



Raoul Wallenberg Institute
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In-Depth Study on the Linkages between Anti-Corruption and Human Rights

for the

United Nations Development Program

Including 'Concept Note' Appendix



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Executive Summary

This study explores the relationship between corruption and human rights with a view to recommending ways in which UNDP could integrate more fully human rights perspectives into its anti-corruption technical assistance programmes. First, we consider the value of adopting a human rights based approach to anti-corruption strategies. Second, we make explicit the links among human rights, democracy and the rule of law, before discussing how corruption poses a threat to all three. We approach this relationship from several different angles: firstly by considering how corruption poses a serious threat to human rights promotion and protection; secondly, by considering how weak human rights promotion and protection can create conditions that increase the incidence of corruption; and third, by considering how human rights based approaches in anti-corruption strategies can strengthen democracy and the rule of law and promote the enjoyment of human rights in general. Fourth, we identify corruption as a matter of recognized international legal concern and we discuss the relevance of international legal frameworks to address it. Fifth, we review pertinent examples that illuminate *in concreto* the threat corruption poses to specific civil and political rights as well as to specific economic, social and cultural rights. Sixth, we discuss key actors and policy approaches to fight corruption which leads us finally to our recommendations as to the practical measures UNDP should take with its partners to fight corruption in line with international human rights standards.

In-Depth Study on the Linkages between Anti-Corruption and Human Rights

I. Aim and Approach of the Study

This study explores the relationship between corruption and human rights with a view to recommending ways in which UNDP could integrate more fully human rights perspectives into its anti-corruption strategies. We approach this relationship from several different angles: firstly by considering how corruption poses a serious threat to human rights promotion and protection; secondly, by considering how weak human rights promotion and protection can create conditions that increase the incidence of corruption; and third, by considering how human rights based approaches in anti-corruption strategies can strengthen democracy and the rule of law and promote the enjoyment of human rights in general.

To do this, we first relate the integral character of strong human rights observance to democratic governance and the rule of law, both of which can be threatened in many ways by corruption, as we shall discuss. Until fairly recently, human rights, democratic governance and the rule of law have been viewed as discrete issues to be addressed separately. As we shall see however, the international community has been according increasing recognition to the relationship among human rights, democracy and the rule of law, which implies not only a wider perspective on the meanings of these concepts, but that a more holistic and comprehensive approach must be adopted in addressing threats such as corruption.

We then explain why it is important to adopt an international approach to anti-corruption issues, and we survey the international legal framework on anti-corruption. In particular, we highlight the interdependence between anti-corruption and human rights, we then concentrate first on anti-corruption strategies as they are reflected in human rights instruments, and second, we look at how anti-corruption instruments incorporate human rights principles.

Our discussion then focuses on practical experiences resulting from integrating human rights based approaches into anti-corruption strategies. Although the problem of corruption has been viewed traditionally as a criminal law enforcement issue, we consider that as corruption has become increasingly recognized as a threat to human rights, it has become essential to adopt a human rights based approach to fighting corruption. While criminal law enforcement against corruption is a *conditio sine qua non* for prevention, suppression and punishment of all forms of corruption, we argue that criminal law measures must be integrated within the larger framework of good governance and a human rights based approach for the following reasons:

- ❖ As States have increasingly recognized, corruption corrodes not only the integrity of particular units within governmental administrative organs, but it undermines the whole delivery of government services and quickly depreciates the credibility and legitimacy of public services. The direct impact of corruption on a range of human rights and fundamental freedoms calls for a human rights based approach to maintain broader international focus of the effects of corruption on the enjoyment of human rights.
- ❖ From a practical point of view, anti-corruption strategies are likely to be less effective where the rot of corruption has already reached into the prosecutor's office, drug

enforcement authorities, the Executive, the judiciary, and in some cases, even national anti-corruption commissions. A human rights based approach represents a direct and potentially effective way in which to empower ordinary individuals to demand transparency, accountability and responsibility from elected representatives and public officials.

- ❖ Although far from perfect, the international human rights institutional regime at global and regional levels, has a well developed and integrated system of norms and implementation mechanisms that can contribute much to international monitoring, reporting and follow-up on issues involving corruption insofar as they relate to human rights questions.
- ❖ The adoption of a human rights based approach to problems of corruption has an important educative effect that invites mass media coverage and NGO action and public awareness raising through media campaigns and outreach in schools. By highlighting the links between corruption and the denial of human rights, corrupt practices are exposed for what they are: a direct attack on good governance practices and hence, on human rights at all levels, and not merely a criminal law matter attracting interest perhaps only from the criminal bar and legal scholars. An important element of the corpus of human rights norms is the right to information in the sense of Article 19(2) of the International Covenant on Civil and Political Rights, which if implemented, can prove critical in ensuring transparency and accountability of public officials and in discouraging corrupt practices.¹
- ❖ The application of international human rights standards is itself governed by the overarching principle of non-discrimination on grounds “such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” to paraphrase Article 2(1) of the ICCPR. Thus, linking anti-corruption policies, laws and strategies to human rights standards can help ensure that such measures are implemented in ways that not only respect basic human dignity, but do so in a non-discriminatory fashion.
- ❖ Finally, particularly in less developed countries, corruption siphons public funds into private bank accounts, impairing economic, political and social development. Funds intended for development, including the building and maintenance of hospitals, schools and other essential services suffer directly as a result. There is thus a clear connection between widespread and systematic corruption and the squandering of natural resources which could have been used to strengthen economic and social development and to improve the enjoyment of human rights, which calls for corruption to be understood and

¹ Article 19(2) of the ICCPR provides that: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” This provision has to be read together with Article 19(3) to the effect that: “The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.”

addressed from the broader perspective of human rights based analysis, not only from a criminal law perspective.

In this connection, we draw attention to a few examples that illustrate how the incorporation of a human rights based approach into anti-corruption strategies enhances democratic governance, the rule of law and further promotes human rights, pointing out also the value of using a ‘best practices’ approach to anti-corruption.

Bearing in mind the conceptual interdependence among human rights, democracy and the rule of law, we then draw out the practical linkages between anti-corruption policies, strategies and implementation on the one hand, and human rights promotion and protection on the other, highlighting key institutional actors and policy approaches that hold out the greatest promise for improvement.

Finally, we offer a set of recommendations to help guide UNDP’s anti-corruption efforts in a way that will reinforce human rights and the rule of law, and maximize its contribution to the consolidation of democracy and good governance in the development context. For the purposes of the present study, we consider that UNDP will likely be more effective by following its tried and tested approach of maintaining a close ear to the ground and working in partnership with the Government or Governments in question, together with key multilateral institutions, NGOs and civil society at large, to identify, evaluate and address patterns of corruption on a wide front. This too requires that UNDP’s anti-corruption efforts remain well anchored in the established multilateral normative and institutional frameworks, including as regards human rights.

II. Corruption as a Threat to Human Rights, the Rule of Law and Democratic Governance

In this section, we highlight the normative and institutional interdependence among human rights, the rule of law and democratic governance for two reasons. First, corruption poses a threat not only to human rights implementation, but also to the broader normative and institutional framework of democratic governance and the rule of law that sustain effective human rights implementation. Second, the international community has increasingly recognized, from a practical point of view, that the quality of democracy and the rule of law must be evaluated not in formalistic, conceptual or abstract terms, but rather according to the degree to which democratic governance actually measures up to internationally recognized human rights standards. In short, effective human rights protection is not only an important public good in itself, but it constitutes also an important barometer of democratic governance and the rule of law. In this sense, when corruption threatens human rights, it also threatens democracy and the rule of law.²

² In a study for the World Bank, Kaufmann Kraay and Mastruzzi mention human rights practices among Governance Indicators for 2004, under the heading ‘voice and accountability’. See Daniel Kaufmann, Aart Kraay, and Massimo Mastruzzi, *Governance Matters IV: Governance Indicators for 1996-2004*, The World Bank, May 2005

A. The Theoretical Framework

The doctrine of ‘the rule of law’ was expressed in Plato’s *Republic*,³ and in Aristotle’s *Politics*⁴ which surveyed the constitutions of more than 200 city-States in ancient Greece. While the concept of the ‘rule of law’ dates back to ancient times, it began to operate as an important principle of constitutional law and practice in relation to the modern State only once the sovereign will of the people began to triumph over absolute monarchy in Europe. Perhaps the clearest articulation of the rule of law in the context of basic democratic principles can be found in the classic writings of John Locke, Thomas Hobbes, John Stuart Mill, and of the great *philosophes* of the Enlightenment, in particular, Jean-Jacques Rousseau, Baron de Montesquieu and Voltaire.

Having developed over centuries, the doctrine of ‘the rule of law’ has become reflected in the forms of parliamentary supremacy, separation of powers, responsible government, pluralism, free and regular elections and mass political participation, equality before the law, independence of the judiciary, and general transparency and accountability of the public service. The doctrine of the rule of law continues to develop in theory and practice, tempered and nourished by the prevailing social and political conditions of the times.

In a narrower sense, ‘the rule of law’ can be understood to mean ‘supremacy of law’, prescribing that ‘no one is above the law’ and that ‘everyone is equal under the law’. As such, it implies the illegality of the arbitrary use of public authority and limitations on discretionary authority. In this sense, ‘the rule of law’ approximates the principle of legality, or is a little wider, if we include Joseph Raz’s procedural requirements that law must be clear, ‘open’ or public (rather than secret), prospective and relatively stable.⁵ In a wider sense, ‘the rule of law’ refers not only to procedural requirements of legality, but also to substantive elements of law, as in Lon Fuller’s ‘inner morality of law’,⁶ H.L.A. Hart’s ‘minimum content of natural law’,⁷ or in explicitly rights-based legal theories, such as those of Ronald Dworkin⁸ or the Natural Law approach of John M. Finnis.⁹

B. Current Approaches to Anti-Corruption and Human Rights

Delegates gathered at the 12th International Anti-corruption Conference in Guatemala in November 2006 emphasized the importance of recognizing the links between corruption and the abuse of human rights. In addition to the need for more research into these related areas, the Conference’s Declaration called for “greater sharing of knowledge and approaches between civil society organizations engaged in these areas and closer attention to the implementation and monitoring of anti-corruption programs and protection of human rights”. Governments had expressed a similar concern already in the Preamble to the Convention against Corruption, 2003,

³ Plato, *The Republic* (trans. Desmond Lee: Penguin Classics) 2003.

⁴ Aristotle, *Politics* (trans. T. A. Sinclair: Penguin Classics) 1981.

⁵ *See generally* Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford: Clarendon Press) 1979.

⁶ Lon L. Fuller, *The Morality of Law* (London: Yale University Press) 1969.

⁷ H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon) 1961 at 189.

⁸ Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard Univ. Press) 1977.

⁹ *See* John M Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press) 1980.

which stresses “the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law”. In this sense, Governments have been long convinced that “the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law”. Recent approaches to anti-corruption and human rights have evolved along the same lines, placing increased emphasis on the negative impact of corruption to democracy, human rights and the rule of law - an approach reflected in the Chairperson’s final conclusions from the first Expert Seminar held in Geneva in 2002 on the Interdependence between Democracy and Human Rights.¹⁰

The threat corruption poses to basic human rights will be discussed in detail in later sections of this study. It is important to highlight straightaway however, the interconnections among corruption and human rights, democratic governance and the rule of law, in particular, the way corruption undermines accountability and fosters impunity. Article 1 of the Convention against Corruption 2003, defines the promotion of “integrity, *accountability* and proper management of public affairs and public property” as one of the Convention’s purposes.¹¹ Democratic accountability implies that there are effective limits on the exercise of power by public officials, open and transparent public service, access to information, and accessible avenues for victims to obtain adequate redress in case of abuse.¹² ‘Impunity’, literally meaning ‘lack of punishment’ constitutes a particularly serious threat to democracy, human rights and the rule of law because democracies purport to represent the sovereign will of the people, rather than narrow sectional interests. A clear pattern of lack of punishment with respect to criminal behaviour - which often arises out of widespread corruption - signals a critical violation of the right of people to enjoy peace, security and human rights, and places some individuals beyond the reach of punishment and the rule of law. In effect creating special privileges for some at the expense of others, corruption also tends to distort and undermine all forms of democratic governance by allowing political and economic decision-makers to act in the interests of well placed power brokers, rather than according to the will of the people as duly expressed in democratic electoral processes and a constitutionally sanctioned mandate.

Over recent years, Governments have focused on the threat that corruption, together with lack of accountability on the one hand, poses to human rights, democracy and the rule of law on the other hand. Article 26 of the Convention against Corruption, 2003, for example, requires that States Parties adopt measures to establish the liability of both legal and natural persons for “participation in the offences established in accordance with [the] Convention”. Both legal and natural persons should be liable under criminal, civil or administrative law. The Convention stresses the importance of having “effective, proportionate and dissuasive criminal or non-

¹⁰ For example, para. 4 of the Chairperson’s Conclusions considers that democracy “goes beyond formal processes and institutions, and should be measured by the degree to which these principles, norms, standards and values are given effect and the extent to which they advance the realization of human rights.” See Chairperson’s Conclusions, Expert Seminar on the Interdependence Between Democracy and Human Rights, Geneva, 25-26 November 2002; UN Doc. E/CN.4/2003/59 of 27 January 2003.

¹¹ See Article 1 of the Convention. Emphasis added.

¹² See generally Ilaria Bottiglierio, *Redress for Victims of Crimes under International Law* (Leiden / Boston: Martinus Nijhoff Publishers) 2004.

criminal sanctions, including monetary sanctions” against those engaging in corruption activities as described in the Convention.

Turning to the issue of concrete implementation, the first session of the Conference of States Parties to the Convention against Corruption took place in Jordan from 10 - 14 December 2006, covering such topics as technical assistance, asset recovery and monitoring of the Convention. At the Conference, much focus was placed on the Convention’s obligations on States Parties to ensure the recovery of assets misappropriated by or through corrupt practices. Because the Convention does not itself set up a tribunal or other enforcement mechanism to ensure the return of private or public assets which have been unlawfully extracted through corrupt practices, and instead relies on the efforts of judicial mechanisms in the individual jurisdictions of States Parties, the aligning of national legislation to the Convention’s standards in this area will prove to be critical in making the Convention’s asset recovery provisions work. To put it another way, while the Convention sets up a valuable normative regime for implementing a system of mutual cooperation in asset recovery in connection with corruption, its success will depend on whether, and if so how, States Parties adjust their domestic law and practice to implement the Convention’s asset recovery scheme. At the same time, States Parties must ensure that criminal law techniques to trace, seize, freeze, confiscate and recover assets, pay full regard to the human rights of suspected persons, in particular, the right to fair trial, presumption of innocence, and to refrain from using anti-corruption techniques as political tools to target individuals whose personal views may be at odds with those of the Government. At the Conference, a number of Delegations called for the gathering of information as to how States Parties to the Convention have been implementing the Convention and for a periodic review process to be established with a view to maintaining effective implementing of the Convention high on the list of the domestic priorities of States.

During the series of International Conferences on New or Restored Democracies which have been convened periodically since the first one was held in Manila in 1988,¹³ participating Governments have declared their concern over the threat of impunity in connection with the problems of corruption, organized crime, money laundering, drug trafficking, terrorism, the crime of aggression, war crimes, crimes against humanity, genocide, and the systemic challenge of ensuring civilian control over the military. All of these threats have been recognized to constitute direct attacks on the integrity of democracy, human rights and the rule of law.

In 1997, the Bucharest Declaration¹⁴ also emphasized the need for stronger human rights promotion and protection, judicial reform, and measures to fight corruption and organized crime, recalling that countries that had been dominated by military rule or totalitarianism had to “consolidate their democratic achievements and reconciliation, to hasten economic and social reforms and to revitalize the civil society organizations that had little or no participation in

¹³ Thus far, the International Conferences have been held in Manila, The Philippines, 3-6 June 1988; Managua, Nicaragua, 4-6 July 1994; Bucharest - Romania, 2-4 Sept 1997; Cotonou, Benin 4-6 Dec 2000; Ulaanbaatar, Mongolia, 10-12 Sept 2003; and a sixth one was set to take place in Doha, Qatar in October 2006.

¹⁴ Progress Review and Recommendations for Strengthening Policies and Principles Addressed to the Governments of the New or Restored Democracies *adopted* at the Third International Conference of New or Restored Democracies on Democracy and Development, Bucharest, 2-4 September 1997; A/52/334 of 11 September 1997.

governance during the period of military rule”. Similarly, in the year 2000, the Cotonou Declaration condemned “all military coups d’état, all forms of terrorism and violence against democratic, freely elected Governments” and affirmed the principle of accountability of all public authorities for their acts.¹⁵ This concern was reiterated also in the Ulaanbaatar Declaration.¹⁶ The combined threat of money laundering, drug trafficking, organized crime and corruption, figured as the main focus of the Managua Declaration, issued in 1994, which urges greater international cooperation to assist Governments in addressing these problems.¹⁷ The Managua Declaration also condemned “all terrorist acts, methods, forms and practices wherever they are committed, as they are actions that constitute an assault on human rights, basic freedoms and the preservation of a democratic system”.¹⁸

III. The Relevance of an International Legal Framework on Anti-Corruption

In our view, the optimal starting point in the development and implementation of effective anti-corruption strategies through multilateral institutional frameworks must be the relevant emerging international legal norms and mechanisms. In this sense, corruption has to be treated as a matter of international legal concern rather than as a matter falling within the exclusive domestic jurisdiction of individual States, for the following reasons.

First, the phenomenon of corruption has a distinctly transnational feature to it in that corruption arises often with regard to international business and international transactions that are regulated by international law and cannot be treated only by the domestic jurisdiction of any one single State. Carr notices how:

“corrupt practices in various guises such as kickbacks and bribes are common phenomena in the world of international business. With globalisation fuelled by the free-trade philosophy as promoted by the World Trade Organisation (WTO) and the information technology (IT) revolution, opportunities for engaging in corrupt practices have increased enormously”.¹⁹

Also, it is important to remark that although corruption at the international level is something that affects both rich and poor countries, it is mostly in poor countries that the impact of corruption on the enjoyment of fundamental economic and social rights, such as the right to development, has been felt. It has been estimated that “with better governance and anti-corruption measures, a country with a per capita income of \$2,000 per year would see this increase, in the long run,

¹⁵ Declaration and Final Report, *adopted* at the Fourth International Conference of New or Restored Democracies, Cotonou, 4-6 December 2000; A/55/889 (2001) of 5 April 2001. See paras. 14 and 15 of the Declaration.

¹⁶ Declaration and Plan of Action, *adopted* by the Fifth International Conference of New or Restored Democracies, Ulaanbaatar, 10-12 September 2003; A/58/387 of 23 September 2003 at para. 16.

¹⁷ Progress Review and Recommendations *adopted* at the Third International Conference of New or Restored Democracies on Democracy and Development, Bucharest, 2-4 September 1997; 11 September 1997, A/52/334 (1997), Part I(D).

¹⁸ Declaration, *adopted* at the Second International Conference of New and Restored Democracies, Managua, 4-6 July 1994; A/49/713 of 23 November 1994 at paras. 16 and 17.

¹⁹ See Indira Carr, *Strategic Improvements in the Fight Against Corruption in International Business Transactions*, *Journal of Business Law* (2006) 375-395 at 375.

to \$8,000 per year. Lower corruption would mean lower poverty”.²⁰ Clearly, serious efforts to combat corruption have to be taken globally as part of the fight against poverty.

The economic costs of corruption are also intrinsically linked to the overall enjoyment of the right to development. Hess and Dunfee remark that “a 1997 World Bank estimate placed the total corruption involved in international trade at \$80 billion per year”.²¹ In countries such as Ecuador:

“estimates indicate that the government could pay off its foreign debt in five years if corruption was brought under control. In Argentina, corruption in the customs department defrauded the government out of \$3 billion in revenues. Officials estimated that 30% of all imports were under-billed and approximately \$10 billion of goods over a four-year period were brought into the country under the guise of being labeled ‘in transit’ to another country, thus illegally avoiding import taxes altogether. Corruption also influences government spending, moving it out of vital functions, such as education and public health, and into projects where public officials can more easily extract bribes”.²²

Hess and Dunfee mention yet other cases: in Mexico there have been strong suspicions that Raul Salinas, the brother of former President Carlos Salinas, gathered over \$120 million in public funds during his time as a Government official. Corruption has affected also South Korea, where two former presidents were convicted for “developing a fund of over \$900 million while they were in office in the 1980's and 1990's”. Turning to Europe, the city mayor of Grenoble, France, “was convicted for personally receiving \$1.8 million in 1989 while selling the city water system”.²³

Second, it is important to look at corruption from an international point of view because foreign States and businesses often use bribery and other corrupt practices in order to obtain influence and the granting of large contracts. In Germany for example:

“companies are estimated to pay over \$3 billion a year in bribes to obtain business contracts abroad. In Indonesia, it is estimated that bribes to bureaucrats account for 20% of business costs. In Albania, businesses lose approximately one-third of their potential profits to bribe payments, amounting to 8% of inventory turnover.”²⁴

If only one or few States were to adopt domestic anti-corruption policies, laws and practices while other countries did not implement similar measures at the same time, those in the forefront could lose competitive advantage in the international marketplace. Tellingly, the drop in competitive advantage motivated the US Government to amend the 1977 Foreign Corrupt

²⁰ *Ibid.*

²¹ David Hess and Thomas W. Dunfee, *Fighting Corruption: A Principled Approach - The C2 Principles (Combating Corruption)* (2000) at 596.

²² *Ibid.* At 596-597.

