

UNGASS 2021

A human rights based approach to corruption

Contribution UNGASS 2021

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1. Introduction

The Centre for Civil and Political Rights and International State Crime Initiative welcome the initiative of the UN General Assembly Special Session (UNGASS) against corruption that will take place from 26 to 28 April 2021. The UNGASS offers an opportunity to shape global anti-corruption efforts for the next decade by: (1) including human rights perspectives in the discussions, (2) by analysing existing mechanisms and assessing the need for new ones, and (3) by ensuring the meaningful participation of independent civil society within these mechanisms.

Corruption is a major obstacle to the observance and implementation of human rights, and it is imperative a human rights perspective is included when understanding the issue of corruption. A human rights approach involves a shift in perception, moving from an economic and political perspective on corruption towards a human rights perspective, whereby corruption is viewed not solely as being a misappropriation of wealth and distortion of expenditure (which harms the economic and political stability of a country), but moves beyond this to acknowledge the impact of human rights violations for kleptocratic purposes; and the societal and governance implications of this.

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2. The link between corruption and human rights

Acts of petty and grand corruption affect people and communities in different ways. They may amount to prohibited forms of discrimination or directly violate individual and collective rights. Pervasive corruption weakens the accountability structures that protect human rights, contributing to impunity and impeding law enforcement. Corruption also negatively impacts collective rights. Combating corruption is particularly important for ensuring the empowerment, participation and protection of people who are members of vulnerable or marginalised groups.

The Centre for Civil and Political Rights has published a few studies to empower independent civil society and affected communities to engage with UN Human Rights mechanisms, and to analyse the approach of the latter on the issue of corruption:

- [Corruption and Human Rights - The Approach of the UN Treaty Bodies](#): this is a study of how all the UN Treaty Bodies have handled the issue of corruption in their state reviews between 2007 and 2017.
- [How to better integrate corruption issues in the UN human rights mechanisms](#): this guide provides guidance and practical recommendations to anti-corruption experts on how to effectively integrate human rights into anti-corruption efforts and vice versa.

- [How to engage with the UN Human Rights Mechanisms in practice](#): this is a list of concrete Frequently Asked Questions about participation to the UN Human Rights mechanisms.

Corruption is a major obstacle to the observance and implementation of human rights, both as objective standards and as subjective rights. Corruption undermines the basic values of human dignity, equality, and freedom for all, but in particular those whose rights are already wrongfully curtailed such as people living in poverty and those who are disadvantaged or otherwise marginalised. It also destabilises democracy, good governance, and the administration of justice. Corruption negatively impacts the enjoyment of human rights and can constitute a violation of human rights in concrete cases. In other words, corruption ‘facilitates, perpetuates and institutionalises violations of human rights.’¹ According to the UN Human Rights Council, it is ‘difficult to find a human right that could not be violated by corruption’.² Conversely, the protection of human rights should serve as an integral part of any anti-corruption campaign.

Corruption is recognised throughout the United Nations system as one of the main challenges to sustainable development and the realisation of human rights. Resolute in this regard, the UN Human Rights Council has recognised that “transparent, responsible, accountable, open and participatory government, responsive to the needs and aspirations of the people, is the foundation on which good governance rests, and that such a foundation is one of the indispensable conditions for the full realisation of human rights”.³

Moreover, in the context of Sustainable Development Goal (SDG) 16 “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”, the 2030 Agenda for development refers to concrete actions for combating corruption, namely, “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, anti-corruption practitioners have not been fully equipped to make the link between corruption and the realisation of human rights, and vice versa, human rights experts have not been fully equipped to make the link between human rights and corruption, in the existing available UN mechanisms.

¹ UN Subcommittee for Prevention of Torture, Seventh Annual Report, CAT/C/52/2, 24 February 2014; A/ HRC/40/59, §76.

² Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights, A/HRC/28/73, 5 January 2015, §17.

³ Human Rights Council Resolution 31/14 on ‘The role of good governance in the promotion and protection of human rights’, A/HRC/RES/31/14, adopted on 23 March 2016.

