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Working Paper

TRANSPARENCY INTERNATIONAL
the global coalition against corruption



Human Rights and Corruption

Corruption is the cause and core of many human rights violations. Among countries, there is a generalised trend of systemic corruption coexisting with an institutionalised failure to respect human rights. The three countries where perceived corruption levels are high — Somalia, Myanmar and Iraq — also are cited for having grave human rights abuses.[1]

Fighting corruption has largely been directed at ending abuses that distort policy processes and which put people in power who do not represent the society they govern. It strives to promote a judiciary that is independent, unbiased and effective. Reducing corruption improves access to public services, particularly for the poor and vulnerable. It also promotes transparency to enhance the impact of resource wealth for development. The human rights agenda addresses similar concerns in order to respect, protect and fulfil the related rights set out. While there are challenges, there are many areas where both agendas can compliment each other.

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The Human Rights Framework

For the past 60 years, the human rights movement has been working to promote and ensure the respect, protection and fulfilment of the rights that were first laid out in the United Nations Universal Declaration of Human Rights (UDHR, 1948).

The main human rights covenants — the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social and Cultural Rights (ICESCR) — are derived from it and set out legal obligations for states parties.

In addition to this series of documents — the so-called 'International Bill of Rights' — several other core human rights treaties expand and deepen the framework. Among them are the conventions on the Elimination of all Forms of Racial Discrimination (CERD, 1965), Discrimination against Women (CEDAW, 1979), Torture (CAT, 1984) and the Rights of the Child (CRD, 1989).

These international instruments are complemented by regional human rights frameworks. The European Convention on Human Rights (ECHR), the Inter-American Convention (IACHR) and the African Charter on Human and People's Rights (ACHPR) re-interpret and expand the UDHR. They have had varying degrees of efficacy with setting up monitoring systems, the most successful being the European Court of Human Rights.

This overarching body of legal instruments and systems of protection — internationally and regionally — focus on guaranteeing equality, political participation, a fair justice system, and the availability and access to goods and public services.

1. Fulfilling human rights and fighting corruption: common links

Although states' commitments to international anti-corruption and human rights regimes can run parallel to each other, they are rooted in the same principles: equal participation, accountability, democratisation, empowerment and inclusion of the marginalised. When put into practice, these concepts can be used to better the situation of individuals as well as to improve the functioning of states, linking human rights and anti-corruption work in a common set of objectives.[2]

However, the anti-corruption (AC) and human rights (HR) movements employ a different language to describe their work. The points discussed below juxtapose the terms used by each, revealing potential linkages for a common plan of action.

Combating political and judicial corruption (AC) / Guaranteeing civil and political rights (HR)

The anti-corruption movement has been fighting political and judicial corruption to achieve better participation and representation of citizens in a democracy. It gathers information and promotes transparency to empower individuals to make informed decisions when they participate in their country's democratic processes.

The space for civil society to act in both the human rights and anti-corruption arenas is determined by governments fulfilling civil liberties and respecting rights such as the freedom of information, freedom of association and the right to peaceful assembly.[3] Lacking these conditions, the work of anti-corruption advocates and human rights activists is endangered and the achievement of accountability and transparency in the public sector is made impossible.

For example, corruption in electoral contests distorts the democratic process, directly undermining the right of citizens to participate in their own government. This leads to a misrepresentation in political decision-making, since the people put into power are not independent in their decisions or representative of their electorate.[4] According to TI's *Global Corruption Barometer*, political parties and parliaments are perceived to be the most corrupt entities in a state.

Political corruption in a country also can lead to other branches of government being used to silence political opposition. On a systemic level, a judiciary manipulated by corruption is incapable of providing justice and may allow human rights abuses to go unpunished. Perpetrators can act with impunity when they do not fear genuine and impartial prosecution and if they believe money and influence can buy a favourable verdict (see top box on page 3).

