

**Presentation: 'Linking acts of corruption with specific human rights'  
Gareth Sweeney, Transparency International**

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**Acts of corruption as human rights violations**

The link between corrupt acts and human rights is often clear; sometimes less so. Corruption can constitute a direct human rights violation when the intent of the act is precisely to restrict human rights, for example bribing judges in order to deny due process and fair trial, or buying votes to undermine peoples' right to political participation. Often the intent may not be to violate human rights, but the effect is the same, as when doctors demand payments for services that should be free. Often a corrupt act may indirectly lead to human rights violations, such as bribing local officials to dump illegally, subsequently impacting on the right to health of locals, or fixing public tenders and endangering the lives of citizens. It can also be reasoned (and has been successfully), that the failure to adequately plan against corruption, for instance in the embezzlement of public funds for service delivery, also constitutes a failure of the state to adequately fulfill human rights.

**The effect of corruption on human rights**

It is important to frame the issue in its proper context and recognize that anti-corruption and human rights are not always synonymous. There are countries where perceptions of corruption are low, anti-corruption preventive mechanisms are in place, and yet human rights records are poor. Indeed, anti-corruption investigations and prosecutions, when not carried out in accordance with human rights standards, can conflict with fundamental rights of privacy, due process, fair trial and so forth. Nor do all acts of corruption impact on human rights (private-to-private corruption for instance). But what is clear is that where corruption is pervasive and systemic, it is effectively impossible for human rights to be respected, protected and fulfilled.

Corruption diminishes public trust and weakens the ability of government to respect and protect human rights. It cannot provide for the security of the person when security forces are compromised, or assure fair trial when the judiciary is prone to undue influence. Nor can states progressively realise rights when the maximum of available resources have been siphoned off to corruption.

Systemic corruption perpetuates and widens inequality when those who are connected and can afford to pay climb the ladder, and those without are denied opportunity. In the widest sense, corruption obstructs national development, and even this can be understood as an obstacle to the right of all peoples to 'to freely

pursue their economic, social and cultural development'.<sup>1</sup> At its worst, corruption completely undermines the rule of law, fosters a culture of impunity and thwarts any opportunity to protect human rights.

### **Why link corruption to human rights?**

The immediate question, from a practitioner's standpoint is what is the practical advantage of linking corruption to human rights? The first advantage, for me, is one of people's engagement. The traditional perspective that corruption obstructs political, social and economic development is important, but it is equally important in my view to extend this understanding beyond assessments of economic and political effects, and to increase the focus on the impact of corruption on *people*.

The human rights approach is by its definition a people-centred approach, founded on the principle of human dignity. A cursory cross-reference of anti-corruption and human rights conventions amply illustrates this divergence of approach. It is my personal view that presenting corruption primarily as an obstacle to economic and social development can appear an abstract goal and limit its potential resonance with the public conscience. Understanding a corrupt exchange as a violation of your rights is a powerful incentive for action, and the chances of engaging the broader public in demanding their rights are amplified.

This shift in thinking in terms of human rights responsibilities and obligations, coupled with increased public accountability, should also bring about a policy shift towards the development of rights-based anti-corruption strategies and indicators.

The second clear advantage, building from the first, is the opening up of the vast and more evolved human rights machinery at the national, regional and international level to the anti-corruption movement. Much can be gained from engaging these processes, as recommended below, and to date this is critically underutilized.

### **What is being done?**

Recent world events, from the Arab Spring to mass protests in China, Russia, India, Slovenia, Iraq and Azerbaijan in the last 12 months, have shown that popular movements do not distinguish between anti-corruption or human rights in their demand for social justice and the rule of law. Policymakers need to follow suit by breaking down the conceptual and institutional barriers and better synergizing anti-corruption and human rights efforts.

Research is focusing more on this synergy. Transparency International's forthcoming Global Corruption Report on Education, for example, positions

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<sup>1</sup> For an interesting approach see C. Raj Kumar, 'Corruption and Human Rights Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India', 17(1) Columbia Journal of Asian Law, 2003.

education not only as a development goal but as a fundamental human right, and argues that anti-corruption strategies must be framed accordingly. Public interest litigation is being used for the first time to hold governments accountable under human rights law for acts of corruption.<sup>2</sup> And while various international initiatives have been sporadic and peripheral in the last decade,<sup>3</sup> there is now a genuine momentum at the global level. Morocco, on behalf of 132 states, addressed the UN Human Rights Council in June 2012 on what it saw as the ‘increasingly’ negative impact of corruption in undermining national initiatives to improve citizens’ lives.<sup>4</sup>

On the basis of this intervention, an expert panel discussion will take place on 13 March at the Human Rights Council to see what should be done. It is my hope and expectation, and I will come back to this, that Morocco and co-sponsors (including your colleagues Poland and Austria) will find a way to ensure that corruption becomes a fixed issue on the Council’s agenda.