²³ *Ibid.*

²⁴ *Ibid.*

Practices Act (FCPA) to allow greater flexibility in implementation. As outlined in the US Senate Report on the Anti-Bribery Act, 1998:

“Since the passage of the FCPA, American businesses have operated at a disadvantage relative to foreign competitors who have continued to pay bribes without fear of penalty. Such bribery is estimated to affect overseas procurements valued in the billions of dollars each year. Indeed, some of our trading partners have explicitly encouraged such bribes by permitting businesses to claim them as tax-deductible business expenses”.²⁵

The Report continues to say that:

“It is impossible to calculate with certainty the losses suffered by U.S. businesses due to bribery by our foreign competitors. The Commerce Department has stated that it has learned of significant allegations of bribery by foreign firms in approximately 180 international commercial contracts since mid-1994, contracts that were valued at nearly \$80 billion”.²⁶

To avoid such unfairness, anti-corruption measures, which entail some immediate and short-term costs to some individual Governments and businesses which have previously profited from corrupt practices, have to be implemented in as comprehensive and universal a manner as possible, in other words, through global and regional international legal norms and mechanisms. Governments, together with intergovernmental organizations, figure as the main actors in developing and implementing anti-corruption strategies, and in cooperation with multinational corporations through the Global Compact. At the same time, Governments are the main entities responsible for the promotion and protection of human rights at domestic, regional and global levels. The international legal norms and mechanisms that States have developed over time represent the concrete manifestation of their political recognition and resolve to address the problem of corruption as a human rights issue and they therefore represent the most solid basis upon which to further elaborate specific policies, strategies and measures from this perspective.

A. Anti-Corruption Focus in Human Rights Instruments

The development of international human rights law since 1945 has enriched the meanings of ‘democracy’ and ‘the rule of law’, associating them both closely to fundamental rights and freedoms and allowing room for anti-corruption strategies to be incorporated fully into the human rights legal debate. A number of commentators have argued for the right to a corruption-free society to be considered as basic. Kofele-Kale for example, argues persuasively that the right to a corruption-free society is related closely to the rights to self-determination and development.²⁷

²⁵ The International Anti-Bribery Act of 1998: Senate Report No. 105-277 of 30 July 1998 at 1.

²⁶ *Ibid.*

²⁷ Ndiva Kofele-Kale, *The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime under International Law*, 34 (Spring) *International Lawyer* (2000) 149-178.

“The right to a society free of corruption is inherently a basic human right because life, dignity, and other important human values depend on this right. That is, it is a right without which these essential values lose their meaning. As a fundamental right, the right to a corruption-free society cannot be easily discarded ‘even for the good of the greatest number, even for the greatest good of all’.”

He argues further that:

“there is sufficient state practice to support a claim for an emerging international customary law prohibiting corruption in all societies. That is, a case can be made for the right to a corruption-free society as a fundamental human right; a right that should be recognized as a component part of the right to economic self-determination and the right to development. Alternatively, the right to a corruption-free environment can be viewed as a freestanding, autonomous right, if you will, a right in its own right”.²⁸

While the words ‘democracy’, ‘rule of law’ or ‘corruption’ cannot be found in the Charter of the United Nations, after much debate, clear references to principles of democratic governance were inserted in Article 21 of the Universal Declaration of Human Rights (UDHR) which lays down the minimum elements that: everyone has the right to take part in the government of his or her country directly or through freely chosen representatives; everyone has the right to equal access to public service in his country; and that the will of the people shall be the basis of the authority of government as expressed in periodic and genuine elections through universal and equal suffrage held by secret vote or equivalent free voting procedures.²⁹ Article 29(2) of the UDHR also provides that “everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society” implying not only that restrictions placed on rights themselves must be limited, but that democratic protection of human rights must not constitute *abus de droit* in one way or another. Similarly, Article 30 seeks to prevent the Declaration from being interpreted to destroy the rights and freedoms set out therein. Although minimal in form and content, the provisions of the UDHR are very important because they signal the international community’s recognition in 1948 to include democratic rights as part of the ‘common standard of achievement for all peoples and all nations’.

Since the end of the Cold War, the international community’s consideration of democracy and the rule of law have broadened beyond the formal, procedural approach enunciated in Article

²⁸ *Ibid.* at 152.

²⁹ For an interesting discussion of the *travaux préparatoires* to Article 21 of the UDHR, see Allan Rosas, *Article 21* in Gudmundur Alfredsson and Asbjørn Eide, eds., *The Universal Declaration of Human Rights: A Common Standard of Achievement* (The Hague: Martinus Nijhoff) (1999) 431-451.

21 of the UDHR,³⁰ Article 25 of the ICCPR³¹ and Article 7 of the CEDAW. Adopting a broader, more holistic interpretation that relates democracy not only to civil and political rights, but also to economic, social and cultural rights, the international community has increasingly viewed anti-corruption efforts as critical to the safeguard of basic human rights and fundamental freedoms.³² Hess and Dunfee note that:

“although the end of the Cold War brought increased attention to corruption, it also led to greater opportunities for corruption. The collapse of the Soviet Union and socialist governments in Europe allowed policymakers all over the world to focus their attention on other matters, including corruption and its negative consequences. In addition, nations no longer felt the strong pressure to support corrupt governments in order to advance other geopolitical interests. The end of the Cold War also increased the independence of the judges and prosecutors and created a stronger free press. At the same time, paradoxically, the opening up of markets and the privatization of state-owned enterprises increased opportunities for corruption. Further involvement in global trade by countries with high corruption may also contribute to increased instances of coarse bribery”.³³

With the end of superpower rivalry, the international community began to focus on a wider range of civil and political rights essential to the realization of genuine forms of democratic governance, such as the freedoms of association, opinion and expression, as well as certain economic, social and cultural rights, in particular, the right to education³⁴ and the right to an adequate standard of living, as discussed further below.³⁵ This trend finds expression in

³⁰ Universal Declaration of Human Rights, *adopted* by UN General Assembly resolution 217A (III) of 10 December 1948.

³¹ The International Covenant on Civil and Political Rights, *adopted* 16 December 1966; *entered into force* 23 March 1976; U.N.T.S. No. 14668, vol 999 (1976) at 171, provides in Article 25 that: “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; c) To have access, on general terms of equality, to public service in his country.”

³² The Convention on the Elimination of All Forms of Discrimination against Women, *adopted* by the General Assembly in resolution 34/180 of 18 December 1979, *entered into force*, 3 September 1981, provides in Article 7 that: “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.” *See also* CEDAW General Recommendation No. 23 on Political and Public Life, *adopted* 13 January 1997.

³³ David Hess and Thomas W. Dunfee, *Fighting Corruption: A Principled Approach - The C2 Principles (Combating Corruption)* (2000) 593-626 at 601.

³⁴ ICESCR General Comment No. 13 on the Right to Education observes that: “Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make.” *See* E/C.12/1999/10 of 8 December 1999.

³⁵ As provided for in the International Covenant on Economic, Social and Cultural Rights, *adopted* 16 December 1966; *entered into force* 3 January 1976; U.N.T.S. No. 14531, vol. 993 (1976) at 3.

numerous resolutions of the General Assembly and Commission on Human Rights,³⁶ and in the declarations coming out of the five International Conferences of New or Restored Democracies, convened since 1988, and in the Vienna Declaration and Programme of Action,³⁷ which emphasize the integral linkages among human rights, democracy and the rule of law. At its 1999 session for example the Commission on Human Rights adopted resolution 1999/57 entitled ‘Promotion of the Right to Democracy’,³⁸ which affirms “that democracy fosters the full realization of all human rights, and vice versa” and spells out various elements and aspects of democratic governance in terms of rights.³⁹ In Part V of the Millennium Declaration⁴⁰ on ‘Human Rights, Democracy and Good Governance’, Member States resolved to “... spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development.”⁴¹ Importantly, General Assembly resolution 55/96⁴² calls upon States to promote and consolidate democracy by *inter alia* promoting sustainable development through effective measures aimed at the progressive realization of economic, social and cultural rights, overcoming

³⁶ See General Assembly resolution 55/96 adopted 4 December 2000, entitled “Promoting and Consolidating Democracy”, and Commission resolutions 1999/57 adopted 27 April 1999, on “Promotion of the Right to Democracy”, 2000/47 adopted 25 April 2000 on “Promoting and Consolidating Democracy”, 2001/41 adopted 23 April 2001 on “Continuing Dialogue on Measures to Promote and Consolidate Democracy”, and 2002/46 on “Further Measures to Promote and Consolidate Democracy” adopted 23 April 2002.

³⁷ See paras. 8, 9, 17, 27, 34, 66, 68, 74, 79, 80 and 81, of the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993.

³⁸ Commission resolution 1999/57, adopted on 27 April 1999 by a roll call vote of 51 votes to none, with 2 abstentions.

³⁹ Para. 2 of resolution 1999/57 affirms that “the rights of democratic governance include, *inter alia*, the following: (a) The rights to freedom of opinion and expression, of thought, conscience and religion, and of peaceful association and assembly; (b) The right to freedom to seek, receive and impart information and ideas through any media; (c) The rule of law, including legal protection of citizens' rights, interests and personal security, and fairness in the administration of justice and independence of the judiciary; (d) The right of universal and equal suffrage, as well as free voting procedures and periodic and free elections; (e) The right of political participation, including equal opportunity for all citizens to become candidates; (f) Transparent and accountable government institutions; (g) The right of citizens to choose their governmental system through constitutional or other democratic means; (h) The right to equal access to public service in one's own country” and para. 3 notes that the realization of all human rights including the right to development remain are indispensable to human dignity and are also integral to democratic society.

⁴⁰ United Nations Millennium Declaration, General Assembly resolution A/55/2 of 18 September 2000, adopted by all 189 Member States at the Millennium Summit, 6-8 September 2000. See UN Press Release PI/1380 of 19 September 2001.

⁴¹ This comes from para. 24 of the Millennium Declaration. Para. 25 declares the Member States’ resolve to: respect fully and uphold the UDHR; strive for the full protection and promotion in all our countries of civil, political, economic, social and cultural rights for all; strengthen the capacity of all our countries to implement the principles and practices of democracy and respect for human rights, including minority rights; combat all forms of violence against women and to implement the Convention on the Elimination of All Forms of Discrimination against Women; take measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in many societies and to promote greater harmony and tolerance in all societies; to work collectively for more inclusive political processes, allowing genuine participation by all citizens in all our countries; ensure the freedom of the media to perform their essential role and the right of the public to have access to information.

⁴² Assembly resolution 55/96 on “Promoting and Consolidating Democracy”, adopted 28 February 2001.

social inequalities, and creating an environment conducive to development and poverty elimination.⁴³

At its fifty-ninth session, the Commission adopted resolution 2003/36 on “Interdependence between Democracy and Human Rights”⁴⁴ which refers not only to the principle of periodic and genuine elections by universal suffrage and by secret ballot, but notes also the “close link between democracy, good governance on the one hand, and economic development and poverty alleviation on the other hand”. In the same resolution, the Commission reaffirmed the mutually reinforcing interdependence of democracy, development and respect for human rights, “based on the freely expressed will of the people to determine their own political, economic, social and cultural systems”.⁴⁵

In its 2005 session, the Commission on Human Rights maintained its focus on the interdependence among human rights, democracy and the rule of law, as reflected in resolution 2005/29 on ‘Strengthening of popular participation, equity, social justice and non-discrimination as essential foundations of democracy’,⁴⁶ resolution 2005/32 on ‘Democracy and the rule of law’,⁴⁷ 2005/36 on ‘The incompatibility between democracy and racism’, resolution 2005/55 on ‘Human rights and international solidarity’, resolution 2005/57 on ‘Promotion of a democratic and equitable international order’, and resolution 2005/80 on ‘Protection of human rights and fundamental freedoms while countering terrorism’. The Commission on Human Rights stressed the importance of anti-corruption measures with regard to access to information and democratic

⁴³ General Assembly resolution 55/96 also welcomed efforts on the part of the: Assembly of Heads of State and Government of the Organization of African Unity (AHG/Dec.141 (XXXV) *adopted* in 1999); the Organization of American States (6 resolution AG/RES.1080 (XXI-091) *adopted* in 1991); the Conference for Security and Cooperation in Europe which committed Member to take certain steps in the event of an interruption of democratic government (Moscow Document on the Human Dimension *adopted* in 1991); the Commonwealth Heads of Government (Commonwealth Declaration *adopted* in Harare in 1991); the International Conferences of New or Restored Democracies held in Manila (June 1988), Managua (July 1994), Bucharest (September 1997), Cotonou (4-6 December 2000); as well as the Ministerial Conference hosted by the Government of Poland at Warsaw (26 and 27 June 2000); the Forum on Emerging Democracies held at Sanaa (27-30 June 1999); as well as the Eighth Summit of la Francophonie in Moncton (September 1999). A fifth International Conference on New or Restored Democracies held in Mongolia *adopted* the Ulaanbaatar Declaration and Plan of Action in September 2003.

⁴⁴ Commission on Human Rights resolution 2003/36 on Interdependence between Democracy and Human Rights *adopted* on 23 April 2003.

⁴⁵ Para. 2 of Commission resolution 2003/36.

⁴⁶ *Adopted* on 19 April 2005. Para. 4 affirms that “the consolidation of democracy requires the promotion and protection of all human rights for everyone, both civil and political rights and economic, social and cultural rights, including the right to development as a universal and inalienable right and an integral part of fundamental human rights, as established in the Declaration on the Right to Development”.

⁴⁷ *Adopted* on 19 April 2005. Para. 14(b)(vi) of the resolution calls upon States to strengthen the rule of law and democracy by ensuring that “comprehensive anti-corruption strategies and measures are adequately developed and applied in order to maintain the independence and impartiality of the judiciary, and to ensure the accountability of the members of the judiciary, legislative and executive systems” and in para. 14(c)(iv), it calls upon States to promote: “continuously the independence and impartiality of a judiciary free from unlawful or corrupt outside influence”.

participation and accountability,⁴⁸ as well as to the role of good governance in the promotion and protection of human rights.⁴⁹

B. Human Rights Focus in Anti-Corruption Instruments

Anti-corruption instruments frequently refer to human rights, democracy and the rule of law as necessary components in the global fight against corruption, as discussed next.

i. The UN Convention against Corruption

The United Nations Convention against Corruption, adopted by the General Assembly in its resolution 58/4 of 31 October 2003 represents a major step forward in the global fight against corruption. It symbolizes the political will, concrete efforts, and not least, the legal commitment, of UN Member States to address the problem of corruption through a thoroughly multilateral approach. This is confirmed in the Convention's Preamble, which clearly indicates that: "corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential". The Preamble also states that "a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively". The Convention against Corruption entered into force on 14 December 2005 and has been already signed by 140 countries and ratified by 38. The treaty, which takes account of a number of previous instruments, in particular the Convention against Transnational Organized Crime 2000, represents the first legally binding global instrument designed to assist Member States to fight corruption in both the public and private sectors.

Turning to the specific provisions of the Convention and implications as regards human rights based approaches in anti-corruption strategies, it is important to note straightaway that the definition of 'public official' as set out in Article 2 has the potential to reach beyond the domestic legal definition of the term, to encompass "any person any person who performs a public function or provides a public service as defined in the domestic law of the State Party". While this is bound to make the Convention more effective, it is conceivable that the application of a broad Convention definition might be used in the context of domestic adjudication in a way that imposes greater legal responsibilities upon a person accused of engaging in corruption by supposing that, for all intents and purposes of the Convention, he or she were a public official when in fact they were not. This could raise the issue of a prejudicial legal presumption which might in some cases jeopardize the fair trial rights of the accused.

⁴⁸ See Commission on Human Rights resolution 2005/38 on "The right to freedom of opinion and expression", *adopted* 19 April 2005, para. 4(p)(I).

⁴⁹ Commission on Human Rights resolution 2005/68 on "The role of good governance in the promotion and protection of human rights", *adopted* 20 April 2005, reiterates in para. 4(d) "[t]he importance of taking measures, both within countries and at the international level, that promote transparency and combat corruption, including entry into force and implementation of the United Nations Convention against Corruption as well as the United Nations Convention against Transnational Organized Crime, so as to eliminate corruption and the multiple negative impacts that it has on human rights".

In terms of the obligation to implement measures to combat corruption, the most important operative paragraphs of the Convention against Corruption require States Parties:

- to establish codes of conduct for public officials (Article 8);
- to establish appropriate systems of procurement, based on transparency, competition and objective criteria (Article 9);
- to ensure public reporting that enhances transparency within the public administration (Article 10);
- to take measures to strengthen the integrity of the judiciary (Article 11);
- to take measures to prevent corruption in the private sector, including providing for stronger accounting and auditing standards as well as a set of civil, administrative and criminal penalties (Article 12), together with preventive measures;
- to take appropriate measures to ensure the participation of civil society in anti-corruption strategies in a way that promotes human rights, in particular, the public's access to information without involving arbitrary interference with privacy, family, home or correspondence, or to attacks upon the honour and reputation of persons under suspicion (Article 13); and
- to institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions (Article 14).

The Convention also obliges States Parties to adopt a number of measures to criminalize corruption and to strengthen enforcement, namely:

- to outlaw the offering or giving to a national public official, undue advantage as well as solicitation or acceptance of such offers or gifts (Article 15) or in relation to a foreign public official or official of a public international organization (Article 16);
- to outlaw embezzlement, misappropriation or diversion of benefits, committed by a public official (Article 17);
- to outlaw trading in influence (Article 18);
- to outlaw abuse of functions or position to obtain undue advantage (Article 19);
- to consider adopting measures to catch cases of illicit enrichment involving “a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income” (Article 20);
- to outlaw bribery (Article 21) and embezzlement of property (Article 22) in the private sector;
- to criminalize the laundering of proceeds of crime (Article 23) or the concealment of unlawfully gain (Article 24);
- to outlaw obstruction of justice (Article 25); as well as
- to criminalize acts which constitute participation in or attempt at the commission of a Convention offence (Article 27).

Inevitably, as a criminal law convention, the Convention against Corruption raises many human rights issues. Article 20 for example, obliging States Parties to outlaw illicit enrichment involving “a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income”, if not carefully implemented, risks a *de facto* reversal of the burden of proof from the prosecution to the accused. In some cases, it can be difficult for a person to document each and every transaction the total of which over a

considerable period of time, may have contributed to their wealth. If Article 20 obligations become translated into politicized or heavy handed domestic enforcement, this could produce palpable injustice for persons under investigation, not to mention serious abuse of human rights, in particular, the right to fair trial.

On the occasion of the adoption of the Convention against Corruption, the UN Secretary-General Kofi Annan highlighted the close connection among corruption, the enjoyment of human rights, human security and development as follows:

“Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism and other threats to human security to flourish. ... This evil phenomenon is found in all countries - big and small, rich and poor - but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately - by diverting funds intended for development, undermining a government’s ability to provide basic services, feeding inequality and injustice, and discouraging foreign aid and investment. Corruption is a key element in economic underperformance, and a major obstacle to poverty alleviation and development.”⁵⁰

While the UN Convention itself makes no reference to ‘human rights’, the threat that corruption poses to human rights is reflected more clearly in regional and sub-regional anti-corruption instruments.

ii. Regional and Sub-Regional Anti-Corruption Instruments

A number of regional instruments developed by groups of relatively like-minded countries such as those of the Organization of American States, the African Union, and the Council of Europe, highlight the threat of corruption to democracy, the rule of law and the enjoyment of human rights.

Among them, one can mention the Inter-American Convention Against Corruption⁵¹ and the Ibero-American Charter for the Public Service, 2003, which complements the Convention. In its preamble, the Inter-American Convention refers to the fact that “corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as at the comprehensive development of peoples”. The Convention also considers that “representative democracy, an essential condition for stability, peace and development of the region, requires, by its nature, the combating of every form of corruption in the performance of public functions, as well as acts of corruption specifically related to such performance”. Finally, the Convention highlights that “fighting corruption strengthens democratic institutions and prevents distortions in the economy, improprieties in public administration and damage to a society’s moral fiber”. Unlike other anti-corruption treaties, the Inter-American Convention definition of ‘corruption’

⁵⁰ See SG/SM/8977; GA/10200; SOC/CP/271 of 3 November 2003 entitled “Secretary-General Lauds adoption by General Assembly of United Nations Convention Against Corruption”.

⁵¹ Adopted on 29 March 1996.

goes beyond the traditional meaning of the term, to include an express prohibition of ‘illicit enrichment’, defined as “a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions”.⁵²

At the European level, in 1995 the European Union adopted the Convention on the Protection of the European Communities’ Financial Interests and its two additional Protocols.⁵³ The Convention draws its inspiration from the European Parliament ‘Resolution on Combating Corruption in Europe’ 1995, which states that “corruption, particularly in conjunction with organized crime, poses a threat to the functioning of the democratic system and thus destroys public confidence in the integrity of the democratic State”.⁵⁴

In 1997, OECD (Organisation for Economic Co-operation and Development) countries adopted the Convention on Combating Bribery of Public Officials in International Business Transactions. Significantly, the drafters considered that “bribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions”.⁵⁵ The OECD Convention only prohibits the so-called ‘active corruption or active bribery’, meaning the act of promising or giving a bribe “in order to obtain or retain business or other improper advantage”. This is a move forward from the exclusive notion of ‘passive bribery’, where the offense of bribery targets exclusively the person who receives the bribe.

Also of importance is the Council of Europe’s Criminal Law Convention on Corruption,⁵⁶ and the Civil Law Convention on Corruption,⁵⁷ which both refer to the interrelation between corruption and poor human rights observance. The preamble of the Criminal Law Convention on Corruption emphasises that “corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society”. Similarly, the Preamble of the Civil Law Convention on Corruption highlights that corruption represents “a major threat to the rule of law, democracy and human rights, fairness and social justice, hinders economic development and endangers the proper and fair functioning of market economies”, it recognizes the “adverse financial consequences of corruption to individuals, companies and States, as well as international institutions” and makes mention to the individual’s right to compensation, by stating that persons who have suffered damage because of corruption should receive ‘fair compensation’.

