

CORRUPTION AS A THREAT TO HUMAN RIGHTS

A Proposal for Reform of the International Corruption Legal Regime



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1 Introduction

1.1 A call for reform: An inadequate regime

Corruption has traditionally been considered a problem involving public officials and the private interests they serve, be it their own interests or those of others. More recently it has been increasingly considered a problem that undermines the rule of law, democratic governance and sustainable development.¹ Widespread corruption also leads to systemic human rights violations, and for a society to exist under the rule of law, uphold democratic institutions and promote development, human rights must be protected. It is the argument of this paper that the current legal framework dealing with corruption does not fully encompass the magnitude of the issue. The legal framework is too narrow in its focus on the criminalization of corrupt acts and lacks any consideration for third parties whose human rights are violated by such acts. The legal framework should address the reality that individuals who have no part in corrupt deals are nonetheless directly affected. Furthermore, the legal framework should provide for effective remedy to those whose human rights have been violated.

Corruption and human rights are interrelated and have a circular cause and effect relationship,² yet this link is not reflected in the existing corruption legal regime. The disharmony in the law could be remedied by including a human rights component to the corruption legal regime. First, there must be a change in the perception of corruption. Human rights must be an integral part of the overall understanding of corruption. Adding a human rights perspective may also have the effect of placing the fight against corruption in a position of higher priority within the international community. This may in turn

¹ Kumar (2003) p.35 "The institutionalized form of corruption creates mass victimization, which threatens the rule of law, democratic governance and the social fabric of any society;" *see also* U4 Report (2007) p.15

² *See supra* Section 2.

increase the chances that both the public and private sectors will support such a change in the corruption legal regime.

Section 2 of the paper discusses the link between corruption and human rights. Section 3 covers the general framework of current international corruption law, including some mention of regional instruments. Section 4 attempts to explain how the current corruption regime came to look the way it does by reflecting back on how the anti-corruption movement started. Section 5 introduces the human rights framework and provides examples of efforts to place human rights obligations on various non-state actors. Also, the argument is put forward that corruption should be considered a threat to human rights. Section 6 presents a case study of the logging industry in Papua New Guinea to provide empirical evidence of how human rights are violated as a result of corruption, despite PNG's many human rights obligations under international law. The case study also illustrates how the current corruption legal regime lacks any recourse for the individuals whose human rights are violated.

In Section 7 the paper will suggest how to create the most effective and all-encompassing legal regime to best fight corruption and protect human rights. Two alternatives are proposed for how the corruption legal regime can be expanded to provide for human rights protection. The first suggestion is the use of a soft law instrument, and the second alternative suggests that elements of the human rights legal regime be introduced into the corruption regime through a binding protocol to the UNCAC. The idea is to bring suggestions to the table and encourage discussion. The two suggestions are by no means meant to represent complete, final solutions to the issue set forth in this paper.

1.2 The UNCAC as a representation of the corruption regime³

In discussing the current corruption legal regime, a comprehensive analysis of the numerous anti-corruption conventions in effect will not be undertaken. Rather the United

³ The term "corruption regime" is to be understood to mean a regime that combats corruption and is synonymous with "anti-corruption regime"

Nations Convention against Corruption (the UNCAC)⁴ will be used to represent the current regime. The UNCAC is the appropriate representative convention of the regime not least because it is the most recently adopted global anti-corruption convention. It is thought to reflect an international consensus about the measures states should take in the areas of prevention, criminalization, asset recovery and international cooperation on investigation and prosecution.⁵ This can be attributed in part to the fact that the drafting of the UNCAC was based upon previous anti-corruption efforts. As a result, the UNCAC contains many provisions which mirror those contained in, for example, the Inter-American Convention against Corruption (the Inter-American Convention) of the Organization of American States (the OAS). However, the extent and detail of the UNCAC provisions are more far reaching than conventions that have come before it, particularly with regard to asset recovery and international cooperation obligations.⁶

1.3 A focus on legal reform

The discussion herein will not include how countries should wage anti-corruption campaigns. This depends on the circumstances specific to each country. Root causes of corruption, such as weak governance, a lack of democratic institutions, or both, will require different anti-corruption measures. Each country, and even in different regions within a single country, has to come up with a strategy to suit its particular circumstances. No pre-fabricated strategy will work anywhere it is applied. Questions of the causes of corruption and how to develop a strategy to combat it are important to understanding the deeply complex issue of corruption and can be seen as part of a parallel discussion to the one being undertaken here.⁷ The scope of this paper will be limited to the issue of addressing human rights within corruption law.

⁴ The United Nations will hereinafter be referred to as “the U.N.”

⁵ Global Organization of Parliamentarians Against Corruption

⁶ Transparency International

⁷ See Rose-Ackerman (2004); see also Buckley (2002) and Hussman (2007)

2 The link: Corruption and human rights

2.1 The vicious circle syndrome

Corruption both results from a failure of governance and is a cause of its continued failure. A system of good governance is one that encompasses transparency and accountability. If these characteristics are present, decision-making by the state will take into consideration the views of the most vulnerable minorities in society.⁸ The state will act in the interest of protecting its citizenry rather than in the interest of an elite few. Where there is a failure of governance, the state does not provide its people with the tools that are necessary to empower themselves against an abusive state, such as allowing them to exercise their freedom of expression, freedom to information and other civil liberties. These rights provide a society with the necessary checks and balances to influence or change government policy, and of course, control corruption. Without this power in the hands of the people, a state can act without being called to account, including for the benefit of corporate interests at the expense of the general public. An absence of accountability and transparency allows corruption to flourish and the result is further human rights violations.

In the context of development, the World Bank⁹ has said that there is a link between the existence of corruption and a lack of civil and political rights in a society. Because the successful implementation of socio-economic development policies relies on civil and political rights, corruption is therefore also an obstacle to the fulfillment of social and economic rights which depend on those policies.¹⁰ Despite the existence of this link, the Bank observes that human rights law does not include a freedom from corruption and

⁸ U.N. Economic and Social Commission for Asia and the Pacific (2008)

⁹ Also hereinafter referred to as “the Bank”

¹⁰ Kaufmann (2006) p.3

anti-corruption conventions do not explicitly encompass human rights.¹¹ This implies that a key mechanism bridging first and second generation issues—namely corruption as a mediating link—is explicitly omitted from coverage by human right conventions, declarations, and, often in the human rights field generally.¹² The ‘silo’ approaches that the fields of governance, rule of law, corruption and human rights have taken should be challenged and there should be further integration.¹³ The approach taken does have significant implications in terms of strategies and prospects for progress on human rights, and integration is necessary for improving governance and corruption control.¹⁴

2.2 Corruption: A necessary evil

From a different perspective, the argument has been made that corruption is actually necessary for the enjoyment of economic, social and cultural rights.¹⁵ In some of the poorest countries, those perpetrating petty corruption tend to take bribes as a result of low incomes and low standards of living. The bribes are taken merely to make ends meet. Under the existing corruption laws, including the UNCAC, both the givers and takers of bribes would be considered criminals. When the reality is that they are forced into a situation of inescapable daily bribery, it does not seem fair or effective for the law to merely address the criminal aspects of these acts. By changing the perspective of corruption the international community would see that in some societies systematic corruption has infiltrated every sector, working its way down from the top levels to the bottom levels. A more holistic corruption legal regime would be better able to prevent and control corruption. Then these individuals, victims themselves, would not have to resort to bribery.

¹¹ Id.

¹² Id.

¹³ Id. at p. 6

¹⁴ Id. at p.4

¹⁵ Buckley (2002) p.180

3 Current Corruption Framework

3.1 What is corruption?

The traditional legal framework for fighting corruption attempts to prevent and criminalize corrupt acts. There is no internationally recognized uniform definition of corruption though a commonly accepted definition provided by the World Bank is “the use of public power for private benefit.”¹⁶ This definition is intended to include corruption perpetrated by both the public and private sectors. Most anti-corruption instruments refer to a non-exhaustive list of acts that constitute corruption¹⁷ rather than provide a general definition of corruption.¹⁸ These acts can take the form of petty or grand corruption.¹⁹ Petty corruption involves persons in positions of low-level authority such as policemen, medical doctors or teachers who use bribery, extortion, theft or misuse of property to gain small amounts of money.²⁰ Grand corruption involves high-level officials using their authority to gain large amounts of money usually in connection with big transactions such as infrastructure projects.²¹ State capture is a term used to define a form of grand corruption where the private sector is deeply implicated in the active corrupting of public

¹⁶ NORAD (2000) p.7

¹⁷ See Carr (2007) for a comparison of the crimes included in anti-corruption conventions, which include, but are not limited to bribery, embezzlement, fraud, extortion, favoritism and nepotism, and the more recent offense of illicit enrichment where a public official or any other person cannot reasonably explain the possession of his assets.

¹⁸ *But see* Id. at p.131 the South African Development Protocol against Corruption (2001) does define corruption in its art 1.

