

Transparency International responses to Advisory Committee questionnaire on the negative impact of corruption on the enjoyment of human rights (30.10.13)

1. From your experience, what are the human rights that 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 people and others?

Transparency International defines corruption as the abuse of entrusted power for private gain. Corruption can impact negatively across the spectrum of civil, political, economic, social and cultural rights, from equality and non-discrimination, due process and fair trial, freedom of expression, freedom of association, political participation and effective remedy, to access to education, employment, health, housing, to wider collective rights to development and self-determination.

The impact may vary from clear and specific individual violations to acting as an obstacle to the wider realisation of rights. Corruption can amount to a direct human rights violation, for example bribing judges in order to deny a fair trial, or buying votes to undermine peoples' right to political participation. Often violations are less direct, but the effect is the same, as when doctors demand payments for services that should be free, thus denying the right to health. Often a corrupt act subsequently leads to human rights violations. For example, bribery of local officials to dump illegally, can later impact on the right to health of locals, or rigging public tenders that can later endanger the lives of citizens.

In all instances 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.¹ Nor can states progressively realise rights when the maximum of available resources have been siphoned off to corruption.

The experience of Transparency International shows that marginalised and vulnerable groups are most exposed to abuses of public trust in accessing health, housing, employment, education, and justice, and are least equipped to seek redress. 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,

¹ See for instance the warning by the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, in her report to the General Assembly that corruption in the judiciary threatened the rule of law and protection for human rights across the world:
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12692&LangID=E> (October 2012).

social and cultural development'.² At its worst, corruption completely undermines the rule of law, fosters a culture of impunity and thwarts any opportunity to protect human rights.

2. Do you have any experience regarding the ways on how best to deal with corruption while at the same time promoting and protecting human rights? What are the best practices and what are the challenges in this respect? Are there any specific problems in your work in cases when corruption has a negative impact on the enjoyment of human rights?

Transparency International's almost 100 national chapters around the world deal every day with the forms of corruption above that impact on human rights directly. However, national, regional and international human rights mechanisms remain completely underutilised by the anti-corruption movement. This is largely because the anti-corruption movement has not traditionally perceived or framed corruption as a human rights issue. Corruption has rather been conceived as an obstacle to political and economic development. While this is appropriate, there are also huge advantages to placing people at the centre of the issue, and recognising that corruption affects people, and the rights of people first and foremost. The value of people-centred approach is a strong message that the Council should promote.

Nonetheless, there are some new approaches to utilising human rights processes, For example, Transparency International's recent *Global Corruption Report: Education* assesses the experience of the Social and Economic Rights Accountability Project's successful use of public interest litigation before the ECOWAS community court to show that money lost to corruption in Nigeria's primary education budget constituted a violation of the right to education.³

Anti-corruption initiatives are also founded on the full exercise of human rights, including access to information, citizen participation and an independent judiciary, and need to also respect human rights in the exercise of tackling corruption. Conversely, anti-corruption investigations and programmes, when not carried out in accordance with human rights standards, can conflict with fundamental rights of privacy, due process, fair trial and non-discrimination, to name a few.

Transparency International therefore seeks to integrate a human rights-based approach in its operations (although this could be much further mainstreamed). For example, TI recently initiated a joint programme of its national chapters in Guatemala, Peru, Colombia, Argentina and Dominican Republic to strengthen transparency and accountability mechanisms in conditional cash transfer programmes in Latin America by developing a '4A' human rights indicator framework of availability, accessibility, acceptability and adaptability to measure the effectiveness and compliance of these programmes with the rights of recipients, particularly women.⁴

² 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.

³ Adetokunbo Mumuni and Gareth Sweeney, 'Public interest litigation for the right to education: the *SERAP v. Nigeria* case' in Transparency International, *Global Corruption Report: Education* (Routledge: London, 2013).

⁴ See CESCR General Comment No. 13, the Right to Education, at <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/ae1a0b126d068e868025683c003c8b3b>

3. Is there cooperation between anti-corruption agencies and national human rights institutions in tackling corruption? Please include examples of best practices of such cooperation.

We are not aware of specific cases where this has occurred,⁵ at least formally, and this presents a very good opportunity for measureable advancements.

The Advisory Committee, and in turn the Council, could encourage dialogue between national anti-corruption and human rights agencies in understanding their common role and establishing working relations. It could invite the International Coordinating Committee of National Human Rights Institutions (ICC) to place on the agenda of its next annual meeting the issue of cooperation between anti-corruption agencies and national human rights institutions, inviting key anti-corruption agencies and regional groups⁶ with the intention of collecting national experiences of cooperation and practical challenges, developing guidelines for effective communication between NHRIs and ACAs, and establishing a system for continued dialogue at the regional and international level.

