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Contribution to the Call for Input on Connecting the BHR and Anti-corruption

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Respected Members of the Working Group on Business and Human Rights,

In my personal capacity as expert and as member of the UNCAC Coalition (www.uncaccoalition.org) and member of its Coordination Committee, I am pleased to submit a few ideas on the consultation on the linkages between corruption and business and human rights and the impact of considering joint action and joint agendas.

This document summarises a few ideas put together to reach the consultation effort. I am happy to elaborate or deepen on this any time.

A. On the linkages between corruption and business and human rights

The connections between corruption and human rights have been increasingly accepted and widely explored and described.

These arguments are also valid in their own merit for the framework and spectrum of business and human rights. In addition, corruption involves in the majority of cases businesses, if not organisations in any form public or private who are subject also, even if in principle, to the BHR framework. For the sake of brevity, I will refer here to human rights and to business and human rights interchangeably.

I will mention here a few of the most salient points of these linkages:

1. The linkages between corruption and business and human rights are manifold and actually work in both directions.

➔ **Corporate social responsibility and any organisation's duties to respect and remedy rely on integrity and the absence of corruption at its basis.** Integrity is an attitude that entails a daily decision. Is the basis of trust and a necessary ingredient in the sustainability of any organisation. Beyond compliance, integrity ensures that organisations fulfil their mission, take responsibility of their impacts, be good employers and irradiate trust towards all of its stakeholder groups. For this reasons, integrity is a vital and cross-cutting ingredient necessary for organisations, both public and private, to fulfil their duties in terms of sustainability and human rights, and therefore inextricably linked to them.

➔ **Corruption affects human rights directly and indirectly and affects the capacity of the State to exercise its duty to protect and remedy** not only by deviating funds that are necessary to fulfil its duty to attend to individual and collective rights, but also because it erodes its legitimacy and the rule of law. While corruption affects democracy, it also erodes the capacity of non-democratic regimes to govern.

2. The linkages between corruption and human rights are also circular in both its causes and consequences, as well as in the strategies to avoid and contain them. Corruption is used as a means to commit human rights violations, as a means to affect fundamental rights or as means to cover them up and ensure impunity. On the other hand ensuring impunity is key to those benefiting from corruption. Because of corruption's impacts in terms of institutional trust, and rule of law, corruption always affects human rights. Corruption is in essence, an act of discrimination as it translates into privileges what should have benefited everyone. Simply put, all corruption entails human rights violations, directly or indirectly and always affect the enjoyment of fundamental rights. However, not all human rights violations or impacts entail corruption.

On the other hand, the progressive implementation of civic, political, social, economic and environmental rights are key to fight corruption. Indeed many fundamental rights are essential to fight and to prevent corruption: freedom of expression, freedom of association, rights to information, participation and all rights that speak to equality in any sense.

However, human rights abuses can be committed for the sake of fighting corruption: violations to due process, damages to human dignity and reputation, restrictions to freedom of association and movement, just to name a few. This can also happen when, for example, protections to whistleblowers and journalists are not granted. The fact that the linkages between anti-corruption and human rights are not always positive, has led some to emphasize the disconnect. I think the issue is not about its disconnection but about understanding the complexity of the linkages.

3. One of the clearest linkages between both issues concerns the victims of corruption, who bear the damages it causes. This is an important subject (see more on this [here](#)) that deserves more attention and allignment, particularly by enforcement authorities. However this is not the only point of connection. For this same reason, I believe the linkages between both topics can't be reduced to a human rights "approach" to corruption or anticorruption, as some argue. This denies the full picture. What is necessary is amore allignment and integraion of both issues at the policy and at the practical level.

B. On necessary points of connection for both agendas

Both phenomena: corruption and human rights impacts and violations, have in common that we are talking about human behaviour that needs to be promoted (integrity, human rights protection and respect) or contained (human rights violations, social impacts, corruption), so that social coexistence is possible. The separation we have made of this phenomena, is artificial, and comes form our own need to better understand and better define these issues and the political circumstances around which international frameworks have developed for them. This doesn't mean that the separation is genuine nor that it is necessary any longer. The problem is that the frameworks, the solutions, the remedies and a lot of the perspectives are separated as if there were two completely different phenomena. I think we can and should not see them so separate.

I focus in these section on some of the difficulties arising from this separation, and make a few reflections on connecting them.

- **At many policy and decision-making levels, there is a profound lack of understanding what corruption really means and how it can me limited. Anti-corruption bodies, also seem to have a lack of understanding of human rights impacts.** In many cases corruption is

reduced to bribery and are not only other tactics and forms ignored, but the broader concept of integrity is seldom acknowledged. Anti-corruption has evolved in many ways as a tool-based approach, as a check list of requisites for public and private actors to fulfil. All this has led to a series of problematic consequences, among them:

- Human rights decision-making bodies sometimes oversee the use of corruption in cases brought to them
- Or even if corruption has been identified, they make recommendations that are not really fit to tackle the problem (e.g. suggest an anti-corruption law be issued in a country with drastic restrictions on freedom to expression)
- Often there is the impression that corruption can only be fought against via enforcement, or by blindly complying to certain requisites, leaving options and requirements for change (for managing the impact) out of the picture
- The human rights' impacts of corruption, are often left unattended by policy and enforcement authorities.
- National Action Plans and National Anti-corruption strategies seldom (if ever at all) interconnect and address issues jointly. Also, authorities in charge of national anti-corruption strategies rarely work together with human rights centers and other human rights authorities. A lot could be achieved by simply expecting more collaboration among them.

