

Breaking down the silos: Corruption and Human Rights

Identifying new strategies and concepts to address the issue of corruption in the
work of UN Treaty Bodies

Benefits of
improving
connections
between
corruption and
human rights

- **1. Potential to improve the UNCAC:** Unlike the Treaty Bodies, UNCAC has no independent experts/rapporteurs; 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.
- **2. Potential to raise awareness of harm of corruption and generate greater public debate:** 2015 Final Report of the HRC Advisory Committee on the negative impacts of corruption on human rights says introducing an HR perspective:
 - Makes visible the social impact of corruption and generates awareness about harmful consequences of corruption
 - Makes new alliances
 - Makes preventing corruption a state obligation in order to meet its HR duties
 - Turns victims of corruption into rights-bearers: people denied right to basic standard of life by unholy mix of international financial system and local elites

No need to
reinvent the
wheel

- 2015 final report by HRC Advisory Committee on negative impacts of corruption on human rights made 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 whistleblowers and activists in Declaration on Human Rights Defenders.
 4. Systematic inclusion of corruption in Universal Periodic Reviews with clear criteria of what to assess
 5. Close coordination with UNODC

Rather than thinking of new strategies – to what extent have these old ones been implemented and if not, why not? What were the obstacles to achieving them?

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/000/55/PDF/G1500055.pdf?OpenElement>

Additional areas: I. Stolen assets and Human rights

Large scale theft of assets breaches:

1. Art 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. Art 11: right to an adequate standard of living

HRC has focused on negative impact of non repatriation of illicit funds to countries of origin on HR in various resolutions since 2011.

Latest resolution from March 2017:

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
2. to include impact of illicit financial flows on HR in mandate of independent expert on effects of foreign debt and other international financial obligations on HR.

US consistently opposes these resolutions and European countries abstain.

Expert study on HR impact of non repatriation of illicit funds

- August 2017 report concluded that failure to return stolen assets "*contributes immensely to violation of HR*" 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.
- Key HR issues in asset recovery:
 1. Speed of returning assets V due process
 2. Transparency, accountability and participation as essential components in return of funds V no conditionality (shaping up to be one of the most divisive issues)
 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
- <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/235/72/PDF/G1723572.pdf?OpenElement>

II. International Treaty on Business and HR – scope for AC provisions

Call for comments and proposals on draft elements due by 28th February 2018 (

http://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/CallsCommentsDraftElements_EN.pdf)

Corruption is mentioned a couple of times in the draft elements. How could Anti-Corruption provisions be made more meaningful.

Behaviour of business that contributes to HR violations: bribes paid that cause damage to social and economic development; facilitation of laundering of stolen wealth.

Possible proposals:

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