A human rights-based approach of corruption, with its focus on the victims of corruption and State responsibility, can be used to complement and strengthen anti-corruption efforts. The interdependency of corruption and human rights violations requires not only more awareness around corruption matters in existing human rights mechanisms, but also more consciousness regarding human rights violations in the UNCAC review mechanism and in the corruption debate more broadly. Given these entry points, a stronger implementation of the UNCAC will undoubtedly lead to better implementation of human rights treaties.

2.1. Elections

The UN Human Rights Committee regularly expresses its concern regarding the link between corruption and elections, either in the List of Issues or in Concluding Observations. This can be related to corruption within the Electoral Body (Liberia 2018⁴, Gambia 2018⁵), or corruption and fraud during actual elections (Angola 2019⁶, Saint Vincent and the Grenadines 2019⁷), corruption and nepotism among public officials (Vietnam 2019⁸, Cabo Verde 2019⁹).

Other concerns related to elections and participation in public affairs, include campaign financing (Saint Vincent and the Grenadines 2019¹⁰), the registration of voters (Tajikistan 2019¹¹, Equatorial Guinea 2019¹², Guinea 2019¹³, Eritrea 2019¹⁴) and election campaigns in the media (Czech Republic 2019¹⁵, Belarus 2018¹⁶, Equatorial Guinea 2019¹⁷).

According to the UN Human Rights Committee, corruption among public officials leads to a violation of the right to effective participation in public life (Bosnia and Herzegovina 2017¹⁸), as does fraud during elections (Honduras 2017¹⁹).

Other recommendations included improved transparency of campaign financing or party financing and equal access to media for candidates' campaigns.

⁴ CCPR/C/LBR/CO/1

⁵ CCPR/C/GMB/CO/2

⁶ CCPR/C/AGO/CO/2

⁷ CCPR/C/VCT/CO/2/Add.1

⁸ CCPR/C/VNM/CO/3

⁹ CCPR/C/CPV/CO/1/Add.1

¹⁰ CCPR/C/VCT/CO/2/Add.1

¹¹ CCPR/C/TJK/CO/3

¹² CCPR/C/GNQ/CO/1

¹³ CCPR/C/GIN/CO/3

¹⁴ CCPR/C/ERI/CO/1

¹⁵ CCPR/C/CZE/CO/4

¹⁶ CCPR/C/BLR/CO/5

¹⁷ CCPR/C/GNQ/CO/1

¹⁸ CCPR/C/BIH/CO/3

¹⁹ CCPR/C/HND/CO/2

Following these concerns, the UN Human Rights Committee recommended investigations into cases of corruption in government or among public officials, including accounting for UNCAC's recommendations. This shows that both systems - Geneva and Vienna - can reinforce each other by making references to state obligations within those respective institutions and by reiterating recommendations which have not been implemented by the State in question.

2.2. Asset recovery

There is growing recognition of the correlation between asset recovery, and the human rights and development agendas. SDG 16 mandates States to 'provide access to justice for all and build effective, accountable and inclusive institutions at all levels', whilst SDG 16.4 specifically obligates states to 'strengthen the recovery and return of stolen assets'. UNODC's bi-yearly Addis Ababa International Expert Meeting committed itself to fostering best practice in the field of asset recovery. This has included specific commitments to realising the SDG commitments through the return of stolen assets summarised in the 'Addis Ababa Agenda on 'financing for development'.²⁰ It articulated this further by mandating the use of returned assets to realising the SDG's. This was echoed in May 2019 at a UN High Level Meeting in New York on promoting best practices in asset recovery and repatriation as an 'important means to support the timely implementation of Agenda 2030'.²¹

The aforementioned commitments are consistent with Article 14 of the UN Covenant on Civil and Political Rights - one of the core UN Human Rights treaties governing international human rights law - which obligates the equality of persons before the law, transparency in proceedings, and independence of judicial mechanisms, mandating states as 'duty-bearers' in ensuring accountable, effective and inclusive judicial institutions. This overall position has been supported by the UN Independent expert on the effect of Foreign Debt who has advocated for a rights based approach to asset recovery and return, and the obligation of states to comply with their human rights obligations including economic, social and cultural rights.²² In spite of this, there have been no recommendations regarding asset recovery by UN Treaty Bodies.

