Office of the special Prosecutor to deal with corruption. In this sense, discussions on grand corruption are very political, but at the same there is a robust legal system to deal with this issue. Nevertheless, there is a missing link when it comes to petty corruption.

She explained that petty corruption is not explicitly defined in any legal and policy document on corruption in Ghana. Having said this, she underlined that there are indications that petty corruption occurs during recruitments, promotions, contracts, procurements processes and service delivery according to the National Anti-Corruption Plan (NACAP 2012-2021). NACAP also cites "quiet corruption", manifesting itself in various forms including absenteeism, regular lateness for work, leakage of funds, imposition of informal user fees, petty thievery (e.g. stealing of office supplies) and diversion of supplies by public officers.

According to the study "Citizens' Knowledge, Perceptions and Experiences of Corruption" (Consortium on Anti-Corruption 2017), respondents advanced bribery, fraud, embezzlement, extortion, abuse of discretion, conflict of interest and illegal contribution as manifestations of corruption. A majority, however, did not perceive conflict of interest, abuse of discretion and payment of facilitation fees as forms of corruption. This was not a survey on perception study as usual indexes are, but on actual corruption that was happening. The following are some of its findings after interviewing persons that have participated in corrupted practices:



- 64% have participated in situations of corruption.
- 92% share the view that bribery is corruption.
- They perceived the police service (95%) as the most corrupt institution, followed by education (89%), service providers (84%) judiciary (77%), media (60%) and NGOs (49%).
- 73% did not consider “greasing of the palm” or “payment of facilitation fees” as a form of corruption. Paying this “informal fees” are considered as regular way of procedure for accessing basic services.

According to Wendy Abbey, if gradually we have this consciousness among the citizenry that these forms of scenarios actually are acceptable then it becomes very difficult to pull them up to understand the various perspectives on how their own practices impact their fundamental rights. So, if any public official denies any particular service, because they are able to pay they would not feel that their right have been deny to them. Increasingly, people accept the idea of paying informal fees in order to have services rendered to them.

As an example of a plea service being implicated in perceived and actual participation in petty corruption, Wendy Abbey referred to a case from the Commission on Human Rights and Administrative Justice (CHRAJ) of a 13 year old boy who was unlawfully detained in a police station in a suburb of Accra for defilement. He was refused bail for three weeks. The parents of the boy contacted CHRAJ for assistance since “in spite of the bribes” paid to the police officer, the boy was not granted bail. CHRAJ sought relief for the boy at the District Magistrate Court in regards to juvenile right to bail, and it was finally granted. However, the CHRAJ relief failed to secure compensation for unlawful detention.

In this case, it is clear to see the different vulnerabilities, stigmas and the intersectionality that exists when talking about minorities of the segments of the population, Abbey explained. It not only took courage to report the violation, one can see the difficult situation that he was living and then, the incapacity to pay this informal fees.

She concluded that even people working on the subject see petty corruption as misconduct of public officers, but not as a real problem.

All these interventions led to a very interesting debate and ideas on how to feed information for the Committee with the following conclusions:

- Little attention is given to petty corruption even though it means stealing directly from the poor and depriving them from basic public services;
- First step could be start monitoring practices at the national level: data collection; report’s drafting, etc. In order to have evidence of petty corruption and bring cases on the national and international level.
- Petty corruption exists side by side to grand corruption;
- Grand corruption is high in the political agenda and there are lots of efforts to fight it, contrary to what happens petty corruption.
- People could also use National Human Rights institutions as to denounce petty corruption.
- Space for civil society working on these issues is shrinking and whistle-blowers and activists are in danger.
- A possible strategy is to change the “naming and shaming” towards states so they also react differently.

- Petty corruption could be brought to the UN human rights mechanisms, especially the treaty bodies.
- Giving specific recommendations to states on petty corruption;
- Lodge individual communications bearing in mind that it is difficult to prove (since there are no invoices for bribes);
- HR Committee and CESC Committee: bring collective complaints (class action) as long as each plaintiff signs the petition.
- Ground the complaint on specific articles of the treaties.

