

RAOUL WALLENBERG INSTITUTE

OF HUMAN RIGHTS AND HUMANITARIAN LAW

THE NEXUS BETWEEN ANTI-CORRUPTION AND HUMAN RIGHTS

A Review by the Raoul Wallenberg Institute
of Human Rights and Humanitarian Law

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Foreword

Corruption is a human rights issue. Whichever form it takes, grand or petty, corruption results in states not fulfilling their human rights obligations and in people not enjoying their rights. Then, why is it that anti-corruption practice and human rights practice seem to evolve on parallel tracks, in separate forums and with distinct agendas? How should we understand the “human rights approach to anti-corruption?” Could this approach bring together two movements that have much in common and bring about positive change?

We at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law believe that human rights mechanisms can help in the fight against corruption. The research undertaken for this study has convinced us that the anti-corruption movement should engage with human rights mechanisms at the United Nations, at regional level and at country level. It has also convinced us that the human rights movement should set itself to the task of interpreting human rights principles and norms against corruption. Human rights mechanisms should clarify what the entitlements of rights holders and the responsibilities of duty bearers are when corrupt acts distort governance processes, affecting everyday lives of people globally.

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Executive Summary

This study focuses on translating theoretical discussions about the connections between human rights protection and anti-corruption work into practice. Its intended audiences are anti-corruption specialists wishing to know more about what human rights principles and institutions can bring to their work and human rights specialists wishing to build bridges between human rights practice and anti-corruption work.

To anti-corruption specialists, this study highlights entry points into the existing international human rights system, showing that human rights mechanisms need to be supplied with detailed, expert knowledge about specific corrupt acts, rather than sweeping statements about “Corruption”, in order to develop authoritative guidance on how human rights are affected by corrupt practices. It shows how some mechanisms have innovated, pushing discussions far about human rights obligations in relation to wasteful expenditure, illicit financial flows, petty corruption by healthcare providers or corruption in the pharmaceutical supply chain.

This study makes the case for anti-corruption experts to take advantage of existing human rights mechanisms, at the international level as much as at the regional level and country level, providing them with up-to-date, detailed knowledge about various corrupt acts. Doing so has the potential to kick-start crucial discussions about how bribery, embezzlement, favouritism, and nepotism relate to the obligations of human rights duty bearers and the entitlements of rights holders. Anti-corruption experts may not be well-informed about how human rights could be applied in their work and fail to see how treaties and existing mechanisms might be relevant. Hence, this study maps out what is available in a way that is as much didactic as it is analytical. Anti-corruption organisations will be able to use it as a first reference when weighing which human rights mechanisms might be best suited in the pursuit of their work: United Nations human rights treaty bodies, special procedures, regional human rights mechanisms, or national human rights institutions.

To do so, the study highlights the myriad of ways in which human rights mechanisms have dealt with corruption so far, from merely acknowledging its interference with the protection of human rights to looking into how it impedes states from fulfilling their human rights obligations. What is still crucially missing is consistency and detail: discussing generally about corruption and human rights no longer suffices when one could look into how looting of state resources impacts the availability, accessibility, acceptability and quality of public service delivery. This study advocates for testing how human rights law and practice could frame and inform anti-corruption policy-making and programming. States and non-state actors ought to work and put the concept of “a human rights approach to anti-corruption” into practice in order to give it flesh and meaning before it becomes a simple and hollow element of agreed language in resolutions of the United Nations Human Rights Council.

A human rights approach to anti-corruption, this study shows, does not necessarily mean drastically changing current practice. To the contrary, many anti-corruption actors already integrate human rights to some extent, which in and of itself puts into question the posture of those refusing to mention human rights in their anti-corruption, good governance, or poverty reduction actions.

This study advocates for more systematic and in-depth examinations by human rights mechanisms of corrupt acts wherever they happen, particularly state review and monitoring mechanisms. At the global level, UN treaty bodies and special procedures can integrate corruption consistently in their work. These mechanisms offer the possibility for anti-corruption organisations to provide specific, detailed information, which mechanisms would examine with a human rights lens. These mechanisms have a crucial role to play to establish what duties states have and what rights people have when affected by corruption.

Rationale For This Study

The year of 2018 marks the 70th anniversary of the Universal Declaration of Human Rights and the 15th anniversary of the United Nations Convention on Anti-Corruption. These milestones provide the occasion to question whether there is hope to believe human rights work and whether the fight against corruption can ever succeed. But these milestones also provide a timely frame to debate and develop the strategic thinking on how the application of a human rights approach can lead to more effective anti-corruption policies. Supporting such development is the purpose of the present study.

Corruption, the “abuse of entrusted power for personal gain”, is the third largest industry in the world and, as such, it bears costs. It diverts funds intended for investment in public services, erodes the rule of law, distorts justice systems, interferes with political processes, and affects the delivery of public services. In other words, corruption bears human rights costs. The image of corruption affecting the rights of the poorest is the first that comes to mind for most – it is often the image of the petty bribes that poor people pay in their everyday lives. Yet, the fact that it is so easy to create this mental picture of the spiral of corruption obscures the ways in which grand corruption affects the human rights of all.

The global context in which this study places itself is one of building bridges between different fields, explicitly engaging human rights as a framework for justice and equality. An example of such a venture is translated into the negotiations and adoption of the Sustainable Development Goals (SDGs) under Agenda 2030. The SDGs had offered hope that the global commitments would reflect explicitly the beginning of a human rights-based development era. In many respects, each of the SDGs implicitly reflects human rights concerns, including the need to reduce inequalities and challenge power imbalances, yet how exactly human rights standards and tools can contribute to the SDGs implementation has to be thought out and experimented. This is an opportunity for the human rights community to engage in an effort to guide SDG implementation and demonstrate how human rights law and international human rights institutions can contribute to achieving the goals of Agenda 2030.

Among the 17 goals, the one that highlights corruption is SDG 16, aiming 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”. Within the agreed targets and indicators for SDG16, only target 16.5 explicitly mentions corruption and bribery: “Substantially reduce corruption and bribery in all their forms”, while 16.4 implicitly refers to corrupt acts in its mentioning of illicit financial flows: “By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime”. Notably, several other targets of SDG 16 gather several essential elements of anti-corruption and engage directly with human rights: 16.3 calls for

promoting “the rule of law at the national and international levels and ensure equal access to justice for all”, 16.6 calls for the development of “effective, accountable and transparent institutions at all levels”, target 16.7 seeks “to ensure responsive, inclusive, participatory and representative decision-making at all levels”, target 16.10 to “ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements”. SDG 16 is neither solely about corruption nor framed around human rights objectives. The interaction of both elements sets the background of this study. It is an entry point to argue for the advancement of the nexus between anti-corruption and human rights mechanisms, mostly considering that corruption is a constraint to the achievement not only of SDG 16, but of the 2030 Agenda as a whole.

On a narrower scale, the study departs from the recommendations and discussions held over a roundtable organised by the Raoul Wallenberg Institute in November 2017. The roundtable gathered international anti-corruption and human rights experts, representatives from governments and local authorities, as well as business representatives, national human rights institutions, academics and NGO’s. The occasion resulted in a set of recommendations and key points that explore the synergies and possibilities for strengthened cooperation between the anti-corruption and human rights communities, highlighting ways in which human rights can make a more active contribution to anti-corruption policy-making and programming. The discussions revealed across the board agreement that international human rights institutions have an important role to play in anti-corruption, particularly the United Nations human rights machinery.

A clear message from the roundtable was that there is value in applying a human rights based approach (HRBA) to the fight against corruption. The HRBA, because it is people-centred and focuses on empowerment, should help tackle corruption like it helps tackle issues that were long seen to be outside the scope of human rights concerns, such as economic policies, economic crises, budgeting and fiscal policies, to name a few.

To support the argument for adopting a HRBA to corruption, the first step is to look at how international human rights institutions have addressed corruption as a cause for human rights violations. That exercise is undertaken by this study, which was made possible with the support of the Ministry of Foreign Affairs of Denmark. To produce a study that can serve as a practical tool, it is also important to keep in mind that the fight against corruption is a long-term process that requires institutional reform as well as change in cultural attitudes to the rule of law in practice. Therefore, the study also provides practical recommendations to strengthen the current mechanisms and institutions.

In order to bring all the above elements together, the study is divided as follows: first, it explains the methodology used, then it presents the mapping exercise of how international human rights institutions have been addressing corruption, followed by a discussion on the application of a HRBA to corruption. The last chapter makes recommendations and the conclusion looks at the challenges ahead.

Methodology

The findings in this study are the result of a desk review of the work of international human rights institutions. At the global level, the review focused on United Nations Human Rights Treaty Body conclusions and recommendations and the Human Rights Council Special Procedures reports.

At the regional level, it focused on judgments of the European Court of Human Rights, observations and recommendations by the European Committee on Social Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment reports, the European Committee on Racism and Intolerance; as well as judgements of the Inter-American Court on Human Rights, and the Court of Justice of the Economic Community of West African States.

In addition, publications by non-governmental organisations working at international and national level were also reviewed, in particular but not exclusively Transparency International (international secretariat and local chapters), the Centre for Civil and Political Rights, the Geneva Academy, UPR Info, Global Witness, Sherpa, Anticor, Open Society Foundation, and Integrity Action. Finally, the desk review included publications by the United Nations Development Programme and the World Bank.

This extensive albeit by no means exhaustive desk review was also complemented with face-to-face interviews or through media interfaces, information requests by email, and discussions in Geneva in February and June 2018.

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1. Human Rights and Anti-Corruption: the State of Play

The concept of a HRBA to anti-corruption is increasingly gaining acceptance. In 2017 alone, the Human Rights Council, the European Parliament and the Inter-American Commission on Human Rights all addressed it in resolutions on corruption and human rights. The Parliamentary Assembly of the Council of Europe, also in 2017, reaffirmed that “the fight against corruption remain[ed] not only a cornerstone of the rule of law but also a key component of a genuine democracy and an essential element in ensuring the protection of human rights”¹. Political acceptance of the need for a HRBA to anti-corruption exists, its relevance is increasingly supported by states and international organisations. Still, political acceptance is not in itself an indicator that what is entailed in practice is clear to all, not even to the actors with a key role to play in giving practical meaning to the phrase.