Without an effective and comprehensive anti-corruption framework incorporating human rights obligations in regulating the process of asset recovery, return and disbursement, there are two key associated risks which emerge. First is the risk that misappropriation and/or re-laundering of returned assets will jeopardise the integrity of the return and result in re-occurrence. Second is the risk that the permissive environment which allowed the original offence will remain unchanged. The absence of change would permit kleptocrats to continue with impunity, and prevent redress for victims of corruption for the initial offence. It would

²⁰ See:

https://www.unodc.org/documents/corruption/AddisEGM2017/Concept_Note_Beyond_Addis.pdf

²¹ See: <https://www.un.org/pga/73/event/international-cooperation-to-combat-illicit-financial-flows-and-strengthen-good-practices-on-asset-returns/>

²² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/027/17/PDF/G1402717.pdf?OpenElement>

result in acts of corruption going unpunished, leading to a re-trauma and victimisation of victim populations.²³

Restitution of illicit assets is a challenging process with many political, legal, and administrative obstacles. For a human rights-based approach to asset recovery to occur, asset returning and receiving states must uphold their responsibilities as duty-bearers ensuring that fundamental human rights are respected throughout the asset recovery and return process, in particular the right to a fair trial, independence of judicial institutions and remedies for victims of corruption. The procedure through which the assets are seized, returned and disbursed is just as important as the conceptual framework within which the funds themselves are disbursed: going towards positively contributing to the lives of victim population and remediating the harm caused to them.²⁴

A well-functioning and effective asset recovery system has favourable impacts on the prevention of widespread corruption and should be used as one of several corruption-prevention mechanisms. The more asset return is aligned with standards of integrity, transparency, and accountability, the harder it becomes to divert assets or carry out corrupt acts. In this regard, the asset return process must support the establishment and enforcement of rule of law and prevent further corrupt practices in the country of asset origin. And, of course, fewer acts of corruption mean fewer corruption-related human rights violations.²⁵

A rights-based approach to asset recovery implies the inclusion of the victim population affected by the theft of the assets in question; as well as support for a free and independent civil society and media. These are crucial actors who provide an oversight, monitoring and scrutiny role in tackling impunity, ensuring perpetrators are held responsible.²⁶

Member states should enhance proactive and timely information sharing, pursue corrupt officials domestically and implement adequate laws on legal standing (Articles 53 and 56, UNCAC), all within the framework of a human rights approach. Asset recovery must be accountable and transparent at all stages of the process. Independent civil society has an important role in the asset recovery process - a role that should also be properly and formally recognised. Assets recovered should be dedicated to repairing the harm caused by grand corruption on victim populations, and work towards implementing measures to meet the

²³ F. Membrez and M. Hösli, *How to return stolen assets, The Swiss policy pathway*. Available here: http://ccprcentre.org/files/media/SwissReport_Asset_Recovery_25_Feb_20201.pdf; Lasslett, K., Kanji, F., and McGill, D. (2017) 'A Dance With The Cobra': *Confronting Grand Corruption in Uzbekistan*, London: International State Crime Initiative. Available here: <http://statecrime.org/data/2017/08/Full-Report-with-Executive-Summary.pdf>.

²⁴ *Ibid*; Lasslett, K., Kanji, F., and McGill, D. (2017) 'A Dance With The Cobra': *Confronting Grand Corruption in Uzbekistan*, London: International State Crime Initiative. Available here: <http://statecrime.org/data/2017/08/Full-Report-with-Executive-Summary.pdf>

²⁵ *Ibid*.

²⁶ *Ibid*.

Agenda 2030 vision in-keeping with SDG 16's intentions. They should also ensure kleptocrats and individuals within their periphery of influence should not benefit or in any way manage the return and disbursement of assets. Furthermore, Member States should ensure that returned assets pursuant to the Convention are used and managed in line with the Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases ("GFAR Principles") and in a manner contributing to and fulfilling the SDGs, and to the reparation of the damage caused to victims and society. Member States should work to develop and apply guidelines on best practices on asset management and return, which encompass those principles.²⁷

2.3. Effective Institutions

Several Treaty Bodies have made recommendations regarding the anti-corruption institutions. The UN Human Rights Committee in particular, has focused on several aspects. Firstly, if there is a lack of an independent body mandated to detect and investigate corruption, it has recommended that one be established (Tajikistan 2019²⁸).