⁵² Ndiva Kofele-Kale, *The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime under International Law*, 34 (Spring) *International Lawyer* (2000) 149-178.

⁵³ The First Protocol to the Convention deals with corruption of public officials that endangers the Communities’ financial interests. The Second Protocol criminalizes money laundering and the confiscation of the fruits of fraud, and calls for cooperation between the Commission and the national prosecuting authorities in the Member States with respect to fraud, corruption and money laundering.

⁵⁴ See European Parliament ‘Resolution on Combating Corruption in Europe’; A4-0314/95 of 1995.

⁵⁵ See the Preamble to the OECD Convention.

⁵⁶ Adopted in Strasbourg on 27 January 1999.

⁵⁷ Adopted in Strasbourg on 4 November 1999.

The relationship between corruption and human rights is clearly expressed in the African Union Convention on Preventing and Combating Corruption, adopted in July 2003. In Article 3, the Convention recognizes among its fundamental principles “respect for democratic principles and institutions, popular participation, the rule of law and good governance” and “respect for human and peoples’ rights in accordance with the African Charter on Human and Peoples Rights and other relevant human rights instruments”. In the Convention’s Preamble, States Parties link the objectives of the Convention to “the need to respect human dignity and to foster the promotion of economic, social, and political rights” and underline “the need to observe principles of good governance, the primacy of law, human rights, democratization and popular participation by the African peoples in the processes of governance”. States Parties also consider the adoption of the Convention as one of the means to remove “obstacles to the enjoyment of economic, social and cultural rights”. Udombana remarks that up to the adoption of the Corruption Convention, the African Union “demonstrated a high degree of insensitivity and passivity towards corruption, allowing the ailment to develop into a pandemic. All that is about to change, as the African Union ... has taken a bold step towards immunizing Africa against corruption pandemic”.⁵⁸

Finally, another notable instrument is the Southern African Development Community (SADC) Protocol Against Corruption - the first sub-regional anti-corruption treaty in Africa - adopted by the SADC Heads of State and Government at their August 2001 Summit held in Malawi. Interestingly, it was a human rights organization, the Human Rights Trust of Southern Africa (SAHRIT), that pushed for development of the draft Protocol and worked for its adoption through the organization of regional roundtables on ethics and governance, targeting policy makers, “to discuss the magnitude, impact and consequences of corruption in the region”.⁵⁹

IV. Integrating Human Rights Based Approaches into Anti-Corruption Strategies: Practical Experiences

To understand the myriad ways in which corruption undermines the promotion and protection of democracy, human rights and the rule of law, it is essential to consider some specific examples that shed light on this connection. Owing to the interconnectedness and indivisibility of particular human rights, it is convenient to discuss these rights in clusters.

At the outset, it is important to note that corruption distorts the provision of public goods and services to people in need of them, and skews public access to wealth, income and opportunity, in effect, severely undercutting the principles of equal treatment, equality before the law and non-discrimination that are the hallmarks of democracy, human rights and the rule of law. Moreover, there is a clear relation between corruption and poverty and, given that poverty reduces or prevents the enjoyment of basic human rights and fundamental freedoms, by extension, corruption undermines the enjoyment of human rights on a pervasive basis. This relation has been very persuasively documented by the World Bank in its comprehensive study of corruption in countries in transition from Soviet rule which shows a high positive correlation between corruption and inequality:

⁵⁸ Nsongurua J. Udombana, *Fighting Corruption Seriously? Africa's Anti-Corruption Convention*, 7 Singapore Journal of International and Comparative Law (2003) 447-488 at 447.

⁵⁹ See the website of the 10th International Anti-Corruption Conference at <http://www.10iacc.org/content-ns.phtml?documents=118&art=98>.

“The countries of Europe and Central Asia started the transition with some of the lowest levels of inequality in the world. Since then, however, inequality has increased steadily in all transition economies and dramatically in some of them. ... Countries such as Armenia, the Kyrgyz Republic, Moldova, and Russia are now among the most unequal in the world, with Gini coefficients (a standard measure of inequality) nearly twice their pretransition levels. ... Rising education premiums and wage dispersion explain very little of the rise in inequality. In Armenia, Georgia, the Kyrgyz Republic, Moldova, and Russia income differences linked to educational achievement explain less than 5 percent of inequality, compared with 20 percent in Slovenia and 15 percent in Hungary and Poland.”

The report goes on to identify the prevailing practice of widespread corruption and rent seeking and notes “a strong correlation between higher corruption and higher inequality (and higher poverty) in the region” which disproportionately affects the poor. The World Bank study also shows that the ‘capture’ of the State by narrow interests incurs high social costs which limit competition and blocks attempts to reform Government services in the interests of the general public.⁶⁰

With the overarching relationship among high corruption, high inequality as well as high levels of poverty in mind, we consider next examples where corruption has weakened or destroyed human rights, beginning our discussion with the effects of corruption on political rights, democratic governance, and related to this, the enjoyment of the right to self-determination, in particular, the right of a people to benefit from their permanent sovereignty over natural resources. Next, we consider also: the relationship between corruption and the right to development; the right to health; the rights of the child and right to education; the right to work and social security; the right to information which relates also to the freedom of expression, opinion and the press; the right to equal access to justice and to a remedy in case of a human rights violation which relates to the right to fair trial and the independence of the judiciary; and finally, we consider summary or arbitrary executions.

It should be noted that these points of discussion serve as examples only. A more comprehensive treatment could consider the relation between corruption and human trafficking, slavery and slavery-like practices, the infliction of torture, inhuman or degrading treatment or punishment, or the ways that corruption may distort the grant of asylum and refugee status, or work and residence permits to migrants. The point of the discussion below is not to attempt some sort of exhaustive treatment or analysis of the relationship between corruption and human rights, but merely to illuminate this relationship with the help of examples and to suggest the value first, of employing a human rights based approach to the problem of corrupt practices, and second, of using a human rights based approach systematically in anti-corruption policies, laws and practices.

⁶⁰ Transition - The First Ten Years: Analysis and Lessons for Eastern Europe and the Former Soviet Union, World Bank, 2002 at xiv.

A. Political Rights / Democratic Governance / Empowerment of Women / Right to Self-Determination

In serious cases, corruption can systematically subvert both democratic governance and the right to self-determination by hindering the effective enjoyment of political rights. As discussed above, the effective guarantee of political rights forms an essential pillar for the existence of democratic governance as well as full human rights implementation in general. In countries where the people have weak political rights, and cannot elect their representatives freely and periodically, the opportunities for government to concentrate its own power and to abuse it at the expense of human rights, will be greater. Political rights ensure that government has to represent the will of the people and stay accountable to the electorate, and thus, the effective guarantee of political rights constitutes an important control to limit the abuse of State power. As set out in Article 25 of the International Covenant on Civil and Political Rights, 1966, political rights also encompass the right of every citizen to have access, on general terms of equality, to the public service in his or her country. Also related to democratic governance is self-determination, which is referred to in the Charter of the United Nations, 1945, and is enshrined as a legal right in Article 1 of both the International Covenant on Civil and Political Rights, 1966, and the International Covenant on Economic, Social and Political Rights, 1966.

Corruption undermines the right of peoples to “freely determine their political status and freely pursue their economic, social and cultural development”, as well as their right to “freely dispose of their natural wealth and resources”. This fundamental right is an expression of the principle of ‘permanent sovereignty over natural resources’, as expressed in General Assembly resolution 1803 (XVII) on Permanent Sovereignty Over Natural Resources.⁶² Specifically, resolution 1803 affirms that the right of peoples and nations to permanent sovereignty over natural wealth and resources must be exercised in the interests of “their national development and of the well-being of the people of the State concerned” (para. 1). Also, the resolution stresses that “in cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law”. In this case, due care must be taken to ensure that in the sharing of profits between the investors and the recipient State “there is no impairment, for any reason, of that State’s sovereignty over its natural wealth and resources” (para. 3). As Kofele-Kale has argued, corruption diminish a people’s right to permanent sovereignty over the country’s natural resources where the Government sells the country’s resources cheaply to foreign companies through corruption or otherwise in an unwise fashion, or where the Government:

⁶¹ Article 1 of the ICCPR and ICESCR provide that:

- “1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”

⁶² See General Assembly resolution 1803 (XVII) of 14 December 1962, ‘Permanent Sovereignty over Natural Resources’, *adopted* on 14 December 1962.

“engages in the corrupt transfer of ownership of national wealth to those select nationals who occupy positions of power or influence in the society. The violation by the State also operates to deny the people, individually and collectively, their right to freely use, exploit and dispose of their national wealth”.⁶³

As discussed below, such practices also slow economic development.

In Nigeria for example, Effeh notes that the post-Abacha period “began with legislators awarding themselves up to 3.5 million Naira in furniture allowances (about \$35,500, in a country where the average monthly civil service salary is only about \$200)”.⁶⁴ He argues that corruption has increased under President Obasanjo alongside systematic and widespread human rights violations and impunity. He points out for example that Obasanjo seemed to have considered “the installation of a satellite system in space to be a more urgent governmental function than improving the healthcare and educational needs of his fellow citizens. The same ruler ... is currently negotiating the purchase of missile and other defense technologies from North Korea”.⁶⁵

To take another blatant example, many have speculated that Côte d’Ivoire President Félix Houphouët-Boigny used Government funds to erect the multi-million dollar Basilica of Our Lady of Peace of Yamoussoukro, between 1985 and 1989, rather than his own private funds.⁶⁶ During the building of this grandiose monument, the President even went to the extent of having his image memorialized in stained glass alongside images of Jesus and the Apostles. The Basilica - the world’s largest Christian church - was built at a cost of some USD 300 million. One of the Church’s purported functions was to provide social services for the country’s disadvantaged, but these have been reported to be virtually non-existent and the Church has remained empty during Mass.

Effeh also recalls that in Cameroon, President Paul Biya “had a personal airport built near his presidential retreat of Mvomeka” in 1999⁶⁷. In another case, the King of Swaziland purchased a USD 45 million private jet, spending “the equivalent of his country’s entire health budget at a time when his people are either dying of starvation, or of HIV/AIDS, if not both.”⁶⁸ The above are just a few among seemingly countless examples that could be cited in many parts of the world where a lack of or weak democratic governance leaves despotic rulers a free hand to squander their nation’s wealth.

⁶³ Ndiva Kofele-Kale, *The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime under International Law*, 34 (No. Spring) *International Lawyer* (2000) at 165.

⁶⁴ Ubong E. Effeh, *Sub-Saharan Africa: A Case Study on How Not to Realize Economic, Social and Cultural Rights, and a Proposal for Change*, 3 *Northwestern University Journal of International Human Rights* (2005) 1-83 at 25.

⁶⁵ *Ibid.*

⁶⁶ *See generally*, Hans J. Massaquoi, “An African’s Gift to the Vatican: The World’s Largest Church - Felix Houphouët-Boigny, Basilica of Our Lady of Peace”, *Ebony*, December 1990.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

An obvious part of the equation is to ensure that political rights are fully respected. In this connection, it remains particularly important that a gender approach be incorporated into full implementation of political rights and democratic governance, particularly since the lack of women's participation in decision-making continues to stymie economic and social development in many countries. As the UN Secretary-General indicated in his 2005 Report on Implementation of the Programme of Action for the Least Developed Countries for the Decade 2001-2010:⁶⁹

“Poverty reduction and sustainable human development cannot be achieved without good governance at the national level. Several least developed countries have reported on measures instituted by their countries towards good governance, in particular regarding their efforts to promote democracy and human rights, introduce institutional reforms, fight corruption, empower people, especially women, and promote national reconciliation and dialogue. ... Many post-conflict least developed countries, in the process of democratization, have adopted affirmative measures, such as reserved seats and a quota, to ensure the participation of women in decision-making.”

The report also refers to a number of anti-corruption strategies launched in least developed countries:⁷⁰

“A national anti-corruption strategy was developed and an anti-money laundering act was enacted in Sierra Leone. The Commission of Inquiry on properties and assets of civil servants was established in the Gambia. Anti-corruption, legal and judicial reforms, public administration reforms and armed forces reforms have been undertaken by the Government of Cambodia. The United Republic of Tanzania has adopted a national anti-corruption strategy and an action plan for the period 2003-2005, has established the National Integrity Fund to support anti-corruption activities and has passed an anti-money laundering act. ... Benin has undertaken reforms aimed at increasing efficiency, accountability and transparency in government procurement and established the Observatory for the Fight against Corruption. Of 50 least developed countries, 24 have signed and 4 have ratified the United Nations Convention against Corruption while 28 have signed and 15 have ratified the United Nations Convention against Transnational Organized Crime.”

Thus, while low political participation and weak democratic governance, go hand in hand with corrupt practices and leave the door wide open for the unscrupulous exploitation of a country's wealth, special measures can be used successfully to increase the representation of women and disadvantaged minority groups in political decision-making and at all levels of the public service. The more equal representation of all constituencies in society in democratic processes reduces the chances for corruption and acts as a brake on the unbridled largesse of otherwise autocratic regimes. Indeed, corruption distorts the distribution of public goods and services so much that it deprives the people of the right to development, as discussed next.

⁶⁹ Report of the UN Secretary-General on “Implementation of the Programme of Action for the Least Developed Countries for the Decade 2001-2010: A/60/81-E/2005/68 of 23 May 2005 at para. 12.

⁷⁰ *Ibid.* at para. 17.

B. Right to Development

The UN Commission on Human Rights Independent Expert on the Right to Development, Arjun Sengupta defined the right to development as follows:

“The definition of the right to development as the right to a particular process of development in which “all human rights and fundamental freedoms can be fully realized” is consistent with the approach of the human rights movement. It refers to the realization of all the rights and freedoms recognized as human rights - civil and political rights and economic and social and cultural rights - in their totality as an integrated whole, as all these rights are interrelated and interdependent. The outcomes of development, as well as the way the outcomes are realized, constitute the process of development which is regarded as a human right. It is a process in time, not a finite event ...”⁷¹

As argued above, the strengthening of political rights to empower ordinary people remains key to democratic governance and it acts to maintain popular control over the Government and the public service. This relates closely also to the collective right to development. In this regard, Christy Mbonu, Subcommission Rapporteur on the effects of corruption on economic, social and cultural rights, referred to the role companies using corrupt practices play in connection with public officials in developing countries and the socioeconomic costs to people in developing countries:

“In one of the high-profile corruption cases, France’s electronic giant, SAGEM SA, has been accused of bribing some Nigerian officials to secure a \$214 million contract with the Nigerian national identity card programme in 2001. The concerned officials, irrespective of their social status, are being tried in court and under the many national instruments established by Nigeria to fight corruption. Halliburton, a United States oilfield services giant, has also been involved in many scandals in Nigeria ranging from tax evasion to bribery of public officials.”⁷²

Some authors see the right to a corruption-free society as part of the collective right to development. Kofele-Kale⁷³ for example, argues that “political development is essential to assure the human right to participate in self-government in one’s own country”. He further maintains that economic development in a country can also guarantee its citizens’ economic and

⁷¹ See Fourth Report of the UN Commission on Human Rights Independent Expert on the Right to Development, Arjun Sengupta on the “Right to Development”; E/CN.4/WG.18/2 of 20 December 2001.

⁷² Preliminary Report of UN Subcommission Special Rapporteur, Ms. Christy Mbonu on Corruption and its Impact on the Full Enjoyment of Human Rights, in Particular, Economic, Social and Cultural Rights; E/CN.4/Sub.2/2004/23 of 7 July 2004 at para. 11.

⁷³ Ndiva Kofele-Kale, *The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime under International Law*, 34 (No. Spring) International Lawyer (2000) 149-178.

social rights.” Along the same lines, Hendrix⁷⁴ notes that corruption undermines social, political and economic development as well as democratic governance. He notes that “corruption impairs service delivery, particularly for the poor” and argues that “by improving the productivity of public expenditures, tracking and reducing leakage, and enhancing citizen oversight, anti-corruption efforts can help support the achievement of ‘Millennium Development Goals’ in health, education, social safety net programs, water supply, and infrastructure”.

In a Case Study on Sri Lanka,⁷⁵ the UNDP highlighted further the negative impact of corruption on poverty reduction and in general, on the achievement of the Millennium Development Goals. Importantly, the report mentions that:

“the negative impact of corruption on development is no longer questioned. Evidence from across the globe confirms that corruption impacts the poor disproportionately. Corruption hinders economic development, reduces social services, and diverts investments in infrastructure, institutions and social services. It also undermines efforts to achieve the MDGs. Corruption therefore reflects a democracy, human rights and governance deficit that negatively impacts poverty and human security”.

The report also argues that the quality of governance and resource allocation and management will prove decisive in whether or not a country meets the Millennium Development Goals.

In least developed countries in particular, the effects of corruption on the right to development, democratization and economic growth can be devastating, particularly where corruption has reached the very top levels of political decision-making and influence. As the Global Coalition for Africa mentions in a study of corruption and development in Africa: “low salaries ... may partly explain the existence of petty corruption and theft at lower levels ... [but] it cannot be an excuse for higher-level and large scale bureaucratic corruption. Unless high-level bureaucratic corruption is addressed, it will be difficult to reduce corruption at lower-levels”.⁷⁶

Kofele-Kale mentions a number of pertinent examples showing how high-level corruption infringes upon the right to development. In the Democratic Republic of Congo and in Nigeria Field Marshall Mobutu Sese Seko and General Sani Abacha respectively were accused of embezzling large sums of their nations’ wealth. It is estimated that “Mobutu succeeded in embezzling some four billion dollars” of Zaire’s public money, while in Nigeria, Sani Abacha “is believed to have stashed in European banks more than 3.6 billion pounds sterling (approximately \$5.4 billion) during his five-year tenure as head of state ... [and] his national security adviser withdrew close to \$2.45 billion from the Central Bank ostensibly to pay back debts owed to Russian contractors for the construction of the giant Ajaokuta Steel plant. The

⁷⁴ Steven E. Hendrix, *New Approaches to Addressing Corruption in the Context of US Foreign Assistance with Examples from Latin America and the Caribbean*, 12 *Southwestern Journal of Law and Trade in the Americas* (2005) 1-23 at 6.

⁷⁵ See Case Study on “Strengthening of the Commission to Investigate Allegations of Bribery or Corruption, Sri Lanka”, commissioned by UNDP, [undated, author unknown].

⁷⁶ See Ndiva Kofele-Kale, *The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime under International Law*, 34 (Spring) *International Lawyer* (2000) 149-178.

debts owed the Russians were grossly overvalued allowing the Abacha family to pocket the difference”. In addition, “according to a Government White Paper, the Nigerian government earned \$12.225 billion from sales of surplus petroleum during the 1990-1991 Gulf War. Of this amount the military generals made away with \$12 billion and only \$225 million trickled back into the national treasury”.⁷⁷

A similar situation of entrenched high-level corruption can be found in Indonesia, where a UNDP case study on anti-corruption notes that under President Soeharto, the Government was set up “for the purpose of generating the rents that Soeharto wanted presumably for their own sake, but also needed in order to first attain, and then maintain a position of virtually unchallenged authority”.⁷⁸ The case study continues to explain that the President orchestrated a grand corruption scheme to channel money and privileges to family members and cronies. For example, monopoly licenses were granted over the production of cloves, government contracts, access to natural resource extraction, and to top it all of, a generous award of tax breaks.

To mention yet another example, in Sri Lanka the UNDP found that not only corruption, but also the perception of corruption stifled economic growth and discouraged foreign direct investment, which impacted negatively on the State’s provision of social safety nets. Corruption gave rise to general disrespect for the law and lowered public confidence in the public service. Moreover, the case study observed that corruption: “greatly hinders the application of justice and particularly access to justice for the most vulnerable and marginalized people in society. It hinders the application of human rights. Corruption can undermine rule of law which in turn can jeopardize the application of human rights principles”.⁷⁹

Even in countries that have made substantial progress towards development, such as Armenia, corruption can remain a serious obstacle in establishing democratic institutions, economic development and the growth of a full market economy. In its report on Armenia, the UNDP noted that corruption was “widespread, hampering democratic, economic and social development in the country” and that it was “seen as a main barrier to social and economic development, and as a factor that erodes social cohesion and stifles the proper functioning of formal democratic structures”.⁸⁰

⁷⁷ *Ibid.*

⁷⁸ See Ross H. McLeod: *Soeharto’s Indonesia: A Better Class of Corruption*, 7(2) *Agenda* (2000), at 99-112, as cited in UNDP Case Studies in Anti-Corruption - Indonesia [undated].

⁷⁹ See Case Study on “Strengthening of the Commission to Investigate Allegations of Bribery or Corruption, Sri Lanka”, commissioned by UNDP, [undated, author unknown]. On this point, see also the *UNDP Anti Corruption Brochure* [undated], remarking that: “Corruption has been long recognized as one of the main obstacles to development. It corrodes the rule of law and democratic institutions, hinders economic development by distorting markets and damaging the integrity of the private sector, and it destroys people’s trust in the political leadership and ultimately in the fundamental principles of democratic governance. The most vulnerable strata of society (i.e., the poor, women, minorities) are most adversely affected by corruption by hampering their access to public services, employment, information, and fair justice. Recognizing that minimizing corruption is critical to poverty alleviation, democracy promotion and human development at large, UNDP has been a leading provider of technical assistance aimed at tackling corruption within country’s political, economic, historical and cultural context”.

⁸⁰ See “Armenia: Case Study on Anti-corruption Initiatives”, Final Report - 28 October 2005, by Cathy Stevulak at p. 5.