¹⁹ NORAD (2000)

²⁰ The World Bank (1999)

²¹ Sandgren (2005) p.723 The author also refers to political corruption, a serious type of grand corruption, which is abuse of power by political leaders for private gain and is noted for its threat to democracy.

officials. In a situation of state capture, a private entity, working in collusion with government officials, influences the shaping of state legislation, politics and regulations in a particular sector.²² State capture goes beyond mere corruption in the administration of existing policies, it includes the outright purchase of laws, regulations and policies by private companies.²³ Representative democratic institutions are weakened through the capture of the democratic process by special interests.²⁴

3.2 Advancements in corruption law

The UNCAC is considered an innovative instrument because it is more far-reaching than previous anti-corruption instruments. Like most anti-corruption treaties, the UNCAC requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if they are not already crimes under domestic law. It criminalizes not only basic forms of corruption but also private sector offenses and offences committed in support of corruption, including money-laundering and obstructing justice. The convention also contains a whole chapter on prevention measures, and extensive provisions regarding cooperation among states parties in the investigation and prosecution of offenders and on the tracing, freezing seizure and confiscation of proceeds. The convention also contains separate chapters on asset recovery and implementation mechanisms which include technical and economic development assistance among states and with regional organizations.²⁵

The contribution of regional anti-corruption instruments to the legal regime is not to be underestimated. The Inter-American Convention was the first juridical anti-corruption instrument of its kind.²⁶ It not only served as a model for the UNCAC, but also for the African Union Convention on Preventing and Combating Corruption and Other Related Offenses (the AU Convention) which was adopted the same year as the

²² Shah (2004)

²³ Rose-Ackerman (2004) p.332

²⁴ Rajagopal (1999) p.499

²⁵ See www.unodc.org/unodc/en/treaties/CAC/index.html

²⁶ Transparency International *9 Years of the Inter-American Convention Against Corruption* (2005).

UNCAC.²⁷ Regional regimes provide for coordinated regional efforts tailored to deal with corruption-related issues specific to the area. Their implementation and monitoring mechanisms are better able to keep track of anti-corruption measures being taken in their respective regions. That being said, states parties to those instruments have also signed onto the UNCAC. The desire for a global effort is reflected in the commitment shown by the international community to the UNCAC.

3.2.1 Limited progress: the missing element of human rights

There is no mention of human rights violations in the UNCAC or regional regimes. The UNCAC does address victims of corruption, but it is clear that the convention addresses third-party victims in terms of commercial transactions. Terms such as “good faith” and “damage” bring to mind contractual relationships and monetary obligations rather than human rights. Pursuant to the UNCAC, a state may consider corruption a relevant factor in legal proceedings to rescind or annul a contract, rescind a concession, or other similar instrument, or to take other remedial action.²⁸ Entities or persons who have suffered damage as a result of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.²⁹ This is the extent of the consideration given to the rights and remedy available to individuals if they should suffer an injury as a result of corruption.

The Inter-American Convention has already celebrated its 10-year anniversary and implemented its Follow-Up Mechanism and has not included human rights into its regime. States parties are not required or asked to report on human rights, and states have not offered the information. The AU Convention speaks extensively of human rights in the preamble but contains nothing relating to human rights in its operative provisions. It has been said that the AU Convention was intended to complement the UNCAC, so perhaps it followed the UNCAC lead in not including human rights issues.³⁰

²⁷ Id.

²⁸ UNCAC art 34

²⁹ UNCAC art 35

³⁰ Honorable Dauda Kamara (2006)

To some extent, it could be argued that the current regime does have the potential to help states meet their obligations to use their available resources to achieve the full realization of economic, social and cultural rights as required under the International Covenant on Economic, Social and Cultural Rights.³¹ Corruption impedes a state's ability use its available resources to progressively achieve the full realization of these rights because national resources are instead diverted into the pockets of public officials, or because development aid is mismanaged, misused or misappropriated. Anti-corruption laws, if faithfully implemented and carried out, could bring about a more efficient distribution of public resources which is essential for the enjoyment of economic, social and cultural rights.³² Nevertheless, human rights protection must become part of the purpose of anti-corruption measures, not an unintended result of such measures.

³¹ ICESCR art 2

³² Rajagopal (1999) p. 499

4 Ideology of the anti-corruption movement: A historical perspective

The evolution of the anti-corruption movement is important to understanding why the legal regime has the limitations it does. Corruption became a leading international issue in the 1990s and was regarded as a problem of the international economy. Globalization caused an ever-increasing number of multinational enterprises to expand into new markets and it fostered conditions conducive to an escalation in corruption.³³ In 1997, the World Bank estimated that the cost of bribery among multinational enterprises was \$80 billion a year.³⁴ At the same time a global forum which had previously been lacking enabled coalitions of interested parties to set standards on international businesses to control corruption. Corruption was no longer going to be accepted as an unchallengeable part of doing business. In 1997 the OECD created the first international corruption convention, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The aim of the anti-corruption movement was clear: to rid the global economy of corrupt transactions which were skewing profit margins.³⁵

As has been previously noted, the broader societal effects of corruption have been given their place in the corruption discussion. The UNCAC maintains that corruption weakens the rule of law, democratic governance and sustainable development.³⁶ The Inter-American Convention asserts 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.³⁷ The AU Convention speaks of the need to respect human dignity and to foster the promotion of economic, social, and political rights in conformity

³³ Hess (2000) p.595

³⁴ Buckley (2002) p.184

³⁵ Id.

³⁶ UNCAC preamble

³⁷ Inter-American Convention preamble

with the provisions of the African Charter on Human and People's Rights and other relevant human rights instruments. At the same time, it could be argued that such statements still primarily serve the financial sector, the need to protect the rule of law, governance and development principles being necessary in order to maintain a robust and open free- market.³⁸ Regardless, the negative impact of corruption has been expressed as being more than just an economic problem.

4.1 Anti-corruption efforts by non-state actors

Since the emergence of corruption as an international problem, various actors have joined in the movement to combat it. While there has been some recognition of the link to human rights, the majority of anti-corruption efforts are focused on curbing impacts on sustainable economic growth and financial policies. International financial institutions want to maintain economic growth to ensure socio-economic development while multinational corporations want to maintain markets that are favorable to investment. The result has been the emergence of codes of conduct, guidelines and policies reflecting the stance that corruption will not be tolerated by public or private actors. The rate of success of these efforts is questionable but it helpful to look at anti-corruption measures in the non-state sector.

4.1.1 Transnational Corporations

Corporations have a very important role in the anti-corruption movement being the supply-side of bribery and partaking in embezzlement. Measures to control corruption by the private sector are not only contained in conventions or national legislation. International organizations have contributed to efforts to control corporate corruption by producing codes of conduct and guidelines. The International Chamber of Commerce (the ICC) was the first non-governmental organization to establish rules of conduct for corporations relating to bribery.³⁹ It remains an active and influential force in the corporate

³⁸ Buckely (2002) p. 191-2

³⁹ First published in 1977, the ICC rules of conduct were updated in 2005 after the establishment of the UNCAC

world. In 2001, the ICC established an Anti-Corruption Commission which works actively with the OECD, the U.N., the Council of Europe and the European Union. The ICC rules of conduct recommend that corporations adopt their own codes of conduct based on its rules but adapted to their particular situation. It has also insisted on the need to confront private-to-private corruption (corruption between private entities), as this form of bribery also distorts competition. The ICC has established whistle blowing guidelines, works on strengthening links with the World Bank and other intergovernmental organizations, and provides businesses with input on how to implement the UNCAC.⁴⁰

The U.N. attempted a Draft Code of Conduct on Transnational Corporations which was never adopted. It did address corruption but its scope was quite broader. It also covered contract negotiation and implementation, non-collaboration with racist regimes, non-interference with political affairs and intergovernmental relations, training facilitation, financial transactions and investments, transfer pricing, taxation, competition, technology, and information disclosure. The 2000 version of the OECD Guidelines for Multinational Enterprises added a new chapter on combating bribery but they also covers many topics, many the same as the U.N. draft code. Codes of conduct targeting corporations that focus on corruption, like the ICC rules, are less common than those that encompass the overall operation of corporations.⁴¹

Corporations often establish their own codes of conduct for their employees. Specifically, corporations set up internal compliance and auditing systems to detect and discourage corrupt payments.⁴² There is the risk that a corporation will put forward a good faith effort only to have its employees act in contradiction with its policies. Or in the opposite case, a corporation establishes a policy for the sake of its public image and then encourages employees to gain business however possible.⁴³ The additional risk is that a

40 International Chamber of Commerce

41 *See* Hess (2000) for an overview of corporate codes of conduct and for a proposal for a new set of guidelines which focus on corruption.

42 *Id.* at p. 610

43 *Id.*

corporation can easily alter its own code to fit its needs which may not always be in the interest of preventing corruption.

4.1.2 International Monetary Fund

The International Monetary Fund (the IMF) has remained steadfast in its focus on macroeconomic stabilization and sustainable growth.⁴⁴ It only began to direct its attention to governance and corruption when empirical evidence increasingly showed that poor governance and corruption may have an actual or potential negative impact on macroeconomic performance.⁴⁵ Nevertheless, as a rule, the IMF role in corruption is limited. According to IMF policy, it will only get involved in instances of corruption that have significant macroeconomic implications, have affected governance and if there is reason to believe it could threaten the successful implementation of the adjustment program.⁴⁶ In such instances financial assistance may be suspended or delayed.⁴⁷ Critics have said that this approach is too standoffish. Its loans to states are not contingent on a lack of corruption and it is seldom that conditions are placed on lending to try to prevent corruption in receiving states. The IMF counters that conditions placed on aid as a method to counter corruption does not work and can even foster circumstances creating further corruption.⁴⁸ However, it does agree with critics that current forms of IMF assistance can foster or perpetuate corruption.⁴⁹ It has proposed reforms and procedural changes to decrease the recurrence of such situations.⁵⁰

4.1.3 The World Bank

The World Bank has played a more active role in fighting corruption. Since 1996, the Bank has supported more than 600 anti-corruption programs and governance initiatives

44 Schiller (2000)

45 Id.

46 Id.

47 Id.

48 Leite (2001)

49 Id.

50 Id.

developed by its member countries.⁵¹ In particular, the Governance and Anticorruption Strategy was developed in light of the fact that corruption and poor governance significantly undermine the Bank's poverty reduction mission, undermine the legitimacy of the institution and its programs, divert resources from priority sectors and increase the debt of developing and transition countries.⁵² Among the criticisms of the Bank's implementation of the strategy is that while it acknowledges implementation requires participation by civil society organizations, the private sector, the media and the general public, that participation is not actually sought on the ground.⁵³ One of the major critiques of the strategy is the absence of explicit recognition of human rights in assessing governance. While Bank programs may need to be improvement, anti-corruption is a priority in Bank policy.