Fighting marginalisation and exclusion (AC) / Protecting the right to non-discrimination and equality (HR)

The principle of equality and non-discrimination is a fundamental pillar and driver of the human rights agenda. The human rights regime not only proscribes direct discrimination,[5] it requires states to actively take measures to ensure equality,[6] particularly for certain categories of rights.[7] The rights guaranteed under the human rights covenants must be fulfilled without any type of discrimination, including upholding the equality of men and women.[8]

Since corruption perpetuates marginalisation and exclusion, it prevents non-discrimination and promotes inequality. As the *TI Global Corruption Barometer*

has shown, the poor are disproportionately affected by corruption. They often bear its greatest costs. Studies from national chapters in Bangladesh and Mexico demonstrate that bribe payments can absorb up to a quarter of household income.

The cycle of corruption perpetuates exclusion and marginalisation. Corruption leads to a lack of political voice, diminishing the accountability of governments and high-level public officials to a country's disadvantaged groups. Without other recourse, poor citizens may feel compelled to turn to corruption to meet their basic needs.[9]

Ensuring the provision of public services (AC) / Securing economic, social and cultural rights (HR)

Corruption hinders the delivery of state services that individuals are entitled to, preventing the realisation of economic, social and cultural rights. Development, adequate living standards and the continuous improvement of living conditions are considered human rights in themselves.[10]

On a systemic level, corruption diverts funds away from social services that provide vital assistance to the neediest. The *2006 Global Corruption Report on Health* showed that corruption in the sector makes healthcare costly, inaccessible or simply unavailable to large groups of society. When access to healthcare is not possible, the state fails to progressively and fully realise the right to the highest attainable standard of health (Art. 12, ICESCR). Similarly, corruption in education[11] and the water sector directly undermines international human rights conventions (Art. 13, ICESCR).

Even citizens in resource-rich countries where transparency and accountability are in short supply have not seen their natural wealth materialise into the better delivery of public services. Rather, a nation's abundant natural endowments have too often become a 'resource curse' due to the political, social and economic problems that usually follow. With the bounties of extractive industries captured by a few, corruption has fuelled internal conflicts over who controls a nation's resources. Examples from the Niger Delta (e.g. oil) and Sierra Leone (e.g. mining) to Bolivia (e.g. gas) and the Solomon Islands (e.g. forests) show how corruption and resource wealth overlap with severe human rights abuses (see sidebar).

2. Challenges for aligning the movements

While the human rights and anti-corruption movements may have many common goals and actions, they can also come into conflict when implementing them.

- *Governments may operationalise an anti-corruption agenda that violates human rights.* Political leaders may use the popularity of an anti-corruption campaign to ascend to power and then turn these measures into a channel for violating human rights, perhaps by selectively applying the laws against their opposition. The recent power shake-ups in Bangladesh, Fiji, Thailand and Venezuela underscore the problems that can result when anti-corruption is used as a platform for taking over control — either through elections or military coups.

Corrupt Law Enforcement and Justice: Violating Human Rights

According to the TI *Global Corruption Barometer* (2007), one in four citizens that came in contact with the police paid a bribe.

Such corruption can begin a chain of human rights violations that plague every step of the law enforcement and justice process.

If an individual is arrested by a corrupt police officer after failing to pay a bribe, this violates the person's right to liberty and security. If rolling charges are used to keep the person in jail unless a bribe is paid, this affects the right to be free from arbitrary or unlawful detention.

When the case goes to court, the presence of corrupt judges violates the defendant's right to a fair trial. Corruption distorts judicial decisions and can result in rogue judgments or a false acquittal — which affects an individual's fair trial rights and the right to an effective remedy for the victim.

Extractive industry projects can displace people and involve forced evictions, violating the right to adequate housing (for those who are displaced), as well as other rights, including the right to life, the security of the person, non-interference with privacy, family and home, and the peaceful enjoyment of possessions.