When there is such a body, the Committee recommends that it has sufficient human and financial resources and capacity to carry out its mandate (Guinea 2018²⁹). This includes sufficient expertise among the staff, as well as effective cooperation between the prosecution and the investigation services (Bulgaria 2018³⁰). It should be an independent institution that is not unduly influenced, as is also foreseen in articles 6 and 36 of the UNCAC. This reiterates the links that exist between corruption and human rights, as well as how both Treaties can reinforce each other when making reference to one another in State reviews.

2.4. Whistleblower Protection

Media, civil society, academics and NGOs have been instrumental in uncovering and reporting particular acts of corruption. Their vigilance and voices are crucial in motivating governments and other actors to act with integrity. Ensuring the involvement of different actors requires both a suitable policy climate and the appropriate legal safeguards. Human rights norms, principles and approaches are indispensable in establishing both, and thus may encourage journalists, activists, experts, victims and witnesses to come forward and "blow the whistle".

Member States should adopt and implement comprehensive legislation on whistleblower protection in line with international human rights standards, providing for confidential and secure reporting mechanisms and robust legal protection from reprisals to all whistleblowers, including those reporting to CSOs, the media, and to international mechanisms.

²⁷ See also the submission of the UNCAC Coalition.

²⁸ CCPR/C/TJK/CO/3

²⁹ CCPR/C/GIN/CO/3

³⁰ CCPR/C/BGR/CO/4

2.5. Judicial guarantees and the right to a fair trial

Corruption in the judiciary and violations of the right to a fair trial are the main concerns of the Human Rights Committee when it comes to corruption. Most of their concerns related to systemic corruption in the judiciary, the lack of independent judges and the appointment, selection, dismissal and promotion procedures in the judiciary.

Many of the recommendations follow a similar pattern: States are recommended to combat, fight or eradicate corruption, focusing on investigations, prosecutions and punishments of the perpetrators, including complicit judges or judicial officers. Other more specific recommendations refer to the inclusion of the issue of corruption in the training curriculum for judges (Azerbaijan 2016³¹), addressing impunity (Georgia 2014³²) and dealing with corruption among law enforcement officials (Albania 2013³³).

Member States should step up their efforts to combat systemic corruption to ensure that it does not go unpunished, to ensure that all cases of corruption are independently, impartially, thoroughly investigated, that appropriate judicial penalties are imposed on the perpetrators, including when they are staff members of the judiciary, to ensure that strict standards are established for public officials.

3. Independent expert on corruption and human rights

In the existing human rights mechanisms, corruption issues are not sufficiently recognised and accounted for. It falls through the cracks for several reasons: those mechanisms don't always have the time, the resources, the knowledge or the expertise, to research and document it in depth.

On the other side of the spectrum, anti-corruption experts and UN mechanisms have fallen short of adopting a human rights approach. The interrelationship between the two issues - corruption and human rights - are known to have severely debilitating impact on a state and its citizenry. It is imperative that an independent mechanism is established to account for this. It is our recommendation that an independent expert with a mandate to assess the negative impact of corruption on human rights is established, to better articulate processes for accounting for and preventing human rights and anti-corruption breaches and ensuring state duty-bearer obligations are met. This mechanism would embody the link between the two fields.

This new mechanism could address the challenges of existing mechanisms by being able to focus on how corruption affects the enjoyment of human rights, whether they are civil and political, or economic, social and cultural, whether it is petty or grand corruption. Ideally,

³¹ CCPR/C/AZE/CO/4

³² CCPR/C/GEO/CO/4

³³ CCPR/C/ALB/CO/2

the mandate holder would have experience and expertise in both fields, allowing them to expertly assist governments in both implementing the UNCAC, as their human rights obligations.