### **What more can be done?**

I would like to close by providing some ideas on policy options that could be taken forward by the EU from a more operational standpoint, with the intention of supporting individuals or institutions in third countries. The starting point is the need to promote the understanding that the anti-corruption movement and the human rights movement share the same end goals. This opens the door to opportunity.

The obvious entry point is for civil society to engage the UN and regional human rights processes (the UN treaty bodies, for example, are an obvious untapped resource), and this is something that I hope Transparency International can do in the future. However, there are two other areas where the advances of the human rights framework could quite easily and directly support the development of the anti-corruption framework in-country: common standards on the role and responsibilities of national human rights institutions, and the protection of human rights defenders.

The **scope of the definition of human rights defenders**, being ‘individuals, groups and organs of society that promote and protect universally recognized human rights and fundamental freedoms’ should extend to include anti-corruption activists and even whistleblowers where the case relates to the protection of human rights. The

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<sup>2</sup> *SERAP v. Nigeria*, suit no. ECW/CCJ/APP/12/07, judgment no. ECW/CCJ/JUD/07/10, ECOWAS Community Court of Justice (CCJ), 30 November 2010.

<sup>3</sup> See for example Report of the seminar on good governance practices for the promotion and protection of human rights (Seoul, 15 - 16 September 2004) (E/CN.4/2005/97); Report of the United Nations Conference on anti-corruption, good governance and human rights (Warsaw, 8 - 9 November 2006) (A/HRC/4/71) and reports of the Sub-Commission Special Rapporteur on corruption and its impact on the full enjoyment of human rights, 2004-2005.

<sup>4</sup> ‘Cross-regional statement on corruption and human rights’, delivered by Morocco on behalf of a group of 132 States to the UN Human Rights Council, 26 June 2012.

former most often do not see themselves as HRDs, whistleblowers even less so, but this is changing. This work is often in fact the very definition of what you refer to as 'combating cultures of impunity'.

The EU can actively reference and promote the recognition of anti-corruption activists as HRDs, and require EU Heads of Mission to monitor the situation of anti-corruption activists and whistleblowers in third countries and support and assist them in accordance with **the EU Guidelines on Human Rights Defenders**. [EU member states could also invite Ms Margaret Sekaggya, the UN Special Rapporteur on Human Rights Defenders, to dedicate her annual thematic report to this issue. ]

The huge growth of statutory anti-corruption authorities (ACAs) over the last two decades is comparable to that of national human rights institutions (NHRIs), but their quality varies. When NHRIs are not credible, fail to uphold their mandate, or are restricted in the exercise of their functions, they can be held to account under international peer review. There are no equivalent international standards for anti-corruption bodies<sup>5</sup> and no accreditation processes through which to measure performance.

The EU would be well served to **initiate the development of international standards on the independence and effectiveness of ACAs**, drafted intergovernmentally with the aim of final adoption by the UN General Assembly, equivalent to and with the same robust scope as the Paris Principles for national human rights institutions.<sup>6</sup> The ambition should be that such principles would be used as a benchmark of accountability through peer review performance assessments, possibly through the International Association of Anti-Corruption Agencies (IAACA), in the way that the Paris Principles provide the backbone for the International Coordinating Committee of National Human Rights Institutions (ICC).<sup>7</sup> We should, I would hope, be able to refer to 'A status ACAs' in the next decade.

In the interim, the EU could encourage dialogue between national anti-corruption and human rights agencies in understanding their common role and establishing working relations, and organize a workshop bringing NHRIs and ACAs together to share experiences and agree on standards for national-level collaboration.

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<sup>5</sup> The recently drafted Jakarta Principles (27 November 2012) provide a very useful starting point, but are relatively slim and are not internationally adopted principles. The EPAC/EACN Anti-Corruption Authority Standards are far more detailed, but have limited regional scope. There are also only limited reference to the role of ACAs in relation to human rights (two footnote references to the Paris Principles).

<sup>6</sup> Addressing for example composition and appointments process, financial autonomy, scope of functions, and parliamentary responsibility to address recommendations.

<sup>7</sup> See European Agency for Human Rights, *Handbook on the Establishment and Accreditation of National Human Rights Institutions in the European Union*, p43, at [http://fra.europa.eu/sites/default/files/fra-2012\\_nhri-handbook\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2012_nhri-handbook_en.pdf).

What can be done in the near future? EU member states [through our encouragement] can **support the establishment of a UN special rapporteur on corruption and human rights**, with a mandate to produce annual reports on the linkage between corruption and human rights at the sectoral level, to strengthen the connections between anti-corruption and human rights mechanisms globally, regionally and nationally [in the manner for instance that the UN Rapporteur on counter-terrorism has achieved], to undertake country visits and submit summary reports and recommendations to the UN Human Rights Council, and to be able to receive and respond to individual communications alleging human rights violations as a result of corruption.

The latter is an achievable goal for 2013, and would provide a very good foundation for finally bringing together two movements that, to quote Morocco, have 'for too long been working in parallel rather than...together'.