

Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Multi-stakeholder consultation and call for inputs

Connecting the business and human rights and anti-corruption agendas

6 February 2020, 15:00-17:30

Room XXI, Palais des Nations, Geneva

The Alliance for Integrity has discussed and otherwise worked on the topics of corruption and human rights as well as their interconnection in the past, including with its stakeholders and members of its network. The answers to the following questions as asked in the call for input are an abbreviation of the outputs of those discussions.

1. What are the key areas where corruption causes, contributes or is linked to human rights abuses and negative impacts for right holders? Are there key sectors or key areas where corruption leads to human rights abuses with a business nexus (For example in particular actors or in specific areas such as large-scale land acquisitions or government procurement)?

Given the many interdependencies between the areas of human rights abuses and corruption, there is no clear separation of affected sectors or actors. Corruption can lead to governance deficits that inhibit states' abilities to fulfil their obligations as human rights duty-bearers. That said, some areas stand out. Corruption often severely inhibits the access to (basic) public services. This may curtail the ability to protect and fulfil human rights and thereby result in various human rights abuses. Corruption may lead to various forms of discrimination. For example, by denying or inhibiting access to public services to the poor, who may not be able to afford bribes, there results a distinction based on economic class. This may also lead to an infringement of the right to water (see Water Integrity Initiative).

A similar logic holds true for access to the judicial system: bribes and/or facilitation payments can easily result in violations of Arts. 7, 8, 9, 10, 11 UDHR. This is especially true for SMEs but even larger companies and its employees/dependents may be restricted in their rights due to a loss of legal certainty.

The textile sector is a clear example where (business) corruption often leads to human rights infringements and it does so in three ways: The manufacturing sites themselves often violate building regulations but inspectors are bribed. This has already led to significant loss of life. Chemicals and other unsafe materials used during the

manufacturing process are also often the result of bribery, presenting violations of Art. 23 UDHR. Cost pressures and/or greed companies at the bottom of global supply chains often quote very low prices which can only be realised by unfair wages, overly long working hours (violations to Arts. 23 and 24 UDHR) and also tax evasion). The sector furthermore has a large environmental impact, exacerbated by bribery which allows companies to dispose of hazardous waste improperly, thus negatively affecting entire communities.

Experience also shows that many man-made environmental disasters are preceded by corrupt activity (such as bribes to avoid environmental checks or to circumvent protective regulations).

Corruption, in various forms, can also impede the access to (capital) markets for economically/socially or otherwise disenfranchised population groups, thus exacerbating existing inequalities and denying avenues to realise human rights. This applies particularly to indigenous communities and women. Generally, there is an overlap between the issues of human rights, anticorruption and gender.

2. Given the areas discussed in the question above, what are the ways States should address the issue of corruption which has a connection to business-related human rights abuses? For example, how can States address the twin duties of both promoting anti-corruption as well as implementation of the UN Guiding Principles through their national action plans, anti-corruption strategies, and overall desire for policy coherence in areas such as responsible business conduct, trade and investment promotion, access to justice, etc.?

States must acknowledge that corruption negatively affects their ability to fulfil their obligations as human rights duty-bearers. They must recognize the interdependence between corruption and human rights abuses and increase efforts to create coordination between the two areas at multiple levels. This may include clarity about legal corporate responsibility for both corruption and human rights abuses, including along the entire supply chain.

Governments should also strengthen their efforts in providing incentives for integrity and respecting human rights. This may be done for example by incentivised financing benefits or by giving priority access to tendering process for compliant companies or the promotion of (mandatory) seals

Generally, it is advisable for governments to support (both ideally and financially) multi-stakeholder approaches and collective actions.

3. Are there areas where States should extend existing anti-corruption policy and regulations to encompass requirements for businesses to also respect human rights (e.g. in extending export credit and other forms of trade and investment support, in providing government procurement contract)?

Incentives for public procurement, see question above

4. How can anti-corruption compliance and human rights due diligence be better coordinated within companies as part of an overall approach to responsible business conduct? What are examples of good practice?

States should seek to align measures of anti-corruption with efforts to implement human rights due diligence. In this respect, the key (and first) step is a broadened risk assessment process that explicitly not only considers compliance risks to the company (corruption, among other issues) but also risks related to human rights, both as it reflects on the company and with regards to how the company's action may (negatively) influence others.

Some compliance processes, especially third-party due diligence, can be applied in the prevention of human rights violations as well as with regards to corruption. Information provided by third parties can be applied for both processes; even some

of the mitigation strategies can be similar. This represents an opportunity inside the organisation to align the HR and AC agenda processes.

5. How does corruption and corrupt activities impact the ability of victims to seek access to an effective remedy (both judicial and non-judicial)? What measures can States and companies take to address these challenges?

Whistleblowing systems are crucial in this regard and can be used to inform both about corruption and human rights violations. Especially in environments with corrupt judicial systems, these systems can help achieve remedies or at least escalate a complaint. Compliance officers in practice are often trusted and respected persons (de facto ombudspersons) and therefore valued by employees. Whistleblowing systems should be designed so that they allow for complaints by employees of subsidiaries, suppliers and local communities.

6. Are there ways in which victims of business and human rights related abuses used anti-corruption mechanisms to seek remedies for human rights abuses?

See above (due diligence tools, whistleblowing)

7. Are there areas where there should be greater policy alignment, in terms of seeking reforms, that will benefit both the business and human rights and anti-corruption agendas such as in areas including public procurement, whistle-blower protection, beneficial ownership reform, conflict of interest legislation for public officials and legislators, etc.

Where local (or regional/global) laws confer judicial/administrative/legal responsibility to companies and/or its agents, these responsibilities should encompass corruption and human rights violations equally. This should also apply to rules with extraterritorial reach. Furthermore, there should be clarity for situations in which AC and HR laws/logics, respectively, suggest different paths of action.

8. How can/should states, private sector and civil society work to better coordinate anticorruption and business and human rights agendas to prevent harms along both dimensions through collective action, multi-stakeholder platforms.

The goal should be to build collective ownership for both agendas between the relevant stakeholders. Trust- and relationship-building between experts and stakeholders between sectors are important as a first step. This should be complemented by multi-stakeholder approaches/collective actions .

With respect to access to justice, states should enable strong societal control, for example by implementing surveys to evaluate judicial services, by taking into consideration civil society proposals to remedy deficiencies such as corruption and access to remedy.

9. What role should international financial institutions, and investors play in exerting leverage to ensure both prevention of corruption but also business respect for human rights?

Financial Incentives should be created (see also above). Perverse effects must be avoided, where incentives for agenda lead to worse behaviour in the other.

Institutions should also foster existing projects and initiatives already working on HR and AC instead of newly created ones to make use of existing networks, experiences and synergy.

10. How can United Nations bodies such as OHCHR and the UN Office on Drugs and Crime, work more closely together to address the human rights impacts of corruption?

Bodies including OHCHR and UNODC can bring together actors of both agendas and integrate conferences, working groups, etc.