**OHCHR**

***„Connecting the business and human rights and anti-corruption agendas”***

**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)?**

In every area, corruption has a negative impact on an individual or organisation, including human rights. Therefore, the Central Anti-Corruption Bureau (CBA) identifies the thematic areas of the conducted cases with areas where corruption contributes to or is linked to a violation of human rights. In the last few years, the main thematic areas of cases conducted by the CBA included local and government administration, customs and fiscal administration, judiciary, economic sector, companies with State Treasury shareholding, health service and pharmacy, financial institutions and supervisory bodies, sport and others. In the opinion of the CBA, more detailed areas where corruption threatens human rights also include areas of infrastructure investments (e.g. roads, airports, railway lines, pipelines, cities, shopping centres, water reservoirs, etc.), irregularities in land management and administration (tenders, buyout, lease), which may result in forced displacement, lack of adequate compensation. Another example is reprivatisation, where irregularities occurred as a result of corrupt activities by unauthorized persons who took possession of real estate, eliminating legitimate heirs and exposing them to losses, which violated their right to property.

In this area, CBA officers conduct many of investigations. It has been established that persons linked with law firms illegally cooperated with employees of the Real Estate Office of the City of Warsaw, entitled to issue decisions concerning the return of real estate remaining in the city's resources. The aim was to obtain favourable administrative decisions concerning the return of real estate or to formally grant compensation to the heirs or their legal successors whom they represented. In fact, the persons were acting to the detriment of the persons entitled by misleading them, and the return was made directly to persons representing the alleged heirs or persons related to them by family or business. Moreover, investigations concern the benefit of real estate claims by Real Estate Office officials, including those in managerial positions, and the illegal reactivation of pre-war companies to benefit from the restitution of their former property. Officers of the CBA also carried out a lot of analyses of the correctness of the procedures conducted by Real Estate Office in the course of reprivatisation. Attention was focused on the verification of the provisions of international compensation agreements, including their content and interpretation and consequences for decree proceedings.

A further example is the privatisation of public services (e.g. health, transport or telecommunications), which can make it more difficult to exercise certain rights (e.g. access to health care). A similar situation applies to the public procurement process through the use of price collusion and the illegal arrangement of tenders, while eliminating the right to equal access to public procurement. Other examples of corrupt activities violating human rights include the area of environmental protection through illegal dumping of toxic waste, which by contaminating land or water potentially exposes residents to loss of health and life.

**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 are obliged to protect individuals from acts committed by private persons or entities. By violating their human rights obligations, by failing to take appropriate measures or by failing to exercise due diligence to prevent, investigate or remedy damage caused by such acts by private persons or entities, they assume responsibility for such a state of affairs. States, when deciding to provide government’s support to a company, such as trade finance or concessions, may have to address the human rights impact of corruption by economic operators, including in particular the correlation between business and human rights. They show how the measures to introduce responsible business practices in these two dimensions are mutually reinforcing by ensuring policy coherence in the context of effective government, civil society and business action. For example, when deciding to provide government support to a company, such as trade finance or concessions, states will be obliged to address the human rights impact of corruption by economic operators. Similarly, policy reform areas will be identified that will promote greater respect for human rights and prevent corruption. For example, reform of public procurement processes can benefit right holders, as well as prevent corruption in tenders. Therefore, countries should strive to develop coherent economic policies that promote responsible business and anti-corruption policies that reduce economic irregularities while taking into account and preventing human rights violations. Therefore, in order to effectively combat corruption, state policy must address corruption practices in the private sector. Corporate social responsibility programs are consistent with this view. According to the UN guidelines, countries should develop and adopt plans for national implementation of the guidelines on business and human rights[[1]](#footnote-1). On the basis of these plans, business should counteract corruption in all its forms.