The first step of this study has been to assess how international human rights institutions have looked at corruption. The aim was to explore the following questions: how do human rights institutions incorporate corruption concerns in their work? Has it been done systematically? Can characteristics or patterns be observed? This section maps out how corruption has been addressed firstly by the United Nations human rights mechanisms, treaty bodies and special procedure, secondly by the Council of Europe human rights bodies, including the European Court of Human Rights, thirdly by the Inter American Court of Human Rights, and lastly by national human rights institutions².

1.1 United Nations Human Rights Mechanisms

At first glance the analysis shows that corruption is considered in and of itself as a contributing factor to human rights violations, but beyond that statement, recommendations for remedial action are very general. Throughout the documents analysed, corruption is as much an issue that states need to address as it is an external explanatory factor of states’ limited success in protecting rights. This is akin to the often-cited analogy of corruption as cancer (or disease or malady), popularised in 1996 by the then President of the World Bank, James Wolfenson³. The analogy works as a means to demonstrate the seriousness of corruption, but is also highly problematic because of the powerlessness, and the resignation to it that is implied. The uneven and non-systematic nature of the references to corruption should not obscure the fact that in some cases compelling arguments were made, with specific reference to the rights that the mechanisms felt were at stake.

1.1.1 Human Rights Treaty Bodies

Concluding Observations

The committees that monitor the implementation of the core United Nations human rights conventions play a key role because they are entrusted to examine how state-parties fulfil their obligations, and to adopt authoritative interpretations of the treaty obligations. The first striking feature of the mentions of corruption by the UN human rights treaty bodies in their concluding observations is their vagueness. The Committees tend to express concern that

1 Council of Europe Parliamentary Assembly (2017) Promoting integrity in governance to tackle political corruption, Resolution 2170, available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=23930>.

2 A non-exhaustive internet-based search through documents of the African human rights system did not reveal any comparable primary sources, it was thus left out of this analysis.

3 Heywood, Paul (2017) Why we need to kill the ‘Corruption is Cancer’ Analogy, Corruption in Fragile States Series, CDA Perspectives Blog.

corruption is widespread, that it is endemic, that it is persistent, or that a State is highly vulnerable to corrupt practices. It is also noticeable that corruption is seldom the central element of the paragraph, and quite often is an addition to a sentence in the middle or towards the end of much longer paragraphs. Very few of the references to corruption detail what type of corrupt practice is of concern to the Committees and lack reasoning about the links between the corrupt act in question and the human right affected.

CRC/C/HRV/CO/3-4 (Committee on the Rights of the Child, 2014)

(f) Take all necessary measures to prevent and combat corruption.

Box 1

CERD/C/BGR/CO/19 (Committee on the Elimination of Racial Discrimination, 2009)

[...] the Committee is aware of the efforts the State party must make, in particular to enhance the independence of the judiciary and eliminate corruption.

Box 2

CMW/C/KGZ/CO/1 (Committee on Migrant Workers, 2015)

Corruption
While welcoming the progress achieved by the State party in combating corruption, the Committee is concerned that the level of corruption remains high.

Box 3

E/C.12/BDI/CO/1 (Committee on Economic, Social and Cultural Rights, 2015)

Corruption
11.The Committee is concerned that, despite the efforts deployed, corruption continues to be widespread in the State party at all levels and is an obstacle to the enjoyment of economic, social and cultural rights (art. 2, para. 1).

Box 4

CCPR/C/CPV/CO/1 (Human Rights Committee, 2012)

15. The Committee is concerned at the lack of information on the appointment and promotion of judges, as well as the procedures for disciplining judges in the State party. The Committee is also concerned at reports that judges are underpaid, which could expose them to grave risks of bribery and corruption, particularly in light of the emergence of drug trafficking groups that might interfere with the administration of justice (art. 14).

Box 5

Examples of treaty body recommendations

The imprecision that surrounds corruption in the Committees' concluding observations is problematic because the audience is not informed on why or how, according the Committee, the issue has been or should be tackled upfront from a human rights perspective. Yet, concluding observations are crucial. As the core document on a state's review of its human

rights record, they can then serve as a basis for civil society organisations, parliamentary Committees, and national human rights institutions for example, to push for action or reforms at domestic level and for advocacy work at the international level. In that sense, anti-corruption civil society organisations and national anti-corruption agencies could also use concluding observations in their work, for advocacy purposes to influence national policy making, but also to monitor change, progress and recurring violations.

The most specific references to corruption in concluding observations reveal what issues are most likely to be of concern to the Committees. For instance, corruption in places of detention is mentioned by the Human Rights Committee (CCPR), Committee on the Elimination of Discrimination against Women (CEDAW), and Committee against Torture (CAT). Corruption in the justice system is mentioned by the CCPR, CEDAW, CAT and Committee on the Rights of the Child (CRC). The Committee on Economic, Social and Cultural Rights (CESCR) and CRC express concern about corruption in health and education sectors, while CEDAW raises concerns in relation to access to health services and to employment in the public service. CRC also mentions corruption in labour inspectorates in one state review, and has, since 2015 adopted recommendations that mention corruption in relation to budget allocations.

Taken together, all of these references show how corruption in its many forms affect all human rights, they reveal how broad and varied connections between corruption and human rights are. Unfortunately because of the nature of state by state reporting, only a handful of persons are likely to read through a high enough number of reports to be able to observe that phenomenon, and each reference to corruption is unlikely to be connected to others still. For example, the most present concern relates to corruption in the judiciary – bribe-taking by police and the officials in judicial systems, detrimental effects on access to justice and access to remedies, political influence over and lack of independence of judges and prosecutors – and corruption in places of detention. Concerns over petty corruption thus seem to be more prevalent than concerns over grand corruption, but does that mean that the Committees are more concerned about petty corruption than they would be about grand corruption? Or that there has been, historically, more information and awareness about how petty corruption affects human rights?

Some remarkable developments can also be identified in the most recent reports. First the CEDAW Committee, taking a wider approach to women’s human rights in recent years has started to ask state parties to report on financial secrecy legislation⁴. In its examinations of Switzerland and Barbados in 2016 and 2017, the Committee queried the two state-parties’ financial secrecy laws and policies in relation to the states’ extra-territorial human rights obligations not to negatively impact other states’ capacity to “*mobilise maximum available resources for the fulfillment of women’s rights*”. In other words, the Committee is of the view that when some states chose to keep banking secrecy legislation, they might have a responsibility when other states are unable to allocate funds for the fulfillment of women’s rights, and the link between the former and the latter group of states is that funds are diverted from the latter states’ budgets and hidden where banking secrecy allows it.

Second, a noticeable evolution in the CRC’s approach to State parties’ budget allocations reveals how the Committee has refined its approach to corruption: from 2008 onwards the Committee has started recommending that states take measures against corruption “*in*

4 CEDAW representative, 11 June 2018.

*light of the day of general discussion in 2007 on “Resources for the rights of the child – responsibility of States” and with emphasis on articles 2, 3, 4 and 6 of the Convention”*⁵. Progressively, the recommendations increase in precision, linking to budgets for education, health-care and justice. Following the adoption of general comment No. 19 (2016) on public budgeting for the realization of children’s rights, the Committee further refines its recommendations, mentioning in particular wasteful and irregular expenditure, overpricing of contracts and irregular public procurement (see boxes 6-8).

Third, in recent concluding observations, the CESCR has started developing standardized recommendations to States on intensifying efforts to combat corruption. These include: (a) Raise awareness among the general public and government officials on the need to combat corruption; (b) Strengthen the enforcement of anti-corruption laws and combat impunity, particularly involving high-level officials; (c) Strengthen the capacity of the judiciary, including to ensure the effective protection of victims of corruption, their lawyers, anti-corruption activists, whistle-blowers and witnesses; (d) Improve public governance and ensure transparency in the conduct of public affairs.

CRC/C/LSO/CO/2 (Committee on the Rights of the Child, 2018)

Allocation of resources

(c) Taking note of target 16.5 of the Sustainable Development Goals, on substantially reducing corruption and bribery in all their forms, take immediate measures to combat corruption and strengthen institutional capacities to effectively detect, investigate and prosecute corruption.

Box 6

CRC/C/ARG/CO/5-6 (Committee on the Rights of the Child, 2018)

Allocation of resources

(d) Ensure, including through the eradication of corruption in public procurement processes and overpricing of contracts for the provision of public goods and services, that funds allocated to all programmes supporting the realisation of children’s rights at the national, provincial and local levels are fully and efficiently spent.

Box 7

CRC/C/COD/CO/3-5 (Committee on the Rights of the Child, 2017)

Allocation of resources

10. With reference to general comment No. 19 (2016) on public budgeting for the realization of children’s rights, the Committee recommends that the State party set up a budgeting process that includes a child rights perspective and specifies clear allocations to children in the relevant sectors and agencies, including specific indicators and a tracking system to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated to the implementation of the Convention, including by:

(f) Strengthening audits to increase the transparency and accountability of public expenditure across all sectors and reduce wasteful and irregular expenditure, including that related to corruption, in order to mobilize the maximum available resources for the implementation of the rights of the child;

Box 8

⁵ Committee on the Rights of the Child (2016) Concluding observations on the combined third to fifth periodic reports of Bulgaria, CRC/C/BGR/CO/3-5.

Individual Complaints

Of the core treaties, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) include the possibility for individuals to submit complaints to the Committees. Jurisprudence by the Committees is accessible through the database on the website of the Office of the High Commissioner for Human Rights. A keyword search through the database indicates that corruption is mentioned in only 80 cases in total⁶, 52 of which were examined by the CCPR, 27 by CAT and 2 by CEDAW.

