

Corruption and human rights

1. Which human rights are most affected by corruption? What specific negative impact can corruption have on the enjoyment of human rights by vulnerable groups such as women, children, elderly, persons with disabilities, indigenous peoples and others? (others could include minorities, migrants, victims of trafficking, ...)

Considered as an “enemy without a face”¹, corruption does not only affects young democracies, with serious prejudice to its social and economic development, but also longstanding democracies, with high standards of transparency, generating institutional subversion and the rise of a “parallel power”.

It is though not surprising that corruption contributes greatly to undermining the rule of law and seriously affects human rights pertaining to the affirmation in and belonging to the community, as it mirrors the detrimental effects of the law of the strongest. Both civil and political rights as well as economic, social and cultural rights are endangered, especially, as far as the latter are concerned, where the infringement of the principle of equal treatment and embezzlement of public resources are at stake.

Corruption is particularly serious as far as vulnerable groups are involved, as they are more likely to lack effective mechanisms of legal defence or do not have easy access to them.

2. Experiences in integrating a human rights perspective in combatting corruption? (Human Rights Based Approaches to anti-corruption) Best practices and challenges in this respect?

From the point of view of the Portuguese Ombudsman, experiences in this realm are intrinsically connected with the status of the institution as a National Human Rights Institution and also taking into account the fact that it is an independent organ of the State committed to monitoring and supervising the activities of public powers, namely public administration.

It should be noted that the Portuguese Ombudsman has no competences regarding investigation of cases of corruption and connected offences.

¹ MARIA JOSÉ MORGADO/JOSÉ VEGAR, *O Inimigo sem Rosto: Fraude e Corrupção em Portugal*, Lisboa: Dom Quixote, 2003.

Whenever the Portuguese Ombudsman receives a complaint on corruption, the complainant is informed that criminal facts are outside the scope of the Ombudsman's action and that the alleged facts should be communicated to the criminal authorities, to which the complainant should then turn to.

Other possible situations arise from complaints which fall within the Portuguese Ombudsman mandate, as from the Ombudsman's investigation sufficient evidence of corruption practices or connected activities arises. In this case, the Ombudsman has the duty to inform the competent criminal authorities (according to article 35, paragraph 1, of the Statute of the Portuguese Ombudsman, «*If sufficient evidence of criminal, disciplinary or regulatory offences come to the notice of the Ombudsman in the course of the investigation, the latter shall accordingly inform, as the case may be, either the Public Prosecutor, or the authority that is competent on grounds of hierarchy to start disciplinary or regulatory proceedings*»). By other words, in the course of its supervisory and investigatory activity, the Portuguese Ombudsman forwards to the Public Prosecutor the cases in which the conduct of the public administrations may possess a criminal nature.

In any case, one should also highlight that the defence and promotion of the right to good administration by Portuguese Ombudsman is not irrelevant from a point a view of preventing the risks of corruption and connected offences in the public sector. Indeed, respect for the principles and rights which are embraced by the concept of good administration are essential to foster citizens' confidence in the public institutions as well as in the quality, integrity and openness to scrutiny of the public service.

In this context and in more general terms, it is worth referring to the initiative of the Portuguese Ombudsman proposing the adoption of a Code of Good Administrative Behaviour. This initiative was first addressed to the Portuguese Parliament in 2010 and renewed in 2012 through Recommendation 1/B/2012.

This initiative was inspired in a similar undertaking by the European Ombudsman (European Union)². Likewise, the Ombudsman valued that the demand of a public administration of quality, transparent and at the service of citizens has long been acknowledged within the framework of international organisations, such as the

² In April 2000, the European Ombudsman presented to the European Parliament a special report following an own-initiative inquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Good Administrative Behaviour (OI/1/98/OV (<http://www.ombudsman.europa.eu/cases/specialreport.faces/en/407/html.bookmark>)). On 6 September 2001, the European Parliament adopted Resolution C5-0438/2000 - 2000/2212(COS) approving, with some changes, the Code of Good Administrative Behaviour which European Union institutions and bodies, their administrations and their officials should respect in their relations with the public.

United Nations, the Organisation for Economic Co-operation and Development (OECD) and the Council of Europe, under the aegis of which initiatives aimed at the adoption of codes of conduct in the sphere of action of those who exercise or participate in the exercise of public functions have also been taken.

Besides relevant international law (including human rights law), the Code proposed by the Portuguese Ombudsman was drafted also taking into account constitutional rights, general principles of Portuguese administrative law, as well as legislative measures of administrative modernisation and public administration ethical principles.

Explicitly focused in the defence of the citizens who enter into relation with public administration, the Portuguese Ombudsman clarified that the recommended Code is intended to compile, in a clear, concise and accessible wording, the principles of good administration which should guide the conduct of every official, *in their relations with citizens*, stating the fundamental values of public service, the guarantee of the rights of citizens and the rules concerning the behaviour which the latter expect from the public administration officials, making them more visible to citizens.

As the mandate of the Portuguese Ombudsman covers the protection of citizens' rights regarding public powers, it is important to stress that this initiative regarding the adoption of a Code of Good Administrative Behaviour does not intend to embrace a code on corruption issues *within the public administration* (v.g., accumulation of functions, declaration of interests), but only to compile the general principles of good administration that ought to guide the conduct of every official in their relations with the citizens – such as lawfulness, commitment to the public interest and respect for citizens' rights, absence of discrimination, proportionality, absence of abuse of power, impartiality, objectivity, fairness, duty to state the grounds of decisions, keeping of adequate records.

In any case, it is manifest that a code intending to promote the right to a good administration, empowering the citizen with the knowledge of his or her rights *vis-à-vis* public administration and favouring a model of conduct promoting commitment, integrity and transparency in the public administration, may have a positive impact as reinforcing the prevention of risks of corruption and connected offences.

3. What measures can be taken by the Human Rights Council and its subsidiary bodies or by States to combat corruption with specific consideration of the negative impact of corruption on the enjoyment of human rights?

To continue to promote initiatives aimed at the adoption of codes of conduct in the sphere of action of those who exercise or participate in the exercise of public functions.

To reinforce dissemination actions aimed at publicizing measures to fight corruption.

To exhort States, aiming at the creation and/or improving of regulatory mechanisms, especially in areas of the public economy most vulnerable to corruption.

To continue to pay special attention to the existence of human rights defence bodies and to the work of Ombudsman institutions, besides repressive mechanisms in the realm of corruption and connected offences.

To emphasize transparency as a nuclear exigency, decreasing to a minimum reserved or secretive procedures.

4. How can the United Nations human rights mechanisms be utilized for anti-corruption efforts? What other institutional mechanisms could be used to integrate a human rights-based approach in combatting corruption or vice versa at both, the international, regional and national level?

The pervasive and invasive nature of corruption is a legitimate reason for the widespread consideration of its effects at all levels of action of the conventional and non-conventional mechanisms of the United Nations human rights system.

Consideration should be given to the possibility of receiving and considering communications from individuals who claim to be victims of acts of corruption.