Linking both fields also reinforces the links between the different mechanisms in Geneva, Vienna and New York, and this is an added value in and of itself: Geneva being the center of the UN human rights mechanisms, Vienna being the center of the UNCAC mechanisms, and New York being the center of the UNGASS and UN mechanisms overall.

4. Civil society participation to the UNGASS

The Centre for Civil and Political Rights is an organisation that works very closely with the UN Human Rights mechanisms in Geneva: the Treaty Bodies and the Human Rights Council, including the Universal Periodic Review. Geneva has an established system of civil society participation, that is both systematic and transparent.

Even though the Geneva system faces many challenges, it is our opinion that many of the practices related to civil society participation, could be duplicated or improved during the UNGASS, or even afterwards, as part of the UNCAC review system.

- **Special Procedures:** when a Special Rapporteur, Independent Expert or Working Group intends to write a report about an issue, it asks for input from civil society, academia, and any other non-governmental stakeholder. This also happens when a Committee is writing a General Comment about one aspect of their Treaty. This practice allows them to take into account all perspectives and ensures that the CSO-angle is also represented in the final document.
- **Universal Periodic Review (UPR):** a few weeks before the UPR takes place, UPR-info organises pre-sessions. This is a panel discussion by civil society representatives of the country under review, and is attended by the diplomatic missions issuing recommendations to the country under review.
- **Treaty Bodies:**
 - Each Treaty Body has their own specifics, but every Treaty Body welcomes **civil society participation at every stage of the process**³⁴. This includes written, as well as oral briefings, before, during and after the review, to ensure that their priorities are taken into account. Civil society participation at these Committees is systematic. When civil society is unable to participate physically in the briefings, because of a lack of funding or any other reason, remote participation via video conferencing is possible. This participation is crucial: otherwise, the only source of the review is the State report itself. It is essential

³⁴ For the Human Rights Committee, see the [guidelines](#) that were developed by the Centre for Civil and Political Rights.

- that the information in a state report can be checked by - preferably multiple - CSO reports.
- Most Treaty Bodies have appointed a **focal point for reprisals**. This constitutes a safeguard for civil society cooperating with the UN, providing information to these bodies and participating in the review process of their country. The focal point receives any information about possible reprisals, and can react by communicating with the State party to ensure the safety of the Human Rights Defender in question.
 - There are **clear deadlines** for CSO participation for the submission of written reports as well as the registration for oral briefings.
 - A **predictable calendar** of the work of the Human Rights Committee allows for CSOs to plan their activities and engagements. Knowing in advance which country will be reviewed by which mechanism in which year, is crucial information for NGOs in order to divide their funding and plan the work.
 - All the reports submitted to the Treaty Bodies are **public**. All the state reviews are public as well. They are live-streamed online and the video is available afterwards. This ensures transparency and facilitates the work of civil society to disseminate what has been said in Geneva.
 - There is **no limit** to the amount of civil society that can take part in a review process. The more organisations are present, the more useful their participation will be: the information provided to the Committees will be diversified, checked, and confirmed by others. Moreover, they will be able to cover many issues and answer all the questions that the Committee members may have. For example, anti-corruption NGOs can submit reports to the Treaty Bodies to ensure that corruption issues are included in the review. Everyone has access to the mechanisms, and ECOSOC Status is not required.
 - Some of the Treaty Bodies have a **mandatory follow-up mechanism**. When the review is over, States are obligated to report on the measures taken to implement the recommendations. Here again, civil society has the possibility to submit an alternative report, making sure that the State report is not the only source of information for the Committee. The follow-up phase of the process is the most important aspect of the review, since governments are then held accountable for their (lack of) actions in implementing the recommendations they have received.

Member States should push for systematic CSO participation at the UNGASS, and reform the UNCAC review process to ensure that CSO participation is meaningful and effective. In order to be transparent, all reports should be public. There should be a mandatory follow-up mechanism that includes the possibility of civil society participation. A protection mechanism for those cooperating with the UNGASS or UNCAC mechanism, should be established. CSO participation should not be limited, on the contrary: diversification of CSO participation

should be encouraged, so that all aspects of corruption can be touched upon by them, including a human rights perspective.