51 The World Bank Anticorruption Overview

⁵² Id.

⁵³ Bank Information Center (2007)

5 Utilizing the human rights framework

5.1 Human rights law

Human rights law has grown immensely in the past several decades and has become an established and integral area of international law. This is evidenced by the emergence of many sets of principles and guidelines within various non-state sectors that call for human rights protection. These more current efforts have their origin in the Universal Declaration of Human Rights (the Universal Declaration), the first instrument to express the international community's determination to not only recognize human rights, but protect and fulfill them. The aspirations set forth in the Universal Declaration were later reinforced and turned into binding commitments in the International Covenant on Civil and Political Rights (the ICCPR) and the International Covenant on Economic, Social and Cultural Rights (the ICESCR). Subsequent conventions followed which focus on the protection against specific acts, such as torture⁵⁴ or racial discrimination.⁵⁵ Other conventions focus on the rights of groups of people that are particularly vulnerable, such as women,⁵⁶ children⁵⁷ or indigenous and tribal peoples.⁵⁸ Together they have all helped to create a diverse and representative international human rights regime which will continue to expand as the international community recognizes new threats to human rights.

⁵⁴ See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment hereinafter referred to as the Torture Convention

⁵⁵ See International Convention on the Elimination of all Forms of Racial Discrimination

⁵⁶ See Convention on the Elimination of all Forms of Discrimination against Women hereinafter referred to as CEDAW

⁵⁷ See Convention on the Rights of the Child

⁵⁸ See ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries

Notwithstanding its importance in the world of international law, even the area of human rights is politically influenced. Considerable political support from the major world actors is often a prerequisite before a right is recognized as deserving international recognition and protection.⁵⁹ Corruption as a threat to human rights has not yet gained the support of the international community that is needed to make an impact on the law. Perhaps this is because corruption has only recently, as compared to human rights, been considered as a problem necessitating international attention. To take the example of environmental law, its link to human rights has taken decades to evolve and gain international support.⁶⁰ Now environmental degradation is linked to the violation of many human rights such as: the realization of economic, social and cultural rights indispensable for human dignity; the right to the highest attainable standard of health; the right to a standard of living adequate for health and well-being; the right of peoples to self-determination; and the pursuit of economic and social development, to name a few.⁶¹ The effort to make the right to a clean environment an internationally recognized human right is well underway.

⁵⁹ See for example Cassese (2005) p.394-5, “. . . another customary rule is gradually crystallizing as a result of a host of UN GA resolutions, international treaties, as well as the increasing case law of the ICTY on rape and sexual assault; that is the rule banning gender discrimination.”

⁶⁰ Kiss (2004) p.661 describing the emerging argument regarding the link between human rights and harm to the environment, “Protecting human rights and safeguarding the environment, [...] are fundamental values of modern international society. The first two topics emerged as matters of international concern several decades apart and the earlier development of human rights law encouraged international lawyers and activists as early as the 1972 Stockholm Conference on the Human Environment to explore and attempt to understand the inter-relationship [between] human rights and environmental protection.”

⁶¹ Sands (2003) p.297 “Many states have adopted national measures linking the environment and individual rights. The constitutions of about 100 states now expressly recognize the right to a clean environment;” Id. at 296

5.2 Corruption as a threat to human rights

The international community generally accepts that there is a connection between corruption and human rights.⁶² However, it has not gotten to the point where human rights are part and parcel of corruption. The very perception of corruption must be altered so as to also denote human suffering as a direct result of corruption. Once the goal of fighting corruption is understood to include protection of human rights rather than merely curbing use of public power for private benefit, it will be seen as more of a priority within the international community.⁶³

Further, public and private actors would rather avoid the public spectacle of being called out by their peers for failing to act in accordance with human rights standards. To have caused or allowed human rights violations to have occurred can have a considerable shaming effect on all parties involved in a situation, be they state or non-state actors. In fact, a clean human rights record is now used as a condition to allowing states to become members of international organizations such as the European Union or the World Trade Organization. In this way the human rights framework and what it represents in the international community is an effective means of fighting the global problems. Being listed on Transparency International's Corruption Perception Index further illustrates the point. While it too can have a shaming effect and be very damaging for countries, efforts to remedy the situation are left to the state, perhaps with assistance provided by neighboring states or development aid. Motivation to change this perception of being corrupt is financially focused, for example, to keep foreign investment coming in.

⁶² See Kumar (2003) p.58, "[...] corruption interferes in the free progress of people to realize their rights as mentioned in the ICCPR [...] The economic and social rights of people are eroded due to the corrupt transfer of public wealth to a few power holders."; see also Buckley (2002) p.185, "[...] basic civil and political rights has been found to be indispensable to democratically sustainable corruption-control."

⁶³ Kumar (2003) p.35 "Human rights discourse offers powerful resistance to violations of various rights, and the problem of corruption can be addressed by framing it as a human rights violation. The benefit of regarding corruption as a human rights issue will enhance efforts to contain corruption, due to the development of international human rights law as an important aspect of international law."

Corruption as being a threat to human rights, however, would be seen as a more urgent problem to solve at the international level.

5.2.1 New threat, new perception, new regime

It may be argued that human rights violations resulting from corruption can be adequately addressed by human rights treaties. From a normative standpoint, keeping corruption related violations exclusively in the domain of the human rights treaties and institutions perpetuates the perception of corruption as an area distinct and apart from human rights. Corruption in all its forms and consequences will only be fully addressed when human rights are made a part of the dialogue and accepted as an important aspect of it. The recognition of human rights abuses as a result of corruption could serve to preserve the human dignity of victims which is something the corruption legal regime fails to do now. All the consequences of corruption will be accounted for. In turn this will lead to an overall broader perception and an understanding of corruption which will ultimately have the benefit of better combating the problem.

Another problem with using the human rights regime only is that ultimate responsibility remains on states. Though states have the due diligence obligation to prevent, investigate and punish violations, this does not adequately address the reality that state actors and private entities often work together in corrupt transactions that cause human rights abuses. Recently, efforts have been made to extend human rights obligations to non-state actors, but they have failed. In this regard, the field of human rights remains static.

5.3 Human rights obligations and non-state actors

5.3.1 International financial institutions

The Tilburg Guiding Principles, drafted by a group of experts and completed in 2002, express that as international legal persons, the World Bank and the IMF have international legal obligations to take full responsibility for human rights in situations where the institutions' own projects, policies or programs negatively impact or undermine

the enjoyment of human rights.⁶⁴ The principles propose a number of measures that could be taken by each institution, providing ways in which they could fit human rights into the existing mandates and institutions including the Bank's Inspection Panel and the IMF's Independent Evaluation Office. They call for cooperation and coordination with both human rights and development non-governmental organizations to ensure their policies are consistent with the needs of the communities. They are also urged to make their material available, on a regular basis, to relevant bodies within the U.N. human rights system, such as the U.N. Committee on Economic, Social and Cultural Rights.

Unfortunately, neither institution has accepted the Tilburg Principles nor have they adopted a human rights policy. The IMF has refrained from placing human rights conditions on its assistance to member countries. It claims not have the expertise required to make such judgments and suggests that human rights advocates are better suited. Instead its focus remains on sustainable growth and a stable macroeconomic environment, which in themselves are supportive of human rights. It claims to encourage member governments and specialized agencies to work together towards designing development strategies that take human rights into account.⁶⁵ The World Bank also makes clear that it is not an enforcer of human rights though it has acknowledged that there is a link between development and human rights.⁶⁶ It is the Bank's position that even if its policies, programs and projects have never been explicitly or deliberately aimed towards the realization of human rights, it contributes to the promotion of human rights by fighting corruption and increasing transparency of governments. The Bank is exploring the establishment of a Justice and Human Rights Trust Fund and says it will continue to dialogue and form strategic alliances with U.N. bodies, other international organizations,

⁶⁴ World Bank, IMF and Human Rights (2003) p.247-255

⁶⁵ Leite (2001)

⁶⁶ *See supra* Section 2

donors, and civil society organizations where they can complement and add human rights value to its work.⁶⁷

5.3.2 Corporations

The business community has a code of ethics that sets limits to the conduct of companies.⁶⁸ Many different versions of the corporate moral code have been put to paper by a number of international organizations. In 2003, the U.N. Sub-Commission on the Promotion and Protection of Human Rights came up with the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (the Human Rights Norms). They are based on international human rights law and existing norms relating to transnational corporations and other business enterprises.⁶⁹ The Human Rights Norms go further than these instruments by providing for specific human rights obligations relevant to corporations.⁷⁰ In addition, they mention corruption specifically, saying corporations shall recognize and respect social, economic and cultural policies including transparency, accountability and prohibition of corruption.⁷¹ The norms gained much support from civil society organizations that had long called for corporate social responsibility, but they have been critiqued from both a substantive and procedural point of view.⁷²

