LOOKING AHEAD - STRATEGIES ADDRESS THE ISSUE OF CORRUPTION IN THE WORK OF THE UN TREATY BODIES

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“If police, the justice system and communities can offer victims of crime safety, access, information, support, continuity and voice – justice will result.”

- Acknowledgment of wrongdoing and victimhood
- Right to information (also on procedure)
- Enhancing capacity (incl. strategic litigation) & participation
- Transitional justice → transformative justice
- Reforms and prevention of future violations
- (Responsible) asset recovery
- Redirect resources toward providing the medical, economic, and emotional support that victims need
UN HUMAN RIGHTS TREATY BODIES

• Human rights treaty bodies with individual complaints mechanisms:
  - CCPR – civil and political rights
  - CESCR – economic, social and cultural rights
  - CERD – discrimination
  - CEDAW – women
  - CAT – torture
  - CRC – children
  - CRPD – people with disabilities
  - CED – enforced disappearances

• UN Human rights treaty bodies: other avenues – monitoring implementation through periodic reports, country inquiries
  
  Country inquiry: reliable information containing well-founded indications of serious or systematic violations of the conventions in a State party.

• Inter-State complaints?
  
  These procedures have never been used (!)

• General comments
  
  Interpretation of the content of human rights provisions on thematic issues or methods of work

• Meeting of chairpersons
  
  Forum for members of the ten human rights treaty bodies to discuss their work, share best practices, and consider ways to enhance the effectiveness of the treaty body system as a whole

• Universal Periodic Review
  
  Deliver input for recommendations (Cf. Hans Fridlund)

• Special Procedures of the Human Rights Council (OCHRC)
POSSIBLE AVENUES OF APPLICATION

• (More) (strategic) litigation in individual complaints mechanisms
  
  **Admissibility** (definition of ‘victim’ (including at domestic level) – *ratione personae*, no anonymity (whistleblowers), no *actio popularis* (role CSO’s), *ratione materiae* (substance/details, see merits), exhaustion domestic remedies (corruption judiciary/procrastination/no investigation → no proof))
  
  → Secretariats Treaty Bodies: open to signals → ask additional information from authors

  **Merits** (“enjoyment of human rights” → direct, indirect, remote, causality, aggravated factor)

  **Remedies** (word limits recommendations, follow-up/procrastination, restitution: asset recovery)

• Input of legal scholars/representatives and CSO’s to all procedures of the bodies

  Committee’s are limited to input provided by authors/States Parties

  Shifting burden of proof? Need for new evidentiary standards / causality (cf. criminal law / José Ugaz)?

  Input experts/victims: participation – is there a framework? Does the framework work? Guidelines on third party interventions?

  ‘Menu’ of recommendations (molded case-by-case) – individual complaints, country reviews, UPR

• Information/research on the links between corruption and human rights, from both perspectives (fitting in the existing framework, improve/strengthen earlier texts)

• Training of secretariat, judges, committee members, legal representatives & victims
EXAMPLE: UNCAC & THE DUTCH STATE

• Article 35: “Each State Party shall take such measures as may be necessary (...) to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.”

• Dutch State: “The Netherlands confirmed that it fully implemented this provision of the Convention.”

• Dutch Criminal law (article 51a Code of Criminal Procedure): “Anyone who directly has sustained damage/loss as a result of a criminal offence may join a claim for civil damages as the injured party.”

• Burden of proof on ‘victim’ – difficult proving ‘victimhood’

• Strategic litigation: file claim on behalf of group of victims
  
  For example: telecom corruption by Dutch companies in Uzbekistan: who are victims? The Dutch or Uzbek State? Competing telecom companies? Dutch shareholders of corrupt companies? Uzbek users of telecom services? Population Uzbekistan at large (BEST MATCH WITH HUMAN RIGHTS)?

• If claim Uzbek people at large and all appeals denied (“no direct damage”): individual complaint? UNCAC does not provide such a mechanism. ICCPR – fair trial? ICESCR – food, health, education? CAT – prohibition of torture? What is the scope of State responsibility?