



## Human Rights Watch Submission to UN Working Group on Business and Human Rights

### Re: Corruption and Human Rights

We welcome the Business and Human Rights Working Group's attention to the nexus between corruption and human rights and are grateful for the opportunity to share our research and analysis on this important topic.

Human Rights Watch is an independent, nongovernmental organization that investigates and reports on human rights in more than 90 countries worldwide. We have published research on the impact of corruption and corporate influence on human rights in numerous countries, including Equatorial Guinea, Iraq, Afghanistan, Guatemala, Angola, Nigeria, and the United States. We also closely monitor governments' and financial institutions' efforts to promote transparency to combat corruption, hold corrupt officials accountable, and repatriate stolen assets.

In this submission, we hope to describe some of the ways in which corruption impacts human rights, as well as raise three issues for your consideration.

#### I. Corruption's Impacts on a Broad Range of Human Rights

Corruption can severely impact a broad range of human rights. It deprives the public of money to invest in health, education, clean water, housing, and other rights; dangerously undermines essential government functions; and often leads to attacks on judicial independence, freedom of expression, and more.

According to the World Economic Forum, each year \$3.6 trillion—amounting to five percent of the world's GDP—is lost to corruption.<sup>1</sup> The loss of these resources deprives governments of resources necessary for the realization of human rights—especially the progressive realization of economic and social rights—in both obvious and hidden ways. In some cases, corruption officials syphon off public funds earmarked for investment in health, education, or other rights. Other cases of corruption involve more sophisticated schemes that can nonetheless undermine rights. For example, Human Rights Watch documented how corrupt officials in

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<sup>1</sup> Stephen Johnson, "The global economy loses \$3.6 trillion to corruption each year, says UN," Big Think, December 10, 2018, <https://bigthink.com/politics-current-affairs/corruption-costs-world-3-6-trillion>.

Equatorial Guinea diverted government spending to costly infrastructure projects with questionable social value in ways that benefited companies owned by the political elite and resulted in the severe neglect of the country's public health and education systems.<sup>2</sup> The contracts were often grossly inflated and awarded to companies that were mere shells, further draining public resources.<sup>3</sup>

Research also shows corruption leads to lost public resources before it even reaches government coffers, as individuals and companies are less likely to pay taxes. The International Monetary Fund (IMF) estimates that corruption is responsible for \$1 trillion of lost tax revenue globally.

Officials who demand bribes to access schools and hospitals—or allow others to do so with impunity—further endanger human rights. Our research has found corruption is a major impediment to access to education for girls in Afghanistan.<sup>4</sup> It has also found that corruption is a factor in depriving millions of people in southern Iraq of clean water.<sup>5</sup>

Governments are responsible for regulating innumerable potential dangers—from certifying building safety to keeping toxic chemicals out of our food, water, and air. Corruption undermines the integrity of this process in ways that can be life-threatening. Moreover, when corruption leads governments to contract with unqualified companies or individuals, it can have serious rights implications, including those related to labor abuses, unsafe infrastructure, and poor-quality delivery of rights-related goods and services.

Finally, the harm of corruption rarely remains limited to the corrupt act itself. To shield themselves from accountability, corrupt officials often destroy systems, institutions, and individuals that can expose them—which is damaging in its own right and also acts as a shield for others to be corrupt. Human Rights Watch and other others have documented how corruption leads to attacks on civil society and journalists, including by hijacking the courts to punish critics and shield corrupt officials. For example, in 2017, Human Rights Watch published a report documenting how court rules and practices in Guatemala help corrupt

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<sup>2</sup> Human Rights Watch, *“Manna from Heaven?” How Health and Education Pay the Price for Self-Dealing in Equatorial Guinea* (New York: Human Rights Watch, 2017), <https://www.hrw.org/report/2017/06/15/manna-heaven/how-health-and-education-pay-price-self-dealing-equatorial-guinea>.

<sup>3</sup> *Ibid.*, p.2

<sup>4</sup> Human Rights Watch, *“I Won’t Be a Doctor, and One Day You’ll Be Sick,” Girls’ Access to Education in Afghanistan* (New York: Human Rights Watch, 2017), <https://www.hrw.org/report/2017/10/17/i-wont-be-doctor-and-one-day-youll-be-sick/girls-access-education-afghanistan>.

<sup>5</sup> Human Rights Watch, *Basra Is Thirsty: Iraq’s Failure to Manage the Water Crisis* (New York: Human Rights Watch, 2019), <https://www.hrw.org/report/2019/07/22/basra-thirsty/iraqs-failure-manage-water-crisis>.

officials escape accountability.<sup>6</sup> We have documented also numerous cases of attacks on good governance advocates in Equatorial Guinea and elsewhere.<sup>7</sup>

## II. Corruption-related Gaps in the UN Guiding Principles on Business and Human Rights

Despite the close links between human rights and corruption, and between corruption and business activity, businesses' responsibilities when operating in corrupt environments are not well developed. The UN Guiding Principles on Business and Human Rights references corruption twice, both times in the context of preventing corruption of judicial processes; domestic laws, such as the Foreign Corrupt Practices Act, and international initiatives such as the Extractives Industry Transparency Initiative have been the dominant frameworks for establishing businesses' responsibilities for avoiding corruption. Based on our research and experience, there are three gaps in these frameworks where we believe the Working Group can be particularly helpful in developing businesses' responsibilities with respect to corruption.