Linking them more together requires a better understanding of both, and perhaps a different understanding of corruption.

- **Important human rights impacts of corporate behaviour emerging from corruption or simply lack of integrity are ignored.** Because many human rights impacts are examined within the “area of influence” of the company, many impacts arising from corrupt behaviour are not treated as such and its consequences are not addressed. Seldom are corruption risks included in human rights impact assessments. This is also understandable, since many companies (and also public organisations) often fear of speaking (and all the more openly) about corruption risks for fears of appearing conceding guilt.

This also means that other areas of company behaviour are not subject to the same analysis. For example, public relations, lobby activities, and political finance activities could be legal, but can also be contradicting duties to respect human rights and to manage environmental impacts. The borderline between contradiction or not lies within the realm of integrity. On this issue, see [this](#) recent publication from Alison Taylor.

It would help, in practice to examine human rights impact assessments also with the lens of integrity, and for companies to seek reparation of the consequences of their own behaviour, outside of enforcement efforts.

- **The organisational dimension:** Due to a heightened emphasis on enforcement, anti-corruption is built around compliance, while the business and human-rights framework is built around due diligence. In a way, it is the lack of uniformity of standards (or clarity thereof) that has prompted many companies and advocates to claim for binding regulations to address social and environmental impacts of companies. However, the emphasis on compliance (and enforcement) of corruption has limited the impact of anti-corruption efforts, as it has reduced anti-corruption to a check-list, a control process. In many cases, what I observe in companies and public entities (and mostly the latter) is that by focusing on compliance, they fail to set up a culture of integrity. Compliance, by the way, has not managed to hinder wide ranging corruption schemes like those observed in the cases of Odebrecht or Airbus, and much less has hindered repeated offences by companies like Halliburton.

Companies rarely integrate or coordinate CSR and compliance responsibilities. Partly, the trouble is that compliance areas tend to have a narrow focus on corruption and a perspective of control. I have seen cases where CSR activities have been questioned by compliance teams, and to be fair, also a few cases where they should have.

The main point here is that most companies deal with both issues differently. If companies saw the issues of integrity and their social and environmental responsibilities more integrated, they would be able to create more value from them and quite possibly generate more positive impact. Integrity is essential for a company to genuinely be addressing its duty to respect. With a more critical view one could also argue that it is the lack of integrity what explains most of the gaps between rhetoric and practice when it comes to many corporate human rights and environmental commitments and their practice. Making the connection should also help bridge that gap.

The question is how to promote that if the topics are still seen and treated as different? Perhaps this requires also new and creative approaches within companies., and yes, also within public institutions.

- **The international realm.** There have been already significant efforts by the UN Human rights bodies (including the HRC, the OHCHR) to address these linkages, improve communication and expertise on corruption. From my perspective, the efforts by the UNCAC bodies have not been as strong (or as visible). In any case, more integration at this level could contribute with significant impact on the ground, for example:
 - Human rights considerations (and context) are not considered within UNCAC reviews. To the extent of my knowledge, business and human rights National Action Plans are not addressed at all in UNCAC reviews, and are also often disconnected from national anti-corruption plans at the national level. Guidelines for UNCAC reviews could address/change this and the expectation be laid out that human rights contexts are relevant for UNCAC reviews just as corruption contexts are relevant for human right's reviews.
 - Careful consideration needs to be given to examine UNCAC commitments against human rights obligations as well. It is not unlikely to find contradictions and different assessments on standards of behaviour.
 - There are also contradictions within the UN in applying its own rules. For example, the UNCAC subsidiary bodies have failed to provide due access to civil society to their deliberations, in clear violation of the UNCAC Convention itself, and also of the 2018 Guidelines to the states on the effective implementation of the right to participate in public affairs, issued by the High Commissioner for Human Rights. as indicated in its follow-up report of July 2018.
 - In the past, the figure of a special corruption rapporteur to human rights bodies has been tested. This is also worth considering again, exploring formats that enable coordination and impact and change on the ground.

Finally, more integration, at the practical level is wished for. I have mentioned here the Un system only for the sake of brevity, but other organisations can and are also being well involved in this field, including the OAS, the OECD and ASEAN.

In sum, the effort to connect business and human rights anti-corruption agendas is important and promising, even if not easy. In my view it needs to progress at the operational and practical level, and less at the framework level. At best, when it comes to the question of what this connection means in practice, different dimensions should be considered: the international, the national, and the organisational.