⁶⁷ World Bank Human Rights (2007)

⁶⁸ Hess (2000) p.614 “*Concepts of justice and human rights require condemnation of corrupt practices, even where considered as a community norm, when such acts make it impossible for a country to provide the social goods necessary for minimal standards of living.*”

⁶⁹ They include the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, OECD Guidelines for Multinational Enterprises, the U.N. Global Compact, and the Draft U.N. Code of Conduct on Transnational Corporations

⁷⁰ Deva (2004) p.498

⁷¹ Human Rights Norms art 10

⁷² *See* Deva, supporters of the norms have complained about their voluntary rather than obligatory nature, lack of enforcement mechanism to ensure implementation, lack of independent monitoring for compliance with the obligations, ineffective reparations and the need for stricter sanctions

The corporate sector has shown great opposition to the Human Rights Norms, the thrust of the argument being that liability for human rights violations should not be shifted to companies and should stay within the area of state responsibility.⁷³ The function of transnational corporations has traditionally been limited to the economic sphere and the Human Rights Norms extend that to social, cultural, civil, and political purposes, which is usually reserved for the state.⁷⁴ The private sector complained that the norms contain vaguely worded obligations, an argument echoed by proponents of the norms. Whereas proponents argue they give a lot of discretionary power of corporations in interpreting or applying the norms, corporations are confused as to the extent of positive measures corporations are expected to take secure fulfillment of human rights.⁷⁵ Also, extensive and onerous reporting procedures on observance of human rights standards would be required which corporations argue will discourage investment. Many companies simply argued they did not have a problem with human rights abuses and had no need for such norms.⁷⁶

Although the Human Rights Norms have met with much resistance they did identify what corporate social responsibility actually means. Global companies do wield increasing power and it is natural that responsibilities should be placed on their exercise of that power. The norms do not say companies' human rights obligations would not be on par with obligations are expected of states, but limited to their sphere of activity and influence. In most cases, this would apply to their employees and to the communities in which they operate.⁷⁷ This formulation will be important when a reformed legal regime is discussed in Section 7.

⁷³ See Backer (2005)

⁷⁴ Id.

⁷⁵ Id. at p. 51-2

⁷⁶ Gow (2004)

⁷⁷ International Network for Economic, Social & Cultural Rights (2004)

6 Case Study: Papua New Guinea

6.1 Captured state: corruption in the logging industry

Since PNG ratified the UNCAC in 2007, the country has taken measures to implement the convention.⁷⁸ Nevertheless, it remains in a governance crisis. Politicians are rarely re-elected and the expectation of being in office for only one term gives them an excuse to steal while they can and deal their way into lucrative post-government employment.⁷⁹ In the logging industry, corruption has become so entrenched the government of PNG is struggling to control the situation. Trafficking in guns, drugs, timber and people is rampant and is threatening regional security.⁸⁰ With the help of Australia and the World Bank, a wide range of reforms have been instituted in an effort to fight corruption in the logging industry but have had little impact. Corruption has allowed foreign logging companies to operate largely outside forestry laws rendering them ineffective.⁸¹ Efforts to investigate or take legal action against corruption have led to arson and people being physically attacked and threatened.⁸²

A common complaint of authorities is that logging companies operate are difficult to monitor since their operations are in such remote areas. The lack of presence also means the government hardly exercises authority at all in these areas. Companies such as

⁷⁸ See Pacific Islands News Bulletin (11 July 2008). PNG ministers have prepared model whistle blower legislation though it is believed it will meet with resistance as it is sensitive legislation. There has also been opposition to a bill concerning an Independent Commission against Corruption.

⁷⁹ Global Integrity (2008)

⁸⁰ Centre for Environmental Law and Community Rights (hereinafter referred to as CELCoR) (2006) p.24-26

⁸¹ See news.mongabay.com/2006/0308-png.html

⁸² CELCoR (2006) p.22

Rimbunan Hijau take on the role of the government in rural PNG.⁸³ Impunity is enjoyed by companies and local authorities, including the police, involved in rights abuses and illegal activities. The role of the Ombudsman Commission is to guard against the abuse of power by those in the public sector, assist those exercising public power to do their jobs efficiently and fairly and impose accountability on those who are exercising public power.⁸⁴ While it has investigated the logging industry with regard to the granting of licenses, its impact on corruption is non-existent. A recent scandal has recently been uncovered which the Commission is set to investigate and will provide an opportunity for the Commission to fight corruption on a more substantive level.⁸⁵

6.2 Human rights in the logging industry

The corruption in the logging industry illustrates how, “state capture adopts an apparatus of repressive state action imposing a series of linked human rights abuses committed in order to preserve the elite’s opportunities for the abuse of public office for private gain.”⁸⁶ PNG is party to several human rights treaties including the ICCPR, ICESCR and CEDAW. It is not party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Torture Convention), but as a *jus cogens* norm it is binding on PNG.⁸⁷ Despite these international human rights obligations, rampant abuses of human rights protected by each one of those conventions occur in the logging industry. Not only has PNG violated its obligation to respect, protect and fulfill landowners’ rights, it has also failed in its duty to prevent, investigate and punish violations by private parties.

⁸³ Id. at p.23

⁸⁴ See <http://www.lawandjustice.gov.pg/www/html/118-the-ombudsman.asp>

⁸⁵ Radio Australia (2008) Secret deals between two government ministers and logging companies worth 40million dollars in kick-backs from log exports was discovered

⁸⁶ Cockcroft (1998)

⁸⁷ Further, the Constitution of the Independent State of Papua New Guinea contains a freedom from inhuman treatment provision in art 36(1), “*torture (whether physical or mental), or . . . treatment or punishment that is cruel or otherwise inhuman, or is inconsistent with respect for the inherent dignity of the human person.*”

PNG also demonstrates how a lack of rights is an impetus to causing corruption. The protection and enjoyment of civil and political rights give civil society the voice and power to advocate for accountability and transparency in government.⁸⁸ Recent amendments to the Forestry Act have reduced landowners' rights to participate in the development and management of their forests. A provision was also added preventing National Forest Board members from disclosing information to the public.⁸⁹ Communities are being kept even more out of the allocation process than ever before. Economic, social and cultural rights are necessary for national development. In societies where there are limited opportunities for formal paid employment, as in PNG, states often rely on exploitive deals with multinational corporations.⁹⁰ Providing opportunities for livelihood from within the communities could help to avoid falling into this trap.

6.2.1 Land acquisition process

The process by which the PNG government acquires timber rights from landowning communities and issues licenses to logging companies amounts to the illegal appropriation of forest land by companies. A review of forest administration in PNG showed that officials did not follow the controls established to protect landowner rights and sustainable logging.⁹¹ The law requires that landowners meet with an independent facilitator who is supposed to help them make an informed decision about divesting themselves of their forest rights. However, in practice this precaution is often disposed of and logging companies negotiate directly with landowners. An independent review team that looked over 30 concessions found that almost without exception landowners had not been properly involved in decision making, were not aware of what was happening to their resources and had not given informed consent to logging operations.⁹² In other instances, companies were able to simply buy the right to operate bypassing the legal process

⁸⁸ See *infra* note 10

⁸⁹ CELCoR (2006) p.22

⁹⁰ Forest Trends (2006) p.7

⁹¹ CELCoR p.21

⁹² *Id.*

required to obtain licenses and permits. The corrupt means used by the state and companies to obtain rights to the forest has resulted in the loss of landowners' means of shelter and food. This is a violation of the right to internal self-determination which protects against a people being deprived of its own means of subsistence.⁹³

Once companies acquire land they operate in violation of the code of logging practices. For example, by building poorly designed roads that cause severe erosion in the soil and runoff into surrounding rivers. The result is that the community's water supply is polluted and ruined as a food source. The right to an adequate standard of living, which includes adequate food, housing and the continuous improvement of living conditions,⁹⁴ and the right to the highest attainable standard of health⁹⁵ are violated by the subsequent pollution caused by operations. Companies have one objective, to get their operations up and running. They will pursue this at the expense of human rights and at the expense of the faith communities put in them to provide services they are falsely promised.⁹⁶

6.2.2 Working conditions

The overall poor working conditions in the logging camps violate the right to the enjoyment of just and favorable conditions of work.⁹⁷ Conditions in logging camps pose both physical and health risks to employees. Operations are dangerous due to a lack of safety equipment and employees have been seriously injured.⁹⁸ There are not sufficient amounts of medicine made available in the camps so not all employees who become ill are

⁹³ ICCPR art 1; ICESCR art 1

⁹⁴ ICESCR art 11

⁹⁵ ICESCR art 12

⁹⁶ CELCoR (2006) p.15. Logging companies often make promises in order to induce landowners to sell forest rights such as infrastructure and services such as schools, health centers, water tanks and roads which the government often cannot supply are promised to communities.