C. Right to Health

The right to health has to be considered to rank among the more important economic, social and cultural rights because equal access to medical care can spell the difference between life and death and the capacity to enjoy all other human rights. Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966, obliges States Parties to “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” and requires them to reduce the stillbirth-rate and infant mortality, to promote the healthy development of the child, to improve environmental and industrial health, as well as to prevent, treat and control epidemic and endemic, occupational and other diseases. Article 12 also obliges States Parties to create conditions that “would assure to all medical service and medical attention in the event of sickness.”

The UN Commission on Human Rights Special Rapporteur on the Right to Health reported in 2005 on his mission to Romania that:

“Corruption reportedly affects the right to health in various ways. Some funds intended to support health services or particular institutions, are reportedly taken for private use. Illicit payments are reportedly often made by, or requested of, health system users. Some individuals (not public officials) the Special Rapporteur met argued that this practice did not amount to corruption, or that it was grounded in cultural norms, or that it was acceptable since health professionals do not receive adequate remuneration. However, evidence suggests that widespread corruption encountered in accessing health services deters the poor from seeking care. As such, it is an obstacle to the realization of their right to health, and inconsistent with the principles of non-discrimination and equality.”⁸¹

He noted that despite the establishment of a National Programme for the Prevention of Corruption and a National Action Plan against Corruption in Romania as well as the Act on the Prevention, Detection and Prosecution of Corruption Offences (2000) qualifying a certain number of acts as corruption-related criminal offences, and the operation of several mechanisms to address the problem, corruption constituted a systematic problem throughout the health sector. In this regard, the Special Rapporteur turned his attention to the prospects for strengthening implementation, recommending to the Government of Romania that “transparent accounting and rigorous and independent monitoring of the national and regional budgets, as well as the budgets of all health institutions, must be ensured”. Moreover, the Government should ensure that people were not expected to make illicit payments, that they had a right to receive information about their right to receive health care without discrimination and to have access complaint mechanisms in case of a violation of their rights. Finally, he stressed that the criminal law had to be actually implemented through criminal prosecutions, and he called on the Ombudsman to launch an investigation into corruption in the health service.⁸²

⁸¹ Report of the UN Commission on Human Rights Special Rapporteur on the Right to of Everyone to the Highest Attainable Standard of Physical and Mental Health, Paul Hunt, on his mission to Romania; E/CN.4/2005/51/Add.4 of 21 February 2005 at para. 34.

⁸² *Ibid.* at paras. 36 and 37.

The Special Rapporteur spelt out the connection between corruption and the right to health.⁸³

“Corruption can act as a severe constraint to the enjoyment of the right to health, for example when resources intended for the health-care system are diverted into private pockets, or when bribery comes to define priorities. Those living in poverty inevitably suffer the worst in the face of corruption. Integral features of the right to health include participation, access to information, transparency, monitoring and accountability. Each of these features helps to establish an environment in which corruption cannot survive. In other words, a right-to-health policy is also an anti-corruption policy.”

In line with this approach, the Special Rapporteur, following his mission to Mozambique, urged the Government to combat corruption in the health sector and to integrate transparency and accountability into all Ministry of Health policies and programmes as well as to make clear and strong public commitments to combating corruption within the health sector.⁸⁴

The particularly heavy impact of corruption on the poor has been felt in many countries in connection with the human right to health. This may involve, for example, “giving some money to the doctor to ‘advance’ in the waiting list for an appointment or to ensure that the doctor visits the patient at home in due course”. According to the Special Rapporteur on the sale of children, such practice was common in Romania, and was not even perceived as corruption but rather as a ‘voluntary payment’.⁸⁵ During his mission, the Special Rapporteur also learnt that corruption hindered the effective functioning of police services at all levels, a problem exacerbated by low salaries and heavy bureaucratic procedures. The Special Rapporteur concluded that corruption undermined “the enforcement of the law, the delivery of social services and the overall capacity of the State to prevent and redress human rights violations” and he called on the Government “to firmly address the problem of corruption, noting that “[p]ublic institutions must be defended, as they represent the backbone of democracy.”⁸⁶

A UNDP-commissioned case study on Armenia indicated that ‘informal payments’, over billing, unnecessary tests and examinations, overpayments for medications, misappropriation of medications by nurses and doctors, and illegal staff appointments, to name a few, plagued the health services.⁸⁷

⁸³ Report of the UN Commission on Human Rights Special Rapporteur on the Right of Everyone to the Highest Attainable Standard of Physical and Mental Health, Paul Hunt, on his mission to Mozambique, E/CN.4/2005/51/Add.2 of 4 January 2006 at para. 69.

⁸⁴ *Ibid* at para.70.

⁸⁵ Report of the UN Commission on Human Rights Special Rapporteur on the sale of children, child prostitution and child pornography, Mr. Juan Miguel Petit on his mission to Romania; E/CN.4/2005/78/Add.2 of 26 January 2005 at paras. 60-62.

⁸⁶ *Ibid.* at para. 112.

⁸⁷ Cathy Stevulak, “Armenia: Case Study on Anti-Corruption Initiatives for UNDP of 28 October 2005.

D. Rights of the Child / Right to Education

In certain countries, systematic corruption has had a devastating effect on the rights of the child, in connection for example, with education, sexual exploitation or other forms of abuse, and irregular adoption.

The rights of the child are set out in the UN Convention on the Rights of the Child, 1989, which has been ratified by every single Member State of the United Nations, except Somalia and the United States. The Convention represents the most comprehensive and universal instrument adopted thus far by the international community to protect the best interests of the child. With regard to the right to education, Article 28 of the Convention obliges all States Parties to: “recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity”. Article 21 obliges States Parties to ensure that adoption of a child is authorized only by competent authorities in accordance with applicable law and procedure. Article 34 obliges States Parties to protect the child from all forms of sexual exploitation and sexual abuse.

In certain countries, teachers have abused their power by threatening not to award passing grades to pupils unless their parents pay a bribe. Such practices violate Article 28 of the Convention which obliges States Parties to provide education to children on the basis of equal opportunity. In effect, they throw a disproportionately high burden on poorer parents, at the same time reinforcing the relatively stronger position of wealthier families, reproducing class inequality for the future. Fairly applied, education can offer children a powerful means by which to break the shackles of class inequality and escape diminished prospects for accessing income, wealth and opportunity according to merit. Corruption in the education sector slants the playing field against the children of already disadvantaged parents. In Armenia, in addition to ‘bribery for grades’ corruption, low quality food has been reportedly procured for schools and other educational institutions and the differential funds skimmed off by procurement officers.⁸⁸

As regards the issue of the sexual exploitation of children, UN Commission on Human Rights Special Rapporteur on the sale of children, child prostitution and child pornography, Mr. Juan Miguel Petit, following his mission to Paraguay in February-March 2004, drew attention to rampant corruption within the police. He urged the Government to:

“to investigate and crack down on police corruption and inaction. It is also recommended that a special unit should be set up within the police force to deal with family matters, and that police officers should be trained in how to deal with cases of sexual exploitation.”⁸⁹

He also underlined the importance of incorporating a human rights based approach to problems of this kind and in this regard he commended the Government of Paraguay’s initiative to

⁸⁸ This practice was reported in Cathy Stevulak, “Armenia: Case Study on Anti-Corruption Initiatives for UNDP” of 28 October 2005.

⁸⁹ Report of the UN Special Rapporteur on the sale of children, child prostitution and child pornography, Mr. Juan Miguel Petit on his mission to Paraguay; E/CN.4/2005/78/Add.1 of 9 December 2004 at para. 119.

establish human rights units within the administration of justice and various other public authorities.⁹⁰

Another example that illuminates the degree to which corrupt practices can affect the rights of children has arisen with regard to adoption procedures in Romania following the collapse of the Ceaucescu regime. As the UN Special Rapporteur on the sale of children explained:⁹¹

“Although many of those who travelled to Romania to look for a child for adoption were drawn there by the images of children in institutions, it soon became apparent that the vast majority of the children were not available for adoption. For a start, most of them were not actually “orphans”, but had been placed in institutions by their families as a way of coping with economic hardship. It soon began to happen that foreigners started to look outside institutions for children to adopt. Corruption started to spread rapidly. It is estimated that between January 1990 and July 1991, more than 10,000 children were taken from Romania to be adopted in other countries.”

The intrusion of corrupt practices subverted the regular adoption procedures that had been established to ensure children were placed in safe foster homes with responsible foster parents. Without proper control, children in effect were allocated to prospective parents who had the means to make the highest monetary bid. The insinuation of corruption degenerated the adoption process in Romania into a process tantamount to the sale of children without any regard to the best interests of the child.

Although we have treated the rights of the child and the right to education together, it should be noted that corrupt practices has also become endemic in recruitment of teachers and professors and in student admissions at universities and colleges. In Armenia, Ukraine and a number of former Soviet Socialist Republics, admission to universities is reported to have become routinely affected by monetary bribes and personal influence.

E. Right to Work / Social Security

The implementation of labour law standards depends closely upon a corruption-free environment. Where workers’ rights and employment security remain weak, corruption is liable to further lower the relative status and power of workers vis-à-vis their employers. As the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Ambeyi Ligabo, reported on his mission to Serbia-Montenegro: “Lack of job security also increases all sorts of illegal trade and cases of corruption. Workers denouncing corruption and mismanagement were suspended from their job and received menaces.”⁹²

⁹⁰ *Ibid.* at para. 69.

⁹¹ Report of the UN Special Rapporteur on the sale of children, child prostitution and child pornography, Mr. Juan Miguel Petit on his mission to Romania; E/CN.4/2005/78/Add.2 of 26 January 2005 at para. 21.

⁹² Report of the Special Rapporteur on the Right to Freedom of Opinion and Expression, Ambeyi Ligabo, on his Mission to Serbia-Montenegro; E/CN.4/2005/64/Add.4 at para. 62.

It has been common practice in many countries for employers to bribe government inspectors responsible for uncovering, reporting on and imposing sanctions for breaches of labour law. Some companies might consider it cost effective to bribe labour standards inspectors to avoid incurring higher labour costs from minimum wage requirements, the honouring of statutory rules relating to dismissal and compensation, and from introducing proper lighting, safety and health conditions in the workplace. This kind of corruption exerts a very direct impact on the health and safety of workers and on the enjoyment of all human rights associated with the right to work and associated social benefits.

One solution is to ensure that management supervision is tightened to strengthen accountability of labour inspectors who solicit or accept bribes. A related solution, as the International Labour Office's Toolkit for Labour Inspectors recommends, would be to introduce codes for ethical behaviour with a view to bringing best institutional practices to bear on the work of labour inspectors and to increase peer pressure among inspectors.⁹³

F. Rights to Freedom of Opinion / Expression / Information / Press

The rights to freedom of opinion, expression and information, as well as freedom of the press, remain essential to the existence of open and accountable democratic governance. Corruption thrives most insidiously in societies where free exchange of ideas and information have been tightly restricted and secret deals can be kept secret. The free exchange of information constitutes one of the more powerful elements by which the public, mass media and civil society at large, can come to know of instances of corruption and to call for greater accountability on the part of public officials, to demand the overhaul of institutions where corrupt practices have become endemic and to limit future abuse of power. Under Article 19(2) of the ICCPR, everyone has the right to hold opinions without interference, and to seek, receive and impart information through the media of his or her choice. The cases discussed below indicate both the plight of individuals whose rights and freedoms as spelt out in Article 19 have been severely restricted because of their efforts to stamp out corruption, as well as the powerful contribution that the freedoms of opinion, information and the press can make to anti-corruption.

Those working at the frontline to expose corruption have often come under direct threat from reactionary elements. In Colombia for example, the paramilitary group "United Self-Defense Forces of Colombia" allegedly targeted journalists as 'military objectives'. As UN Commission on Human Rights Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo noted,⁹⁴ the paramilitary group allegedly assassinated some 15 Colombian journalists since 1997 and forced another 20 journalists to flee the country because of their investigations on corruption. An illustrative case concerns that of a 46-year-old television journalist by the name of William Soto Cheng who was assassinated in Buenaventura on 18 December 2003. The Special Rapporteur indicates that:

⁹³ A Toolkit for Labour Inspectors, International Labour Office, Geneva (2006) at 69. *See further* the Toolkit's "Model Code for Labour Inspectors" at 83-85.

⁹⁴ Report of the Special Rapporteur on the Right to Freedom of Opinion and Expression, Ambeyi Ligabo, on his Mission to Colombia; E/CN.4/2005/64/Add.1 at para. 16.

“Mr. Cheng had spoken out against corruption and voting irregularities, implicating local elected officials and members of the security forces. In his programme “Litoral Pacífico”, he systematically denounced irregularities apparently committed by local officials and leading figures in the region. He had also alleged electoral fraud the day after municipal elections on 26 October, suggesting that members of the army and the police were implicated.”⁹⁵

The Special Rapporteur referred also to the circumstances surrounding the killings of numerous journalists, many of whom had, or were in the course of, exposing corruption and corrupt practices being perpetrated in official circles.

Similarly, Government intimidation of the press reportedly took place in the Democratic Republic of Congo where National Intelligence Agency officers “in Lubumbashi raided Radio Hosanna, confiscated equipment and arrested six staff members after the broadcast of a sermon by the Rev. Albert Lusuka, who was accused of inciting people to rebel in a speech criticizing corruption and bad governance in the country.”⁹⁶

In her report on the situation of human rights defenders in Nigeria, the Special Representative of the UN Secretary-General, Hina Jilani drew attention to deliberate attacks on journalists and defenders working on corruption and good governance, the situation of trade unions and labour activists, that of economic, social and environmental activists, women’s rights activists, and the lack of effective responses with regard to a prevailing climate of impunity with respect to such abuses. In particular, she reported that:

“On 8 September 2004, a staff member of Africa Today was arrested and detained without charges by the State Security Service. On 24 November 2004, the police in Lagos arrested and detained three editors of Insider Weekly in connection with a story denouncing an oil bunkering scandal in which senior government officials were involved.”⁹⁷

Also in her report on her mission to Angola, the Special Representative noted the case of:

“... Manuel Vieira, a Radio Ecclesia correspondent in Huila who was reportedly questioned by police on 31 May 2003 about his coverage for the radio station of high death rates in transit camps for demobilized UNITA fighters. Other cases covered by the [Human Rights Watch] report relate to the alleged misuse of defamation laws to target journalists reporting possible corruption by senior officials or persons linked to the Government.”⁹⁸

⁹⁵ *Ibid.* at para. 54.

⁹⁶ Report submitted by the Independent Expert on the Situation of Human Rights in the Democratic Republic of the Congo, Mr. Titinga Frédéric Pacéré; E/CN.4/2005/120 of 7 February 2005 at para. 35.

⁹⁷ Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani on her mission to Nigeria; E/CN.4/2006/95/Add.2 of 30 January 2006 at paras. 56-91.

⁹⁸ Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani on her mission to Angola; E/CN.4/2005/101/Add.2 of 21 February 2005 at para. 69.

She also referred to the fact that in Angola, human rights defenders and journalists who have been trying to investigate and report on cases of State corruption have been targeted by the Government:

“Editions of private newspapers carrying stories of alleged corruption have had their distribution in Luanda and the provinces disrupted. Journalists investigating corruption allegations have been arrested. On 22 February, Arthur, a journalist with the Folha 8 newspaper, was arrested and held in custody until 28 March 2003 while he was attempting to interview officials about malpractice surrounding the sale of a State-owned hotel.”⁹⁹

In general, access to information legislation has to be implemented much more fully than it is being done in most countries. At the UN Conference on Anti-Corruption Measures, Good Governance and Human Rights, held in Warsaw on 8-9 November 2006, Sandra Coliver pointed out that a study conducted by the Open Society Justice Initiative entitled “Transparency & Silence” showed that:

... all governments provide information erratically; many requests filed twice by different requestors received different answers, and 47 percent of requests in all countries yielded no response at all. Most disturbingly, requests from disadvantaged groups (Roma, the disabled), were ignored at a rate twice that of other requesters.”¹⁰⁰

On the other hand, access to information legislation has proven to be a particularly effective means by which to empower the citizenry as part of a human rights based approach to anti-corruption strategies, as we discuss in part I below.

G. Access to Justice / Right to a Remedy / Equality before the Law / Right to Fair Trial / Independence of the Judiciary

Like other key public services, the judiciary can figure as part of the problem of corruption, or instead, as part of the solution to control it. Corruption within the judiciary has a particularly far reaching effect on all legal and administrative structures of public administration. The judiciary can root out corruption by remaining fair and impartial in respect of criminal prosecutions and disciplinary proceedings involving corruption, but a corrupt judiciary itself also becomes a perpetrator of corrupt practices. Once the administration of justice has fallen into serious disrepute, it can be very difficult to regain the public’s confidence in State institutions as a whole.

This issue has become evident not only with regard to countries emerging from situations of armed conflict, but also with regard to those regimes transiting from Soviet rule. In

⁹⁹ *Ibid.* at para. 89.

¹⁰⁰ Sandra Coliver, “The Importance of the Right of Access to Information Held by Public Authorities, and the Need for the United Nations to Take Steps to Further Elaborate, Codify, Protect and Promote This Right”, paper presented to the UN Conference on Anti-Corruption Measures, Good Governance and Human Rights, Warsaw, 8-9 November 2006 at 1.

Kazakhstan for example, as UN Commission on Human Rights Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, noted in connection with his mission to that country, despite the raising of salaries of judicial personnel, the criminalization of bribery and the establishment of economic and administrative courts to fight corruption:¹⁰¹

“lawyers, in particular, insisted that the old Soviet ‘telephone justice’ has not yet been eradicated. All interlocutors acknowledged that the judiciary, at all court levels, has a very bad reputation among the public, which generally perceives it as a branch in which corruption is prevalent. In meetings with judges there was an admission that a few cases of bribery end each year with the removal of the judge, while many cases simply “disappear” due to a lack of evidence. Yet according to OSCE statistics, about 50 per cent of the complaints for the first half of 2004 related to corruption in either the police or the judiciary. Many interlocutors insisted that corruption and bribery in fact affect the Government, the police, the judiciary, the Procuracy and the legal profession, including at the level of the legal educational institutions.”

Similarly, in Kyrgyzstan - another former Soviet Socialist Republic, an anti-corruption and human rights culture had yet to take root in the judiciary and legal profession.¹⁰²

Although governments are advised to launch strong anti-corruption programmes and to implement these vigorously, particularly through effective criminal prosecutions, anti-corruption measures themselves have to be applied with fairness and transparency. Criminal prosecutions for corruption can sometimes be launched on a patently selective basis or carried out more for base political motives rather than to uphold the rule of law. In such cases, anti-corruption prosecutions can undermine the independence of the judiciary and trample upon the right to fair trial. Pertinent examples seem to have arisen in Tajikistan, where the Special Rapporteur on the Independence of Judges and Lawyers noted that while there were some important criminal prosecutions of high level officials implicated in corruption, the pressure to convict might have precluded the possibility of an independent judicial determination of the applicable facts and law.

“Cases have been brought to the Special Rapporteur’s attention in which judges were not in a position to independently pronounce judgements for fear of possible retaliation, since a judge acquitting a person charged of a criminal offence may be suspected of having been bribed and is exposed to being arrested and charged with corruption. The Special Rapporteur received information that this happened

¹⁰¹ Report of the UN Commission on Human Rights Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy on his mission to Kazakhstan; E/CN.4/2005/60/Add.2 of 11 January 2005 at para. 66.

¹⁰² The Special Rapporteur remarked that in Kyrgystan, there was no unified code of judicial ethics and there was a high level of corruption in criminal and civil cases, perhaps because of low salaries and unstable terms of employment. See the Report of the UN Commission on Human Rights Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy on his mission to Kyrgyzstan; E/CN.4/2005/52/Add. 3 of 30 December 2005 at para. 48. The Special Rapporteur recommended that salaries should be increased and better terms of tenure introduced for members of the judiciary. He also recommended the establishment of a clear judicial code of ethics as well as the institutionalization of disciplinary proceedings by a body that remains independent of the Executive. See *ibid.* at para. 84.

to a judge of the Khujant City Court, Murtazo Aliev, who had acquitted Mr. Dekhkonboi Soliev and three other persons. Mr. Aliev was sentenced to one year in prison for deliberate pronouncement of an illegal ruling (article 349 of the Criminal Code). Another disquieting factor is that judges often base their decisions on confessions obtained from an arrested person during pretrial investigation in the absence of an independent legal counsel.”¹⁰³

Although legislation was adopted in 2005 to root out corruption in the administration of justice, the Special Rapporteur observed that an anti-corruption unit was established within the Procuracy itself. The placement of this unit could not afford it sufficient arm’s length distance from the source of corrupt practices within the judicial system. It also increased the power of prosecutors vis-à-vis judges whose low pay and weak authority put them at greater risk from Executive interference.¹⁰⁴ This led the Special Rapporteur to recommend that the Government of Tajikistan had to ensure that anti-corruption measures were carried out by an independent body and that ‘acts of corruption are duly sanctioned as required by law’, rather than by other means.¹⁰⁵

Another illustrative case in this regard concerns Cambodia where, as the Report of the UN High Commissioner for Human Rights noted, an ‘emergency campaign’ to reform the judiciary and to address allegations of corruption was implemented in ways that threatened human rights. The reform efforts had to be implemented in line with applicable law. Disciplinary proceedings should be taken by the Supreme Council of the Magistracy, rather than through direct public condemnation or the media. The Council itself had to be made more independent of the Executive Council and designed to ensure fair and effective disciplinary proceedings.¹⁰⁶

A related problem concerns the misuse of anti-corruption programmes to suppress the legitimate rights of the political opposition. This concern was raised in the 2006 report of the Special Rapporteur on the human rights situation in Belarus, Adrian Severin, who noted that while there were several legal instruments to tackle corruption, “their application is selective, and they are mostly used a means to harass political opposition and independent civil society organizations.”¹⁰⁷ In her “Anti-Corruption in Bangladesh: A UNDP Case Study”, Hitomi Oikawa noted the similar misuse of Bangladesh’s Bureau of Anti-Corruption - which reported to the

¹⁰³ Report of the UN Commission on Human Rights Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy on his mission to Tajikistan; E/CN.4/2005/52/Add. 4 of 30 December 2005 at para. 40.