**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)?**

Policy reforms in business-related areas that will promote greater respect for human rights and prevent corruption should be strengthened. For example, reform of **public procurement** processes can benefit right holders, as well as prevent corruption in tenders. Countries allowing public and private business to **invest and develop sectors of the economy**, **including regions, by creating special economic zones** should not forget to balance the need for economic development with respect for the fundamental rights of the individual by increasing the protection of citizens with regard to fundamental rights and effective policies to reduce the process of possible abuse and corruption. In particular, anti-corruption policy and regulations of economic activity should cover the **area of employment by protecting employee rights**. At the same time, a strengthened anti-corruption policy should cover the **areas of investment, land trade** and public procurement, as the lack of transparent legal solutions in these areas causes a lot of irregularities and abuses. This should be done through clear economic regulations, as well as through anti-corruption national strategies covering the prevention of irregularities in the economic area, also taking into account the care of individual (employee) rights, as one of the main elements of economic success. It should be taken into account to enable individuals to report irregularities and abuses by entrepreneurs from the bottom up by creating and promoting regulations protecting the whistle-blower, revealing business irregularities both in the area of economy and economics, as well as in the area of human rights violations.

**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?**

The strengthening of anti-corruption in regard to the overall approach to doing business in a human rights context should be reflected in national anti-corruption strategies. Specific actions should be proposed to prevent corruption practices and bribery in the business sphere that may lead to human rights violations and punishing for these practices. It is also recommended that countries support additional measures to promote, adopt and implement codes and standards for compliance with law regulations and fight against bribery or corruption, as well as companies participating in, i.e. public procurement tenders have a robust code for combating bribery and corruption and principles of good governance in tax area. Misuse of public funds, illegal enrichment and bribery should be punished by specific additional sanctions under criminal law, especially if they lead directly to human rights violations caused by corruption.

**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?**

Creating corruption protection requires not only the developing and implementation of standards of ethics, but also efficient national institutions and an effective judiciary. The lack of efficiency of the judiciary weakens the countries and creates an open space for unpunished corruption activities. To counteract this, it is important to access legal remedies by strengthening the legal position of the individual (enhanced legal protection of victims, whistle-blowers) in relation to the corporate and business system represented by professional law firms in the context of disputes, strengthening at the same time its right of defence and a fair trial. An important role in this area is played by the state responsible for building a fair legal system that equalizes the position of individual and institution, including domestic and international business and financial corporations, preventing the latter from gaining an advantage through illegal practices, including corruption. The states provide effective judicial and extra-judicial mechanisms for dealing with complaints for human rights violations in connection with economic activities. Affected persons whose human rights have been violated by business should be guaranteed access to remedies and opportunities to receive compensations for the harm suffered. An important role in this area is played by international scrutiny, independent international organisations such as the Council of Europe's Group of States against Corruption (GRECO), which monitors the situation in all Member States and draws attention to serious institutional and legal solutions that limit the effectiveness of the fight against corruption. Equally important in this respect is the role of civil society organisations (NGOs), which always guard the protection of individual rights when confronted by the machinery of state administration and the private business sector.

**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?**

There are a numbers of methods thanks to which victims of business and human rights abuses have been used to seek remedies for individual rights. Bottom-up initiatives are used, which are mass-oriented and offer good opportunities for impact. Tested worldwide, mass civil rights activities and civil disobedience movements put public opinion and civil society at the centre of change, causing states and business to notice the demands of human rights protection. While reform proposals are often easier to implement from above, sustainable change is clearly more likely to be supported and demanded by society as it promotes accountability and transparency. National human rights institutions can contribute to strengthening the impact on anti-corruption agencies. Generally speaking, they combine the traditional human rights practice of identifying and highlighting this problem with the technical and strategic expertise of anti-corruption organisations active in developing anti-corruption programmes. The presence of active human rights organisations and effective national mechanisms (including anti-corruption) to protect human rights will also help to protect against abuse. Where the law promotes transparency, prevents impunity and guarantees access to information and freedom of expression, individuals and organisations that disapprove corruption will be better protected and it will be more difficult for private (economic) entities to use unclear internal regulations for human rights violations.