## Looking ahead

Anne Scheltema Beduin from Transparency International (Netherlands), addressed the issue of corruption in the work of the UN treaty bodies. She identified the following non-exhaustive elements that victims are looking for in certain human rights/corruption cases:

- Acknowledgment of wrongdoing and victimhood: corruption is not a victimless crime even though it is hard for a victim to be an actual party of a legal process.
- Right to information and transparency (also on procedure): to actually know who is a victim.
- Enhancing capacity (incl. strategic litigation) & participation: victims need more support in order to be able to have their voices heard.
- To redirect resources toward providing the medical, economic, and emotional support that victims need.
- Reforms and prevention of future violations: non repetition of violations
- The need of (responsible) asset recovery.

Regarding the practical issues in the individual complaints mechanisms, one should take into account:

- Merits: direct, indirect and remote human rights violations that have an impact on causality and if corruption can be considered as an aggravated factor.
- Admissibility: talking about the criteria under the human rights mechanisms, Scheltema Beduin explained that there are several challenges when it comes to exhaustion domestic remedies (corruption of judiciary/lack of investigation) and the definition of “victim” (*ratione personae*, no anonymity (whistle-blowers), as well as the lack of *actio popularis* (role CSO’s, and *ratione materiae*). She also brought to the audience attention that the Secretariats at the Treaty Bodies are the ones that go over the first check if a complaint is admissible. They could ask additional information from authors. Guidelines would be useful in this sense.
- Remedies: since there are word limits, model recommendations could be useful.
- The importance of information/research on the links between corruption and human rights, from both perspectives: by fitting in the existing framework, improve/strengthen earlier texts.
- The relevance of training of secretariat, judges, committee members, legal representatives & victims.

On the other hand, Susan Hawley, from Corruption Watch (UK) explained the benefits of improving connections between corruption and human rights, for instance:

- Potential to improve the UNCAC: Unlike the Treaty Bodies, UNCAC is not as strong, since it has no independent experts; no ability to send letters to

countries stating that they are in breach of UNCAC obligations; no complaints procedure. UNCAC compliance could be strengthened by greater incorporation of corruption into work of HR treaty bodies.

- Potential to raise awareness of the impact and harm of corruption and generate greater public debate. On this point, Susan Hawley indicated that the 2015 final report by HRC Advisory Committee on negative impacts of corruption on human rights made a series of good recommendations:
  1. Creation of special procedure in form of independent expert or ideally a five person working group on Human Rights Violations caused by corruption (when the Special Rapporteur on extreme poverty and HR visits the US it makes big news, in a way an UNCAC review of the US never does).
  2. Comprehensive study on concrete measures to establish links between anti-corruption and human rights practices.
  3. Including anti-corruption whistle-blowers and activists in Declaration on Human Rights Defenders.
  4. Systematic inclusion of corruption in Human Rights Treaty body reviews, Universal Periodic Reviews with clear criteria of what to assess.
  5. Close coordination with UNODC.

Susan Hawley suggested that instead of thinking of new strategies, perhaps one could try to find out to what extent have these old ones been implemented and if not, why not? What were the obstacles to achieving them?

According to Hawley there is a large scale theft of assets breaches. In this sense, one can invoke:

1. Article 2 of International Covenant on ESC rights: “*in no case may a people be deprived of its own means of subsistence*”, especially relevant to extractive resource corruption.
2. Article 11: right to an adequate standard of living.

The Human Rights Council has focused on the negative impact of non-repatriation of illicit funds to countries of origin on human rights in various resolutions since 2011. The latest resolution from March 2017 states:

1. Requests Advisory Committee to conduct study on “*utilizing non-repatriated illicit funds including through monetization and/or the establishment of investment funds*” to meet the SDGs and contribute to enhance of HR (due in September 2018 with the possibility for CSOs to send inputs).
2. To include impact of illicit financial flows on the human rights in mandate of independent expert on effects of foreign debt and other international financial obligations on HR. It is know that the US consistently opposes these resolutions and that European countries usually tend to abstain.

The expert study on Human Rights impact of non-repatriation of illicit funds (August 2017) looks at:

- The failure to return stolen assets “*contributes immensely to violation of Human Rights*” especially in developing countries, by hindering capacity of states to deliver basic social services, and eroding confidence in government and the rule of law
- Attempt at UNCAC COSP 2017 to introduce this language was blocked by US and European countries who felt that it was unbalanced and didn’t recognise the HR impact of the original theft of the assets. Need for both to be reflected to get consensus.