Combating Corruption to Guarantee a Right to Education

Any form of corruption that negatively affects children's ability to attend schools can violate their right to an education. Access can be negatively affected by discrimination (e.g their ethnic background or gender), availability (e.g. textbooks and schools) and costs (e.g. student fees).

Various TI national chapters have done projects on corruption in the education sector. The TI secretariat has used chapter-level projects to assess the extent and forms that corruption takes in education. The projects have ranged from ensuring transparency in the procurement of textbooks, to conducting opinion polls on corruption among students at schools and universities.[13]

In addition, a TI-led programme 'Education Watch' has been implemented in seven African countries — Burkina Faso, Ghana, Madagascar, Niger, Nigeria, Uganda and Zambia — which consists of local participatory assessments on the delivery of basic education at the district or city level.

- *Legislative measures nationally to enhance the effectiveness of anti-corruption efforts could conflict with human rights law, values and norms*. For instance, gathering evidence to prosecute corruption may interfere with the right to privacy — not only for the individuals under investigation but also for others. Moreover, measures that reverse the burden of proof may be very helpful in obtaining a conviction but violate human rights.

- *Anti-corruption measures may hurt marginalised groups and block their access to essential services*. Breaking up informal water provision networks that use corruption and connections to exist may deprive poor communities from accessing water, violating their rights to health and an adequate standard of living. A similar problem may arise when informal settlements that have relied on bribes and government neglect to occupy land are forcibly evicted without a viable alternative that enables them to realise their right to adequate housing.

- *International anti-corruption instruments could have normative weaknesses when it comes to respecting human rights.* The United Nations Convention against Corruption (UNCAC) has a section on illicit enrichment (Art. 20) that allows signatory states to establish a criminal offence against any official who has had a significant increase in her/his assets that s/he cannot reasonably explain. Since this provision places the burden of proof on the defendant, it could be applied to violate the right of individuals to the presumption of innocence, as set out in human rights law (Art. 14, par. 2, ICCPR).

3. Finding a way forward

Despite the challenges, the many similarities between the movements suggest joint activities could be possible to bring a greater human rights-based approach to the work of TI and anti-corruption partners. Potential areas of action include:

Exploring corruption as a cause of human rights violations

- There is a need for an increased recognition and analysis of how corruption contributes to the violation of human rights — and how such findings can be integrated in reporting by both movements. *National Integrity System* (NIS) assessments could offer an entry point for this collaborative work. These reports provide an analysis of the extent and causes of corruption by assessing factors that contribute to the integrity, transparency and accountability of a society including: the executive, legislative and judiciary branches; the media; the private sector; and civil society. Although human rights are not explicitly mentioned in an NIS, it is clear that a system based on the rule of law needs to respect human rights in order to fulfil the basic premise of integrity.[12] Adopting a more explicit human rights-based approach to the NIS could help to provide an enhanced focus on individuals within the assessment framework.

Collaborating on awareness raising

- As anti-corruption work increasingly draws on legal frameworks, such as the UNCAC or the OECD Convention on Combating Bribery, litigation and the exposure of individual corruption cases will receive more attention.

The experience of the human rights movement in effectively using human rights covenants and lobbying their signatories when violations are found offer useful lessons and openings for joint work. For example, advocacy on anti-corruption and human rights could be aligned better to highlight commonalities when working with their respective bodies and across frameworks. One step forward could be uniting both movements to support an existing civil society coalition, *Friends of the UNCAC*, to promote the effective monitoring of the UN convention.

Aligning policy strategies and activities

- Existing policy work within each movement has the potential to be better linked and mutually supportive. For example, enhancing the legal protection of individuals — whether every-day citizens or civil society activists — who publicise illegal activities occurring within her organisation or country presents a natural policy overlap.[14] Such safeguards protect the human rights of the witness and aid efforts to bring clear, fair and impartial judicial decisions, particularly in cases of human rights abuses.
- A new area that could be explored is how to use citizen accountability mechanisms as a platform for alignment. TI's work to develop Advocacy and Legal Advice Centres (ALACs), which have been supported by national chapters from Bosnia to Haiti, focus on advocating and petitioning governments on individual anti-corruption claims through available state institutions. This process is very similar to the approach of the human rights movement to call on states to respect, protect and fulfil individual human rights.