⁹⁷ ICESCR art 7

⁹⁸ CELCoR (2006) p.17

treated.⁹⁹ The failure to provide safety measures for employees and medical treatment for the sick violates the right to safe and healthy working conditions.¹⁰⁰

Women are a particularly vulnerable group in the camps. There are reports that female employees are forced to have sex with their superiors, including police officers who are hired as private security.¹⁰¹ This amounts to a violation of their rights to be free from cruel, inhuman, or degrading treatment or punishment¹⁰² and to human dignity.¹⁰³ Women are kept in low-skilled jobs where they have no opportunity to learn a more valuable skill and are therefore easily replaced.¹⁰⁴ Being relegated to menial jobs is a violation of the right to equal opportunity to be promoted in employment.¹⁰⁵ There are also marriages of convenience forcefully arranged between expatriate employees and local women.¹⁰⁶ These arranged marriages are clearly a violation of the right to enter into marriage with free and full consent.¹⁰⁷

It would not be overstating the situation to describe the working conditions in camps as slave conditions. A common practice among managers is to promise to open a bank account for employees to save their earnings. Many of the workers have returned home without ever having been paid.¹⁰⁸ Salaries, when they are paid, combined with employment conditions are so poor as to have been officially described in one project as modern day slavery.¹⁰⁹ The conditions not only violate the prohibition against slavery but

⁹⁹ Id.

¹⁰⁰ ICESCR art7(b)

¹⁰¹ CELCoR (2006) p. 17

¹⁰² *See generally* Torture Convention; ICCPR art 7; Constitution of the Independent State of PNG art 36

¹⁰³ ICCPR art 10

¹⁰⁴ CELCoR (2006) p. 17

¹⁰⁵ ICESCR art 7(c); CEDAW art 11

¹⁰⁶ CELCoR (2006) p. 19

¹⁰⁷ ICCPR art23(3); CEDAW art 16

¹⁰⁸ CELCoR (2006) p.17

¹⁰⁹ Forest Trends (2006) p.9, 30

also the right to receive remuneration that provides a decent living.¹¹⁰ If an employee cannot earn enough salary for a decent living, it will in turn hinder the enjoyment of the right to an adequate standard of living for himself and his family.¹¹¹

Employees are not allowed to leave the camps for long periods of time, and when they are able to leave they must rely on company transportation. Because the camps are virtually isolated, many of them only accessible by plane.¹¹² It is a situation akin to being held captive. Combined with the practice of not paying wages, this is a violation of the prohibition against being held in servitude.¹¹³ The control that companies retain over the movement of their employees is an obstacle to their ability to leave the camp and make a complaint to authorities. Together with the lack of monitoring of operations by government authorities it would seem that a victim would have little or no opportunity to make a complaint to the authorities about abuses.

6.2.3 Police brutality

Allegations of police brutality in connection with logging operations, including killings, are widespread. Specifically, there are allegations of police officers being paid by logging companies to provide security on their behalf. The police are instructed to use violence and intimidation against people who speak out against companies or against the communities where such people live. Landowners do not report the incidents since they rightly assume they will not be properly investigated.¹¹⁴ A former police officer for the Southern Regional Command task force confirmed allegations of police being hired by Rimbunan Hijau as private security. The hired officers were also instructed to use force against landowners who caused trouble. The former police officer was paid a daily allowance and an occasional lump sum by an official from a company official. These

¹¹⁰ ICCPR art 8(1); ICESCR art 7(a)(ii)

¹¹¹ ICESCR art 11

¹¹² CELCoR (2006) p. 19

¹¹³ ICCPR art 8(2)

¹¹⁴ *See* Human Rights Watch (2006)

payments were made secretly as "some sort of bribery-type money" which he believed was paid to him as compensation for using violence against the troublemakers.¹¹⁵

A representative from the village of Bosset alleges that police hired by Concord Pacific logging company came into his village and arrested several men, took them to an airstrip, ordered them to strip at gunpoint and made them commit sex acts with each other.¹¹⁶ They were then taken into a logging camp and locked into timber containers. When they were released the police told the men they had been arrested for possession of guns, but no formal charges had been made.¹¹⁷ At its most extreme, the police brutality violates the prohibition against torture and other cruel, inhuman or degrading treatment or punishment, especially given the stigma attached to homosexuality.¹¹⁸ The right to liberty and security of person ensures no one shall be subject to arbitrary arrest or detention. This means deprivation of one's liberty shall be based on such grounds and in accordance with such procedures as are established by law.¹¹⁹ No grounds for detention were given by the police at the time of arrest. When they were released days later they were given bogus reasons for the detention. The right to security of person is analogous to the right to bodily integrity meaning an individual has the right to control what happens to his own body. The detainees were forced to participate in physical acts against their will. Furthermore, when an individual is deprived of his liberty he has the distinct and separate right to be treated with humanity and with respect for the inherent dignity of the human person. This right was also violated as a result of the brutality imposed by the police.

Not only does the conduct of police violate obligations set forth in several human rights conventions, it fails to comply with the U.N. Code of Conduct for Law Enforcement Officials (the Law Enforcement Code). The Law Enforcement Code consists of eight articles containing minimum rules of law enforcement behavior and responsibility,

¹¹⁵ CELCoR p. 11

¹¹⁶ Human Rights Watch (2006) Section II There is a social stigma against homosexuality which shields police from public outrage when they commit violence against men and boys perceived to be homosexual

¹¹⁷ CELCoR (2006) p.13

¹¹⁸ See *infra* note 116

¹¹⁹ ICCPR art 9(1)

including use of force by police. According to the code, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons in the performance of their duty.¹²⁰ It follows that law enforcement officials must not commit any act of corruption and have the duty to rigorously oppose and combat all such acts.¹²¹ The Law Enforcement Code also prohibits law enforcement officials from using force except when strictly necessary and only to the extent required for the performance of their duty.¹²² Further, no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment.¹²³ Although the code is not binding international law, it constitutes authoritative guidance for interpreting international human rights law regarding policing.¹²⁴

Police brutality in PNG is widespread and is not contained to logging camps.¹²⁵ Though police have received extensive human rights training, they are not required to follow it.¹²⁶ A climate of impunity has been created and police officers themselves risk retaliation for trying to hold other officers accountable.¹²⁷ Despite the seriousness of the problem, there is little or no willingness on the part of police to investigate, prosecute, or otherwise punish its members.¹²⁸ The occasional dismissal and prosecution of abusive police officers does occur though these victories are negligible when compared with the scope of the problem. The fact is, it is very rare for police officers to face punishment either through internal police disciplinary procedures or in a court of law, even at in the most extreme cases of excessive force, torture and rape.¹²⁹

¹²⁰ Code of Conduct art1

¹²¹ Code of Conduct art10

¹²² Code of Conduct art5

¹²³ Code of Conduct art8

¹²⁴ Human Right Watch (2006)

¹²⁵ *See Id.*

¹²⁶ *Id.* Section VI

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

The lack of government presence in rural areas, with the exception of bribed local authorities, allows those in power to rule without accountability. If the state has little control over police who commit abuses at the national level, it can be assumed that police in remote camp areas are even more sheltered from accountability. The cooperation between the authorities and companies makes reporting of abuses virtually impossible for victims. Even in the general public outside the camp areas where perhaps there is more a semblance of a separation between the state and companies, there has been little success in holding the police accountable. Victims have appealed to government mechanisms other than the police, such as the public solicitor's office, the Ombudsman Commission and civil claims against the state, but even these efforts have not been effective in diminishing police violence.¹³⁰

6.2.4 Unsustainable logging

It is widely reported that politicians and forestry officials actively solicit logging companies and facilitate their unsustainable and illegal activities.¹³¹ Allowing companies to operate without abiding by the sustainable logging laws and policies is taking its toll. Unsustainable logging is a threat to the successful enjoyment of what are known as solidarity rights. Of significance here is the right to a healthy and sustainable environment and the right to economic and social development.¹³² The ecologically and financially unsustainable nature of present logging operations has been amply illustrated by the official reviews that have been carried out on the industry. The costs of environmental destruction and natural resource depletion resulting from illegal practices are passed on to landowners and to the global community.¹³³ A report found that if forests were cleared or degraded at their current rate, 83% of PNG's accessible forests would be gone or severely

¹³⁰ Id. citing CELCoR charging that companies paid police who arbitrarily beat, detained, and intimidated landowners in fn 6 (2006)

¹³¹ Forest Trends (2006) p.13

¹³² General Assembly Press Release 1998; *see also* General Assembly Declaration on the Right to Development (1986)

¹³³ Hunt (2006) p.2

damaged by 2021.¹³⁴ The report concludes that this information justifies significantly curtailing current logging industry activities and scrapping new large-scale projects. It also calls for the government and international development partners to reorient conservation and commercial forestry activities so that they respect the rights of local communities that legally own the forest, and enable members of those communities to better use and conserve the forest for their own development needs.¹³⁵

In economic terms, corrupt states have less of their GDP going to areas that are critical to development, such as to the education and health sectors.¹³⁶ Corrupt states also have comparatively lower economic growth rates than countries with little or no corruption.¹³⁷ High levels of corruption also correlate with more severe levels of income inequality.¹³⁸ In PNG, logging companies are manipulating tax laws and greatly influencing national forestry policies at the expense of national coffers and ultimately the general public. Based on average logs prices reported by companies, companies are basically operating at a deficit. Logging does not appear to be economically viable at the declared export prices. This has led to the suspicion that the companies are setting set transfer prices on cross-border transactions to reduce their taxable profits.¹³⁹ In the past, the government has also given in to pressures from the logging lobby and decreased the log export tax,¹⁴⁰ and processed timber products are exempt from export duty altogether.¹⁴¹ The state also receives very little from corporate income tax paid by companies.¹⁴² The tax benefits of and questionable profit reporting by companies means that government is losing out on substantial revenue from logging operations. This invariably leads to less money going into social services for the public which reflects

¹³⁴ Science in Public (2008)

¹³⁵ Id.