¹⁰⁴ *Ibid.* at 80.

¹⁰⁵ *Ibid.* at 96.

¹⁰⁶ See the Report of the UN Secretary-General on the “Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and the People of Cambodia in the Promotion and Protection of Human Rights” E/CN.4/2006/105 of 24 January 2006 at para. 35. The Report further notes OHCHR’s participation in Government efforts: “to address corruption and to promote access to information held by the public authorities” and to develop a strategic approach to prosecuting corruption in line with international best practice and the United Nations Convention against Corruption at para.41. See also the Report of the Special Representative of the Secretary-General on Cambodia, Peter Leuprecht; E/CN.4/2005/116 of 20 December 2004 for extensive references to the problem of corruption in Cambodia.

¹⁰⁷ Report of the UN Commission on Human Rights Special Rapporteur on the Human Rights Situation in Belarus, Adrian Severin, E/CN.4/2006/36 of 16 January 2006 at para. 70.

Office of the Prime Minister - to harass the political opposition.¹⁰⁸ Although an Independent Anti-Corruption Commission was established in Bangladesh with the adoption of a bill to this effect on 17 February 2004, there have been widespread complaints of its ineffectiveness.¹⁰⁹

H. Summary or Arbitrary Executions

The role of corruption in human rights violations is not restricted only to political rights and the various economic, social and cultural rights we have discussed above, such as the right to work, right to education and right to health. In even more brutal fashion, corruption frequently lies behind violations of the right to life, the right not to be enslaved and the right not to be subjected to torture, inhuman or degrading treatment or punishment.

One of the more egregious human rights violations connected to corruption has arisen in Nigeria with regard to summary or arbitrary executions of criminal suspects as well as innocent bystanders who may have witnessed cases of police brutality. The UN Commission on Human Rights Special Rapporteur on Summary or Arbitrary Executions, Philip Alston, stated in his report on Nigeria that:¹¹⁰

“Police put forth various pretexts to justify extrajudicial executions. When a victim is killed in custody, an attempted escape may be cited. When the victim is killed before being taken into custody, his status as an armed robber may be cited. Resort to these pretexts is facilitated by the domestic legal framework. First, the elevation of armed robbery to the level of a capital offence has perverse consequences. While armed robbery does plague much of Nigeria, the label of “armed robber” is very often used to justify the jailing and /or extrajudicial execution of innocent individuals who have come to the attention of the police for reasons ranging from a refusal to pay a bribe to insulting or inconveniencing the police. There is reason to doubt that the 2,402 armed robbers killed since 2000 were in reality all armed robbers, much less that they were all killed in shoot-outs. Armed robbery as such should be removed as a capital offence.”

The Special Rapporteur went on to explain that the Government of Nigeria had not taken sufficient measures actually to implement anti-corruption measures or to dispel the climate of impunity for corrupt practices. He noted in particular that the system of internal accountability within the Nigerian Police was extremely weak and that the “single greatest impediment to bringing police officers to justice for their crimes is the Nigeria Police force itself” which blocked investigations and allowed suspects to get away.¹¹¹ He also cited a lack of governmental accountability and a sense of social accountability for failing to curtail rampant abuse of power by law enforcement officials.

¹⁰⁸ Hitomi Oikawa, *Anti-Corruption in Bangladesh: A UNDP Case Study*, June 2003 at 4.

¹⁰⁹ See e.g. An Open Letter to the UN Human Rights Council from the Asian Human Rights Commission of 8 August 2006; AHRC-OL-041-2006, contending that Bangladesh should not be allowed to sit as Member of the UN Human Rights Council in light of the country’s failure to address rampant corruption.

¹¹⁰ Report of UN Commission on Human Rights Special Rapporteur on Summary or Arbitrary Executions, Philip Alston, on his Mission to Nigeria; E/CN.4/2005/53/Add.4 of 7 January 2006 at “Summary”.

¹¹¹ *Ibid.* at para. 56.

Many other examples could be cited to indicate that where corruption has thoroughly infiltrated the police and the military, ordinary citizens find themselves completely at their mercy. Hidden from judicial oversight, supervision from public institutions, and the vigilance of the media and public at large, corruption in the form of extortion can result in such severe abuse as torture. Where police act in collusion with criminal gangs and human trafficking networks, vulnerable people are more prone to become enslaved and exploited for the purposes of prostitution or forced to work in sweat shops.

I. How Effective Anti-Corruption Strategies Can Positively Influence Democracy, the Rule of Law and Human Rights

We have seen many examples above that demonstrate the negative impact of corruption on human rights. At this juncture, it is valuable to explore also the question from the opposite direction, in particular, to consider examples as to how anti-corruption strategies that adopt a human rights based approach, can positively contribute to democracy and the rule of law, and enhance human rights promotion and protection.

Many illustrative examples have been documented in this regard in the context of best practices compilations that have been assembled by the Organization for Security and Cooperation in Europe (OSCE), Transparency International, the Anti-Corruption Resource Centre based in Bergen, Norway, the Asian Development Bank, the IMF etc. While the scope of the present study does not permit a recitation of best practices, it is nevertheless valuable to cite a few examples that pertain specifically to the added value of adopting a human rights based approach in anti-corruption strategies and implementation.

Without a vibrant and vigilant civil society that can insist on the basic right to information as a way of making officialdom accountable for the expenditure of public monies intended for development and basic services, it is difficult to root out corruption and its perpetrators. The right to information is also closely related to equal access to justice, the right of everyone to a remedy in case their human rights have been breached, to enjoy equality before the law, and to benefit from the right to a fair trial and to avail themselves of legal avenues through a judiciary independent of the Executive. Coliver notes that there are at present some 68 countries worldwide that have enacted laws on the right of access to information.¹¹² A striking example has arisen in India where a successful campaign to use the right to information to open up official records, thereby exposing systematic corruption, illuminates the concrete connection between freedom of information and effective anti-corruption efforts. The grassroots organization Mazdoor Kisan Shakti Sangathan (MKSS) or Association for the Empowerment of Workers and Peasants in English, in Rajasthan, India, in 1996, organized a large gathering of peasants and rural men and women. They descended upon local public officials, demanding the immediate disclosure of all documentary records so as to expose the routine misappropriation of public monies intended for development. Initially, public officials succeeded in keeping these

¹¹² For a detailed review of legislation on the right to information see Sandra Coliver, *the Importance of the Right of Access to Information Held by Public Authorities, and the Need for the United Nations to Take Steps to Further Elaborate, Codify, Protect and Promote this Right*, Talk presented to the UN Conference on Anti-Corruption Measures, Good Governance and Human Rights, Warsaw, 8-9 November 2006.

documents confidential but, following a series of public demonstrations as well as a successful campaign to introduce freedom of information legislation into Rajasthan, the MKSS managed to pry open public expenditure accounts. As the Economist reported in 2001:

“*Gram panchayats* - councils representing clusters of villages—ought to be the most accountable unit of government because they are closest to the people. Yet each is headed by a *sarpanch* who spends up to 100,000 rupees (\$2,100), some of it on booze for prospective constituents, to be elected to a job that pays 400 rupees a month. So the balance has to come from diverting public money. ... In and around Rajsamand district, the MKSS is the *sarpanch*'s nightmare. It has held a series of public hearings where villagers discover from official documents the discrepancies between what is due to them and what has actually been delivered. One, for five *gram panchayats* in January 1998, revealed misappropriations of at least 100,000 rupees in each. At some, officials have volunteered to return the money. After a 53-day sit-in in Jaipur, the state capital, in 1997 the MKSS won the right for citizens to obtain photocopies of panchayat records within four days. ... Its battle in Janawad, south-west of Rajsamand, shows both the power of openness and of the resistance to it. In accordance with MKSS-inspired rules, the *panchayat* painted on the walls of its village hall an account of works done in the previous five years. It did not take villagers long to realise that much of the fresco was fiction. In 1998, for example, 80,000 rupees were supposedly spent on renovating Janawad's dispensary. The nurse who lives beside it says no work was done. 'If this board hadn't come up, all would have been lost in papers,' says another local.”¹¹³

The efforts of the MKSS exemplifies the power of the right to information as a way of ensuring accountability and getting rid of corrupt public officials. Largely as a result of its efforts, and that of other NGOs, several Indian state Governments introduced right to information statutes in the year 2000, and on 15 June 2005, the Parliament of India adopted a new Right to Information Act, which came into force on 12 October 2005. It provides in Article 3 that “all citizens have the right to information” which applies to all branches of government.¹¹⁴

The Right to Information Act 2003 of Ghana¹¹⁵ provides another interesting example of best practices involving the right to information. The Act guarantees each individual, *inter alia*, the right to access to personal information “held by a government agency or a private body which relates to that individual”, without requiring the individual to provide any specific reason as to why he or she is requesting a particular document. In this respect, the Government owes to all citizens a general ‘responsibility to inform’. The Act also provides for “internal review of decisions of government agencies by the sector ministers and judicial review by the High Court of decisions of Ministers and private bodies”, as well as the right of appeal in case of violations of the Act. It must be remarked however, that a wide range of information is exempted from the

¹¹³ “The poor want answers” in The Economist of 11 January 2001.

¹¹⁴ The Right to Information Act (India) is available at <http://persmin.nic.in/RTI/WelcomerTI.htm>, last accessed 30 October 2006.

¹¹⁵ See Highlights on the Right to Information ACT 2003, at <http://www.ghana.gov.gh/dexadd/info1.php>

general duty of divulgation, including information that has been “prepared for submission or which has been submitted to the President or Vice President”, or information relating to the Cabinet, to law enforcement, public safety and national security. Also exempt is information on “[e]conomic and other interests which contain trade secrets or financial, commercial, scientific or technical information that belongs to the government and the information has monetary or potential monetary value”, information relating to tax liability or that relates to “parliamentary privilege, fair trial, contempt of court”. In addition, there are exemptions on information subject to “the medical profession”. If misused, these extensive exemptions could jeopardize the full enjoyment of the right to information.

The example of Ghana’s Commission on Human Rights and Administrative Justice also illustrates how the incorporation of an explicitly human rights based approach in anti-corruption strategies can be implemented. The Commission was established in 1993, following the restoration of democracy in the country, after years of single-party authoritarian rule. The Commission brings the human rights commission, the Ombudsman and the Anti-Corruption Commission together to form a single unit, the independence of which finds protection in Ghana’s Constitution. The Commission’s anti-corruption mandate refers to ‘human rights’:

- i. To investigate complaints of violations of fundamental human rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties.
- ii. To investigate allegations that a public officer has contravened or has not complied with a provision of Chapter Twenty-four (Code of Conduct for Public Officers) of the Constitution, namely that a Public Officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office
- iii. To investigate all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor General, resulting from such investigation”.¹¹⁶

Importantly, the Commission has the power to administer a wide range of remedies in case of violations, including by means of: “negotiation and compromise; reporting the findings to a superior officer; bringing court proceedings to stop or change actions or conduct that violate rights; challenging any law that violates constitutional rights; taking appropriate steps to address corruption, including reports to the attorney-general and the auditor-general resulting from such investigations [and] restoring property confiscated by the two previous military governments”. In light of these powers, the Commission can both restore the *status quo ante* in case of corruption cases, and at the same time, ensure the enjoyment of the basic human rights of victims to receive prompt and adequate redress.¹¹⁷

One can also mention the case of Botswana, where a Directorate on Corruption and Economic Crime was established in 1994, after the Government had become seriously concerned

¹¹⁶ See the website of the Commission on Human Rights and Administrative Justice at <http://www.chrajghana.org/index?articleId=1125665605933>.

¹¹⁷ *Ibid.*

about the adverse effects of corrupt practices on the country's development. The Directorate's powers extend to cases involving "public officers, employees of public bodies, agents and those in the private sector".¹¹⁸ Efforts at fighting corruption in the country go hand in hand with tangible improvements in many human rights areas, including independence of the judiciary, the right to fair trial and the right to a remedy.¹¹⁹ In Transparency International's 2006 Corruption Perceptions Index, Botswana ranked a respectable position of 37th out of 163 countries, beating among others, South Korea, Cyprus, Hungary, Jordan, Italy, Lithuania, Latvia and South Africa.

V. Key Actors and Policy Approaches

In this Part, we identify key actors and policy approaches with a view to further enhancing UNDP's important role in promoting anti-corruption policies and strategies that at the same time strengthen human rights, democracy and the rule of law. We put forward a number of practical recommendations in Part VI to optimize UNDP's potential as an effective agent of change through its sustained, tried and tested cooperation with Governments, the international community at large, and civil society organizations.

In adopting a human rights based approach to the linkages between anti-corruption efforts on the one hand, and the strengthening of human rights, democracy and the rule of law, on the other hand, we have deliberately taken a wide-angle perspective to the issue as discussed in Part I of the present paper. In terms of key actors and policy approaches, the human rights based approach leads to one inevitable conclusion: anti-corruption policies have to be fashioned with a flexibility that takes account not only of particular country conditions, but also of the particular kind of corrupt practices of concern. In this connection, it is important to note that the international community has already gone beyond the notion that a single 'one-size-fits-all' model for fighting corruption that can be adapted to meet any country situation, or that anti-corruption conditionality requirements inserted in top-down international financial aid and assistance programmes through the World Bank or IMF, can suffice to force Governments to clean up. The philosophy behind adopting a human rights based approach to anti-corruption was well expressed in UNDP's Anti-Corruption Practice Note of March 2004 with which we agree:

"The principles of empowerment, transparency, participation and accountability, are at the centre of a human rights based approach to poverty reduction and at the heart of UNDP's prioritization of achieving the MDGs [Millennium Development Goals]. These are the same principles that motivate the anti-corruption drive. In the fight against corruption, the poor must be considered as the principal actors of development; they can no longer be seen as passive recipients; they are strategic partners rather than target groups (India, Indonesia and the Philippines)."¹²⁰

¹¹⁸ See Republic of Botswana at http://www.gov.bw/index.php?option=com_content&task=view&id=36&Itemid=40

¹¹⁹ See US State Department *Country Reports on Human Rights Practices*, Botswana, 2001 at <http://www.state.gov/g/drl/rls/hrrpt/2001/af/8265.htm>.

¹²⁰ UNDP Practice Note of March 2004.

Essentially, human rights based approaches are about maintaining central focus on the human rights and fundamental freedoms of persons affected by policy, law and practice. At heart, human rights based approaches aim to build support for anti-corruption initiatives and strategies from the ground up, despite the fact that from an institutional point of view, many of the key actors, policy approaches and recommendations that we put forward fall into the category of classic top-down approaches. In our point of view however, no institutional mechanism to fight corruption, regardless as to how high it may be in the State hierarchy or how elaborate it may be, is likely to meet with sustained success in fighting corruption unless ordinary people whose rights are directly affected on a daily basis by the ravages of corruption feel they can put their trust in, and actually turn to, such mechanisms. In other words, positive change to eradicate corruption on a broad front requires first and foremost that people feel empowered to fight it and that they can expect to live in a corruption-free environment in future. Ultimately, a radical change in the cultural norms, values and expectations of society at all levels is likely to bring about greater and longer lasting improvement as regards corruption than the implementation of any number of strategies without the requisite political will.

A. Civil Society

With this general perspective in mind, we begin with consideration of civil society as a key actor and proceed ‘upwards’ to discuss from a human rights based angle, other relevant social sectors and institutions UNDP could target in its broad-based anti-corruption strategies through its technical cooperation with Governments.

First, representatives of civil society should, to the greatest extent possible, be included in all anti-corruption initiatives and strategies. The ultimate test of a Government’s political will to address corruption effectively will be the extent to which it entrusts civil society with the means by which ordinary people can vindicate their rights. While the appointment of eminent personalities and politically connected individuals of influence can often lend anti-corruption commissions and initiatives much needed clout and profile, this has to be balanced with the inclusion of broad participation. An example that bears this out has been the establishment of the Honduran Anti-Corruption Commission. Established in February 2001, the Commission has 12 members of Government and 12 representatives of civil society. Unfortunately however, the Commission was established by Presidential Decree and all members are appointed by the President. It would have been better if those Government officials appointed to this commission had practical experience in anti-corruption, democratic governance and human rights, and that all appointment were not at the sole discretion of the President. Otherwise, the Commission will always suffer a credibility deficit with ordinary people. These kinds of issues are discussed in more detail below in connection with national human rights, anti-corruption and right to information commissions.

Second, the importance of mass campaigns through educational schools, the media, billboards and the dissemination of anti-corruption comic books, skits and other means of raising consciousness, cannot be underestimated. Pressure to give bribes or other favours in exchange for basic government services is likely to be more easily resisted where messages abound on the illegitimacy of corruption and that persons engaged in corrupt practices risk prosecution. In this connection, one can recall that UN General Assembly resolution 58/4 stresses the importance of raising awareness about the problem of corruption, declaring that 9 December should be

designated “International Anti-Corruption Day”. The first International Anti-Corruption Day was observed on 9 December 2004 and was marked by a number of activities in Vienna, New York and in places around the globe.

Third, if confidence on the part of ordinary people can be regained in the Government’s efforts to clean up, people are more likely to join in on the process. If that happens, momentum for positive change could build exponentially as individuals increasingly bring complaints against public authorities to vindicate their own rights. The vigorous use of citizens’ complaints procedures represents a uniquely powerful way to throw the spotlight on specific instances of corruption that demand concrete action and remedies from Government.

Fourth, rather than to resort to *ad hoc* measures, Governments should follow a clear strategy and national action plan to promote accountability, the rule of law, transparency and anti-corruption as part of a comprehensive and coherent policy package. Such strategies have to be very clearly communicated to the public which, after years of dealing with endemic corrupt practices throughout vital public institutions, may have grown cynical.

Fifth, the individual right to information has to be strengthened so that people can have access to public records and accounts. A higher degree of openness and transparency, embarrassing though this can be for Government from time to time, remains an essential element of regaining widespread trust from the public. From a political point of view, Governments should however feel assured that the bitter medicine of accountability in specific cases can reap greater rewards in political legitimacy and generate increased support from the electorate at election time.

Sixth, in order to assess the degree to which anti-corruption measures meet with success, it is essential to monitor people’s perceptions on a periodic basis with the help of interviews, questionnaires and public opinion polls. Encouraging signs will be seen in a steady rise in people’s level of optimism about beating corruption.

Finally, it is worth noting that Article 13 of the Convention against Corruption is dedicated to participation of society in the fight against corruption. States Parties to the Convention are in fact obliged to “promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption”. The Convention indicates several ways in which civil society can participate more actively in preventing and suppressing corruption, including for example promoting the contribution of the public to decision-making processes, ensuring that the public has effective access to information, promoting public information activities based on non-tolerance of corruption, as well as public education programmes, including in schools and universities, and respecting and promoting the freedom to seek, receive, publish and disseminate information concerning corruption.

B. Mass Media and Associations of Journalists and Independent Broadcasters

We have seen cases in numerous countries where journalists and human rights defenders working on corruption have been singled out for intimidation, harassment, persecution and even assassination as discussed in Part IV(F) of the present paper. The degree to which a Government is actually serious about anti-corruption reflects very clearly in its attitude towards and treatment of sources of independent dissent and criticism. Governments that continue to suppress the right to free speech and freedom of the press while at the same time claiming determination in the fight against corruption can be doubted with good reason. Not only that, but Government has limited resources at its disposal. The media's freedom and independence to criticize cases of corruption, even if this might involve politically-biased reporting at times, should be assured, not destroyed, for the media remains vital to any mass media campaign and the exposure of corrupt practices.

It is also true that in many countries where freedom of opinion, speech and expression may have been weak, the tradition of independent journalism may be relatively new. Journalists may be interested in exposing corruption, but may be inexperienced in how to do this without inviting Government lawsuits for defamation or even for threatening national security.

One approach would be to conduct training of journalists on corruption-related issues. This strategy was adopted through the World Bank's Economic Development Institute in Nicaragua and East Africa with tangible success.¹²¹ This approach ensures that people are empowered through realizing their right to information. As discussed above with regard to corruption in Rajasthan, the right to information, aided by the operation of free and independent media, constitutes a basic element upon which people can push for their rights and marshal public opinion behind their cause.

C. National Institutions on Anti-Corruption, Human Rights and /or Right to Information

Part and parcel of empowering civil society and the media, using a human rights based approach, is to ensure that there are national institutions established that are mandated to deal specifically with anti-corruption. National commissions on the right to information are equally important in this regard as are national human rights institutions. Because anti-corruption strategies and implementation have to be implemented first and foremost at ground level, national anti-corruption institutions rank among the more important of key actors. National institutions can strengthen their effectiveness through their involvement and cooperation with national institutions in other countries so as to share best practices and experience.

¹²¹ See David Pezzullo, "Journalist Training to Curb Corruption" *Economic Perspectives*, 3(5) USIA Electronic Journal (November 1998) who argues that: "Enhanced confidence and professionalism among journalists is likely to change the newsroom dynamic over time, much as institutional reform and civil service training are likely to gradually modernize government. The Economic Development Institute recently has staged journalist training workshops in Uganda, Tanzania, Ethiopia, Benin, Mauritius and Cameroon. In addition to Nicaragua, the institute is planning similar workshops in other Latin American countries with the hope of providing ideas to build a responsible and independent media to buttress the transition to fuller democracy."