An overall greater understanding of the nature of human rights abuses and the mechanics of corruption could help to better target the efforts of each movement and to develop more precise tools for dealing with abuses that are affecting and perpetuating each other, preventing the realisation of each one's end goals.

According to the UN Declaration on Human Rights Defenders, anti-corruption advocates fall under the definition of individuals to be protected.[15]

Through this mechanism, anti-corruption advocates have access to the UN Special Rapporteur on the Situation of Human Rights Defenders. This office receives information on the status of individuals and establishes a dialogue with the concerned state governments on their behalf.[16]

This Working Paper was prepared by the TI Secretariat's Policy and Research Department in collaboration with members of the anti-corruption and human rights movements. External peer reviewers have included Amnesty International, Human Rights Watch, International Alert and the International Council for Human Rights Policy.

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[1] *According to Transparency International's 2008 Corruption Perceptions Index (CPI), see at: www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table.*
[2] *See Art. 13 of the UN Convention against Corruption, adopted by UN GA on 31 October 2003, entry into force 14 December 2005. This article encourages civil society and citizen participation as well as grants freedom of information.*
[3] *See Art. 19, 22 and 21of the ICCPR, respectively.*
[4] *Art. 25 of the ICCPR calls for genuine elections by universal suffrage, guaranteeing the free expression of the will of the electors.*
[5] *The term 'discrimination' as used in the human rights covenants means any distinction or exclusion which has the purpose or effect of impairing or nullifying the recognition or enjoyment by all persons, on an equal footing, of all rights and freedoms – see UN Human Rights Committee, General Comment No. 18: Non-discrimination (1989), para. 7.*
[6] *UN Human Rights Committee, ibid, para. 5.*
[7] *Specifically mentioned in the fair trial rights of Art. 14 (para. I) of the ICCPR as the general right to equality before courts and tribunals and Art. 14 (para. III), which stipulates the enumerated judicial rights that are to be granted 'in full equality'. It is also mentioned in the context of equality of access to public services in Art. 25 (c) of the ICCPR.*
[8] *Art. 2 of the ICCPR as well as the ICESCR prohibit discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; Art. 3 of the ICCPR stipulates the equality of men and women.*
[9] *International Council on Human Rights Policy, Corruption and Human Rights: Conceptual Paper - DRAFT REPORT (Geneva, Switzerland: ICHRP, June 2008).*
[10] *The right to development is claimed by some but contested at the international level. An adequate standard of living is according to the maximum of available resources. See: Art. 2 and 11, para. 2 ICESCR.*
[11] *For more information, see the Education Watch project of Transparency International: www.transparency.org/regional_pages/africa_middle_east/priority_areas/education.*
[12] *Lucy Koechlin, An Evaluation of National Integrity Systems for a Human Rights Perspective (Geneva, Switzerland: International Council on Human Rights Policy, 2007), para. 56, 57.*
[13] *Transparency International, Bettina Meier and Michael Griffin (editors), Stealing the Future – Corruption in the Classroom (Berlin, Germany: Transparency International, 2005), p. 11.*
[14] *See Art. 32 UNCAC, supra, n. 1.*
[15] *Declaration on Human Rights Defenders as per UN Resolution A/RES/53/144, adopted 8 March 1999.*
[16] *In March 2008, the Human Rights Council decided to continue the mandate for the Special Rapporteur on the Situation of Human Rights defenders for a period of three years. It appointed Mrs Margaret Sekaggya as Special Rapporteur. She succeeds Ms Hina Jilani, who was a Special Representative of the Secretary General on the Situation of Human Rights Defenders (2000-2008).*

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