Consistent with a recent European Parliament resolution on corruption and human rights,⁷ Transparency International would also support the development of comprehensive international standards on the independence and effectiveness of anti-corruption authorities (ACAs), modelled on the Paris Principles ('Principles Relating to the Status of National Institutions'). The recent Jakarta Principles (27 November 2012) drafted by national anti-corruption agencies and regional groups (also attended by UNODC, OHCHR and Transparency International) provides a very useful starting point.⁸ However, having the same robust scope and supporting infrastructure as the Paris Principles for National Human Institutions would require that states play a lead role in drafting standards that they will adhere to, such as ensuring that ACAs are established as statutory bodies by law, securely funded, with an independent appointment process and sufficient investigative and decision-making powers. An additional clause could include that ACAs should sign MoUs with NHRIs to cooperate on issues that relate to corruption and human rights etc.

It may be most appropriate for such standards to be developed through an open-ended intergovernmental working group under the guidance of the UNODC and UNDP, with technical input from OHCHR and the ICC, but the aim should be for final adoption by states at the UN General Assembly in order to gain universal recognition. The longer term ambition could be that such

⁵ Efforts were made by the Asia Pacific Forum of National Human Rights Institutions (APF) to place this on the agenda of its 2009 meeting in Jordan, but it is not clear if there was any implementation or follow-up. See <http://www.asiapacificforum.net/news/nhris-share-strategies-to-tackle-corruption.html>

⁶ For example, the Network of National Anti-Corruption Institutions in West Africa, the Southeast Asian Parties against Corruption, the Arab Anti-Corruption and Integrity Network, the Southern African Forum against Corruption, the East African Association of Anti-Corruption Authorities, and the European Partners against Corruption/European Anti-Corruption Contact Point Network (EPAC/EACN).

⁷ European Parliament resolution of 8 October 2013 on corruption in the public and private sectors: the impact on human rights in third countries (2013/2074(INI)), para. 30.

⁸ The EPAC/EACN Anti-Corruption Authority Standards are far more detailed, but have limited regional scope. There also only make limited reference to the role of ACAs in relation to human rights (two footnote references to the Paris Principles).

principles would be used as a benchmark of accountability through peer review performance assessments.⁹

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

Transparency International believes that corruption impacts negatively across so many human rights and in such a sustained and serious way that there is good cause for corruption to become a standing issue on the agenda of the Human Rights Council. The most effective means to achieve this would be the establishment of a mandate for a UN special rapporteur on corruption and human rights. An effective, cross-cutting mandate could include, for example:

- producing annual reports on the linkage between corruption and human rights at the sectoral level, potentially co-authored with thematic rapporteurs, and presented to the UN Human Rights Council and General Assembly. This would advance our knowledge on more specific aspects of the linkage.
- undertaking country visits and producing reports and recommendations [also presented to HRC and General Assembly as addenda to main annual reports]
- receiving and responding to individual communications alleging human rights violations as a result of corrupt acts.
- strengthening the connections between anti-corruption and human rights mechanisms globally (UN Forum on Business and Human Rights, UNODC, UNDP, OECD etc), regionally and nationally in order to strengthen conceptual links and working relations, and reporting to the UNCAC Conference of States Parties at the invitation of states parties.

In the current absence of a cross-cutting mandate on corruption and human rights, present thematic mandate holders of the Council can be encouraged to undertake studies on the negative impact of corruption related to their respective mandates (for example, corruption and access to education; anti-corruption and human rights defenders; whistleblowers and freedom of expression; corruption as a driver of extreme poverty; corruption and discrimination against women). This would advance our understanding of the issue and identify gaps in protection, as well as to raise issues related to corruption in country visits. The establishment of a rapporteur on corruption and human rights could then give rise to joint-studies with other thematic mandate-holders.

Transparency International would also strongly recommend that the Council explore how to extend protection under the UN Declaration of Human Rights Defenders to those anti-corruption activists and whistleblowers whose work relates to the defence of human rights. It is worth noting that the European Parliament has called upon the Commission “to propose an extension of the definition of human rights defenders in the EU Guidelines on Human Rights Defenders to include anti-corruption

⁹ 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.

activists, investigative journalists and, notably, whistleblowers”.¹⁰ We would propose that the Council at least consider how to reflect this expanded definition at the international level.

5. 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 combating corruption or vice-versa at both the international and national level?

We see enormous potential for linking the anti-corruption movement to the opportunities provided by the existing human rights machinery, from the human rights treaties, Universal Periodic Review and special procedures. The establishment of a rapporteur would provide the clearest step forward and the necessary incentive to engage anti-corruption organisations and activists.