As the UN Secretary-General's report on revitalizing public administration has noted,¹²² various initiatives have been launched at the regional level to strengthen anti-corruption measures within domestic public administrations:

"In 2003, the African Union concluded the Convention on Preventing and Combating Corruption, although its ratification has been slow. In addition, integrity, transparency and accountability in public administration are inherent among the principles of the New Partnership for Africa's Development laid out in 2001. To measure conformity with these principles, the African Peer Review Mechanism was introduced in 2003. In addition, the Charter for the Public Service in Africa was adopted in 2001 at the third Pan-African Conference of Public Service Ministers." (para. 37)

The report (para. 38) also mentions the situation in Latin America, where "many countries are now in the institution-building phase (e.g., the Anti-Corruption Unit of the Ministry of Justice of Argentina, the Public Ethics Commission of Brazil), while others are introducing civil service reforms (e.g., Mexico, Peru, etc.)", following some serious cases of political corruption. As for the Asia-Pacific region, (para. 39), the report notes that some countries have "highly developed and effective anti-corruption institutions that serve as a model for other countries (e.g., Hong Kong SAR China, Singapore, etc.)", while other countries "have recently introduced legislation and are setting up institutions (e.g., Mongolia, etc.)". Importantly, 36 Asia-Pacific countries have joined the Anti-Corruption Action Plan for Asia and the Pacific 2000 - a document adopted under the auspices of the Asian Development Bank and OECD, with its main focus on technical assistance in anti-corruption matters.

A number of UNDP case studies have been particularly instructive on the potential role of national institutions for combating corruption in terms of both strengths and weaknesses. In Burkina Faso for example, the Cour des Comptes has top legal authority for controlling public expenditures but it cannot refer a case to the judiciary in case it discovers irregularities in the accounts. Rather than proceeding through the judiciary, reports of the Cour des Comptes go to the President's Office or other political authority which may then decide to refer the case to the courts - a process which invites political meddling in possible criminal cases of corruption. Another body, called the Haute Autorité de Lutte contre la Corruption, established in 2001, has prepared detailed reports that have named specific individuals and laid out grounds for suspicion of corruption, but according to the UNDP Case Study on Burkina Faso, no subsequent action has been taken by the Prime Minister's Office. The obvious risk is that confidential reports on persons suspected of corrupt practices, can be used to blackmail opponents of the Government. The Case Study concludes that:

"... the anti-corruption apparatus can work reasonably well, given the caveats of a deficient judiciary system, etc., as long as it refrains from touching those with

¹²² Report of the UN Secretary-General on "Revitalizing Public Administration: Strategic Directions for the Future"; E/C.16/2005/2 of 28 February 2005 at paras. 37-39.

political power. As soon as politicians are targeted, these institutions become powerless.”¹²³

Similarly, as regards the Democratic Republic of Congo, a UNDP Case Study indicates that without the necessary political will, a number of national institutional initiatives and bodies set up to address anti-corruption, have met with very little success.¹²⁴ Now that democratic elections have been held in the DRC with relatively little violence, prospects have improved for more serious Government action to fight corruption.

In Armenia, an Anti-Corruption Council set up in June 2004 has been meeting on a monthly basis to measure the degree to which the anti-corruption strategies of international organizations, international donors and the Government of Armenia have been implemented. The UNDP Case Study on Armenia’s Anti-Corruption Strategy notes that some stake-holders consider that the Council’s real function has been mainly to pacify international bodies. The Case Study urges that Armenia adopt a results-based approach in order to gauge whether and to what extent anti-corruption legislation is actually effective. Moreover, it recommends that awareness raising has to be pursued much more systematically not only with civil society but also within the institutions of Government.¹²⁵

The importance of political will to allow anti-corruption efforts to meet with success is also apparent in Lithuania. A UNDP Case Study has noted that the Special Investigative Service mandated to root out corruption, has focused almost exclusively on low-level corruption instead of important high-level cases and that this has led to a general impression of double standards in Lithuanian society as regards anti-corruption efforts.¹²⁶

Brighter prospects for the more effective implementation of anti-corruption strategies through national institutions are found in Tanzania. Tanzania reinvigorated its anti-corruption drive in 1998 by establishing first a Presidential Commission on Corruption which produced a detailed report and recommended that: the fight against corruption could not be successful unless top-level corruption was eliminated; public officials should be required to declare presents and gifts; property unlawfully acquired through corruption should be confiscated; clear standards governing the accountability of public leaders had to be established; and public awareness campaigns should inculcate the message among the public of their rights vis-à-vis corrupt officials. These recommendations were implemented successfully through the adoption of a zero-tolerance policy and the establishment of a national action plan to combat corruption that targeted the rule of law, financial management, procurement practices, public education and mass awareness, reform of the public service, whistle-blower and witness protection, as well as encouragement of media to report on corruption issues. In addition, there has been the establishment of a Good Governance Coordination Unit, a strengthened Prevention of Corruption

¹²³ See Sebastian Silva-Leander, “UNDP Case Study on Burkina Faso Anti-Corruption, (undated) at 6.

¹²⁴ Karen Hussmann and Marie-Ange Bunga, “Case Study on the Democratic Republic of Congo: Anti-Corruption Projects Limited by Logics of Transition”, 12 October 2005 at 15-18.

¹²⁵ See “Armenia: Case Study on Anti-corruption Initiatives”, Final Report - 28 October 2005, by Cathy Stevulak at 9.

¹²⁶ UNDP “Case Study on Lithuania’s anti-corruption efforts” [undated] at 12.

Bureau, as well as the adoption of a broad range of initiatives that involve other key actors in the fight against corruption. Finally, one can mention that the issue of corruption has acquired a positive political significance as evidenced by the fact that in the year 2000, general elections figured high up on the policy platforms of many of the election campaigns.¹²⁷

It should be noted that many Governments appear enthusiastic about establishing anti-corruption commissions to enhance the State's image abroad and encourage foreign investment - as long as they can control such commissions and they do not disturb entrenched patterns of patronage, favouritism, cronyism and nepotism. In short, Governments often appear ready to establish such mechanisms to win approval from donor countries and institutions, but they do so without providing such mechanisms with independence, impartiality, adequate resources, skilled staff, a sense of permanence, or with sufficient legal authority and mandate for effective investigation, subpoena, search and seizure and prosecution. The universally accepted international norms governing the independence and impartiality of national institutions are gathered together in the Paris Principles relating to the Status of National Institutions, 1993, which spell out the competences, responsibilities, composition and guarantees of independence and political pluralism, methods of operation, and additional principles concerning the status of commissions with quasi-judicial competence.¹²⁸

D. National Legislative Public Hearings on Corruption

In demonstrating its political will and resolve to tackle corruption honestly, fairly and effectively, the Government should facilitate the legislature to establish a multi-party parliamentary commission on corruption. Unlike national institutions which are generally established by Government but intended to operate independently from the Executive and to be politically neutral, national legislative public hearings should involve legislators and parliamentarians. This commission could hold public hearings on the kinds and incidence of corruption, inviting views from a broad cross-section of civil society. Such hearings should be held regularly and be made accessible to the public with open media coverage. Even if there are cases which arise that inevitably cause some embarrassment to the Government, the openness, integrity and encouragement the Government shows in making the top reaches of public service more transparent and participatory is likely to increase its political legitimacy and help set a higher standard for future political discourse and action on corruption issues.

Parliamentary commissions on corruption have been successful in some countries, most strikingly in Lithuania, where the impeachment of President Rolandas Paksas took place on 6 April 2004 for bribery, extortion, and other serious forms of corruption. Parliamentary commissions on corruption have been held in New South Wales (Australia), in India in connection with the MKSS campaign in Rajasthan discussed above, and in other countries.

¹²⁷ See generally, "UNDP Case Studies on Corruption: Tanzania" [undated].

¹²⁸ The Paris Principles were adopted as the conclusions of a workshop, held in Paris in October 1991. These conclusions were transmitted by the Commission on Human Rights, in resolution 1992/54, as the "Principles relating to the Status of National Institutions", to the UN General Assembly. The General Assembly adopted the Principles in 1993 as the Annex to resolution 48/134.

E. Training of Attorneys General, General Prosecutors, Judicial Personnel, Police and Law Enforcement Officials

Implemented against the background of a public education campaign to get across the message of firm Government resolve to combat corruption must be a programme to train responsible public officials concerned with the rule of law, from the top levels to the bottom, in the importance of fighting corruption as a priority national concern. The true test of success will not however, be in how many officials have been trained, but rather, in the number of fair and effective corruption cases that result over time. In countries where corruption is rife and laws and regulations are already in force to eradicate corruption, but there are few if any actual prosecutions, it is obvious that the laws against corruption simply are not being enforced, as discussed above with regard to Kazakhstan and Kyrgyzstan.

In other cases, the cause for few prosecutions may not be that prosecutors and judges are themselves corrupt, but that they lack the necessary level of expertise or legal authority to bring about successful corruption prosecutions. In this regard, the international community can be of substantial assistance. For example, the Second World Summit of Attorneys General and General Prosecutors, Chief Prosecutors and Ministers of Justice, held in Doha, Qatar, 14 - 16 November 2005, attended by representatives of 97 States, recommended that in order to implement the UN Convention against Transnational Organized Crime and its Protocols the: “use of undercover operations as an investigative technique, especially in cases of identification, tracing, freezing or seizure and confiscation of proceeds and instrumentalities of organized crime, corruption and terrorism and the establishment of an appropriate legal framework that would allow for the admissibility of the evidence gathered. Their use in practice, however, should be proportional to the objectives to be achieved”.¹²⁹ As well, the Summit recommended that States should “put in place appropriate regulatory regimes and promote the necessary administrative reforms to ensure accountability in both the public and private sectors and create a culture of integrity and good governance as effective deterrents to corruption-related practices” and the establishment of “appropriate and efficient legal and administrative mechanisms and methods that would allow for assets plundered through corruption and confiscated in one country to be repatriated” in line with the Convention’s requirements.¹³⁰ These and other initiatives could be used to strengthen the role of law enforcement and the judiciary to sharpen the anti-corruption drive.

In this regard, one must mention also the role of police and law enforcement officials. The Code of Conduct for Law Enforcement Officials adopted by the General Assembly in resolution 34/169 of 17 December 1979 underlines that: “Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession”. Article 7 of the same Code declares that: “Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat such acts”, highlighting not only the obligation upon all law enforcement to refrain from engaging in corrupt

¹²⁹ Note by the Secretary-General on “International Cooperation in Combating Transnational Crime”; E/CN.15/2006/17 of 2 February 2006 at para. 13(f).

¹³⁰ *Ibid* at paras. 18 and 19.

practices of any sort, but also the mandatory obligation to actively intervene to suppress corruption.

Finally, ordinary citizens should have clear and easy access to independent police complaints review board on a no-cost basis. Such board should be empowered to review all citizens' complaints against police to ensure that cases of corruption are dealt with fairly and effectively.

F. Public Service Commissions / Independent Electoral Commissions

Every State should have mechanisms specifically mandated to ensure that individual complaints about corruption in the public service will be heard independently and fairly and such mechanisms should be equipped to get the facts from the relevant Government agencies concerned and where necessary to take or recommend disciplinary action against persons proved to have been responsible for acts of corruption. Related to this is the functioning of independent electoral commissions to ensure that all voting procedures are followed during elections and that fraud, ballot box stuffing and other such criminal acts are avoided.

G. Associations of Regional Authorities and City Mayors / Public Auditors

As discussed above, corruption has become more recognized as an international issue. This sometimes however results in the central or national Government acting as the sole authority within the country to develop and implement anti-corruption policies and strategies. This would seem to make sense from the point of view of international cooperation because it is the national Government which is almost always the main if not exclusive interlocutor with such actors as the World Bank, the International Monetary Fund, the UN Office of Drugs and Crime and UNDP. This can sometimes result however in regional or municipal (at the city or town level) authorities being overlooked when it comes to actual anti-corruption implementation. Because in many jurisdictions, the building and management of roads, schools, hospitals and other essential services reside at local levels, it is important that regional authorities and city mayors play an active part in the country's anti-corruption efforts. In some countries, courts, police and law enforcement functions have also been decentralized to regional and local levels to a certain extent, and in such cases, their role in anti-corruption efforts becomes all the more germane. In this regard, the role of public auditors to maximize responsible and transparent accounting practices that are open to public scrutiny should be utilized.

H. Trade Unions / Labour Inspectorates / Public Auditors

Trade unions can be powerful allies in the fight against corrupt practises that affect health and safety in the workplace. Every effort should be made to include trade unions and other representatives of workers' rights into national anti-corruption strategies. At the same time, corruption within trade union organizations has not been unknown, so the engagement of labour movement representatives can serve a double purpose of bolstering controls of employer-perpetrated abuses while at the same time ensuring greater transparency in 'closed shop' situations. As discussed above, it is also critical that ethical practices and accountability within labour inspectorates be strengthened to ensure that workers are not shortchanged by collusion between corrupt employers and corrupt labour inspectors. One concrete way to ensure greater

transparency is to strengthen and support the use and role of public auditors so that audits of public expenditure do not remain hidden from public view.

I. Political Party Organizations

Most countries have election campaign contribution laws that impose maximum limits on the amount of money that can be donated towards the operations of a registered political party. The rationale behind such limitations is to restrict the extent to which vested interests are allowed to place themselves in a position of influence to determine decision-making should a particular political party become elected to power, so that popular will can prevail in genuine democratic governance. The issues of campaign contributions remain however highly politicized in most jurisdictions and they are therefore not usually amenable to international review. Yet mass political parties do remain vulnerable to corruption and most domestic legal frameworks at least require donations greater than certain amounts to be disclosed publicly so that party leaders must first acknowledge and second be prepared to explain or justify such donations. Where the international community could perhaps be more influential in a constructive way with political party organizations is to encourage them to make corruption a political platform issue. If the main political parties explicitly recognize the urgency of addressing corruption, there will perhaps be greater leverage and likelihood that voters can hold the party that wins the election to account on this score.

J. Business-Persons Associations

It is important that to the extent possible, the international community together with the Government, engage associations representing businesses based within the country and abroad. Companies that publicly declare themselves 'corruption-free zones' may be less likely to face demands for bribery, kickbacks and other forms of corruption. A virtue in businesses working together on the issue is that it avoids their having to outbid each other by bribing procurement officers, license and certificate personnel etc. Although difficult to implement in practice, the clear winner of such agreements would be the companies themselves because the cost of doing business would decrease for every individual business. More important, the relative attractiveness of the country for foreign direct investment will increase where corruption is reduced, ultimately benefiting the people and Government with jobs and greater economic growth.

K. Diplomatic Missions / National Donor Agencies (CIDA, DANIDA, SIDA, UKDFID, USAID, etc.), Regional Peer Review Mechanisms and Workshops

Because the tentacles of corruption spread beyond the borders of every individual State, and corruption is often, as argued above, closely connected to money laundering, transnational organized crime, terrorism and other serious security threats, it remains essential that every State engages fully in multilateral cooperation. The main step in this regard is for every State to ratify the UN Convention against Corruption which establishes universal definitions, standards and guidelines for addressing corruption and opens up avenues for mutual cooperation in the criminal investigation and prosecution of corrupt practices. The tendency however is frequently for States, distracted by seemingly more immediate challenges, to pay insufficient attention to actual implementation and mutual cooperation as regards the Convention and other related instruments.

For this reason, it would be useful that the Government avail itself of every opportunity to promote constructive and frank dialogue with other Governments, their diplomatic missions, and where applicable, their donor agencies, about what they perceive to be the main sectors plagued by corruption and to invite these partners to root it out.

In this regard, the example of Council of Europe's Group of States against Corruption (GRECO) is quite instructive. It was set up to provide a kind of peer review mechanism by which to monitor the observance of the Guiding Principles in the Fight against Corruption and the implementation of international legal instruments adopted in pursuance of the Programme of Action against Corruption. One could mention also other regional undertakings such as the Stability Pact Anti-Corruption Initiative (SPAI), supported by USAID and the OECD Anti-Corruption Network.¹³¹ Philliat Matsheza and Constance Kunaka of the Human Rights Trust of Southern Africa have written a series of booklets focussing on anti-corruption initiatives, strategies and mechanisms in the region of southern Africa and on the SADC Protocol against Corruption.¹³²

L. Development Banks

The leading multilateral institutions which have been and will likely continue to exercise the greatest influence as well as to offer the most extensive expertise and technical assistance to developing countries are the International Monetary Fund and the World Bank, in particular, the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). For its part, the International Monetary Fund has focussed consistently on the problem of corruption as part of its mandate to strengthen international monetary cooperation, stability in exchange rates and to foster economic growth and greater employment. As the preeminent funders of education, health and poverty reduction strategies globally, these institutions remain pivotally positioned to work with Governments and the international community at large to reduce graft, extortion and endemic corruption in developing countries. The World Bank considers that corruption constitutes the largest barrier to development and the World Bank Institute has an established track record of analyzing the issue and developing strategic solutions to it. One must also mention in this regard the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank, the more specialized European Investment Bank, International Fund for Agricultural Development, the Islamic Development Bank, the Nordic Development Fund and the Nordic Investment Bank, as well as the OPEC Fund for International Development. All these and other related institutions must be counted as leading key actors in terms of articulating and implementing effective anti-corruption strategies.

¹³¹ See further Philippa Webb, *The United Nations Convention Against Corruption Global Achievement or Missed Opportunity?*, 8 *Journal of International Economic Law* (March, 2005) 191-229.

¹³² See Philliat Matsheza and Constance Kunaka, *Anti-Corruption Mechanisms and Strategies in South Africa* (1999), Constance Kunaka and Noria Mashumba, *Strategies against Corruption in Southern Africa* (2002), and Constance Kunaka, Noria Mashumba and Philliat Matsheza, *The SADC Protocol against Corruption: A Regional Framework to Combat Corruption* (2002).

M. United Nations Office of Drugs and Crimes (UNODC)

In order to develop coherent and coordinated anti-corruption strategies, UNDP must continue to work in close cooperation with the UN Office of Drugs and Crime the auspices under which the UN Convention against Corruption was negotiated, drafted and adopted, and which continues to form the UN's institutional focal point for mutual cooperation in criminal matters, including on corruption.

At ground level, UNODC has been actively engaged in technical assistance with individual Governments to help them develop and implement national legislation and policy strategies on anti-corruption. UNODC's Global Programme against Corruption which was launched in 1999 with "An Outline for Action", spells out UNODC's plan in the field.¹³³ In Cape Verde for example, UNODC has assumed lead agency role in anti-corruption strategies to address organized crime, corruption and money-laundering, as part of the common country assessment and UNDP's Assistance Framework to run from 2006 until 2010.¹³⁴ As concerns Central Asian States,¹³⁵ in his latest report, the UNODC Executive Director refers to legal advice the Office provided to Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, the Russian Federation and Ukraine on anti-corruption legislation. UNODC has also worked closely with key anti-corruption actors to provide training and workshops for judicial and law enforcement officials in Algeria, Armenia, Azerbaijan, Belarus, Georgia, Ghana, Indonesia, Kazakhstan, Kyrgyzstan, the Republic of Moldova, the Russian Federation, Tajikistan, Turkmenistan, Uzbekistan and 13 Pacific Island countries on the inter-related issues of drug-trafficking, transnational organized crime, corruption and terrorism as well as on the implementation of mutual cooperation arrangements. UNODC reports that it has conducted training on the related problem of money-laundering to some one thousand judges, prosecutors and investigative personnel on the utility of special investigative procedures.¹³⁶

As regards UNODC's anti-corruption focus on Africa:

"Of the 239 projects being implemented by UNODC in 2004, just under 20 per cent were situated in the African region. Projects covered all areas of responsibility of UNODC and include drug demand reduction; drug law enforcement; scientific support; border control (including at sea ports); drug abuse and HIV/AIDS; money-laundering; countering organized crime; countering trafficking in human beings; preventing corruption; and judicial integrity. Several regional and subregional technical assistance projects are also in progress. As part of the UNODC programme of technical assistance, a series of activities have focused on African countries emerging from conflict, aimed in particular at helping reconstitute legislative and institutional frameworks (see

¹³³ See Global Programme against Corruption: An Outline for Action UN Office for Drug Control and Crime Prevention (February 1999); V.99-80875 (E).

¹³⁴ See Development, Security and Justice for All: Towards a Safer World: Report of the UN Office of Drugs and Crime Executive Director; E/CN.7/2006/5-E/CN.15/2006/2 of 12 January 2006 at para. 71.

¹³⁵ *Ibid.* at para. 69.

¹³⁶ *Ibid.* paras. 41-42. See also the Report of the Secretary-General on "Strengthening the Role of the Commission on Crime Prevention and Criminal Justice"; E/CN.15/2006/16 of 20 February 2006.

E/CN.7/2005/10). Much remains to be done on the continent, however, and UNODC is aware of the need to expand its programme of activities, in particular in the areas of trafficking in persons, firearms and natural resources, crime prevention and criminal justice reform.”¹³⁷

At this juncture, it is valuable to move from our discussion of key actors to concrete policy recommendations.

VI. Policy Recommendations to Strengthen UNDP’s Role in the Fight against Corruption

In order to assist Governments to adopt a human rights based approach to the development of anti-corruption strategies, UNDP itself needs to continue to conduct systematic training of its staff and consultants at all levels in the human rights based approach. Too often it is still heard at the UNDP Country Office level that ‘UNDP is a politically neutral agency and human rights is political, therefore UNDP does not involve itself in human rights issues’. This misconception might confuse the politically sensitive character of certain human rights issues with the ideal of political neutrality in technical assistance programming. It should be remembered that every State in the world is a party to at least one human rights instrument, and most States are parties to several. While human rights issues often become politicized, no one would dispute that international human rights obligations such as those prohibiting genocide, torture, slavery, and indeed, those that relate to the full package of civil, political, economic, social and cultural rights, constitute norms that legally bind States the world over. Offering technical assistance to Governments on human rights related issues does not require UNDP to criticize or monitor human rights violations in that country - a distinction about which every Government is fully aware in any case.