### A. Businesses' Responsibilities as Potential Beneficiaries of Corruption or Related Abuses

Companies need not necessarily participate in corruption to benefit from it or related abuses, raising thorny questions about the extent of their responsibilities. Companies that have business relationships with highly corrupt governments, state-owned enterprises, or politically exposed persons (PEP) are especially at risk of benefitting from corruption, and strengthening corrupt actors, in ways that don't necessarily fall afoul of anti-corruption laws' relatively narrow definition of corruption. What are businesses' responsibilities in these contexts?

A few concrete examples of how this may arise:

- What are companies' responsibilities regarding entering into a joint partnership or otherwise hiring a PEP with a reputation for corruption? A common variation on this problem is companies (e.g. oil companies) entering into joint ventures with state-owned enterprises where there is significant risk of corruption.
- What are a company's due diligence responsibilities regarding corruption in its supply chain? For example, what are the due diligence responsibilities for a

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<sup>6</sup> Human Rights Watch, *Running Out the Clock: How Guatemala's Courts Could Doom the Fight Against Impunity* (New York: Human Rights Watch, 2017), <https://www.hrw.org/report/2017/11/13/running-out-clock/how-guatemalas-courts-could-doom-fight-against-impunity>.

<sup>7</sup> "Equatorial Guinea: UN Review Should Highlight Abuses," Human Rights Watch news release, April 9, 2019, <https://www.hrw.org/news/2019/04/09/equatorial-guinea-un-review-should-highlight-abuses>.

development company building on land acquired through corruption or relying on permits obtained through corruption?

- What are companies' responsibilities in contexts where there is a strong possibility that funds paid into government accounts will be syphoned off for corrupt purposes? Eni and Shell are currently under investigation in Italy for their alleged role in bribery payments of more than \$1 billion to Nigerian officials; their payments for the oil blocs were routed through government accounts, but investigators have produced evidence alleging they knew the money would immediately be diverted to corrupt officials.<sup>8</sup>
- What are a company's responsibilities when governments use abusive tactics in ways that benefit the company, such as to silence journalists, civil society activists, or others who criticize or allege corruption involving that company, or interfere with the independence of the judiciary investigating such corruption?

#### B. Defining Corruption's Victims to Include Populations Deprived of Benefits of Stolen Resources

Corruption's victims include anyone whose rights it has helped undermine. However, legal definitions of victim are often considerably narrower, and it is also not possible to fully trace or document every person whose rights have been harmed by corruption, which can include entire populations, and especially the poor. This difficulty has practical implications in cases where governments seize stolen assets from corrupt foreign officials who remain in power, a phenomenon which has increased in the past few years.<sup>9</sup> In these cases, civil society has called upon governments to repatriate these assets for the benefit of corruption's victims, while excluding those who benefited from the corruption. We would greatly benefit from a workable definition of victim that highlights corruption's corrosive, but diffuse, impact on human rights.

#### C. Corporate Influence that May Undermine Rights

Businesses' human rights responsibilities when attempting to exert political influence remain ill defined, even though this may sometimes harm human rights.

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<sup>8</sup> Kelly Gilblom, Jonathan Browning, and Chiara Albanese, "Shell, Eni Officials Named in \$1 Billion Nigeria Lawsuit," *Bloomberg*, May 7, 2019.

<sup>9</sup> Sarah Saadoun, «Biens mal acquis: les victimes de la corruption ont droit à la justice» *Libération*, [https://www.liberation.fr/debats/2019/12/17/biens-mal-acquis-les-victimes-de-la-corruption-ont-droit-a-la-justice\\_1769734](https://www.liberation.fr/debats/2019/12/17/biens-mal-acquis-les-victimes-de-la-corruption-ont-droit-a-la-justice_1769734).

A few concrete examples of how this may arise:

- What are businesses' responsibilities when donating to the political campaigns of lawmakers, judges, or others, and pressing them to take a position that harms human rights?
- What are businesses' responsibilities when funding scientific research that has bearing on their operations? Human Rights Watch documented how US coal companies funded academic research that produced the only studies that did not find a correlation between mountaintop removal coal mining and poor community health.<sup>10</sup> The companies also opposed a federally funded study on the issue.
- What are businesses' responsibilities in whitewashing governments that engage in serious human rights abuses? In some cases, such as public relations firms, the whitewashing campaign is explicit; in other cases, large-scale sports or business events serve a similar purpose.

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<sup>10</sup> Human Rights Watch, *The Coal Mine Next Door: How the US Government's Deregulation of Mountaintop Removal Threatens Public Health* (New York: Human Rights Watch, 2018), <https://www.hrw.org/report/2018/12/10/coal-mine-next-door/how-us-governments-deregulation-mountaintop-removal-threatens>.