¹³⁶ Hess (2000) p.597

¹³⁷ Id. at p.612

¹³⁸ Buckley (2002) p.181

¹³⁹ Forest Trends (2006) p.12

¹⁴⁰ Brunton (1998)

¹⁴¹ Forest Trends (2006) p.64

¹⁴² Id.

PNG's ranking well behind other Pacific islands on the Human Development Index. Illiteracy, infant mortality rates and life expectancy are the worst in the Pacific.¹⁴³

Investment into countries in the form of development aid is also negatively impacted by corruption.¹⁴⁴ Australia has made large aid contributions to PNG, but corruption has rendered them ineffective. The World Bank has provided loans to PNG on several different occasions designed to facilitate more sustainable logging and improve the country's revenue stream.¹⁴⁵ Its last effort was a loan for a Forestry and Conservation Project. It included several conditions relating to proper governance in the forestry sector and required a comprehensive independent review of 14 of the largest existing logging projects. The result of the review was that all of the projects could be regarded as illegal from failure to meet key legal criteria. The project was suspended in 2003 and cancelled at the request of PNG in 2005 with only \$2.6 million disbursed.¹⁴⁶ Not only did PNG not benefit from the reforms initiated by the Bank, it was left with a massive debt.

6.3 Effectiveness of UNCAC on the logging industry

If PNG were to enact legislation for each of the offenses the UNCAC provides for, it would have little effect on what is going on in the logging industry. Perhaps the police officers or government authorities could be found to have committed the crime of abuse of function¹⁴⁷ or the crime of illicit enrichment.¹⁴⁸ The private parties involved can be guilty of the crime of bribery of a national public official.¹⁴⁹ The UNCAC's sections on international cooperation and prevention may help to punish present corruption and stop future corruption in PNG. Asset recovery provisions could bring much needed money

¹⁴³ CELCoR (2006) p.9

¹⁴⁴ Buckely (2002) p.181

¹⁴⁵ Forest Trends (2006) p.67 The export of timber from large-scale logging operations in Papua New Guinea results in a marginal 5% increase to the national budget, presumably because added costs in the form of bribes and other payments cuts into the profit.

¹⁴⁶ CELCoR (2006) p.22

¹⁴⁷ UNCAC art 19

¹⁴⁸ UNCAC art 20

¹⁴⁹ UNCAC art 15

back into the national economy. Still, these provisions do not acknowledge the harm done to the victims and certainly does not help to uphold their human dignity as the human rights regime does. A UNDP report examined the human development dimensions of corruption in the Asia-Pacific region. It singled out illegal logging as being particularly damaging for the poorest communities.¹⁵⁰ The reports says petty corruption smothers opportunities for the most vulnerable people and causes more day-to-day suffering than grand corruption.¹⁵¹ It is an undisputed fact that corruption causes human suffering and this should be acknowledged in the law which is core of the anti-corruption movement.

6.4 Call for Reform in PNG

Civil society organizations have suggested a number of reforms that could help to alleviate the occurrence of corruption and consequent human rights violations in PNG. In 2005, a human rights unit was established as part of the Ombudsman Office, but it remains small and under-resourced. Therefore, groups have called for the establishment of an independent human rights commission to investigate, mediate and refer complaints of abuses to the Ombudsman Commission.¹⁵² There is also a call for a commission against corruption with the power to investigate and take action against those found to be involved in corrupt practices which would complement the work of the Ombudsman Commission and strengthen governance.¹⁵³ The endemic corruption in PNG means that standard law enforcement mechanisms may themselves harbor corrupt officials and an independent corruption commission can bring to light corrupt activities taking place within the government, at all levels.

There is also a call for the improvement of basic services such as health and education. The creation of economic opportunities in rural areas is encouraged in order to

¹⁵⁰ UNDP Report. (2008). For example, small farmers and indigenous people are driven into poverty as a result of illegal land expropriations, and the exhaustion of natural resources and local communities are left to suffer the health effects of toxic waste from mining illegally dumped into nearby rivers.

¹⁵¹ Id.

¹⁵² CELCoR (2006) p.27

¹⁵³ Id. at p.6

provide alternatives to large scale logging. Landowning groups will have more control over the community and will be able to make more informed decisions about it. This will ultimately help to control corruption since landowners will participate more actively in managing their resources. Organizations also call for non-state actors to take on human rights responsibilities and to adhere to human rights standards such as the Human Rights Norms and the Tilburg Principles previously discussed. They also call on the World Bank and Australia, who have such a significant influence on policy in PNG, to use that influence to reform the forestry industry. As long as corruption undermines governance and causes instability in the region, all the development aid from those two sources will be rendered useless.

It is clear that civil society has come up with a holistic set of reforms to combat corruption and human rights abuses. However, as has been shown, efforts by the international community to expand the responsibility over corruption and human rights have met with much resistance. Part of the problem is the voluntary nature of the past measures makes them easily ignored. Perhaps utilizing a more authoritative instrument which proposes to better monitor, investigate, and punish prohibited acts will elicit more compliance. It will send a message of being a serious effort to combine the two regimes that cannot be ignored so easily. The best chance of success for reform in PNG is if there is a legal consequence to the corrupt acts that states and private parties fear.

7 Redefining the perception of corruption

The UNCAC encourages states to coordinate anti-corruption policies that promote the participation of society and reflect the principles of rule of law, integrity, transparency, accountability and proper management of public affairs and public property.¹⁵⁴ This has been interpreted as meaning that preventing and combating corruption is not an end in itself of the convention but promoting policies that contribute to good governance and ultimately sustainable development.¹⁵⁵ In its Declaration on the Right to Development, the General Assembly said that an obstacle to development was the denial of human rights; that in order to promote development, equal attention must be given to the implementation, protection and promotion of human rights. This would seem to support the need to include human rights in the fight against corruption. The activists in PNG advocating reform in the logging industry adopt just the approach the UNCAC calls for. They are calling for a wide range of policy reforms in civil society as well as within government. They look to cooperation with PNG's neighbors and development agencies. A main objective of their fight against corruption is an equal and parallel fight against human rights abuses. The corruption legal regime should reflect this in order to secure the success of reforms like those being called for in PNG.

7.1 Incorporation of human rights standards into corruption law

The discussion herein has always focused on incorporating human rights into the corruption regime. One might consider whether it would be preferable to make corruption a part of the human rights legal regime, that is, that a right to be free from corruption be

¹⁵⁴ UNCAC art 5

¹⁵⁵ Hussman (2007) p.15

incorporated into a human rights instrument. Either approach would be a signal to the world of the desire to reflect the link between corruption and human rights in international law. Practically speaking, it may prove easier to add human rights to the law of corruption rather than to add a right to be free from corruption to human rights law. One reason is that there is currently no internationally accepted definition of corruption. What would a right to be free from corruption entail? What would be expected of states? Would it be a positive right or a negative right, meaning would there be obligations to respect, protect or fulfill the right to be free from corruption? Would it be a civil and political right and be included in the ICCPR or an economic, social or cultural right and be included in the ICESCR? Or, is there another instrument altogether that is better suited to include such a right? Furthermore, since a focus has been placed on the need to revamp the perception of corruption, a corresponding change in law should occur within the corruption regime.

7.2 Soft law approach

The use of soft law is one approach to integrate human rights into the corruption regime. Soft law refers to non-binding, quasi-legal instruments. The U.N. and its organs, institutional bodies established by conventions, certain NGOs and international organizations all contribute to soft law. It can take the form of resolutions, declarations, statements, general comments, codes of conduct and guiding principles. These instruments offer instruction to states by setting standards and norms in areas of international law where binding obligations are lacking. Because the obligations are non-binding, it can be easier for these instruments to gain political support and access to international dialogue. Soft law is a convenient option for negotiations that might otherwise stall if legally binding commitments were sought at a time when it is not convenient for negotiating parties to make major commitments for political and/or economic reasons but still wish to negotiate something in good faith in the meantime. Often soft law can act as a sort of dry run to see if an instrument is in practice an effective, wide-spread and harmonized set of rules. If so it might later be turned into a binding instrument. Or, in the alternative, principles can evolve into customary international law if it meets the requirements of opinion juris and state practice, in which case a binding instrument would be unnecessary.

7.2.1 The Guiding Principles on Internal Displacement

An example of soft law that has filled a gap where guidance was lacking is the Guiding Principles on Internal Displacement (the Displacement Principles). The need for international standards for the protection of internally displaced persons became apparent in the 1990s when the number of people uprooted within their own countries by armed conflict, ethnic clashes and human rights abuses began to soar.¹⁵⁶ A study was therefore conducted by a U.N. appointed representative on the causes and consequences of internal displacement, the status of the internally displaced in international law, the extent of the coverage accorded them within existing international institutional arrangements and ways in which their protection and assistance could be improved.¹⁵⁷ The representative examined international human rights law, humanitarian law, and refugee law by analogy, and concluded that while existing law provided substantial coverage for the internally displaced, there were significant areas in which it failed to provide an adequate basis for their protection and assistance. Besides, the provisions of existing law were dispersed in a wide variety of international instruments which made them too diffused and unfocused to be effective in providing adequate protection and assistance for the internally displaced.¹⁵⁸ The result was a comprehensive instrument that sought to protect human rights within a context never before approached.

The international response to the Displacement Principles has been very positive. They have gained widespread, international recognition. Inter-governmental agencies such as the U.N. High Commissioner for Refugees, U.N. Development Program, the Office of the High Commissioner for Human Rights and UNICEF, have incorporated the Displacement Principles into their policies and have disseminated them among their staff.¹⁵⁹ Monitoring bodies of human rights conventions, such as the Human Rights Committee and the Committee on the Rights of the Child, have referred to the Guiding

¹⁵⁶ Internal Displacement Monitoring Centre

¹⁵⁷ Economic and Social Council (1998)

¹⁵⁸ Id.