This jurisprudence, however, does not help determine how the Committees view corruption. Indeed, in most cases, complainants were facing or had faced judicial proceedings on corruption charges when they appealed to the CCPR regarding violations of their right to fair trial, or they claimed that they had had to bribe public officials in series of events that had led to their fleeing their state of origin and claiming refugee status in another state, and later faced deportation from the latter. However, none of the complaints submitted concerned the acts of corruption, therefore none of the Committees examined whether corrupt acts had violated the rights of complainants.

Special Procedures

United Nations Special Procedures – special rapporteurs, independent experts and working groups – also address or mention corruption in their reports in varying degrees of specificity. Corruption is predominantly mentioned by the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other inhuman or degrading treatment or punishment in their country reports, while the most recent thematic report has been done by the Special Rapporteur on the right to health and is entirely dedicated to corruption and the right to health.

As a general observation, when corruption is mentioned by special rapporteurs in their concerns and observations, it is one in a list of several concerns. This not only diminishes the importance given to corruption, it also has the consequence of not indicating how corruption impacts on the right in question.

[A/HRC/4/25/Add.3 \(Special Rapporteur on the Independence of Judges, 2007\)](#)

4. [...] during his visit, SR Independence of Judges noted that the judicial system is in an alarming state, especially in view of the following: - gaining access to justice is very difficult for the majority of the population because of corruption, a lack of financial resources, the geographical remoteness of the courts and transport problems, and a lack of awareness of appeal mechanisms.

Box 9

[A/HRC/23/43/Add.2](#) (Special Rapporteur on the Independence of Judges, 2013)

110. All allegations of corruption in the judiciary should be properly investigated under clear and transparent rules, set beforehand, and with respect for fundamental guarantees of fair trial and due process of the accused.

Box 10

[A/HRC/20/18/Add.2](#) (Special Rapporteur on Trafficking, 2012)

72. [...] Furthermore, corruption in law enforcement, particularly at the provincial and local levels, is deep rooted and has diluted the efficacy of Government policies and programmes in combating human trafficking. As a result, many trafficked persons are not properly identified, leading to cases of wanton arrest, detention and deportation throughout the country.

Box 11

For example, the Special Rapporteur on the independence of judges and lawyers evokes “corruption and regular executive interference in the work of the judiciary”⁷; “corruption within the country, including in the judicial system”⁸; “corruption [and] undue influence and interference on the part of the public and private sectors”⁹, but it is never clear how the observations can be used by civil society and other stakeholders for advocacy or campaigning for change at national level. The only specific recommendations, in fact, link corruption to the lack of adequate salaries (DRC 2008), which in many respects is a very reductive approach to anti-corruption.

The contexts in which corruption is addressed are by far and large linked to law enforcement: the special rapporteurs on the independence of judges and lawyers, contemporary forms of slavery and trafficking in persons, and for the working group on arbitrary detention address corruption in the justice system; the Special Rapporteur on torture addresses corruption in prisons. This denotes an overwhelming concern for forms of petty corruption. The mentions of corruption in relation to economic and social rights are few but more specific. The Special Rapporteur on extreme poverty makes recommendations regarding anti-corruption agencies, laws on access to information and the protection of whistle-blowers, and on tax collection and tax evasion. The special rapporteurs on the right to food and on adequate housing evoke corruption of local officials, particularly in relation to access to land and real estate.

Finally, the 2018 thematic report by the independent expert on foreign debt on illicit financial flows and by the Special Rapporteur on the right to health on corruption and the right to health are most valuable contributions to spelling out a human rights approach to anti-corruption. Regarding illicit financial flows, the independent expert details how human rights provide a framework for asset recovery, in particular. Meanwhile, the Special Rapporteur on the right to health, makes compelling arguments for the use of human rights as a normative framework and a legally binding imperative to address corruption, detailing how human

7 Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Tunisia, A/HRC/29/26/Add.3, 2015.

8 Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Romania, A/HRC/20/19/Add.1, 2009.

9 Report of the Special Rapporteur on the independence of judges and lawyers, Addendum, Mission to Mexico, A/HRC/17/30/Add.3, 2011.

rights give rise to “obligations that provide a framework for action for duty bearers, as well as a framework of reference for monitoring and accountability”¹⁰. The Special Rapporteur demonstrates how various corrupt practices – from petty corruption by health care providers to corruption in the pharmaceutical value chain – make health care less available, accessible, acceptable and of lesser quality, thus using the criteria of the Committee on Economic, Social and Cultural Rights to assess whether human rights obligations are fulfilled. The Special Rapporteur recommends the adoption of the right to health “as a standard in anti-corruption laws and policies aimed at regulating the health sector”¹¹.

[A/HRC/28/60 \(Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, 2015\)](#)

“43. [...] In [the Independent Expert’s] estimation, respect for and adherence to the human rights principles of transparency, accountability and participation is a critical factor in ensuring the prudent use of repatriated illicit funds. He further endorses the view that “decisions over resources allocation cannot be made behind closed doors, but publicly and openly, with due attention to civil society’s demands. In some cases, lack of transparency and participation in the allocation decisions can end up in the use of the recovered assets to ends different from those sought by human rights principles” (A/HRC/19/42, para. 30). As the study by the High Commissioner underscored, since “recovered resources are not foreseen or public income included in the budget, States must allocate them in accordance with their obligation to devote the maximum of available resources to the fulfilment of economic, social, and cultural rights” (ibid., para. 28).”

Box 12

The working group on business and human rights addresses corruption in its recent country visits in general terms and not with a standard reference, which allows it to tailor its recommendations to each country. For example, in relation to Mongolia¹², it points to the absence of anti-corruption policies; in relation to Brazil¹³ it evokes corporate lobbying and political financing; and with regards to Mexico it mentions investigative journalism¹⁴. The statement issued at the end of the working group’s visit to Kenya, which states: “Corruption has a strong connection to human rights; it reduces the capacity of the government to deliver basic social services, it hinders the access to effective remedies and hampers the observance of safeguards to protect environment and health”¹⁵, also indicates the determination of the working group to continue to address corruption in its work with a strong human rights angle.

1.2 Council of Europe

This section focuses on European regional human rights mechanisms, using the database of the European Court of Human Rights (HUDOC) available through the website of the

¹⁰ Right of everyone to the enjoyment of the highest attainable standard of 137 physical and mental health, A/72/137, 2017.

¹¹ Supra, para 29-36 and 87.

¹² [Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises – visit to Mongolia, April 2013](#), A/HRC/23/32/Add.1

¹³ [Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Brazil, May 2016](#), A/HRC/32/45/Add.1

¹⁴ [Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Mexico, April 2017](#), A/HRC/35/32/Add.2

¹⁵ [Statement at the end of visit to Kenya by the United Nations Working Group on Business and Human Rights](#), Nairobi, 11 July 2018

Council of Europe. Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), European Committee on Racial Intolerance (ECRI) and European Social Charter (ESC) and judgements of the European Court of Human Rights were surveyed. As with United Nations human rights mechanisms, an overall impression of a lack of systematic or detailed approach prevailed.

1.2.1 Committee for the Prevention of Torture, European Committee for Social Rights, European Committee on Racism and Intolerance

The three Committees monitoring the application of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment, the European Social Charter and the European Convention on Human Rights in relation to racism and intolerance respectively, each have their own mandate and working methods, but for the purpose of this study they can be looked at together because all three have addressed corruption in their state reports in similar ways.

ECRI has the broadest range of issues in which corruption is a concern – administration of justice, law enforcement, police, access to public services, public education, health care systems, labour inspections, asylum application and refugee status determination procedures – and it is mentioned usually as an element of contextual information rather than as the issue scrutinized by the Committee. The CPT, with its narrower mandate, focuses on corruption in places of detention, but addresses corruption in a strikingly general and non-systematized manner. For example, it has recommended to “oppose all forms of corruption”¹⁶, to “eradicate the problem of corruption”¹⁷, to “take decisive action to combat the phenomenon of corruption in all prisons”¹⁸, or even to “deliver the clear message that those having abused their position in order to obtain money from persons deprived of their liberty or their relatives will be subject to criminal proceedings”¹⁹.

The European Committee for Social Rights has referred to corruption in relation to two issues only: corruption of law enforcement agencies and child trafficking in the case of Moldova, and corruption in the health sector in the cases of Romania, the Slovak Republic, Albania and Lithuania (see boxes 13-14). These are the only specific mentions of corruption. In the case of Romania the Committee distinguishes grand and petty corruption by invoking corruption in public procurement and informal payments. With these recommendations, the European Committee for Social Rights stands out by using language from anti-corruption practitioners, even if this is done without detailed recommendations attached.

16 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Visit Report of 2013, [Ukraine](#), CPT/Inf (2014) 15, paragraph 48, article ii

17 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Visit Report of 2011, [Azerbaijan](#), CPT/Inf (2018) 9, paragraph 15

18 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Visit Report of 2012, [Bulgaria](#), CPT/Inf (2012) 32, paragraph 13

19 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Visit Report of 2010, [Armenia](#), CPT/Inf (2011) 24, paragraph 63

European Committee of Social Rights – Conclusions 2015, Moldova

In its previous conclusion the Committee noted that corruption played a key role in child trafficking and that the enforcement of anti-trafficking provisions remained weak, partly due to corruption among law enforcers. The Committee also notes from the report of the Governmental Committee to the Committee of Ministers (TS-G) that the Governmental Committee urged the Government to take the necessary measures to combat corruption among senior Government officials. In this connection the Committee also notes from the report of GRETA that as confirmed by representatives of public bodies and NGOs corruption remains one of the most significant structural problems faced by the Republic of Moldova and there are allegations that corruption among law enforcement officials is contributing to trafficking.

Box 13

European Committee of Social Rights – Conclusions 2017, Romania

It further notes from the EU Commission Report on Progress in Romania under the Co-operation and Verification Mechanism (Technical Report 2015) that “corruption in the health sector appears to be widespread. The practice of informal payments is still frequent, especially in smaller towns or villages, and therefore is difficult to eradicate. According to a survey performed by the Ministry of Health and the Association for Implementing Democracy in Romania in February 2014, more than two thirds (68%) consider that the level of corruption in the public health system is high and very high, and one fifth of people admitted giving informal payments. In the area of health, corruption is addressed on two levels: higher level corruption– in the field of public procurement – and petty corruption in the field of informal payments for medical services.” The Committee asks for information on concrete measures and actions taken to tackle this phenomenon in the next report.