**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.**

The states should analyse the correlation of stable economic development, including large facilities for entrepreneurs and real care for individual rights in the sphere of economy, and adjust their policy on reforms that will be beneficial both for entrepreneurs and respect for individual rights. Elements of this balance should take into account the anti-corruption programmes and strategies being developed. In their scope, the state should improve the legislative base towards the criminalisation of corrupt behaviour, develop concepts for a public compliance system, organize issues related to party financing, political and economic actions, educational and informational activities and cooperation between entities active in preventing and combating corruption. An important element will also be to improve policies that take into account the benefits for businesses, counteracting corruption in the most sensitive areas exposed to violations of individual rights, such as the right to life and health, education and work. Nevertheless, states should strive for comprehensive legal and organizational solutions also aimed at respecting human rights in areas, such as a financial market (banks, insurance companies, the stock exchange, large capital groups), as well as taking into account specific areas of anti-corruption, such as the reform of the system for submitting asset declarations, legal protection of whistle-blowers, improving public procurement regulations, problems of conflict of interest, and measures to prevent corruption, nepotism and favouritism.

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

Recommendations to countries, business and civil society should be proposed to address these manifestations, including issues and areas such as improving policy coherence, enhancing human rights due diligence and measures to strengthen access to legal remedies. Corruption involving the private sector affects right-holders in terms of linking, causing or contributing to human rights violations. Appropriate measures and good practices can be undertaken by states, business and civil society to address corruption when it has a negative impact on human rights in the context of business related activities, both in terms of preventing from negative impacts and providing access to effective remedies. Furthermore, countries and economic entities should commit themselves to fully implement and enforce existing national and international anti-corruption instruments - such as the UN Convention against Corruption, the UN Guiding Principles on Business and Human Rights, the Council of Europe Criminal Law Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions, including the use of the instruments referred to therein - in order to better protect citizens and their fundamental rights and commit themselves to work with international partners to increase the number of countries advocating the strengthening of these processes. Moreover, civil society organisations, including NGOs, trade unions, business associations, think tanks, academics and the media, play a key role in the fight against corruption and the promotion and protection of human rights and should work in this area with anti-corruption organisations (agencies) for the implementation of human rights reforms and training, for example on budgeting and tracking of public expenditures, business plans, the establishment of advisory councils and lobbying campaigns.

**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?**

It should be noted that the Special Representative of the Secretary General for Human Rights and Transnational Corporations and Other Business Enterprises has included corruption among the human rights abuses committed by transnational corporations. Financial institutions and investors must take steps to avoid their own corruption. Codes of conduct that clearly identify and sanction forms of corrupt behaviour, promote good practices (e.g. in terms of employee recruitment) and protect employees when attempts are made to corrupt them can be useful. They should also be financially transparent and ready to disclose financial information and can set an example by opening their financial statements to the public, submitting to external audit and establishing improved internal financial control mechanisms. Whenever they participate in public tenders, they should be transparent and open. In addition, national anti-corruption organisations should ensure stricter professional standards and codes of conduct applicable in their country. They could be addressed to other actors, such as bankers, accountants, real estate agents without whose help corruption and its revenues cannot be concealed, and they could work to raise awareness among the public, the media and businesses.

**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?**

In this respect, the UN's objective 16 of sustainable development, which concerns peace, justice and institution building to fight against corruption should be paid into attention. Given that in order for this objective to be achieved worldwide, countries should urgently and directly address the various problems where corruption is crucial, start from human rights violations to poverty, hunger and injustice, including the activities of national and multinational financial corporations that indirectly agreed for human rights violations in their business strategies. The Business and Human Rights agenda as formulated in the UN Guiding Principles on Business and Human Rights and anti-corruption measures should be examined. The combination of the efforts of OHCHR, whose mandate remains the protection of human rights, and UNODC, in the area of competence which is fight against crime, can make a significant contribution to protection of these rights through a coherent approach to preventive and restrictive policies aimed at financial institutions and investors.

*Developed by Central Anti-Corruption Bureau (CBA)*

1. “Polish National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights 2017-2020” was adopted by the Council of Ministers on 29 May 2017. [↑](#footnote-ref-1)