¹⁵⁹ Internal Displacement Monitoring Centre

Principles in their observations to states.¹⁶⁰ References to the Guiding Principles can be found in resolutions, recommendations and reports adopted by the African Union, the OAS, and the Council of Europe.¹⁶¹ States have developed national policies based on the principles, some states have incorporated them into national law, and courts have cited the principles as a basis for judgments in support of internally displaced persons.¹⁶² Some observers have suggested that, as a result of the increasing application and acceptance of the principles throughout the world, they may be becoming customary international law.¹⁶³

7.2.2 Guiding Principles on Combating Corruption and Protecting Human Rights

The Displacement Principles evidence the importance of taking advantage of the moment and exploiting it for the benefit of a cause. Statistics on internally displaced persons had been compiled for a decade by the time the Commission on Human Rights requested an analysis of the situation be conducted. It was when the numbers began to soar that the need to take action became a pressing issue for the international community. After the study was conducted, the full extent of the vulnerability of internally displaced persons and the protections afforded them under international law, or lack thereof, was brought to light. Similarly, the anti-corruption movement was born in the 1990s when increasing reports revealed the negative effects of corruption on the international economy and marketplace. The culmination of the last decade has been the adoption of the UNCAC, the peak of international corruption law. Human rights is now a fixture in international dialogue and a priority for states. Perhaps now is the time for a study to be conducted into how extensive the effect of corruption is on human rights. A set of principles that address human rights obligations within the context of corruption could be established and they could be called the Guiding Principles on Combating Corruption and Protecting Human Rights (the Corruption Principles). The Displacement Principles may offer help in this endeavor.

¹⁶⁰ Id.

¹⁶¹ Id.

¹⁶² Id.

¹⁶³ See Schmidt (2004)

A draft of the Corruption Principles will not be attempted here, but merely a framework for the proposed principles. The purpose of the Corruption Principles should be clear. Consider the Displacement Principles which say, “Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.”¹⁶⁴ The Corruption Principles could state that every human being shall have the right to be protected against human rights violations resulting from all acts of corruption, be they petty or grand, by authorities, groups or persons whether public or private.

One thing to consider is who will be expected to adhere to the Corruption Principles. Whereas human rights conventions are limited to placing obligations and standards on the state, the Corruption Principles are not bound by such restrictions. The Displacement Principles apply to all sectors of society and do not limit themselves to states. They provide guidance to all relevant actors, including groups and persons in their relations with internally displaced persons, and inter-governmental and non-governmental organizations.¹⁶⁵ Likewise, the anti-corruption and human rights movements rely on the efforts of many sectors of society and the principles should reflect this. The Corruption Principles should provide guidance to a diverse cast of actors, among them state and corporate actors, civil society actors, international, regional and local non-profit and non-governmental organizations and development aid partners.

The Displacement Principles call on authorities and international actors to respect and ensure respect for their obligations under human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.¹⁶⁶ Similarly, it would be ideal if corruption was prevented from ever occurring. The Corruption Principles should therefore call on authorities and actors to respect their obligations under corruption and human rights law in all circumstances to prevent fostering an environment where corruption is likely to occur. With regard to human rights obligations, the protection and enjoyment of civil and political rights are imperative to

¹⁶⁴ Displacement Principles art 6

¹⁶⁵ Id. Introduction

¹⁶⁶ Id. art 5

preventing an environment in which parties feel they can partake in corruption without accountability.¹⁶⁷ Fulfillment of economic, social and cultural rights contributes an economic situation that renders useless the need to enter into business transactions that harm a society rather than help it. Therefore, the protection of human rights is relevant at all times, in order to prevent corruption.

Unfortunately, even where all sectors of society put their best effort forward there will be corruption. Therefore, specific human rights commonly or predictably violated as a result of corruption should be delineated in the Corruption Principles. Awareness of these rights as being particularly vulnerable will allow all relevant actors to take appropriate measures, both preventive and remedial, to best avoid or address violations. Such an approach would be in line with the concept of rule of law that demands that obligations be clear and predictable so that those who are bound by them can be sure of what is expected of them. The specific rights that should be highlighted could be provided by U.N. bodies, non-governmental organizations, inter-governmental organizations and any other relevant party that might be involved in the drafting of the Corruption Principles. The principles could also contribute to the promotion of solidarity rights, such as the right to development and the right to a healthy environment, which have been shown to be adversely affected as a result of corruption. Including these rights into the Corruption Principles helps to build international support for their protection.

The Corruption Principles could include provisions which call on states to take measures that promote and facilitate victims' access to justice, including the means to seek a domestic remedy. This would not be limited to the right to seek remedy for violations of only certain rights, but for violations of all rights including economic, social and cultural and solidarity rights. This would go beyond existing human rights law in which only certain conventions allow individual communications to be made regarding alleged violations.¹⁶⁸

¹⁶⁷ See *infra* note 10; See also Section 6.2

¹⁶⁸ See Koch (2006) where the author uses caselaw from the European Court of Human Rights to show how judicial interpretation of political and civil rights as containing social rights elements can lead to states having to take measures to fulfill those rights rather than just passively respect and protect those rights. The

Ultimately, the Corruption Principles would be a very different instrument from the Displacement Principles and they may not enjoy the same level of success, despite basing some of its features on the latter. However, more important than its specific language or provisions, the Displacement Principles express that they are attempting to bridge the gap that exists between human rights aspirations and the current reality. The Corruption Principles are an attempt to bring about changes to the corruption regime and thereby fill a gap in existing law. Perhaps because they are non-binding they will gain the necessary support needed to ensure relevant actors conform their acts to the standards and obligations set forth in the principles. Even if that goal is not reached the principles can still achieve something very important, which is to raise awareness about corruption and its victims, something not yet been done in international law.

7.3 Hard law approach

7.3.1 Optional Protocol to the UNCAC

Another approach would be to create a binding instrument. Existing human rights obligations and mechanisms could be incorporated into the corruption regime via an optional protocol to the UNCAC (the Optional Protocol). The preamble of the UNCAC speaks of corruption as damaging democratic institutions and the rule of law, and as threatening political stability and sustainable development. All of which are linked to human rights. Former Secretary-General of the U.N., Kofi Annan, made a statement at the adoption of the convention in which he said one of the corrosive effects corruption has on society is that it leads to human rights violations.¹⁶⁹ Further, as has been stated earlier, the actual enjoyment of human rights in a society is necessary to control corruption. An Optional Protocol to the UNCAC that addresses human rights would not be a stretch of the original stated purpose of the convention. To use an example from international law, rights and obligations relating to the abolishment of the death penalty were not originally

result is economic, social and cultural rights can be justiciable as they are legally relevant for the effective protection of civil and political rights.

¹⁶⁹ Annan (2003)

included in the ICCPR. The parties undertook to adopt the Second Optional Protocol to the ICCPR, Aiming at the Abolition of the Death Penalty (the Second Optional Protocol) over twenty years later. It is an example of successfully extending substantive rights and obligations an existing convention. An Optional Protocol could incorporate human rights obligations by referring to existing human rights conventions.

The monitoring body of the UNCAC is the Conference of the States Parties (the Conference). States parties are required to report information on its programmes, plans and practices, as well as on legislative and administrative measures to implement the convention.¹⁷⁰ The Conference has the task of periodically reviewing the implementation of the convention by the states parties and making recommendations to improve implementation.¹⁷¹ The Conference is also authorized to establish supplemental review mechanisms as may be necessary to obtain information from states parties about measures they have taken in implementing the convention and their difficulties in doing so.¹⁷² Further, the Conference may establish any mechanism or body it deems necessary to assist in the effective implementation of the convention.¹⁷³

Since the Conference is responsible for monitoring the implementation of the entire UNCAC, it could use its authority to establish a whole new mechanism, such as a committee, to monitor implementation of the additional human rights obligations established in the Optional Protocol. States could be required to provide additional information to the new committee on efforts to implement human rights into anti-corruption efforts. For example, states could be required to report on what measures they are taking to ensure civil and political rights vital to maintaining a transparent and accountable government¹⁷⁴

Also, a valuable source would be committees responsible for monitoring implementation of human rights conventions. There is no need to duplicate work, so the

¹⁷⁰ UNCAC art 63(6)

¹⁷¹ UNCAC art 63(4)

¹⁷² UNCAC art 63(5)

¹⁷³ UNCAC art 63(7)

¹⁷⁴ *See infra* note 163

UNCAC committee and those established by human rights conventions should maintain an information exchange. Though the new committee under the UNCAC would focus on human rights violated as a result of corruption, maintaining communication with the relevant human rights committees would offer a more well-rounded surveillance of human rights.

Like the monitoring bodies of human rights conventions, the new committee could also be given authority receive communications from individuals or groups of individuals claiming to have had their human rights violated as a result of one of the corrupt acts found in the UNCAC. Where the committee finds there has been a violation it will report its findings and make recommendations to the state in question as to how to remedy the violation. To provide for broader vigilance, the right to submit communications can be extended to non-governmental organizations such as is allowed by the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁷⁵ Though the findings would not be binding, the reliable shaming ability of human rights could prove to be a deterrent to future violations.