Box 14

1.2.2 European Court of Human Rights

As a supranational court, The European Court of Human Rights rules on individual complaints in which applicants allege violations of their rights under the European Convention on Human Rights. The very nature of individual cases implies that the Court will examine events, acts, and policies with the applicant’s rights in mind, therefore the approach will inevitably differ from that of a state report.

Despite the fact that the word corruption appears in a vast number of judgements, allowing the Court to evoke a myriad of contexts in which corrupt practices take place, and to identify many stakeholders in corrupt practices, the case-law gives only broad indications on important aspects of corruption from a human rights perspective. The scope of individual cases means that the court relies on what is submitted to it by the complainants and the State party concerned in its reasoning. So far, it appears that the court has not examined any cases where complainants argued that their rights were violated by corruption directly, thus the court has never examined that issue upfront.

In most cases surveyed, corruption was mentioned in judgements because applicants had found themselves accused of corruption, and argued before the court that their right to a fair trial had been violated. In these cases, most recently in [Telbis and Viziteu v. Romania](#)

of 26 June 2018, the court acknowledges that states enjoy a wide margin of appreciation with regards to policies aimed at prevention and eradication of corruption in the public service – in that case in the health care system. The court adds that the applicant’s bribe-taking as a public servant “involved damages to the State social security budget”²⁰, and that confiscation of the applicant’s assets “was effected in accordance with the general interest”²¹. In this and previous judgements, the court has addressed common elements of states’ anti-corruption policies such as investigations, prosecutions, or asset confiscation measures. In others, one can distinguish contexts related to corruption: public demonstrations against corruption, publication by media or stories alleging corruption, public figures and politicians prosecuted in grand corruption trials that are alleged to be politically motivated. In other cases, complainants fight deportation after failing to be recognised as refugees and argue that widespread corruption will put them at risk of having their rights violated, citing third party reports as evidence, but the court does not examine the issue of corruption itself.

From a human rights perspective, the protection of whistle-blowers seems to be the only aspect of high relevance that the Court has dealt with in detail. In *Heinisch v. Germany* (2011) and in [Guja v. Moldova \(2008\)](#), the court established criteria to decide whether whistle-blowers were effectively protected. In addition to ample case-law on journalists’ freedom of expression and the protection of journalistic sources, the court has thus developed meaningful jurisprudence that could find use beyond the specific cases it was built on and beyond the state parties of the convention.

CASE OF HEINISCH v. GERMANY, 2011

(Application no. 28274/08)

37. [...] It invited all member States to review their legislation concerning the protection of “whistle-blowers”, keeping in mind the following guiding principles:

6.1.1. the definition of protected disclosures shall include all bona fide warnings against various types of unlawful acts, including all serious human rights violations which affect or threaten the life, health, liberty and any other legitimate interests of individuals as subjects of public administration or taxpayers, or as shareholders, employees or customers of private companies;

6.1.2. the legislation should therefore cover both public and private sector whistle-blowers ..., and

6.1.3. it should codify relevant issues in the following areas of law:

6.1.3.1. employment law – in particular protection against unfair dismissals and other forms of employment-related retaliation; ...

6.2.2. This legislation should protect anyone who, in good faith, makes use of existing internal whistle-blowing channels from any form of retaliation (unfair dismissal, harassment or any other punitive or discriminatory treatment).

6.2.3. Where internal channels either do not exist, have not functioned properly or could reasonably be expected not to function properly given the nature of the problem raised by the whistle-blower, external whistle-blowing, including through the media, should likewise be protected.

6.2.4. Any whistle-blower shall be considered as having acted in good faith provided he or she had reasonable grounds to believe that the information disclosed was true, even if it later turns out that this was not the case, and provided he or she did not pursue any unlawful or unethical objectives.”

Box 15

20 [Telbis and Viziteu v. Romania](#), 26 June 2018, para 74.

21 [Telbis and Viziteu v. Romania](#), of 26 June 2018, para 80.

1.3 Inter-American Court of Human Rights

The Inter-American Court of Human Rights (IACHR) rules on individual cases of allegations of violations of the Inter-American Convention on Human Rights. *Nash Rojas et al* have studied the jurisprudence in detail of the IACHR in relation to corruption²². The findings of this study are similar to what has been observed so far with regards to other human rights mechanisms: corruption is discussed in multiple scenarios but the IACHR has no systematic, comprehensive approach to it. Relative to the total number of cases dealt with by the IACHR, a few deal with corruption – *Nash Rojas et al* count ten cases in which complainants were subjected to corrupt acts²³ – and as with the judgements of the ECHR there are, arguably, two ways to assess this jurisprudence. On the one hand, there is a basis confirming that the court recognizes that corruption affects the enjoyment of human rights. In *Tibi vs Ecuador* the IACHR examines generalized corruption in a place of detention. In *Nadege Dorezma vs Dominican Republic*, it examines incidents of extortion of trafficking victims by military personnel. However, in neither cases does the court address directly whether the corrupt acts violated human rights. In *Memoli vs Argentina*, the IACHR reaffirms the need to defend those who expose corruption, in this case the freedom of expression of journalists who exposed cases of fraud. In *Valle Jaramillo vs Colombia*, the Court rules that the status of a human rights defender includes those denouncing corruption, and in *Kawas Fernandes vs Honduras* it extends it to defenders of the environment²⁴.

The IACHR also deals with cases of state capture and generalized corruption in land registration, in cases involving indigenous populations. In *Comunidad Xakmok Kasek vs Paraguay*, in *Comunidad Sawhoyamaya vs Paraguay*, or in *Comunidad Indigena Yakye Axa vs Paraguay*, the IACHR addresses the fact that corruption has disproportionate impacts on groups facing discrimination. Corruption in the administration of land registration and land restitution is recognised, in these cases in particular, as a contributing factor to the violation of collective rights²⁵. On the other hand, as *Nash Rojas et al* note, the IACHR never addresses corruption as a systemic problem, therefore it never discusses a comprehensive human rights approach to corruption. Nevertheless, it must be emphasised it is not really possible for the court to do so on the basis of individual cases, nor does the court have a mission to do so.

1.4 National Human Rights Institutions

National human rights institutions (NHRIs), defined by the UN as bodies “established by a Government under the constitution, or by law or decree, the functions of which are specifically designed in terms of the promotion and protection of human rights”²⁶, are increasingly seen as an essential link between the local and international spheres within the global human rights regime. Since the adoption of the Vienna Declaration and Programme of Action by the World Conference on Human Rights in 1993, the UN has promoted NHRIs. It has assisted the development of independent NHRIs, designed to protect and promote human rights, ensure compliance with human rights treaties, investigate abuses and conduct public

22 Nash Rojas, Claudio, Pedro Aguiló Bascuñán, María Luisa Bascur Campos, and Matías Meza-Lopehandía (2014) *Corrupción y Derechos Humanos: Una mirada desde la Jurisprudencia de la Corte Interamericana de Derechos Humanos*, Centro de Derechos Humanos, Facultad de Derecho, Universidad de Chile.

23 Idem, pp.49-50.

24 *Tibi vs. Ecuador* (2004) ; *Nadege Dorezma vs Dominican Republic* (2012) ; *Memoli vs Argentina* (2013) ; *Kawas Fernandes vs Honduras* (2009).

25 *Comunidad Xakmok Kasek vs Paraguay* (2010), *Comunidad Sawhoyamaya vs Paraguay* (2006), *Comunidad Indigena Yakye Axa vs Paraguay* (2005).

26 UN Centre for Human Rights (1995) in Lino Katerina and Tom Pegrum (2017) ‘What works in Human Rights Institutions?’ *The American Journal of International Law*, vol 112 no. 3, pp 2, footnote 5.

enquiries, advise governments and parliaments and examine legislation²⁷. There are now 120 NHRIs globally, with varying mandates, varying degrees of independence, as well as levels of funding. Sepúlveda Carmona offers the most recent survey and analysis of the role these institutions can play in the fight against corruption²⁸. This section gives a few examples of what some NHRIs have addressed in their work in the recent years²⁹. As it is within their mandate to conduct research on human rights issues, several NHRIs have used their reports to expose the negative impacts of corruption on human rights. Peru's Public Defender, for example, looked at the impact of corruption on the enjoyment of the right to education³⁰. In its 2012 annual report, the Uganda Human Rights Commission dedicates an entire section to the impact of corruption on human rights, including by listing incidents and linking each one to the human rights affected.

Date	Report (Author, Article, newspaper)	Allegations	Likely impact on human rights
January 5, 2012	Steven Candia and Simon Masaba LC bicycle scandal Asian Tycoon dead New Vision, pg 1 and 3	One of the directors of the company at the centre of the UGX 4.7 billion LC bicycle died	Right to an adequate standard of living
January 6, 2012	Richard Wanambwa , No report yet as UPE probes uses Shs 7 Billion Daily Monitor at pg 1	UGX 7 Billion spent to make public findings after 25 months of existence	Denial of social services
January 6, 2012	Anne Mugisa Government asked to recover UGX 24 billion from Basajabalaba New Vision pg 1	Government used this money as a bad loans bail-out for the business man in 2004	Violation of the right to accountability for public funds

Source: The 15th Annual Report of the Uganda Human Rights Commission to the Parliament of the Republic of Uganda (2012)

In Ghana, the Commission on Human Rights and Administrative Justice has a mandate that covers human rights and anti-corruption. It is mandated to investigate complaints of violations of fundamental human rights and freedoms, corruption and abuse of power. It also reaches out to communities to disseminate knowledge on human rights and corruption through public education and awareness-raising campaigns. Teaching government officials, business professionals, and citizens about their rights and concretising the linkage between corruption and human rights is considered a first step to prevent violations and promote integrity³¹.

27 Linos Katerina and Tom Pegram (2017) 'What works in Human Rights Institutions?' The American Journal of International Law, vol 112 no. 3, pp 1-61.