- The report also raised key human rights issues in asset recovery:
  1. Speed of returning assets V. due process.
  2. Transparency, accountability and participation are rights, and no conditions. These are essential components in return of funds.
  3. Role of banks and financial intermediaries and safe havens in developed countries.
  4. Importance of avoiding immunity or amnesty agreements that allow impunity for the corrupt.
  5. Greater action by Security Council to freeze illicit financial flows.

Susan Hawley stressed ideas on the International Treaty on Business and HR - scope for anti-corruption provisions. She indicated that corruption is mentioned a couple of times in the draft elements and she asked “How could Anti-Corruption provisions be made more meaningful?” There is behaviour of business that contributes to human rights violations such as bribes paid that cause damage to social and economic development; facilitation of laundering of stolen wealth. Some possible proposals were made:

1. Establishing a principle of compensation for wrongdoing that is commensurate with the harm caused where corruption is involved.
2. Establishing a principle that businesses that commit HR violations including corruption should be excluded from public advantages

Later, Maggie Murphy, from Transparency International-UK, stressed some reflections and ways forward:

- The human rights community and the anti-corruption are jealous from each other and the others capacity to mobilize.
- Anti-corruption experts need the help of human rights experts in order to identify the victims, violations and impact.
- She suggested that the business community and private sector that create technology should also be considered as a partner and players, not only perpetrators. Their area of influence is different, so in order to consolidate and not duplicate the three communities can work together.

In a provocative tone she asked the audience if it is worth it to invest in the Human Rights mechanisms, taking into account the limited time and resources. What she suggested is not duplicate each other, but to work intertwined. Joining different communities (business, banking, gender, human rights, anti-corruption, etc.) to accomplish several recommendations on different subjects using each expertise. In this sense, she finished with offers:

- Submissions coming from the ground;
- Work with UNCAC Coalition;
- Anti-corruption experts sharing expertise with the human rights NGOs;
- Hold sessions with treaty body members on basic technical concepts;
- Connect with businesses that are actually try to do the right thing.

Murphy also presented some requests to the human rights community:

- Help on identifying the victims;
- Help on the human rights issues to avoid violations;
- Step out of Geneva, use other bodies that may have an impact (e.g. G20, OECD, UNCAC);
- UN mechanisms should recognize the issue of corruption, not just in the country of origin but where that money flows; specific recommendations; connect to Vienna; Special Rapporteurs should do joint country reports and also several Special Procedures looking at corruption and how it affect their mandates.

She concluded saying that there is strength in movements, and they do not have to do the same things in the same forums. Coming from different angles will make these movement stronger.

Julio Arbizu, anti-corruption expert from Peru, starts by presenting the multidimensional approach of corruption. Nevertheless, he stressed that when extraordinary fees are demanded by public official in order to grant a basic public service, the public patrimony is not being affected. Here, rights are being affected. Precisely, behind every act of corruption one may find a right affected.

Furthermore, the point he wanted to make is the Law responds to acts of corruption from the Criminal Law, protecting a legal property that is not the patrimony. The legal property that is being protected is the well-functioning of public administration. This can be expressed, he stressed, as human rights.

According to Julio Arbizu, consequences of petty corruption in Peru:

- Implies that poor people have to pay bribes in basic services like security (police officers), justice and health services, in addition to access to administrative procedures (municipal services, migrations, etc.)
- It is a regressive phenomenon since these fees are pre-established. Who earns more money invests less proportion of his/her salary than the ones that earn less. So, more vulnerable and poor people tend to spend a more proportion of their incomes in bribes and they are who, historically, exercise less their own human rights.
- The rate of culmination of procedures is lower in vulnerable socio-economic sectors.
- Corruption is more expensive for poor people (they invest proportionally more of their incomes in corruption).

Julio Arbizu explained that a Corruption Observatory was established in Peru. Its objective was to place this petty corruption practices in the public administration, establish categories that could go further than the criminal definitions; analyze recurrence, impact in different sectors of the country; and to know how much corruption affected on criminal expressions. With all this information, they could claim for compensation from the state that could be equivalent to the acts of corruption. Therefore, the claim goes away from the economic approach. A holistic human rights approach makes understand that a person that has committed a crime, has to pay compensation to the victim. This compensation has to be as intense as the degree of affectation. Only with full scientific certainty, from his experience, they could increase in 400% the collection of civil damages regarding corruption crimes in the period 2012-2013. The *Procuraduría* is in charge of remedies.