The UNCAC is unclear about how often states are required to submit information to the Conference. With regard to the new committee, the Optional Protocol could specify that states are to submit reports regarding human rights measures they have taken within a certain time period after the entry into force of the protocol. It could also require that reports be submitted on a regular basis, on a yearly basis for example. Non-governmental organizations and international organizations are currently allowed to submit information to the Conference, and human rights groups will surely be able and willing to provide information to the new committee as long as they are allowed to participate.

The purpose of establishing an individual complaint mechanism is to offer an independent body that can be relied on to address human rights concerns. A practical issue for victims may be access to the committee to make an allegation. The Human Rights Committee and the CEDAW Committee both require that domestic remedies be exhausted before submitting a complaint with them. It raises the question of what chance a victim of

¹⁷⁵ ECHR art 25

corruption actually has to use the mechanism established by the proposed Optional Protocol. It might be a situation where both the state and private entities act together in causing a human right violation. The victim may choose to avoid local authorities altogether thinking there is no possibility the state will act with due diligence in investigating complaints that they may well be participating in and benefitting from.¹⁷⁶ Or even worse, the victims fear they will be punished for trying to interfere in the system. Were the complaint system modeled on the procedures of the human rights regime, victims could effectively be precluded from seeking out domestic remedies and would be, presumably, barred from using the complaint mechanism. However, there is precedent for allowing victims to seek remedy without having exhausted domestic remedies where local authorities were unable or unwilling to cooperate.¹⁷⁷ Such exceptions could be reflected in the UNCAC individual complaint mechanism.

It should be remembered that corruption and human rights are separate areas of law whose procedures should always be respected. It is important that the committee's duty to pursue human rights allegations would not interfere with the state's decision of how to proceed with domestic criminal law and vice versa. If the state pursued criminal charges against the perpetrators of corrupt acts it should not be a foregone conclusion that the human right violation allegedly suffered was a result of the corrupt act. Nor should it hamper or limit the investigation to be taken by the complaints committee. Just like the finding by the committee that a human rights violation was the direct result of a corrupt act could not be used as proof against individuals charged with crimes of corruption in order to find that person guilty, as this would be a violation of their due process rights.

¹⁷⁶ See *infra* Section 6.2.3

¹⁷⁷ See *Isayeva, Yusupova and Bazayeva v. Russia* where the European Court of Human Rights found that a failure of the authorities to conduct a proper investigation into human rights allegations by the victims' families did not provide the victims with access to an effective remedy. Therefore, the argument by the state that the victims failed to exhaust domestic remedies and therefore could not seek remedy before the Court was rejected by the Court.

7.4 Obstacles to changing the corruption regime

As discussed above, human rights law places obligations on states to not only combat violations by state actors but to prevent violations by private parties. Corrupt acts can be committed by public and private entities. Should investigation of those acts uncover that they also caused human rights violations, the state's responsibility is triggered. States may not want to place additional risk on themselves by having human rights obligations in the area of corruption law as well. When a state is found to be responsible for violations, the fallout can be very politically damaging. With regard to expectations relating to corruption, a state that fails to meet them has the challenge of ridding itself of the stigma of being a corrupt state. But by implementing the UNCAC and an anti-corruption policy, these states can maintain the appearance of trying to reform their reputation. Responsibility for human rights that result from corruption will make the fight to regain face within the international community that much harder. For these reasons, states will probably show resistance to adding human rights to corruption law. Civil society will play an important role in promoting a change to the corruption regime and convincing states that supporting such a change is in their best political interests.

The corporate sector has already voiced its opinion about having human rights obligations placed on it, as demonstrated by the protest against the Human Rights Norms. However, there are plenty of examples in the history of international business that show companies have made the mistake of ignoring changing moral attitudes in the marketplace. The backlash experienced by tobacco companies when they failed to take into account changing attitudes about marketing to children or by Nike when it failed to promptly respond to customer concerns that products were being made in sweatshops ended up harming the very thing companies are supposed to prioritize, their shareholders.¹⁷⁸ The international community has voiced its desire to have the corporate world play a role both in combating corruption and protecting human rights. The two interests are even contained

¹⁷⁸ Hess (2000) p.607

in many of the same codes of conduct.¹⁷⁹ If companies want to keep up with the international consensus, it might be in their best interest to adhere to standards of conduct relating to corruption and human rights. From a financial perspective, corporations can best maintain the value of their stocks by avoiding the shame of being associated with human rights violations or corruption.

¹⁷⁹ See the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, Draft United Nations Code of Conduct on Transnational Corporations, and the OECD Guidelines for Multinational Enterprises.

8 Conclusion

It has taken the past decade or so for the international community to acknowledge the link between corruption and human rights. This paper has argued that it is now time to move forward and create new legal tools to give substance to the implications arising from this link. For what good is acknowledging that corruption leads to human rights violations if it has no legal effect for the victims? The international community has created an corruption regime that has as its focus redressing the abuse of public power for private benefit. A corruption regime which focuses solely on penalizing the perpetrators of corruption but does not at the same time address the victims can no longer be relied upon to adequately address corruption.

If the gap that exists in corruption law is to be bridged, there needs to be a fundamental change in how corruption is perceived. If this were to happen there would be a corresponding change in how corruption is handled by the law. The people committing corrupt acts must think of their behavior beyond the limitations of the current perception. The elite in the highest levels of society believe they are merely tipping the balance of a transaction in their favor in order to make a profit or get a deal done. This trickles down through society and ends with the poor who engage in petty corruption merely to gain a service not available without paying a bribe. Perhaps if the perception of corruption is expanded to include human suffering, people may be less willing to participate in these acts in the future and the cycle would end. This change in perception has to occur within the mainstream, not just among the human rights sector, for states and lawmakers to feel the pressure to affect the change in law.

The UNCAC, the most recently and most widely adopted anti-corruption convention, has introduced innovative elements that expand the traditional corruption regime. Despite these advancements, the convention's aim remains narrowly focused on the economic aspects of corruption. Specifically, how the illicit acquisition of personal

wealth can be particularly damaging to democratic institutions, national economies and the rule of law; how cases that involve vast quantities of assets of the state threaten the political stability and sustainable development of those states.¹⁸⁰ The preamble speaks of the links between corruption and other forms of crime, in particular organized crime and economic crime, but there is nothing about the link between corruption and human rights. While the paper does not disagree with these statements, the understanding of the problem of corruption is limited. Abuse of human rights also threatens democratic institutions, the rule of law, political stability and sustainable development. In order to adequately protect against threats to these institutions, the convention should also protect against and remedy human rights abuses that result from corruption.

The case study of Papua New Guinea provides an example of how the UNCAC fails to adequately address the rampant corruption taking over the logging industry and the country. The money from logging operations that should be coming into national coffers has disappeared. Social and economic development is suffering as a result and the country continues to be one of the poorest in the area.¹⁸¹ These are the consequences of corruption that the UNCAC does not address. It is not disputed that preventing corruption in the logging industry and/or recovering assets gained from corruption could benefit the people of Papua New Guinea immensely, in particular with regard to the progress of development. The argument is that the law does not deal with the full extent of the harm caused by corruption. The individuals whose human rights are violated deserve to have their harm acknowledged by the law that was put in place to fight the very corruption that caused those violations.

Two alternatives could accomplish the goal of having victims acknowledged by international law, a soft law instrument or a binding optional protocol to the UNCAC. Soft law allows for a progressive evolution of international law which serves the goals of this paper well since changing the perception of corruption may require time. Also, it is easier for soft law to gain political support since it is non-binding. States will be more open to

¹⁸⁰ UNCAC preamble

¹⁸¹ *See infra* Section 6.2.4

supporting it and adhering to it if they believe it is of their own will. Finally, the opportunity of starting from a clean slate allows the new instrument to combine corruption and human rights law in a way that has never been done before. An Optional Protocol may seem preferable for the exact opposite reason. Using obligations, institutions and mechanisms that already exist and have proven effective in the human rights regime could be incorporated right into a protocol to another existing convention. Though not exactly the same scenario, the Second Optional Protocol to the ICCPR shows the possibility of adding new substantive rights and obligations to an existing regime. An Optional Protocol would be binding legal instrument and since it would be an extension of the UNCAC may be able to use its U.N. connection to draw support.

Corruption is a crime that brings out the most self-interested sides of people. That does not mean the human rights factor is completely ineffectual as a source of motivation to fight corruption. On the contrary, it has already been discussed how human rights is an ever-expanding area of law that offers a sense of immediacy and importance to issues that otherwise might be overlooked. Just as politicians do many things to keep up a certain appearance or appeal to a certain interest group, they know the importance of a clean human rights record. In the end, adding a human rights perspective may be the very thing that actually has a real impact on controlling corruption.

The following quote is a powerful denouncement of corruption. Looking at it today it represents both a sign of hope and one of pessimism:

[Corruption] deepens poverty; it debases human rights; it degrades the environment; it derails development, including private sector development; it can drive conflict in and between nations; and it destroys confidence in democracy and the legitimacy of governments. It debases human dignity and is universally condemned by the world's major faiths.¹⁸²

The law must address its failure to address victims of corruption. All victims of human rights abuses, including those caused by corruption, deserve to seek a remedy. More than punishing the perpetrator or receiving compensation, victims deserve the opportunity to

¹⁸² Hess (2000) p.594 quoting *The Durban Commitment to Effective Action Against Corruption*, signed by 1600 delegates from 135 countries at the October 1999 Anti-Corruption Conference sponsored by Transparency International

speaking out against their wrongdoers. Only then can they take back and preserve their human dignity.

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