28 Sepúlveda Carmona, Magdalena, (2017) 'The Role of National Human Rights Institutions in the Fights Against Corruption' Liber Amicorum – In honour of a Modern Renaissance Man, His Excellency Gudmundur Eiriksson, O.P. Jindal Global University, Universal Law Publishing, pp415-429.

29 An exhaustive review would not have been possible for the purpose of this study, in particular due to difficulties in accessing information and due to language barriers. This section draws on Sepúlveda Carmona, supra, supplemented by information available [here](#) and a selected desk review of websites in English and French.

30 Peru in Compilation of best practices of efforts to counter the negative impact of corruption on the enjoyment of all human rights, available at: <https://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CopilationBestPractices.aspx>.

31 Raoul Wallenberg Institute (2017) Report: Corruption and Human Rights how to become mutually reinforcing? Roundtable, 13-14 November 2017, available at: <http://rwi.lu.se/publications/anti-corruption-human-rights-be-19-come-mutually-reinforcing/>.

Kenya's National Commission on Human Rights (KNCHR) also used its mandate to investigate and expose human rights issues when it published landmark reports detailing illicit enrichment of public officials between 2006 and 2013. The KNCHR exposes the plunder of public budgets to purchase luxury vehicles, the use of public buildings and resources to organise political campaigns, the illegal acquisition and sale of public land. In these reports, the KNCHR states expressly that corruption impacts negatively on the enjoyment of human rights and employs itself to expose the loss in resources in facts and figures.

The Malaysian Human Rights Commission also evokes corruption in its 2015 report³², with clear references to its human rights impact, while the Zambia Human Rights Commission published the conclusions of a conference held in 2012, where anti corruption agencies, African national human rights institutions, civil society organisations, and media representatives met to discuss the strategies for strengthening the relations between each other in the fight against corruption. For example advocating together for the ratification and domestication of international anti-corruption agreements and for the justiciability of economic social and cultural rights³³.

None of the NHRIs surveyed have addressed corruption in a systematic manner and in a number of cases, it seemed that the institutions have never looked into the issue in any of their publications. However, some NHRIs have brought up corruption in other ways, such as issuing recommendations on legislation. The Irish Human Rights Commission issued recommendations to the Irish government's whistle-blower protection bill in 2012³⁴. The South Africa Human Rights Commission (SAHRC) is mandated to compliance with the South African Public Access to Information Act, and through its complaints mechanisms handles cases involving corruption and whistle-blowing. The SAHRC also undertakes human rights-based budget analysis, which uses tools and methods to examine how public funds are generated, allocated and spent, and allows to appraise how public budgets against obligations under the ICESCR, in particular the obligation to use the maximum available resources for the progressive realisation of economic and social rights³⁵. The use of tools to expose wasteful expenditure, under-spending or over-spending of resources – which often hides corrupt practices – and questioning whether and how they affect states' obligations under the ICESCR, is a relatively new method of human rights monitoring but it offers NHRIs, such as the SAHRC, a key role in looking at how corruption affects human rights.

32 The reports quotes directly a seminal article on corruption and human rights by James Thuo Gathii 'Defining the relationship between corruption and human rights': " Corruption affects human rights in a variety of ways. For example, the rights to food, water, education, health, and the ability to seek justice can be violated if a bribe is required to gain access to these basic rights. Corruption by high-level government officials can siphon millions of dollars of the country's wealth, which in turn handicaps the government from fulfilling its duty to protect, ensure, and respect the rights guaranteed to its people." in Human Rights Commission of Malaysia (Suhakam), 2015 Annual Report, p. 70, available at: <http://www.suhakam.org.my/>

33 Conclusions of the Stakeholder's conference on Corruption and Human Rights, Lusaka, Zambia, 25-26 April 2012, available at: <http://www.hrc.org.zm/>

34 https://www.ihrec.ie/app/uploads/download/pdf/ihrc_observations_on_the_protected_disclosures_in_the_public_interest_bill_2012_june_2012.pdf

35 See Mathews, Thandiwe and Daniel McClean (2016) Budget Analysis for Advancing Socio-Economic Rights. Tools and methods used for formulating and analysing government budgeting for the progressive realisation of socio-economic rights, available at: <https://www.sahrc.org.za/home/21/files/2016%20SPII%20SAHRC%20Guide%20to%20Budget%20Analysis%20for%20Socio-Economic%20Rights.pdf>

Kenya National Commission on Human Rights and Kenya Land Alliance, (2013) “Unjust Enrichment. The Making of land Grabbing Millionaires. Kenya Land Alliance. Kenya National Commission on Human Rights” p.5

Corruption is a human rights issue. Its human rights dimensions are today widely acknowledged among human rights defenders who have even called for its classification as a crime against humanity. At its worst, corruption can lead to the violation of the right to life. When a building collapses because corners were cut, when public funds are siphoned away from providing life saving health care, people die. Where this happens on a grand scale there is not much difference between corruption and genocide. By diverting resources away from public use, corruption seriously inhibits the realization of economic, social, and cultural rights. Besides creating sudden and extreme income inequalities, the diversion of these kinds of resources causes massive human deprivations. Corruption also introduces uncertainties into the economic environment that discourages investments which are so critical for economic growth and poverty alleviation. Corruption leads to the infringement of numerous civil and political rights. It perpetuates discrimination by conferring privileges to those with means- where corruption thrives, people are not equal in dignity and rights, they may not, for example, enjoy equal protection before the law as is provided for in the International Convention on Civil and Political Rights. Public land belongs to all Kenyans- when it is corruptly allocated to a privileged few such preferential treatment constitutes discrimination. When corruption is used to finance political contests as it has in Kenya and electoral outcomes are determined through bribes of public land to political clients; citizens’ choices are distorted and they do not get the leadership they deserve. Kenya today is one of the most unequal countries in the world. We believe that the unjust enrichment of a few people through land grabbing has greatly contributed to this inequality.

Box 16

Conclusion

By mapping the engagement of international and national human rights mechanisms on the matter of corruption, one question is answered while a series of others remains open to discussion. Do human rights mechanisms consider corruption in their work? Resolutely yes, and increasingly so: the multiple human rights bodies surveyed engage with corruption. Despite that, the growing awareness and recognition of the impacts of corruption on human rights still fall short, as too often arguments are general and fragmented.

Undoubtedly, a myriad of factors play a role in this fragmentation, including the personal expertise of mandate-holders, the scope of each human rights instrument against which corruption is discussed, and the fact that corruption, as a concept, covers so many different practices. A higher awareness of how corruption affects the enjoyment of human rights would contribute to the issue being raised more consistently by human rights mechanisms. Still, when these various mechanisms examine specific practices rather than corruption as a vague and general concept, the strength of human rights as a normative framework becomes apparent. Its relevance is highlighted when corrupt practices are examined against human rights obligations (to respect, to protect, to fulfill), duty bearers and rights holders are identified, and corrupt practices analysed against normative dimensions of human rights realization, in terms of availability, accessibility, acceptability and quality.

2. Current Practices of Integrating Human Rights in the Fight Against Corruption

A HRBA, emphasising the roles of principles, standards, and mechanisms for the promotion of protection of human rights, can be a valuable tool in anti-corruption. Applied to anti-corruption, the HRBA places the human rights entitlements of the people – as rights holders – and the corresponding obligations of states – as duty-bearers – at the centre of all efforts. These broad statements are now largely accepted, yet there is no clarity on how exactly that is operated in practice, raising a number of questions: is existing anti-corruption practice by far and large oblivious of human rights, or are there existing practices that already include elements of a HRBA?

In this chapter we argue that conceptualizing and putting into practice a HRBA to anti-corruption does not necessarily mean a complete overhaul of existing practice. We highlight a handful of examples of anti-corruption practices and discuss the extent to which they incorporate elements of a HRBA.

2.1. Anti-Corruption Practices That Already Integrate Some Components of Human Rights Practice

A HRBA empowers people to know and claim their rights. It increases the ability of organisations, public bodies and businesses to fulfil their human rights obligations. It also creates solid accountability so people can seek remedies when their rights are violated. The principles that underpin the HRBA are: Participation, Accountability, Non-Discrimination and Equality, Transparency, Empowerment and Rule of Law. The intersection with principles that underpin anti-corruption is most clear in the case of the principles of transparency, accountability, and rule of law. The International Council for Human Rights Policy, in a seminal study on anti-corruption and human rights, proposed that anti-corruption programmes would gain traction if they were to incorporate human rights principles³⁶. In this section, we explore whether the evolution of both anti-corruption and human rights practice in the last few years might have led to a stage where there is considerable overlapping.

2.1.1 Civil Society

Civil society organisations play a critical role in monitoring public affairs, whether from an anti-corruption perspective or from a human rights perspective, or both. Organisations with a global reach might explicitly give to their work both a human rights and an anti-corruption dimension. For example, Global Witness presents itself in the following manner: “Global Witness campaigns to end environmental and human rights abuses driven by the exploitation of natural resources and corruption in the global political and economic system. At Global Witness, we protect human rights and the environment by fearlessly confronting corruption and challenging the systems that enable it.”³⁷

For other organisations that do not frame their work with references to both human rights and anti-corruption, however, it does not follow that the work undertaken is exclusively useful. For example, in Liberia the Coalition for Transparency and Accountability in

36 International Council on Human Rights Policy and Transparency International (2010) Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities,; see also International Council on Human Rights Policy (2009) Corruption and Human Rights: Making the Connection.

37 <https://www.globalwitness.org/en/about-us/>

Education (COTAE)³⁸, which is coordinated by the anti-corruption organisation Center for Transparency and Accountability (CENTAL)³⁹, monitored the implementation of the Public Private Partnership Program in Education introduced by the Ministry of Education of Liberia in 2016. While concerns around the public-private partnership programme documented from its right to education dimension have been quite large⁴⁰, the work undertaken by the COTAE successfully links the anti-corruption and the human rights elements: from the absence of transparency in public procurement processes to the concerns with the availability, accessibility and quality of the education provided. In this sense, without making upfront references to the ICESCR or the CRC, or the right to education, the COTAE has effectively framed its findings in human rights terms. Its analysis is in line with the criteria set out by the Committee on Economic, Social and Cultural Rights in its assessment of the progressive realisation of economic and social rights, while its primary concern is the anti-corruption dimension.