Recommendation 1 on Training of UNDP Staff and Consultants

UNDP should

- ▶ step up training of its staff and consultants to integrate more fully a human rights based approach in all technical assistance programmes, including in anti-corruption.
- ▶ highlight in this training the distinction between the ‘politically sensitive character of certain human rights’ as opposed to the ‘ideal of political neutrality in technical assistance programming’, to guide UNDP programme staff as to how a human rights based approach can be implemented in their daily work, including as regards anti-corruption strategy implementation.
- ▶ launch as soon as possible, a seminar series getting the human rights based message across. This could take the form of an on-line seminar made available to all UNDP staff.

¹³⁷ Report of the UN Secretary-General on “Implementation of Technical Assistance Projects in Africa by the United Nations Office on Drugs and Crime”; E/CN.15/2005/3 of 14 April 2005 at para. 5.

Recommendation 2 on Ratification of Multilateral Treaties

UNDP should

- ▶ encourage, and where necessary, and provide technical assistance to every Government to sign and ratify the following conventions and additional protocols thereto if they have not already done so, and ensure that Government law, policy and practice conform fully to the norms set out therein:
 - ❑ UN Convention against Corruption
 - ❑ UN Convention against Transnational Organized Crime
 - ❑ the 13 UN Conventions against Terrorism
 - ❑ the 7 principal multilateral human rights conventions: Convention against Racial Discrimination, ICCPR, ICESCR, Convention on Discrimination against Women, UN Torture Convention, Convention on the Rights of the Child, Migrant Worker's Convention
 - ❑ the Rome Statute of the International Criminal Court

Practically speaking:

- ▶ the UNDP Head of Country Office should, in his or her discussions with Government officials at the highest levels, remind them of the importance of becoming a State Party to the above instruments. These efforts should be coordinated with other UN agencies, bodies and programmes, in order to avoid overlap and so as to follow a concerted strategy. Multilateral instruments remain vital to fighting anti-corruption and transnational organized crime, facilitating mutual State cooperation in criminal matters, fighting terrorism, promoting and protecting basic human rights and fundamental freedoms, and ensuring individual criminal responsibility under international law for genocide, war crimes and crimes against humanity. States which have neglected to integrate themselves fully into existing multilateral frameworks for dealing with these issues in effect have 'not done their basic homework' and place themselves in a disadvantaged position vis-à-vis other countries that have taken the effort to benefit more fully from international cooperation and technical assistance. While treaty-making falls within a sovereign State's domestic jurisdiction, it would be remiss of UNDP not to remind and encourage every Government with which it deals of the importance of undertaking these basic international legal obligations for the strengthening of democracy, human rights and the rule of law.

Recommendation 3 on Developing Strategies and National Action Plans

UNDP should

- ▶ in partnership with the World Bank, IMF and other development banks, as may be appropriate, assist the Government in identifying problem areas involving corrupt practices in the country with a view to prioritizing solutions according to: a) urgency; b) practical feasibility; and c) visibility impact. A coherent strategy or ‘national action plan’ to fight anti-corruption, if one does not already exist, should be drawn up in a transparent manner, with the active involvement of civil society representatives, various political constituencies, labour union and employer representatives, as well as equal representation of women, minority groups and other sectors which might suffer disproportionately from corruption and corrupt practices. In other words, developing an anti-corruption strategy should itself be an exercise in empowerment and in stimulating public focus and interest about the issue. Rather than to target the most difficult corruption problems first, it would be useful to score smaller successes with easier cases. For example, it would be more prudent to win the anti-corruption battle on easier fronts first, perhaps in connection with customs officers or petty corruption involved by public officials, rather than to try to tackle the big, tough cases all at once, an approach one UNDP case study refers to as ‘picking low-hanging fruit’ in order to create political momentum.¹³⁸ The important thing will be for the public to see that the Government’s new anti-corruption drive actually yields success and that individuals engaging in corrupt practices are actually being prosecuted. This will serve to build public confidence and support for the Government’s anti-corruption efforts and strengthen the role of civil society as a key ally of the Government in the anti-corruption campaign. In this connection, it is essential that the Government commission periodic independent surveys to track people’s perceptions on corruption and the degree to which its anti-corruption campaign may be perceived as effective.
- ▶ UNDP should offer itself in an advisory capacity in legislative reform efforts to promote transparency and support the development of anti-corruption legislation at all levels.

¹³⁸ Miguel Schloss, “UNDP Case Study and Recommendations for Anti-Corruption Commission of Honduras: Moving from Words to Deeds” (2003)

Recommendation 4 on Anti-Corruption Awareness Mass Campaign

UNDP should

- ▶ join with other key actors (in-country civil society representatives), national human rights institutions, anti-corruption commissions, right to information commissions, national and regional public authorities, mass media organizations, employer and employee associations, representatives of police, Diplomatic Missions, development banks and other intergovernmental organizations, to sponsor a Government-led mass publicity campaign as part of its anti-corruption strategy to build awareness and support for its implementation and to fight impunity. This campaign could involve official Government announcements, billboards, advertising on TV, radio and in newspapers as well as debates, theatre troupes, and the dissemination of posters and comic books featuring anti-corruption themes.

Recommendation 5 on National Institutions

UNDP should

- ▶ encourage the Government to establish national institutions to investigate, monitor and report on human rights, anti-corruption and the right to information. Such institutions should be established fully in line with the Paris Principles relating to the Status of National Institutions. UNDP should encourage national institutions to reach beyond such principles and apply the highest standards on human rights monitoring, not only on anti-corruption matters.
- ▶ encourage the Government to participate actively in fora that bring together representatives of national anti-corruption institutions from other countries so as to share best practices and experiences. In some instances, cooperation with foreign national anti-corruption institutions has resulted in the sharing of information that has led directly to criminal prosecutions of corrupt officials with respect to activities abroad which is necessary to fight impunity.

Recommendation 6 on Freedoms of Speech, Opinion, Expression, Information and the Press

UNDP should

- ▶ urge the Government to ensure that the right to the freedoms of speech, opinion, expression, information and the press, are fully respected.
- ▶ support the training of journalists on corruption-related issues, perhaps in cooperation with the World Bank or other suitable partner.
- ▶ work with the Government to ensure that access to information laws are actually implemented properly. In many countries that have adopted access to information legislation, requests for access to information have either been ignored or answered inadequately or inconsistently.

Recommendation 7 on Parliamentary Commissions

UNDP should

- ▶ encourage the Government to establish a parliamentary commission on corruption, where such a body does not already exist. Such commissions, with multi-party representation, should be mandated to hold public hearings on corruption challenges facing the country and to hear the views of civil society and all relevant constituencies on how to tackle the problem. The purpose of such hearings would be to: a) maintain visibility on the issue of corruption as a matter of high political priority; b) encourage the involvement and support of key actors in the process; and c) maintain a transparent and democratic approach, as well as a human rights based approach to the development, implementation and monitoring of anti-corruption strategies and measures.
- ▶ alternatively, UNDP should work together with existing bodies such as ministerial committees, petition committees, public accounts offices, and other implementation, regulatory and supervisory bodies, to promote anti-corruption strategies and offer assistance on anti-corruption matters.

Recommendation 8 on Justice Sector Reform and Training

UNDP should

- ▶ work with the in-country justice sector to ensure that the law, policy and practice relating to anti-corruption are up-to-date, effective and that they do not violate human rights, such as those relating to fair trial, independence of the judiciary, and the many other human rights discussed in Part IV of this study. The ultimate test however will not only be in the existence of anti-corruption laws on the books, but more in how they are actually implemented.
- ▶ support Government efforts to train officials responsible for the rule of law in the importance of anti-corruption legislation and in fair and effective prosecution. Such training must include attorneys general, general prosecutors, judicial personnel and police and law enforcement officials with a focus on impunity.

Recommendation 9 on Independent Police Complaints Review Board

UNDP should

- ▶ urge the Government to set up an effective and easily accessible independent complaints review board to receive individual complaints against police officers in cases of corruption. Unless the police recognize that they risk prosecution and / or disciplinary proceedings for abuse of their authority, it will be very difficult to eradicate such abuse.
- ▶ support the establishment of codes of conduct to apply to all levels of rule of law officials. These codes of ethics should make clear the Government's expectation as to the conduct of its employees and foreclose the defense that public officials

were not properly warned in advance of possible disciplinary proceedings that may be brought against them.

Recommendation 10 on UNDP Best Practices Manual

UNDP should

- ▶ draw upon its own extensive experience and case studies to produce a best practices manual on anti-corruption to assist the Government to develop a national action plan or national strategy to combat corruption.

Recommendation 11 on Political Party Involvement

UNDP should

- ▶ encourage major political parties to engage in a dialogue on corruption, with the aim at supporting the Government's anti-corruption strategies and measures, and to establish clearly their own political commitment to fighting corruption. In particular, UNDP could encourage political parties to set up internal anti-corruption units and committees to tackle instances of corruption that arise within political decision-making bodies.

Recommendation 12 on Electoral Reform

UNDP should

- ▶ encourage the Government to introduce genuine electoral reform to ensure that political party funding and campaign financing are not overwhelmed by corporate sponsorship and to ensure that donations surpassing prescribed amounts are publicly disclosed.

Recommendation 13 on Public Service

UNDP should

- ▶ urge the Government to establish public service complaints boards to allow ordinary citizens to access remedies in case their rights have been violated in connection with corrupt practices. The procedures for such administrative bodies should ideally be easy to access, offered at a no-cost basis and well publicized by the Government through the media and other means.
- ▶ support the formulation and dissemination of codes of ethical behaviour for public servants, especially those working in the administration of justice.

Recommendation 14 on Regional and City Authority Involvement

UNDP should

- ▶ work with the Government to involve regional and city authorities in all anti-corruption strategies and measures so as to maximize the impact of such efforts at all levels.
- ▶ work directly with city mayors and public officials on anti-corruption initiatives as regards government and police services at the local level.

Recommendation 15 on Recognizing Positive Developments

UNDP should

- ▶ identify areas where anti-corruption measures have met with success and formally recognize and acknowledge such positive developments perhaps using the ‘islands of integrity’ approach that recognizes parts of the public service that are ‘change leaders’ in anti-corruption reform efforts.

Recommendation 16 on Transparency and Public Audits

UNDP should

- ▶ encourage the Government to introduce maximum transparency and the use of public audits to expose corruption, clarify possible public misperception or misunderstanding as regards public expenditures, as well as highlight principles of clear accountability for all procurement and spending responsibilities.
- ▶ assist Governments in strengthening public audit institutions such as the Cour des Comptes, in order to improve standards of controlling public expenditures in an effort to guarantee the independence of such bodies.

Recommendation 17 on Labour Inspectorates

UNDP should

- ▶ encourage the Government to work closely with the International Labour Organization to establish fair and effective supervision of labour inspectorates so that corruption that undermines health and safety in the workplace is eradicated.

Recommendation 18 on Business ‘Corruption Free Zones’

UNDP should

- ▶ encourage foreign and local businesses to declare themselves as ‘corruption-free zones’ that neither offer nor accept bribes.

Recommendation 19 on Assessing Foreign and Multilateral Perceptions of Corruption

UNDP should

- ▶ liaise with Diplomatic Missions and national donor agencies to assess regularly the perceptions of key actors in development assistance as to the state and trends of corruption within the particular country.
- ▶ encourage the Government to work constructively with foreign Governments and development banks to acknowledge problems of corruption and to gain support for tackling them.

Recommendation 20 on Health and Education

UNDP should

- ▶ work with the Government to address corruption in the health and education sectors, in close cooperation with the International Monetary Fund, the World Bank and the UN Office of Drugs and Crime.

Recommendation 21 on Prevention

UNDP should

- ▶ maintain its efforts on bringing Governments within the regime of the Convention against Corruption. This would import a set of treaty obligations on the Government to institute a range of concrete initiatives to fight corruption, most importantly, the following:
 - ❑ to establish codes of conduct for public officials (Article 8);
 - ❑ to establish appropriate systems of procurement, based on transparency, competition and objective criteria (Article 9);
 - ❑ to ensure public reporting that enhances transparency within the public administration (Article 10);
 - ❑ to take measures to strengthen the integrity of the judiciary (Article 11);
 - ❑ to take measures to prevent corruption in the private sector, including providing for stronger accounting and auditing standards as well as a set of civil, administrative and criminal penalties (Article 12), together with preventive measures;
 - ❑ to take appropriate measures to ensure the participation of civil society in anti-corruption strategies in a way that promotes human rights, in particular, the public's access to information without involving arbitrary interference with privacy, family, home or correspondence, or to attacks upon the honour and reputation of persons under suspicion (Article 13); and
 - ❑ to institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions (Article 14).

In this connection, UNDP could offer expert technical assistance to Governments:

- to outlaw the offering or giving to a national public official of undue advantage as well as solicitation or acceptance of such offers or gifts (Article 15) or in relation to a foreign public official or official of a public international organization (Article 16);
- to outlaw embezzlement, misappropriation or diversion of benefits committed by a public official (Article 17);
- to outlaw trading in influence (Article 18);
- to outlaw abuse of functions or position to obtain undue advantage (Article 19);
- to consider adopting measures to catch cases of illicit enrichment involving “a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income” (Article 20);
- to outlaw bribery (Article 21) and embezzlement of property (Article 22) in the private sector;
- to criminalize the laundering of proceeds of crime (Article 23) or the concealment of unlawfully gain (Article 24);
- to outlaw obstruction of justice (Article 25); as well as
- to criminalize acts which constitute participation in or attempt at the commission of a Convention offence (Article 27).

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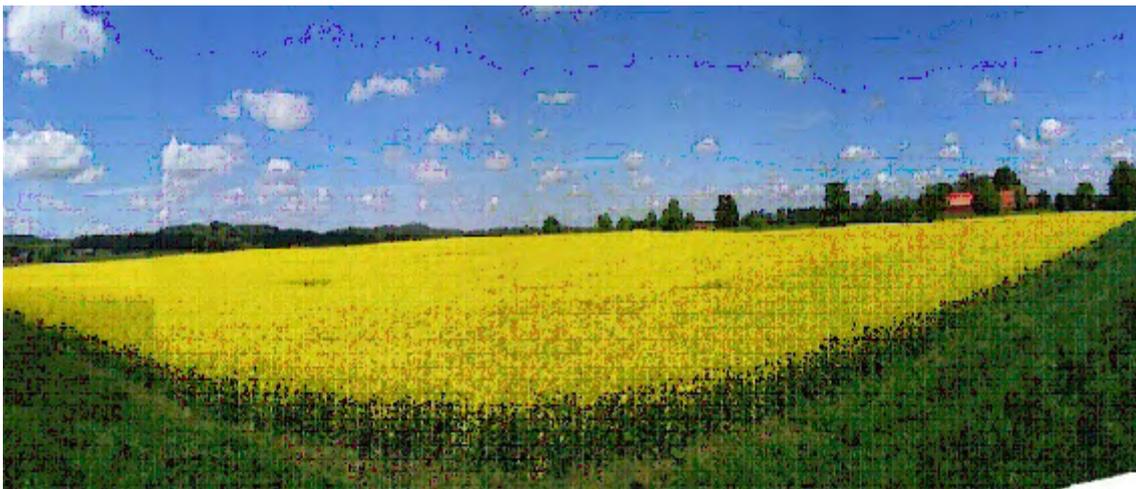
Raoul Wallenberg Institute
of Human Rights and Humanitarian Law

Concept Note on the Linkages between Anti-Corruption and Human Rights

Appendix to the In-Depth Study

for the

United Nations Development Program



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Concept Note on the Linkages between Anti-Corruption and Human Rights

This *Concept Note* provides a synopsis of the main findings of the *In-Depth Study on the Linkages between Anti-Corruption and Human Rights*, carried out by Dr. Lyal S. Sunga and Dr. Ilaria Bottiglierio of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Lund, Sweden, for UNDP, and focuses on the Recommendations set forth in that study. The present *Concept Note* is not meant to duplicate or supersede UNDP's *Practice Note on Anti-Corruption* of February 2004 which focuses more on UNDP's operational niche and offers a five pronged anti-corruption reform strategy, but rather to elaborate on the incorporation of a human rights based approach in anti-corruption strategy and implementation, although this *Concept Note* and the February 2004 *Practice Note* inevitably overlap at certain points.

The *In-Depth Study* explores the relationship between corruption and human rights with a view to recommending ways in which UNDP could integrate more fully human rights perspectives into its anti-corruption technical assistance programmes. First, we consider the value of adopting a human rights based approach to anti-corruption strategies. Second, we make explicit the links among human rights, democracy and the rule of law, before discussing how corruption poses a threat to all three. We approach this relationship from several different angles: 1) by considering how corruption poses a serious threat to human rights promotion and protection; 2) by considering how weak human rights promotion and protection can create conditions that increase the incidence of corruption; and 3) by considering how human rights based approaches in anti-corruption strategies can strengthen democracy and the rule of law and promote the enjoyment of human rights in general. Next, we identify corruption as a recognized matter of international legal concern and discuss the relevance of international legal frameworks to address it. We then review pertinent examples that illuminate *in concreto* the threat corruption poses to specific civil and political rights as well as to specific economic, social and cultural rights. Following that, we discuss key actors and policy approaches to fight corruption which leads us finally to our recommendations as to the practical measures UNDP should take with its partners to fight corruption in line with international human rights standards.

* * * * *

Why is a human rights based approach essential to anti-corruption strategy?

Because ...

- ▶ corruption corrodes not only the integrity of particular units within governmental administrative organs, but it undermines the whole delivery of government services and quickly depreciates the credibility and legitimacy of public services. A human rights based approach maintains broader international focus of the effects of corruption on the enjoyment of human rights.
- ▶ from a practical point of view, anti-corruption strategies are likely to be less effective where the rot of corruption has already reached into the prosecutor's office, drug enforcement authorities, the Executive, the judiciary, and in some cases, even national anti-corruption commissions. A human rights based approach represents a direct and potentially effective way in which to empower ordinary individuals to demand transparency, accountability and responsibility from elected representatives and public officials.
- ▶ the international human rights institutional regime at global and regional levels, has a well developed and integrated system of norms and implementation mechanisms that can contribute much to international monitoring, reporting and follow-up on issues involving corruption insofar as they relate to human rights questions.
- ▶ a human rights based approach to problems of corruption has an important educative effect that invites mass media coverage and NGO action and public awareness raising through media campaigns and outreach in schools. By highlighting the links between corruption and the denial of human rights, corrupt practices are exposed for what they are: a direct attack on good governance practices and hence, on human rights at all levels, and not merely a criminal law matter attracting interest perhaps only from the criminal bar and legal scholars.
- ▶ the application of international human rights standards is itself governed by the over-arching principle of non-discrimination on grounds "such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" to paraphrase Article 2(1) of the ICCPR. Thus, linking anti-corruption policies, laws and strategies to human rights standards can help ensure that such measures are implemented in ways that not only respect basic human dignity, but do so in a non-discriminatory fashion.
- ▶ finally, particularly in less developed countries, corruption siphons public funds into private bank accounts, impairing economic, political and social development. Funds intended for development, including the building and maintenance of hospitals, schools and other essential services suffer directly as a result. There is thus a clear connection between widespread and systematic corruption and the squandering of natural resources which could have been used to strengthen economic and social development and to improve the enjoyment of human rights, which calls for corruption to be understood and addressed from the broader perspective of human rights based analysis, not only from a criminal law perspective.

Integrating Human Rights Based Approaches into Anti-Corruption Strategies

Corruption distorts the provision of public goods and services to people in need of them, and skews public access to wealth, income and opportunity, in effect, severely undercutting the principles of equal treatment, equality before the law and non-discrimination that are the hallmarks of democracy, human rights and the rule of law. Moreover, there is a clear relation between corruption and poverty and, given that poverty reduces or prevents the enjoyment of basic human rights and fundamental freedoms, by extension, corruption undermines the enjoyment of human rights on a pervasive basis.

Political Rights / Democratic Governance / Empowerment of Women / Right to Self-Determination

In serious cases, corruption can systematically subvert both democratic governance and the right to self-determination by hindering the effective enjoyment of political rights. The effective guarantee of political rights forms an essential pillar for the existence of democratic governance as well as full human rights implementation in general. In countries where the people have weak political rights, and cannot elect their representatives freely and periodically, the opportunities for government to concentrate its own power and to abuse it at the expense of human rights, will be greater. Political rights ensure that government has to represent the will of the people and stay accountable to the electorate. Thus, the effective guarantee of political rights constitutes an important control to limit the abuse of State power. Article 25 of the International Covenant on Civil and Political Rights, 1966, guarantees the right of every citizen to have access, on general terms of equality, to the public service in his or her country.

Right to Development

The UN Commission on Human Rights Independent Expert on the Right to Development, Arjun Sengupta defined the right to development as follows:

“The definition of the right to development as the right to a particular process of development in which “all human rights and fundamental freedoms can be fully realized” is consistent with the approach of the human rights movement. It refers to the realization of all the rights and freedoms recognized as human rights - civil and political rights and economic and social and cultural rights - in their totality as an integrated whole, as all these rights are interrelated and interdependent. The outcomes of development, as well as the way the outcomes are realized, constitute the process of development which is regarded as a human right. It is a process in time, not a finite event ...”

Particularly in least developed countries can the effects of corruption on the right to development, democratization and economic growth be devastating. As the Global Coalition for Africa mentions in a study of corruption and development in Africa: “low salaries ... may partly explain the existence of petty corruption and theft at lower levels ... [but] it cannot be an excuse for higher-level and large scale bureaucratic corruption. Unless high-level bureaucratic corruption is addressed, it will be difficult to reduce corruption at lower-levels”.