Marcia Kran, as a member of the Human Rights Committee, has identified the following ways to move forward:

- To improve consistency
- To offer an appropriate and consistent level of guidance on implementation to an extent possible that is in Cobs
- To improve the quality of Cobs of our issues
- To define the approach: a framework could be agreed upon for dealing with acts of corruption. This would include the definitional issue around corruption. The Human Rights Committee has rarely connected Cobs with the provisions of the UN Convention against Corruption. UNCAC is a widely ratified convention with 183 State parties. Although the definition has gaps,

the communications and Cobs touch on issues that fall under the definitions provided by UNCAC. There can then be little quibbling about the meaning of corruption.

- To inform: obtaining reliable information on corruption to ground our future action. The Committee could examine information on corruption about each country, and draw on quality sources of information on corruption (Transparency International, reports from other NGOs and the OECD Working Group on Bribery, etc.).
- To develop a model set of Cobs that could be carefully tailored to address the situation in particular, to improve the consistency of the Cobs.
- To develop a draft menu for remedies to choose from in future views where corruption is an issue.
- To engender the analysis: corruption affect women differently than men. Sextortion, for example, has a disproportionate impact on women: the abuse of authority to obtain a sexual favor. Since non-monetary benefits are not integrated into most definitions of corruption, girls and women's experiences of sexual bribery are dramatically underestimated or not considered at all in most contexts. The Committee has not addressed this problem.

Fridlund mentioned some possibilities to improve the way corruption is addressed during the UPR process:

- Increase the joint submissions on corruption specifically.
- Make advocacy factsheets to make the submissions more user-friendly and to give an overview of the issue
- Identify friendly States to make corruption related recommendations, or to make recommendations to.

Juanita Olaya, Chair of the UNCAC Coalition, had some general remarks about the way forward: some form of common wording should be promoted within the UN that serves as a definition. Also, some form of consistency could be required from governments to provide the mechanisms with clear information.

David Ugolor, Executive Director of ANEEJ in Nigeria, had recommendations on moving forward from the perspective of a local NGO:

- Strengthen citizen participation and capacity
- Think locally, act globally
- National institutions can tackle a part of the corruption, but they need sufficient capacity and be able to act independently

## Annex

### Agenda

#### Monday 19 February - Morning

09:00	Opening remarks	OSF CCPR-Centre
09:15	Opening session I: The human rights dimension of the fight against corruption: the necessity of a comprehensive approach including UN Human Rights Mechanisms and UN Anti-corruption Mechanisms	José Ugaz (Lawyer, Professor of Criminal Law / Peru)
09:45	Opening session II: The fight against corruption in Tunisia and the role the Instance “Truth and Dignity” (Instance vérité et dignité)	Sihem Bensedrine, (Chair of the “Instance Vérité & Dignité” / Tunisia)
<b>Session I: Mapping corruption issues addressed by the UN Human Rights Mechanisms</b>		
10:15	Panel I: Overview of UN Treaty Bodies findings on corruption <ul style="list-style-type: none"> <li>• HR Committee and ICCPR</li> <li>• ESCR Committee and ICESCR</li> <li>• CEDAW</li> </ul>	Marcia Kran (HR Committee Member) Zdzislaw Kedzia (ESCR Committee Member) Hilary Gbedemah (CEDAW Member) <i>TBC</i>
11:00	Break	
11:20	Panel II: Overview of the findings on corruption in the Universal Periodic Review (UPR)	Hans Fridlund UPR-Info (Geneva)  Anar Mammadli (Chairperson, Election Monitoring and Democracy Studies Center / Azerbaijan)
11:50	Panel III: Common challenges <ul style="list-style-type: none"> <li>• Identifying gaps and corruption issues not addressed in UN Human Rights Mechanisms</li> <li>• Thematic approach: Petty corruption vs Grand corruption: a different approach for UN HR Mechanisms</li> </ul>	Ilze Brands Kehris (Member of the HR Committee)  David Ugolor (Director Africa Network for Environment and Economic Justice - ANEEJ / Nigeria)
12:30	Lunch	