2.1.2 UNDP

The United Nations Development Programme (UNDP), as the lead development agency of the United Nations and a member of the United Nations Development Group, has adopted the UN Statement of Common Understanding on the Human Rights-Based Approach to Development Cooperation and Programming of 2003⁴¹. It also plays a key role in the implementation of the 2030 Agenda for Sustainable Development and, notably, in supporting states to achieve the SDGs.

The UNDP has developed and implemented a large number of projects to support states in their anti-corruption work, yet remarkably the extent to which the programmes and projects were actually “normatively grounded in international human rights standards and principles” is often ambiguous. The Global Anti-Corruption Initiative (GAIN), UNDP’s global anti-corruption programme, which ran from 2013 to 2017, makes scarce references to human rights and none to the international human rights framework. Yet it remarks that through the Human Rights Council, states have recognized “that corruption is an enormous obstacle to the realization of all human rights — civil, political, economic, social and cultural, as well as the right to development”⁴².

With its unique position in the UN system, the UNDP stands as the organisation best placed to develop a human rights approach to anti-corruption. However, there does not seem to have been a concerted effort in this direction and it is rather at the level of each programme that one needs to find elements that would naturally take their place in such a HRBA to anti-corruption. For example, in Kosovo, the UNDP’s programme to support anti-corruption (SAEK)⁴³, is grounded on the UN Common Development Plan (CDP) of 2011-2015⁴⁴, in other words the strategic framework document for UN programmes and agencies during

38 <http://www.cotae.cental.org/>

39 <http://www.tilliberia.org/>

40 See for example the work of the Right to Education Initiative <http://www.right-to-education.org/>, also at <http://www.right-to-education.org/blog/evidence-marketing-recalling-known-independently-verified-facts-about-bridge-international>

41 <https://undg.org/document/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies/>

42 UNDP (2014) UNDP Global Anti-corruption Initiative (GAIN) 2014-2017, available at: <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/undp-global-anti-corruption-initiative--gain--2014-2017.html>

43 UNDP (2011) Support to Anti Corruption Efforts in Kosovo (SAEK), available at: <http://www.ks.undp.org/content/dam/kosovo/docs/SAEK/SAEK%20PRODOC%20SIGNED.pdf>

44 UNKT Common Development Plan 2011-2015 (2011) available at: http://www.ks.undp.org/content/dam/kosovo/docs/UNKT_CDP-English.pdf

the five-year period. This key document uses a HRBA, particularly in relation to the development outcomes on which the SAEK is established.

2.1.3 The World Bank

The World Bank integrated anti-corruption into its work in the mid-1990s, under the leadership of its then president James Wolfenson. Its engagement with human rights, however, as has been argued elsewhere⁴⁵, has been scarce and rhetorical, even if the Nordic Trust Fund operating under its auspices has conducted valuable research on human rights topics. For instance, the publication “Integrating Human Rights into Development: Donor Approaches, Experiences, and Challenges”⁴⁶, argues for the integration of human rights principles into anti-corruption practice.

In practice, however, the World Bank has developed the Global Partnership for Social Accountability (GPSA)⁴⁷, which gives grants to civil society organisations. As of June 2018, the GPSA funded 23 projects in 17 countries, in various sectors such as health, education, social protection, water, and across issues such as public sector procurement and budget transparency.

The concept of social accountability, as accepted by the World Bank, has extensive cross-over with human rights principles: participation, transparency, accountability. But as Ackerman explains, social accountability initiatives tend to come up short on elements of the HRBA, such as legal recourse⁴⁸. In addition, Ackerman continues “there are sometimes problems with the issue of inclusiveness, as when social accountability initiatives are designed in a “top-down” fashion and only involve elite NGOs⁴⁹”. Contrary to the United Nations Children’s Fund (UNICEF), which grounds its social accountability work within Human Rights Based programming, and to UNDP, which also works on social accountability projects, in which notions of rights and entitlements are included, the World Bank seems to operate completely separately from the notion of human rights. The GPSA encapsulates both the growing internal recognition of the relevance of human rights to the work of the World Bank and the barriers to a formal recognition. Using social accountability is an efficient pragmatic solution, but it is likely to fall short in addressing discriminatory practices, inequalities and unjust power relations. These are central in tackling corruption.⁵⁰

2.1.4 Does The Absence of an Explicit Human Rights Framework Matter?

The examples above raise the question of whether there is enough existing practice that crosses over between human rights and anti-corruption to articulate what a HRBA to anti-corruption can be. However, the lack of systematic, comprehensive underpinning of human rights principles complicates the task. Moreover, there are serious questions raised with the approach because they fail to use human rights principles, either as a rule like the

45 Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, on the World Bank and human rights, A/70/274, 2015.

46 Organisation for Economic Cooperation and Development and International Bank for Reconstruction and Development / The World Bank (2016), Integrating Human Rights into Development: Donor Approaches, Experiences and Challenges, third edition, Washington D.C., World Bank.

47 <https://www.thegpsa.org/>

48 Ackerman, John M., (2005) Human Rights and Social Accountability, Social Development Papers, Participation and Civic Engagement, No. 86, p.7, available at: <http://documents.worldbank.org/curated/en/250451468048914790/Human-rights-and-social-accountability>

49 Supra.

50 Shawar, Yusra Rihbi and Jennifer Prah Rugger, (2018) The World Bank, in Meier, Benjamin Mason and Laurence O. Gostin, (2018) Human Rights in Global Health, Oxford: Oxford University Press.

World Bank, or selectively depending on the approach of the state concerned, as in the case of UNDP. Human rights give rise to obligations that provide a framework for action for duty bearers, as well as a framework of reference for monitoring and accountability. They are recognised in international and regional human rights agreements and often even in domestic constitutions. Thus, if corrupt practices prevent states from realizing rights and people from enjoying rights, these rights should be normative standards for policies and programmes aimed at reducing corruption.

2.2 Anti-Corruption Litigation

Shifting from a purely criminal law approach to anti-corruption towards a HRBA can contribute to developing a better understanding of who the victims of corruption are and how reparations can be envisaged. The argument that the poor and marginalised groups in society are the primary victims of corruption here encounters the discourse of the HRBA, which is seen as framework to prioritize those who face most discrimination.

Strategic litigation is understood here as the act of bringing selected cases to national courts or international judicial or quasi-judicial bodies, with the aim that it will bring about changes in law, or in practice, or create public awareness about the issues at stake in the case. Cases are not chosen randomly, but rather with a certain advocacy goal, and in the public interest, in the sense that the result would vindicate the rights of persons beyond those named in the cases.

As detailed in the first section of this report, international human rights mechanisms have yet to examine individual petitions in which complainants put acts of corruption at the centre of their claim that their human rights were infringed upon. For example, *Nash Rojas et al*, who studied the jurisprudence of the IACHR in order to establish the elements of a HRBA to anti-corruption, acknowledge that corruption is not at the centre of the rulings they have examined before setting out what they believe should be the key elements of such a HRBA to anti-corruption⁵¹. For *Nash Rojas et al*, the IACHR would be a medium to use for strategic litigation of corruption. Because they emphasise inherent links between corruption and discrimination and based on the fact that corruption should be understood as structural rather than contextual, they discuss possible means of reparations without devoting much attention to the determination of victims.

The issue of determining who the victims of corruption are and how reparation should be implemented is not resolved in cases that involve the recovery of assets of grand corruption. A number of legal initiatives across jurisdictions have had to deal with this issue. First, in 2010, the Nigerian organisation Socio-Economic Rights and Accountability Project (SERAP) brought sufficient evidence of corruption involving personnel and resources of Nigeria's ministry of education before the Court of Justice of the Economic Community of West African states. In its ruling, the court determined that corruption in education could constitute a violation of the right to education if efforts were not made to prosecute corrupt officials and recover stolen funds, and that it was the right jurisdiction to examine the case.⁵² Still, the Court rules that it lacked sufficient evidence regarding the acts of corruption in the case. A number of non-governmental organisations have also been engaging in strategic litigation to pursue grand corruption before national courts. In the ill-gotten gains case against Equatorial

51 Nash Rojas, Claudio, et al (2014) *Corrupción y Derechos Humanos: Una mirada desde la Jurisprudencia de la Corte Interamericana de Derechos Humanos*, see in particular pp. 12-14.

52 Mumuni, Adetokunbo (2016) *Litigating Corruption in International Human Rights Tribunals: SERAP before the ECOW-AS Court*, available at <https://www.opensocietyfoundations.org/sites/default/files/legal-remedies-8-mumuni-20161014.pdf>

Guinea's ruling family Obiang (the *biens mal acquis* trials), Sherpa, Transparency International France, and a few other organisations, filed criminal complaints before French Prosecutors accused Teodorin Obiang of embezzlement and money laundering. This landmark case⁵³ also brought to light a significant gap in the asset recovery legislation in France: while over 100 million euros worth of assets were confiscated by the French authorities, the legal framework called for it to be deposited in French coffers rather than allowing for the assets to be returned to Equatorial Guinea. The management of proceeds of asset recovery poses an array of legal questions, including questions regarding human rights. For example, if the assets were stolen from a state, their disappearance from state's coffers undermines that state's ability to comply with its obligations under human rights treaties. The ICESCR explicitly recognises that the fulfilment of economic, social and cultural rights requires a significant investment of resources, but it is also increasingly accepted that many aspects of civil and political rights fulfilment are also heavily resources-dependent, such as creating a functioning judicial system.