Right to Health

The right to health has to be considered to rank among the more important economic, social and cultural rights because equal access to medical care can spell the difference between life and death and the capacity to enjoy all other human rights. Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966, obliges States Parties to “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” and requires them to reduce the stillbirth-rate and infant mortality, to promote the healthy development of the child, to improve environmental and industrial health, as well as to prevent, treat and control epidemic and endemic, occupational and other diseases. Article 12 also obliges States Parties to create conditions that “would assure to all medical service and medical attention in the event of sickness.”

The particularly heavy impact of corruption on the poor has been felt in many countries in connection with the human right to health. This may involve, for example, giving money to doctors in order to get an appointment prior to other patients, or to move up on the waiting list. Corruption also distorts the provision of pharmaceutical products away from those who may most need them towards persons willing and able to bribe health care workers.

Rights of the Child / Right to Education

Article 28 of the UN Convention on the Rights of the Child, 1989, obliges all States Parties to: “recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity”. Article 21 obliges States Parties to ensure that adoption of a child is authorized only by competent authorities in accordance with applicable law and procedure. Article 34 obliges States Parties to protect the child from all forms of sexual exploitation and sexual abuse.

In certain countries, teachers have abused their power by threatening not to award passing grades to pupils unless their parents pay a bribe. In effect, they throw a disproportionately high burden on poorer parents, at the same time reinforcing the relatively stronger position of wealthier families, reproducing class inequality for the future. Fairly applied, education can offer children a powerful means by which to break the shackles of class inequality and escape diminished prospects for accessing income, wealth and opportunity according to merit. Corruption in the education sector slants the playing field against the children of already disadvantaged parents. Corrupt practices has sometimes meant that low quality food has been reportedly procured for schools and other educational institutions and the rest of the money skimmed off by procurement officers. corrupt practices has also become endemic in recruitment of teachers and professors and in student admissions at universities and colleges. In other instances, corrupt police have been paid to ignore cases of the sexual exploitation of children.

Right to Work / Social Security

In many countries, employers routinely bribe government inspectors responsible for uncovering, reporting on and imposing sanctions for breaches of labour law, thus avoid incurring higher labour costs from minimum wage requirements, the honouring of statutory rules relating to dismissal and compensation, and from introducing proper lighting, safety and health conditions in the workplace. This kind of corruption exerts a very direct impact on the health and safety of workers and on the enjoyment of all human rights associated with the right to work and associated social benefits.

Rights to Freedom of Opinion / Expression / Information / Press

The rights to freedom of opinion, expression and information, as well as freedom of the press, remain essential to the existence of open and accountable democratic governance. Corruption thrives most insidiously in societies where free exchange of ideas and information have been tightly restricted and secret deals can be kept secret. The free exchange of information constitutes one of the more powerful elements by which the public, mass media and civil society at large, can come to know of instances of corruption and to call for greater accountability on the part of public officials, to demand the overhaul of institutions where corrupt practices have become endemic and to limit future abuse of power. Under Article 19(2) of the ICCPR, everyone has the right to hold opinions without interference, and to seek, receive and impart information through the media of his or her choice.

Access to Justice / Right to a Remedy / Equality before the Law / Right to Fair Trial / Independence of the Judiciary

Like other key public services, the judiciary can figure as part of the problem of corruption, or instead, as part of the solution to control it. Corruption within the judiciary has a particularly far reaching effect on all legal and administrative structures of public administration. The judiciary can root out corruption by remaining fair and impartial in respect of criminal prosecutions and disciplinary proceedings involving corruption, but a corrupt judiciary itself also becomes a perpetrator of corrupt practices. Once the administration of justice has fallen into serious disrepute, it can be very difficult to regain the public's confidence in State institutions as a whole.

Although governments are advised to launch strong anti-corruption programmes and to implement these vigorously, particularly through effective criminal prosecutions, anti-corruption measures themselves have to be applied with fairness and transparency. Criminal prosecutions for corruption can sometimes be launched on a patently selective basis or carried out more for base political motives rather than to uphold the rule of law. In such cases, anti-corruption prosecutions can undermine the independence of the judiciary and trample upon the right to fair trial.

Summary or Arbitrary Executions

The role of corruption in human rights violations is not restricted only to political rights and the various economic, social and cultural rights we have discussed above, such as the right to work, right to education and right to health. In even more brutal fashion, corruption frequently lies behind violations of the right to life, the right not to be enslaved and the right not to be subjected to torture, inhuman or degrading treatment or punishment.

Many other examples could be cited to indicate that where corruption has thoroughly infiltrated the police and the military, ordinary citizens find themselves completely at their mercy. Hidden from judicial oversight, supervision from public institutions, and the vigilance of the media and public at large, corruption in the form of extortion can result in such severe abuse as torture. Where police act in collusion with criminal gangs and human trafficking networks, vulnerable people are more prone to become enslaved and exploited for the purposes of prostitution or forced to work in sweat shops.

How Effective Anti-Corruption Strategies Can Positively Influence Democracy, the Rule of Law and Human Rights

The number of examples showing the negative effect of corruption on democracy, the rule of law and human rights can be multiplied indefinitely. It is important however also to note the positive correlation between the implementation of a human rights based anti-corruption strategy and the consolidation and strengthening of democracy, the rule of law and the enjoyment of human rights, which has been well documented in various best practices compilations that relate specific anti-corruption policies, strategies and measures, to good governance.

The Rajasthan Freedom of Information Example

The grassroots organization Mazdoor Kisan Shakti Sangathan (MKSS) or Association for the Empowerment of Workers and Peasants in English, in Rajasthan, India, in 1996, organized a large gathering of peasants and rural men and women. They descended upon local public officials, demanding the immediate disclosure of all documentary records so as to expose the routine misappropriation of public monies intended for development. Initially, public officials succeeded in keeping these documents confidential but, following a series of public demonstrations as well as a successful campaign to introduce freedom of information legislation into Rajasthan, the MKSS managed to pry open public expenditure accounts, exposing systematic corruption and perpetrators.

The Ghanaian Freedom of Information Example

The Right to Information Act 2003 of Ghana provides another interesting example of best practices involving the right to information. The Act guarantees each individual, *inter alia*, the right to access to personal information “held by a government agency or a private body which relates to that individual”, without requiring the individual to provide any specific reason as to why he or she is requesting a particular document. In this respect, the Government owes to all citizens a general ‘responsibility to inform’.

Low Level of Corruption, and Strong Democracy, Rule of Law and Human Rights in Botswana

One can also mention the case of Botswana, where a Directorate on Corruption and Economic Crime was established in 1994, after the Government had become seriously concerned about the adverse effects of corrupt practices on the country’s development. The Directorate’s powers extend to cases involving “public officers, employees of public bodies, agents and those in the private sector”. Efforts at fighting corruption in the country go hand in hand with tangible improvements in many human rights areas, including independence of the judiciary, the right to fair trial and the right to a remedy. In Transparency International’s 2006 Corruption Perceptions Index, Botswana ranked a respectable position of 37th out of 163 countries, beating among others, South Korea, Cyprus, Hungary, Jordan, Italy, Lithuania, Latvia and South Africa.

Key Actors in Anti-Corruption Strategies

Essentially, human rights based approaches maintain central focus on human rights and fundamental freedoms, building support for anti-corruption initiatives and strategies from the ground up, despite the fact that from an institutional point of view, many of the key actors, policy approaches and recommendations have to be taken also 'from the top down'. No institutional mechanism to fight corruption, regardless as to how high it may be in the State hierarchy or how elaborate it may be, is likely to meet with sustained success in fighting corruption unless ordinary people whose rights are directly affected on a daily basis by the ravages of corruption feel they can put their trust in, and actually turn to, such mechanisms. Positive change to eradicate corruption on a broad front therefore requires first and foremost that people feel empowered to fight it and that they can expect to live in a corruption-free environment in future. Ultimately, radical change in the cultural norms, values and expectations of society at all levels is likely to bring about greater and longer lasting improvement as regards corruption than the implementation of any number of strategies without the requisite political will. For such change to be instituted, UNDP must work with the following key actors:

- ▶ **Civil Society**
- civil society reps in anti-corruption commissions / mass campaigns / citizens' complaints procedures / national action plans / gauging public confidence / right to information
- ▶ **Mass Media and Associations of Journalists and Independent Broadcasters**
- freedom of the press / training of journalists on anti-corruption reporting
- ▶ **National Institutions on Anti-Corruption, Human Rights and /or Right to Information**
- establishing national anti-corruption institutions independent of the Executive
- ▶ **National Legislative Public Hearings on Corruption**
- keeping top-level political focus and priorities on combating corruption
- ▶ **Training of Attorneys General, General Prosecutors, Judicial Personnel, Police and Law Enforcement Officials**
- raising anti-corruption awareness in the judiciary and the level of expertise to prosecute
- ▶ **Public Service Commissions / Independent Electoral Commissions**
- to provide fair and independent complaints procedures
- ▶ **Associations of Regional Authorities and City Mayors / Public Auditors**
- to engage pertinent authorities on tender and procurement processes at local levels
- ▶ **Trade Unions / Labour Inspectorates / Public Auditors**
- transparency and accountability to promote workplace health and safety
- ▶ **Political Party Organizations**
- reducing undue financing influence and encouraging political parties to fight corruption
- ▶ **Business-Persons Associations**
- encouraging development of corruption-free zones in business dealings
- ▶ **Diplomatic Missions / National Donor Agencies (CIDA, DANIDA, SIDA, UKDFID, USAID, etc.), Regional Peer Review Mechanisms and Workshops**
- encouraging Governments to join with international partners to eliminate corruption
- ▶ **Development Banks**
- working in partnership with the World Bank, regional development banks, IMF etc
- ▶ **United Nations Office of Drugs and Crimes (UNODC)**
- supporting and collaborating with UNODC in anti-corruption technical assistance

Policy Recommendations to Strengthen UNDP's Role in the Fight against Corruption

Recommendation 1 Training of UNDP Staff and Consultants

UNDP should:

- ▶ step up training of its staff and consultants to integrate more fully a human rights based approach in all technical assistance programmes, including in anti-corruption.
- ▶ highlight in this training the distinction between the 'politically sensitive character of certain human rights' as opposed to the 'ideal of political neutrality in technical assistance programming', to guide UNDP programme staff as to how a human rights based approach can be implemented in their daily work, including as regards anti-corruption strategy implementation.
- ▶ launch as soon as possible, a seminar series getting the human rights based message across. This could take the form of an on-line seminar made available to all UNDP staff.

Recommendation 2 on Ratification of Multilateral Treaties

UNDP should

- ▶ encourage, and where necessary, and provide technical assistance to every Government to sign and ratify the following conventions and additional protocols thereto if they have not already done so, and ensure that Government law, policy and practice conform fully to the norms set out therein:
 - ❑ UN Convention against Corruption
 - ❑ UN Convention against Transnational Organized Crime
 - ❑ the 13 UN Conventions against Terrorism
 - ❑ the 7 principal multilateral human rights conventions: Convention against Racial Discrimination, ICCPR, ICESCR, Convention on Discrimination against Women, UN Torture Convention, Convention on the Rights of the Child, Migrant Worker's Convention
 - ❑ the Rome Statute of the International Criminal Court

Practically speaking:

- ▶ the UNDP Head of Country Office should, in his or her discussions with Government officials at the highest levels, remind them of the importance of becoming a State Party to the above instruments. These efforts should be coordinated with other UN agencies, bodies and programmes, in order to avoid overlap and so as to follow a concerted strategy. Multilateral instruments remain vital to fighting anti-corruption and transnational organized crime, facilitating mutual State cooperation in criminal matters, fighting terrorism, promoting and protecting basic human rights and fundamental freedoms, and ensuring individual criminal responsibility under international law for genocide, war crimes and crimes against humanity. States which have neglected to integrate themselves fully into existing multilateral frameworks for dealing with these issues in effect have 'not done their basic homework' and place themselves in a disadvantaged position vis-à-vis other countries that have taken the effort to benefit more fully from international cooperation and technical assistance. While treaty-making falls within a sovereign State's domestic jurisdiction, it would be remiss of UNDP not to remind and encourage every Government with which it deals of the importance of undertaking these basic international legal obligations for the strengthening of democracy, human rights and the rule of law.

Recommendation 3

Developing Strategies and National Action Plans

UNDP should:

- ▶ in partnership with the World Bank, IMF and other development banks, as may be appropriate, assist the Government in identifying problem areas involving corrupt practices in the country with a view to prioritizing solutions according to: a) urgency; b) practical feasibility; and c) visibility impact. A coherent strategy or ‘national action plan’ to fight anti-corruption, if one does not already exist, should be drawn up in a transparent manner, with the active involvement of civil society representatives, various political constituencies, labour union and employer representatives, as well as equal representation of women, minority groups and other sectors which might suffer disproportionately from corruption and corrupt practices. In other words, developing an anti-corruption strategy should itself be an exercise in empowerment and in stimulating public focus and interest about the issue. Rather than to target the most difficult corruption problems first, it would be useful to score smaller successes with easier cases. For example, it would be more prudent to win the anti-corruption battle on easier fronts first, perhaps in connection with customs officers or petty corruption involved by public officials, rather than to try to tackle the big, tough cases all at once, an approach one UNDP case study refers to as ‘picking low-hanging fruit’ in order to create political momentum. The important thing will be for the public to see that the Government’s new anti-corruption drive actually yields success and that individuals engaging in corrupt practices are actually being prosecuted. This will serve to build public confidence and support for the Government’s anti-corruption efforts and strengthen the role of civil society as a key ally of the Government in the anti-corruption campaign. In this connection, it is essential that the Government commission periodic independent surveys to track people’s perceptions on corruption and the degree to which its anti-corruption campaign may be perceived as effective.
- ▶ UNDP should offer itself in an advisory capacity in legislative reform efforts to promote transparency and support the development of anti-corruption legislation at all levels.

Recommendation 4

Anti-Corruption Awareness Mass Campaign

UNDP should:

- ▶ join with other key actors (in-country civil society representatives), national human rights institutions, anti-corruption commissions, right to information commissions, national and regional public authorities, mass media organizations, employer and employee associations, representatives of police, Diplomatic Missions, development banks and other intergovernmental organizations, to sponsor a Government-led mass publicity campaign as part of its anti-corruption strategy to build awareness and support for its implementation and to fight impunity. This campaign could involve official Government announcements, billboards, advertising on TV, radio and in newspapers as well as debates, theatre troupes, and the dissemination of posters and comic books featuring anti-corruption themes.

Recommendation 5 National Institutions

UNDP should:

- ▶ encourage the Government to establish national institutions to investigate, monitor and report on human rights, anti-corruption and the right to information. Such institutions should be established fully in line with the Paris Principles relating to the Status of National Institutions. UNDP should encourage national institutions to reach beyond such principles and apply the highest standards on human rights monitoring, not only on anti-corruption matters.
- ▶ encourage the Government to participate actively in fora that bring together representatives of national anti-corruption institutions from other countries so as to share best practices and experiences. In some instances, cooperation with foreign national anti-corruption institutions has resulted in the sharing of information that has led directly to criminal prosecutions of corrupt officials with respect to activities abroad which is necessary to fight impunity.

Recommendation 6 Freedoms of Speech, Opinion, Expression, Information and the Press

UNDP should:

- ▶ urge the Government to ensure that the right to the freedoms of speech, opinion, expression, information and the press, are fully respected.
- ▶ support the training of journalists on corruption-related issues, perhaps in cooperation with the World Bank or other suitable partner.
- ▶ work with the Government to ensure that access to information laws are actually implemented properly. In many countries that have adopted access to information legislation, requests for access to information have either been ignored or answered inadequately or inconsistently.

Recommendation 7 Parliamentary Commissions

UNDP should:

- ▶ encourage the Government to establish a parliamentary commission on corruption, where such a body does not already exist. Such commissions, with multi-party representation, should be mandated to hold public hearings on corruption challenges facing the country and to hear the views of civil society and all relevant constituencies on how to tackle the problem. The purpose of such hearings would be to: a) maintain visibility on the issue of corruption as a matter of high political priority; b) encourage the involvement and support of key actors in the process; and c) maintain a transparent and democratic approach, as well as a human rights based approach to the development, implementation and monitoring of anti-corruption strategies and measures.
- ▶ alternatively, UNDP should work together with existing bodies such as ministerial committees, petition committees, public accounts offices, and other implementation, regulatory and supervisory bodies, to promote anti-corruption strategies and offer assistance on anti-corruption matters.

Recommendation 8

Justice Sector Reform and Training

UNDP should:

- ▶ work with the in-country justice sector to ensure that the law, policy and practice relating to anti-corruption are up-to-date, effective and that they do not violate human rights, such as those relating to fair trial, independence of the judiciary, and the many other human rights discussed in Part IV of this study. The ultimate test however will not only be in the existence of anti-corruption laws on the books, but more in how they are actually implemented.
- ▶ support Government efforts to train officials responsible for the rule of law in the importance of anti-corruption legislation and in fair and effective prosecution. Such training must include attorneys general, general prosecutors, judicial personnel and police and law

Recommendation 9

Independent Police Complaints Review Board

UNDP should:

- ▶ urge the Government to set up an effective and easily accessible independent complaints review board to receive individual complaints against police officers in cases of corruption. Unless the police recognize that they risk prosecution and / or disciplinary proceedings for abuse of their authority, it will be very difficult to eradicate such abuse.
- ▶ support the establishment of codes of conduct to apply to all levels of rule of law officials. These codes of ethics should make clear the Government's expectation as to the conduct of its employees and foreclose the defense that public officials were not properly warned in advance of possible disciplinary proceedings that may be brought against them.

Recommendation 10

UNDP Best Practices Manual

UNDP should:

- ▶ draw upon its own extensive experience and case studies to produce a best practices manual on anti-corruption to assist the Government to develop a national action plan or national strategy to combat corruption.

Recommendation 11 Political Party Involvement

UNDP should:

- ▶ encourage major political parties to engage in a dialogue on corruption, with the aim at supporting the Government's anti-corruption strategies and measures, and to establish clearly their own political commitment to fighting corruption. In particular, UNDP could encourage political parties to set up internal anti-corruption units and committees to tackle instances of corruption that arise within political decision-making bodies.

Recommendation 12 Electoral Reform

UNDP should:

- ▶ encourage the Government to introduce genuine electoral reform to ensure that political party funding and campaign financing are not overwhelmed by corporate sponsorship and to ensure that donations surpassing prescribed amounts are publicly disclosed.

Recommendation 13 Public Service

UNDP should:

- ▶ urge the Government to establish public service complaints boards to allow ordinary citizens to access remedies in case their rights have been violated in connection with corrupt practices. The procedures for such administrative bodies should ideally be easy to access, offered at a no-cost basis and well publicized by the Government through the media and other means.
- ▶ support the formulation and dissemination of codes of ethical behaviour for public servants, especially those working in the administration of justice.

Recommendation 14

Regional and City Authority Involvement

UNDP should:

- ▶ work with the Government to involve regional and city authorities in all anti-corruption strategies and measures so as to maximize the impact of such efforts at all levels.
- ▶ work directly with city mayors and public officials on anti-corruption initiatives as regards government and police services at the local level.

Recommendation 15

Recognizing Positive Developments

UNDP should:

- ▶ identify areas where anti-corruption measures have met with success and formally recognize and acknowledge such positive developments perhaps using the ‘islands of integrity’ approach that recognizes parts of the public service that are ‘change leaders’ in anti-corruption reform efforts.

Recommendation 16

Transparency and Public Audits

UNDP should:

- ▶ encourage the Government to introduce maximum transparency and the use of public audits to expose corruption, clarify possible public misperception or misunderstanding as regards public expenditures, as well as highlight principles of clear accountability for all procurement and spending responsibilities.
- ▶ assist Governments in strengthening public audit institutions such as the Cour des Comptes, in order to improve standards of controlling public expenditures in an effort to guarantee the independence of such bodies.

Recommendation 17 Labour Inspectorates

UNDP should:

- ▶ encourage the Government to work closely with the International Labour Organization to establish fair and effective supervision of labour inspectorates so that corruption that undermines health and safety in the workplace is eradicated.

Recommendation 18 Business ‘Corruption Free Zones’

UNDP should:

- ▶ encourage foreign and local businesses to declare themselves as ‘corruption-free zones’ that neither offer nor accept bribes.

Recommendation 19 Assessing Foreign and Multilateral Perceptions of Corruption

UNDP should:

- ▶ liaise with Diplomatic Missions and national donor agencies to assess regularly the perceptions of key actors in development assistance as to the state and trends of corruption within the particular country.
- ▶ encourage the Government to work constructively with foreign Governments and development banks to acknowledge problems of corruption and to gain support for tackling them.

Recommendation 20 Health and Education

UNDP should:

- ▶ work with the Government to address corruption in the health and education sectors, in close cooperation with the International Monetary Fund, the World Bank and the UN Office of Drugs and Crime.

Recommendation 21 Prevention

UNDP should:

- ▶ maintain its efforts on bringing Governments within the regime of the Convention against Corruption. This would import a set of treaty obligations on the Government to institute a range of concrete initiatives to fight corruption, most importantly, the following:
 - ❑ to establish codes of conduct for public officials (Article 8);
 - ❑ to establish appropriate systems of procurement, based on transparency, competition and objective criteria (Article 9);
 - ❑ to ensure public reporting that enhances transparency within the public administration (Article 10);
 - ❑ to take measures to strengthen the integrity of the judiciary (Article 11);
 - ❑ to take measures to prevent corruption in the private sector, including providing for stronger accounting and auditing standards as well as a set of civil, administrative and criminal penalties (Article 12), together with preventive measures;
 - ❑ to take appropriate measures to ensure the participation of civil society in anti-corruption strategies in a way that promotes human rights, in particular, the public's access to information without involving arbitrary interference with privacy, family, home or correspondence, or to attacks upon the honour and reputation of persons under suspicion (Article 13); and
 - ❑ to institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions (Article 14).

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