A cursory index search shows that the UN human rights treaty body system has not dealt with corruption in any depth (the UPR has fared a little better). A lot of work needs to be done by Transparency International and other anti-corruption activists to promote and utilise the treaty body system as an additional source to address corruption. The Council could however recommend that the treaty body system pay closer attention to corruption as a human rights issue, and could also propose that the issue be placed on the agenda of the next Annual Meeting of Chairpersons of Human Rights Treaty Bodies.

The Council could also call for OHCHR to convene an experts’ seminar, separate from the Council session, to focus on the impact of corruption on the protection of a specific human right, bringing together relevant special procedures, treaty body members, other relevant agencies including UNODC, UNDP, OECD etc., states and external experts to identify where and how corruption impacts on the specific right, national good practices and comparative legislative and judicial approaches to addressing corruption.¹¹

Finally, OHCHR should be invited by the Council to establish a permanent focal point in its offices to formally liaise with UNODC on all developments related to corruption that arise via the UN human rights charter and treaty-based bodies, and to provide technical support for UNODC on human rights issues that arise in relation to UNCAC, as well as providing assistance in mainstreaming a human rights-based approach so that the UNCAC peer review recommendations are consistent with states’ human rights obligations.

6. Are there any other observations or suggestions you wish to provide regarding the topic?

We noted closely that the Advisory Committee has been tasked by Council resolution 23/9 to submit “a research-based report to the Human Rights Council at its twenty-sixth session on the issue of the negative impact of corruption on the enjoyment of human rights, and to make recommendations on how the Council and its subsidiary bodies should consider this issue.”

¹⁰ Supra n. 6

¹¹ An example of such an OHCHR-convened cross-cutting experts seminar is not new. See for example, <http://www.ohchr.org/EN/Issues/FreedomOpinion/Articles19-20/2008Seminar/Pages/ExpertSeminar2008.aspx>

On the first task, Transparency International is of the view that there is an extensive body of research on corruption and human rights.¹² The latest will include a draft report by OHCHR¹³ that will detail all forms of corruption as threat to human rights, how the existing human rights machinery can address corruption, etc. There are also new operational resolutions detailing how corruption impacts on human rights and what needs to be done, such as the European Parliament's recent comprehensive resolution on corruption and human rights.¹⁴

While we can see value in the Advisory Committee consolidating and advancing upon this cumulative research, it is our view that the real added value that the Advisory Committee can bring is to recommend "how the Council and its subsidiary bodies should consider the issue". This is what we have attempted to focus on above.

It would be most valuable if the Advisory Committee could also anticipate the likely criticisms of advancing the issue of corruption as a human rights issue by the UN Human Rights Council. One argument may be that corruption is being dealt with comprehensively by UNODC under the UNCAC machinery in Vienna. It can be easily argued that the valuable work undertaken under the UNCAC review process, while relevant to the protection of human rights, does not address corruption as it affects the rights of individuals, and does not specifically and technically address states' human rights obligations in the fight against corruption. This is something that the special procedures of the UN Human Rights Council, the Universal Periodic Review mechanism, and the UN human rights treaties can do. This would complement and not duplicate the work of the UNCAC review process.

A concern also previously voiced in the Council is that corruption is too broad a subject to be dealt with by the Council and could be misused for political ends. We would support the view that the Council would be best served by focusing narrowly on corruption as a violation of or obstacle to the realisation of human rights, and distinguish carefully from those issues that are dealt with by other bodies such as UNCAC. There should be a strong message from the Council that it would not seek to duplicate or impede work in Vienna in order to allay potential concerns by UNODC staff.

Another likely procedural objection is that there are already too many mandate holders and not enough resources to support the further expansion of mandates. While we recognise the scarcity of resources, we nonetheless feel that there are compelling grounds for a Special Rapporteur on corruption as there often are for other proposed new mandates. We would argue that issues related to resources should not derail the need for new mandates, and the debate on proliferation should remain a separate discussion applied equally to all existing mandates. The future value of this new position, in our view, would far outweigh the small financial cost.

¹² For example, http://www.ichrp.org/files/reports/40/131_web.pdf; <http://www.ichrp.org/en/projects/1312>; Martine Boersma and Hans Nelen (eds.), *Corruption & Human Rights: Interdisciplinary Perspectives* (Maastricht: 2010).

¹³ Pursuant to HRC resolution 7/11 (2008).

¹⁴ P7_TA-PROV(2013)0394

If the Advisory Committee would wish to follow up on any of the points raised above, please feel free to contact Gareth Sweeney (gsweeney@transparency.org) or Maggie Murphy (mmurphy@transparency.org)