Some argue that international human rights law provides a normative framework to justify that recovered assets be allocated to NGOs whose sole purpose would be to dispense the funds into social projects, without giving access to these funds to the state from which assets had been initially stolen. This argument prevailed during the creation and existence of the BOTA foundation, through which assets were eventually disbursed in Kazakhstan. Creating the foundation, it was argued, allowed stolen assets to be returned to victims of corruption.⁵⁴ The "victims", in this case, are not identified individually, but collectively as the target group of public policies that should have been implemented by the state, had the money been utilized where allocated rather than lost to corruption. There is little to no guidance emanating from human rights mechanisms on the identification and rights of victims. The Independent Expert on the effects of foreign debt has, in its most recent visits to Switzerland and Ukraine, written about asset recovery. However guidance remains limited: in the case of Switzerland, his report evokes the responsibilities of Switzerland to seize stolen assets, and the fact that it has been more willing to do so in past years. The report does not expand on whether international human rights law gives any guidance on asset recovery.⁵⁵ The Independent Expert's press statement about his mission to Ukraine, insisted on principles of transparency and right to information:

"In relation to the recovery of assets stolen during the presidency of Viktor Yanukovych is as important to ensure fast, high-quality and impartial investigation as it is to make all information available to the public. On the one hand, accountability and access to information are at stake. Who looted what, when, how and what happened to these recovered assets are fundamental questions that require complete and transparent responses. On the other hand, the international network that facilitated the misappropriation of public funds for years needs to be publicly exposed (and held accountable) in order to be fully dismantled."⁵⁶ It is possible that the Independent Expert's final mission report will expand on the articulation of these principles. However, it is important to note that the Independent Expert does not

53 Transparency International France (2017) Le Sort des Biens Mal Acquis et autres avoirs illicites issus de la grande corruption, Plaidoyer pour une procédure adaptée, au service des populations victimes, available at : <https://transparenciy-france.org> ; Perdriol-Vaissière, Maud (2017) France's Biens Mal Acquis Affair: Lessons from a Decade of Legal Struggle, available at : <https://www.opensocietyfoundations.org/sites/default/files/legal-remedies-11-perdriol-20170612.pdf>

54 Open Society Justice Initiative (2015) Repatriating Stolen Assets: Potential Funding for Sustainable Development, available at: <https://www.opensocietyfoundations.org/sites/default/files/repatriating-stolen-assets-background-20150727.pdf>

55 Report 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, on his visit to Switzerland, A/HRC/37/54/Add.3, 2018.

56 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, Press statement visit to Ukraine, 14-2 May 2018, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23118&LangID=E>

mention victims at any point in his work, and it appears that neither international human rights agreements nor jurisprudence has explored that issue and given a definitive answer.

Conclusion

This chapter explored elements of existing anti-corruption practice that intersect with human rights practice. By exploring three examples of anti-corruption practice, at civil society level, at national level through the UNDP and at the level of the World Bank, we have demonstrated that integrating human rights framework in anti-corruption does not presuppose a complete overhaul of existing practice. On the contrary, the conception that anti-corruption practice is strictly detached from human rights practice is a myth in many respects. Nevertheless, just as anti-corruption practice has taken many forms and evolved substantially in the past decades, so has the international human rights regime, which has grown into a sophisticated framework of treaties, networks, institutions, and standards and practices, with the objective of imprinting global standards onto domestic practice. The persistence of important stakeholders to avoid referring to human rights poses serious questions.

The study shows that a case can be made for the notion that a HRBA to anti-corruption practice puts victims at the centre, but important questions remain unanswered and more research is needed to articulate this argument. The recourse to international human rights mechanisms via strategic litigation, if developed, would likely help find some of these answers.

3. Human Rights Based Approach to Anti-Corruption: What Is Still Ahead? Practical Recommendations

Introduction

The perception that corruption is a disease or an unavoidable tragedy has held ground for a long time. It is a misplaced analogy, not only because it gives a sense of fatality it also curtails efforts to reduce it. For too long, international human rights mechanisms have paid too little attention to the ways in which corruption precludes effective human rights protection. However, the mapping analysis of this study shows that this perception is losing ground. Likewise, the notion that human rights and anti-corruption communities have been functioning in silos is partially a myth, which could be done away with. This section explores ways to consolidate the integration of human rights and anti-corruption practices.

3.1 Treaty Bodies

The mapping exercise at the beginning of this study clearly pointed to the unsystematic manner in which corruption has been addressed in the jurisprudence of international human rights mechanisms. Without advocating for a one-size-fits-all model, we argue here that they should provide clearer guidance on corruption.

This is important because one of the purposes of concluding observations on state reports and general comments adopted by treaty bodies is to provide authoritative guidance on interpreting the provisions of the covenants. Additionally, special procedures contribute to the work of treaty bodies by developing a comprehensive understanding of rights and state obligations. General comments are not legally binding but they carry legal and normative weight, while special procedures reports, like treaty body state reports, are important sources for general comments.

3.1.1 Concluding Observations

As guardians of the treaties, the human rights treaty bodies are responsible for interpreting the covenants, and they do so by examining states' practices in the periodic reviews. Based on the reports submitted by states on the measures they have adopted to give effect to the rights in each covenant, the Committees assess progress made in the enjoyment of those rights in their concluding observations. As they meet several times per year to review states from every region, the Committees have a certain margin to tailor their questions and observations to best scrutinize each state. In this sense, treaty bodies' concluding observations to states constitute the first possible avenue to developing a finer approach on the nature and scope of corrupt practices and how they affect rights in the different treaties. Taking into account the complete reporting process, treaty bodies might include in their list of issues specific questions pertaining to corruption in the state party concerned, like anti-corruption policies in place, and the allocation of resources for measures to reduce corruption. Such questions might also be tailored to the different states. In certain cases, corruption in places of detention could be prioritized, in others the political financing and the influence of economic lobbies on policy-making might be preferred. Alternatively, the focus might be placed on measures to detect, investigate and prosecute corruption affecting migrants. A multitude of scenarios could be envisaged, given the nature of the reporting

system, where different states are reviewed each year by one or two of the ten treaty bodies. In turn, based on the responses of states, the treaty bodies would have the opportunity to review the state-parties' anti-corruption measures in relation to the rights embedded in each treaty, thereby gradually developing a basis for interpretation of how corrupt acts interfere with states' human rights obligations.

Nevertheless, several non-negligible conditions need to be met in order for this to prove effective. Firstly, there are practical conditions: 'Lists of Issues' and concluding observations are constrained in length. Brevity is essential but can limit the number of issues raised.

Secondly, the diversity of profiles and interests of mandate holders on each Committee reduces the chances that corruption will be given a central role in the state review. It must be acknowledged that corruption is a current issue, albeit not the only one that might interest states, treaty bodies and their members. During each review process, Committees prioritize which issues to raise with state parties. Corruption is likely to be left out unless Committee members are willing to discuss it and are in possession of up-to-date data and information to engage in dialogue with the State parties.

Thirdly, Committees are also limited in state reviews by the submissions they receive. Shadow reports by civil society organisations, provided they are submitted on time for their considerations in the 'List of Issues', would thus play a key role by bringing information that is specific enough to warrant attention by the Committee, and strategic enough to contribute to the Committees exploration of corruption's impacts on various rights in each convention.

3.1.2 General Comments

General Comments by the treaty bodies constitute the second possible avenue to address corruption, one that would stand more authoritatively than the accumulated jurisprudence through concluding observations. Indeed, General Comments carry more significance because they are more comprehensive. Taking into consideration the impact of corruption on all human rights, the treaty bodies could develop a joint General Recommendation or Comment on human rights and corruption together. Still not all Committees use General Recommendations, while others are already engaged in drafting General Comments on other topics. Finally, some treaty body members also argue that before embarking on the exercise of drafting a General Comment, a Committee also needs to have already examined the issues extensively and methodically in concluding observations, yet none of the Committees have reached that level.

3. 2 Special Procedures

3.2.1 A Mandate For Human Rights and Anti-Corruption?

The current study, arguably, demonstrates that there would be enough grounds for creating a stand-alone special procedure mandate. The work of a mandate holder would create the space for discussions on states' obligations in an incremental manner, if thematic reports have carefully chosen themes and country visits allow for an array of issues to be examined. The Human Rights Council should give careful consideration to this proposal, even in light

of current resource constraints facing the UN human rights system and of the existence of a high number of other special procedures mandates. A carefully-delineated mandate may prove an asset for states, as well as advocacy and research organisations.

3.2.2 General Request That All Special Procedures Address Corruption In Thematic And Country Reports

If the creation of a new mandate on human rights and anti-corruption cannot meet the approval of the Human Rights Council, states could explore ways to invite existing special procedures mandate holders to address corruption and anti-corruption as it relates to their area of human rights expertise. This can take the form of one thematic report – for example the last resolution on torture and corruption invited the Special Rapporteur on torture to turn his attention to this matter. The corruption dimension could also be integrated more systematically into their country missions, thereby allowing national human rights and anti-corruption institutions and organisations to participate.

Several mandate-holders could contribute substantially in addressing the relationship between corruption and human rights, including the special rapporteurs on the independence of judges and lawyers, on freedom of expression, on freedom from torture, inhuman and degrading treatment, and all economic and social rights mandates. The position of the working group on business and human rights is also primordial concerning issues of corruption involving the business sector.

The risk, however, is that if all these mandate holders effectively dedicate some work to human rights and anti-corruption separately, their approaches and priorities will be difficult to reconcile, thereby jeopardizing the development of a comprehensive HRBA to anti-corruption practices.

3.2.3 Communications

Special Procedures can also request information on specific cases or concerns, by sending communications to states. It allows them to raise concerns with states, on the basis of the information they receive, from individuals or civil society organisations. Therefore, civil society organisations could establish relatively informal communication channels with special procedures mandate holders, by submitting information on specific issues or cases. In turn, mandate holders would have a basis to request further information from states on their legislation and policies, as well as articulate detailed human rights based arguments on cases and issues pertaining to corruption.

3.3 Civil Society Organisations

The active involvement of anti-corruption organisations, in particular civil society organisations, is key to developing the practice of a HRBA to anti-corruption. As mentioned above, they have a potential to interact with human rights mechanisms by submitting information in the form of shadow reports to treaty bodies, by contributing to special procedures country visits and by using the communications procedure. By making information and data available to human rights mechanisms, they can lead these mechanisms towards the development of interpretations of human rights treaties and standards as they relate to anti-corruption policy

and practice. For example, whistle-blower protection is widely recognised as an issue in anti-corruption that should be strengthened. Organisations engaging in advocacy work on this specific matter could engage in a systematic manner with international, regional and local stakeholders involved.