#### Monday 19 February - Afternoon

<b>Session II: The concept of victims of corruption and possibility of litigating corruption issues before the UN Treaty Bodies</b>		
14:00	Panel I: The concept of victims in the OP-ICCPR & OP-ICESCR <ul style="list-style-type: none"> <li>• HR Committee and ICCPR</li> <li>• ESCR Committee and ICESCR</li> <li>• Bottom-up and participatory anti-corruption practice: A victims of corruption approach</li> </ul>	Carmen Rueda (former OHCHR - Petition team)  Kristian Lasslett (Prof. and Head of the School of Applied Social and Policy Studies - Ulster University)
14:50	Break	
15:10	Panel II: The victim of grand and petty corruption: Experiences <ul style="list-style-type: none"> <li>• Practical cases of Bota Foundation in assisting victims in Kazakhstan</li> </ul>	Aaron Bornstein (Former Executive Director of BOTA Foundation / USA) and Yevgeniy Zhovtis

<ul style="list-style-type: none"> <li>• The case of Gulnara Karimova and the identification of the victims</li> <li>• Victims of corruption in the cotton in Uzbekistan</li> <li>• Fighting corruption in Azerbaijan": without genuine CSOs, free media and independent court system</li> </ul>	<p>(Director of the International Bureau for Human Rights and Rule of Law / Kazakhstan)</p> <p>Brian Campbell (Lawyer / USA)</p> <p>Umida Niyazova (Director, Uzbek-German Forum for Human Rights)</p> <p>Gubad Ibadoghlu (Senior analyst for social and economic studies at Azerbaijan's Economic Research Center)</p>
16:45 End of the first day	

## Tuesday 20 February - Morning

<b>Session III: Strategic engagement with UN Human Rights Mechanisms and criminal justice on corruption issues</b>	
09:00 Workshop I: Stolen assets & Grand corruption:	Workshop II: Petty corruption:
<ul style="list-style-type: none"> <li>• Strategic advocacy and specific role for the UN Treaty Bodies</li> <li>• Engagement within the framework of and complementarity with international laws on human rights and criminal justice</li> </ul>	<ul style="list-style-type: none"> <li>• Strategic advocacy and issues to be addressed in the Concluding Observations</li> <li>• Strategic litigation before UNTB and cases studies</li> </ul>
Alisher Ilkhamov (OSF / UK)	Bamariam Koita (HR Committee Member)
Dr. Juanita Olaya (UNCAC Coalition)	Elias Isaac (OSISA / Angola)
Richard Messick (Former Senior Public Sector Specialist in the Public Sector and Governance Group - World Bank / USA)	Wendy Abbey (Human Rights Advocacy Centre / Ghana)
10:30 Break	
10:50 Workshop I: (cont'd)	Workshop II: (cont'd)
11:40 Report in plenary and discussion	
12:30 Lunch	

## Tuesday 20 February - Afternoon

<b>Session IV: Looking ahead</b>	
14:00 Panel I: Identifying new strategies and concepts to address the issue of corruption in the work of the UN Treaty Bodies (in particular HR Committee and ESCR Committee)	<p>Olivier de Schutter (ESCR Committee Member)</p> <p>Susan Hawley (Policy Director - Corruption Watch / UK)</p> <p>Anne Scheltema Beduin (Transparency International Netherlands)</p>
14:50 Break	
15:10 Panel II: A comprehensive approach to the fight against corruption:	Julio Arbizu (Lawyer, Professor, and Former Anticorruption Attorney of the Republic of Peru)



<ul style="list-style-type: none"> <li>• How human rights law can contribute to approaches for responsible repatriation of stolen assets.</li> <li>• How the issue of the petty corruption can be better addressed in the HR Committee and ESCR Committee (State reporting procedure and under the complaints mechanisms)</li> <li>• Addressing the gender perspective in the fight against corruption</li> </ul>	<p>Maggie Murphy (Senior Global Advocacy Manager at Transparency International / UK)</p> <p>Marcia Kran (HR Committee Member)</p>
<p>16:00 Closing session:</p> <ul style="list-style-type: none"> <li>• Grand corruption, abuses of Human Rights, and the need for an international Anti-Corruption Court</li> </ul>	<p>Mark Wolf, Judge, (Chair, Integrity Initiatives International / USA) by video link (TBC)</p>
<p>16:20 Conclusion and Final words</p>	
<p>16:30 End of the second day</p>	