Civil society organisations also have the potential to integrate human rights in their work at country level. Anti-corruption specialists can find strong allies among human rights specialists, the former bringing their specific expertise of the many forms that corruption takes and the latter analyzing it against human rights obligations. Such forms of collaboration can accelerate knowledge about human rights impacts of corruption, focus discussions on duty bearers and rights holders, and create opportunities for strategic litigation.

3.4 Donor Agencies

Donor agencies might also contribute to the integration of human rights in anti-corruption work, by using human rights to frame their anti-corruption policies and programmes, and distributing funds to institutions working with human rights-based anti-corruption practice.

Some donors have adopted a HRBA at programmatic level, and should in principle apply it systematically through their programmes and activities, but not all have a specific anti-corruption programme among their governance or integrity programmes or activities.⁵⁷ Donors that integrate human rights in their work can be explicit about how they define human rights-based anti-corruption donor support, bilaterally and multilaterally, and prioritize funding in this area.

Donors can also choose to help finance the programmes and projects of partners that aim at integrating human rights and anti-corruption. From the larger operations of multilateral organisations, such as UNDP, to smaller-scale activities of civil society organisations, donors can play a beneficial role, by prioritizing grants to actors that will engage with international and regional human rights mechanisms on corruption-related issues.

⁵⁷ Organisation for Economic Cooperation and Development and International Bank for Reconstruction and Development / The World Bank (2016), *Integrating Human Rights into Development: Donor Approaches, Experiences and Challenges*, third edition, Washington D.C., World Bank.

4. Conclusion

Advances made in the past ten years to break down silos between anti-corruption and human rights experts are unquestionably significant. Discussions around the relationship between human rights and corruption have been coming and going for a couple of decades at least, both in the academic community and among advocacy groups, almost always revolving around the idea that the silos were standing strong. In this study, we have demonstrated that (a) it is partially a myth, since the core issues dealt with by both communities are of similar nature, and (b) that there are opportunities, and ways to implement anti-corruption mechanisms with a HRBA.

Newly found common interest is not by any means the only reason why change is flourishing. Change is also the result of other contextual elements. First, the global policy context has changed. The adoption of the SDGs, in particular SDG 16.4 and 16.6, has prompted not only human rights practitioners to re-evaluate positions and discourses on human rights and development. It has also prompted anti-corruption and development practitioners to rethink their approaches and find means to combine efforts. Second, global economic trends seem to dash hopes for equality, as staggering income inequality continues to widen. The 2008 economic crisis may have been serious but it was followed by a rapid recovery of the richest while the most vulnerable have not felt any trickle down of wealth, or power. Thirdly, the global political context has also changed, with growing global awareness that the millions “lost” to corruption do not disappear without making victims, nor do they solely further indebt already poor countries. The mass exposure of information that started with Wikileaks and led to the LuxLeaks and to the Panama Papers, shed light on the murky dealings of offshore banking. From tax avoidance to tax evasion and illicit financial flows, the wealth needed to realise human rights has been disappearing and the role that financial secrecy plays in facilitating corruption and in driving economic and financial instability worldwide is now under scrutiny.

We have recommended courses of action, practical steps for all stakeholders to take in order to make headway on integrating human rights and anti-corruption. A number of substantial issues also come to mind that could be starting points for common work of anti-corruption and human rights communities.

Firstly, myths need debunking about tensions between human rights and anti-corruption goals, tensions that can easily be overrated. On the one hand, some overly sceptical anti-corruption experts equate human rights institutions to forums used by the powerful to portray themselves as victims, when faced with anti-corruption investigations and trials, usually after months or years holding public office in their countries. On the other hand, the sceptics in the human rights community point to punitive anti-corruption investigations used as tactics by ruling politicians to silence their opposition, often newly ousted rivals. There is some truth to these assertions. Numerous judgments of the European Court of Human Rights reveal the extent to which anti-corruption investigations may be marred with violations of presumption of innocence and fair trial provisions, and how persons with access to knowledge, financial resources and power are more likely to have these violations vindicated. Meanwhile places as varied as France, Hungary, Georgia and Malaysia⁵⁸ are

58 See for example: 'Affaire Clearstream : le parquet épargne Dominique de Villepin' Fabrice Lhomme, Mediapart, 4 June 2008; available at: <https://www.mediapart.fr/journal/france/040608/affaire-clearstream-le-parquet-epargne-dominique-de-villepin> ; Malaysia's New Leader Agrees to a Pardon for an Old Foe, Anwar Ibrahim, Austin Ramzy, New York Times, 11 May 2018 available at: <https://www.nytimes.com/2018/05/11/world/asia/malaysia-pardon-anwar-ibrahim.html>; Lili Di Puppo (2014) The construction of success in anti-corruption activity in Georgia, *East European Politics*, 30:1, 105-122

among a long list of countries where anti-corruption investigations have indeed been used against opponents in politics. Both are symptoms of larger problems relating to integrity and independence in the administration, not of actual tensions between the pursuits of human rights versus the pursuits of anti-corruption. All human rights must be upheld in all anti-corruption investigations and prosecutions, meanwhile politicians using their elected positions to enrich themselves ought to be removed from office and prosecuted, and the prevention of state capture must be a priority.⁵⁹

Secondly, protecting those who participate in anti-corruption efforts is an area where human rights and anti-corruption might cooperate as a matter of priority. On a conceptual level, it is a key element of the “participation” dimension of the HRBA: people must have a voice and space to speak up without fear of retaliation. On a practical level, concerns grow from all directions on this matter. Human rights institutions and advocacy groups increasingly sound the alarm on reducing civic spaces that make, among others, anti-corruption activists and advocacy groups vulnerable. The protection of whistle-blowers is yet to grasp the attention of human rights mechanisms on par with the protection of human rights defenders.

Investigative journalism is critical in bringing allegations of corruption to light, as it is an element of the “accountability” dimension of the HRBA. It also evolves rapidly and its features deserve attention from human rights bodies. Work in global consortiums, heavy reliance on high volumes of data in multiple formats and from multiple sources, raise new questions relating to the protection of freedom of expression, in particular media freedom, but also freedom of association and the protection of privacy and correspondence.

The growing recourse to strategic lawsuits against public participation (SLAPP) whereby large business enterprises use their power and access to financial resources to engage in legal proceedings against individuals – journalists, editors, whistle-blowers, activists, academics – who have come to criticise their company or their products should also be a common concern for both human rights and anti-corruption experts. Even when these suits have a cloak of legality, they are made possible by differentials of power between the parties. A cornerstone of the HRBA is to address power inequalities and level the playing fields, thus the negative impacts of SLAPPs need to be scrutinized.

Thirdly, grounding anti-corruption in human rights has the potential of contradicting claims of Western biases. While petty corruption may affect people living in the global south disproportionately, it is not a more serious issue than grand corruption. Illicit asset transfers made possible by banking secrecy laws in Western countries dry out resources of states. Banking secrecy affects states’ ability to use the maximum of their available resources to the fulfilment of human rights. As the Universal Declaration of Human Rights defined human rights as a “common standard of achievement for all peoples and all nations”, it is important to scrutinize how all forms of corruption affect the enjoyment of human rights beyond the labels of petty or grand corruption – how to do so requires further practice and research.

We have demonstrated through this study that the concept of a HRBA to anti-corruption, as a politically agreed-upon concept mentioned in a series of international human rights resolutions and agreements, need not be an empty political shell. We have also made a

59 ‘They Eat Money’: How Mandela’s Political Heirs Grow Rich Off Corruption, Norimitsu Onishi and Selam Gebrekidan, New York Times, 16 April 2018, available at: <https://www.nytimes.com/2018/04/16/world/africa/south-africa-corruption-jacob-zuma-african-national-congress.html?mtrref=undefined&gwh=58B08BA353DD132BB5692E5D712E43C8&gwt=pay>; Pakistan ex-PM Nawaz Sharif given 10-year jail term, BBC News, 6 July 2018, available at: <https://www.bbc.com/news/world-asia-44737793>

case that a HRBA to anti-corruption should focus on identifying duty-bearers and rights-holders, it is not limited to victims of corruption. This question could be discussed on a theoretical level, however we feel that practice should in the near future provide some answers. Getting these answers rests on the condition that the human rights and the anti-corruption communities try, test and refine practical ways of working together.

Abbreviations

CAT - Committee against Torture
CAT - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
CCPR - Human Rights Committee
CDP - UN Common Development Plan
CEDAW - Committee on the Elimination of Discrimination against Women
CEDAW - Convention on the Elimination of All Forms of Discrimination against Women
CENTAL - Center for Transparency and Accountability of Liberia
CERD - Convention on the Elimination of All Forms of Racial Discrimination
CESCR - Committee on Economic, Social and Cultural Rights
COTAE - Coalition for Transparency and Accountability in Education
CPT - European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC - Committee on the Rights of the Child
ECHR - European Court of Human Rights
ECRI - European Commission against Racism and Intolerance
ESC - European Social Charter
GAIN - Global Anti-Corruption Initiative
GPSA - Global Partnership for Social Accountability
HRBA - Human Rights Based Approach
HUDOC - Database of the European Court of Human Rights
IACHR - Inter-American Court of Human Rights
ICCPR - International Covenant on Civil and Political Rights
ICESCR - International Covenant on Economic, Social and Cultural Rights
KNCHR - Kenya's National Commission on Human Rights
NGOs – Non-governmental Organisations
NHRIs - National human rights institutions
SAEK - Programme to Support Anti-Corruption of the United Nations Development Programme
SAHRC - South Africa Human Rights Commission
SDGs - Sustainable Development Goals
SERAP - Socio-Economic Rights and Accountability Project of Nigeria
SLAPP - Strategic Lawsuits against Public Participation
UN - United Nations
UNDP - United Nations Development Programme
UNICEF - United Nations Children's Fund

