Fighting corruption globally: The link with human rights

The UN Convention against Corruption – the only legally binding international instrument for fighting corruption – was adopted by the UN General Assembly (UNGA) in 2003. Although it has been ratified by the vast majority of the states in the world, serious implementation gaps persist to this day. The harmful impact of corruption on human rights and on the implementation of the UN 2030 Agenda for Sustainable Development has been widely recognised. In this context, the UNGA is to hold its first special session on corruption on 2-4 June 2021.

United Nations General Assembly special session on corruption

The need to reinforce international efforts against corruption stems from the gravity of corruption in today’s world. Even though the vast majority of UN member states (187 out of 193) have already ratified the UN Convention against Corruption (UNCAC) – the only legally binding international anti-corruption treaty, which has been in force since 2005 – various organisations point out that serious implementation gaps persist. From 2 to 4 June 2021, the UN General Assembly (UNGA) will meet in New York for its first ever special session on challenges and measures related to preventing and combating corruption, and strengthening international cooperation in this field. Member states are expected to adopt a political declaration that was agreed by consensus during intergovernmental negotiations on 7 May 2021 under the auspices of the Conference of the States Parties to the UNCAC. The preparatory process included representatives of the UN system, the private sector and civil society. An August 2020 document outlining the position of the UN system, entitled ‘UN Common Position to Address Global Corruption’, highlights that corruption ‘undermines the achievement of the Sustainable Development Goals (SDGs) and has a negative impact on peace, stability, security, the rule of law, gender equality, the environment and human rights’. A group of civil society organisations and private sector/professional representatives has called on the UN member states to establish ‘an open-ended intergovernmental expert working group’ to propose concrete technical solutions for addressing gaps in the UNCAC. According to media reports, the draft of the political declaration to be adopted at the UNGA special session includes the idea that corruption is an impediment to the achievement of the UN 2030 Agenda for Sustainable Development. The recovery of stolen assets, as well as international technical cooperation, are among the key issues tackled by the draft declaration.

Corruption and international human rights norms

There is no universally agreed definition of corruption, nor does the UNCAC feature one. According to a definition that is often quoted by civil society and EU institutions, among others, corruption is ‘the abuse of (entrusted) power for private gain’. Neither international human rights treaties nor the UNCAC explicitly define corruption as a violation of human rights, yet interpretations of these legally binding texts as well as other guiding international documents increasingly link corruption to human rights. Corruption is recognised as an obstacle to sustainable development in all its dimensions. Agenda 2030 includes, under Goal 16 (on Peace, Justice and Strong Institutions), the fight against corruption and the recovery of stolen assets alongside targets related to human rights, such as reduction of violence, equal access to justice, protection of fundamental freedoms, and non-discrimination.

The UN Human Rights Council (HRC) highlights that all forms of corruption can have a serious negative impact on human rights. In several resolutions on the negative impact of corruption on the enjoyment of human rights (2013, 2015, 2017), the Council emphasises, inter alia, the importance of a preventive approach to corruption with a focus on: safeguarding the human rights of vulnerable persons; ensuring a safe and enabling environment for civil society; providing anti-corruption education; and fostering cooperation between national anti-corruption authorities and national human rights institutions. The 2019 Oslo Statement prepared by over 140 experts recommended, among other things, that additional research...
be carried out on the impact of corruption, involving a vast quantity of assets (VQA), on global peace and security, human rights, the climate and biodiversity.

**The nexus between corruption and human rights abuse**

It is widely recognised that corruption undermines not only a number of human rights but also the rule of law and democratic practices. Judicial corruption limits the right to a fair trial and remedy, and can encourage related abuses such as extrajudicial detention and torture. Corruption represents a big obstacle to socio-economic development, as it blocks immense resources from being used to promote socio-economic rights, such as the right to an adequate standard of living, education, or health care. Moreover, corruption violates the right to non-discrimination, erodes the quality of governance and public trust, and restricts rights of political participation. The harmful effects of corruption on human rights are particularly severe in the case of poor and vulnerable persons.

The Advisory Committee of the HRC found that corruption could affect individuals, groups of people and society at large by having specific negative impacts on their rights. However, as the causal relationship between corruption and human rights violations is not sufficiently clear, it is not always possible to consider an act of corruption as a human rights violation that could be invoked in a court of law. The International Council on Human Rights Policy (ICHRP) – an independent expert forum – maintains that to apply the human rights framework in a legally effective way, it is necessary to distinguish whether corrupt practices violate a human right directly or indirectly or whether no causal link can in practice be established.

**The human rights-based approach to corruption**

To better integrate a human-rights law perspective into actions against corruption, international bodies, such as the UN Human Rights Council and the UN High Commissioner for Human Rights, have advocated a human rights-based approach (HRBA) to corruption. This approach would be complementary to the criminal law approach, which treats corruption as a criminal offence, and would focus on the individual victims of corruption and on prevention and remedy. According to the UNODC, “the criminal justice approach assumes that the State (and the public it represents) has been harmed by acts of corruption committed by individuals …. The human rights-based approach focuses attention on how the State has breached its obligations towards the public by failing to protect it from corruption, and on the need for the provision of remedies by the State’. Conversely, respect for human rights in general, and in particular freedom of expression, assembly and association and the right to information can have a strong preventive effect on corruption. According to the World Bank governance indicators (2019), countries that perform well with regard to political participation rights while also ensuring freedom of expression, of association and of the media tend also to do well in combatting corruption. On the other hand, the Council of Europe Group of States against Corruption (GRECO) and other relevant bodies emphasise that state institutions acting against corruption should not commit human rights abuses against presumed agents of corrupt acts.

**How the EU counters corruption**

Article 83 of the Treaty on the Functioning of the European Union (TFEU) empowers the European Union to establish minimum rules to define criminal offences and sanctions, inter alia with regard to corruption. The EU regularly evaluates the efforts of its Member States (in the framework of the European Semester) and accession candidates to improve their legislative frameworks and establish anti-corruption bodies. It has supported partner countries in its neighbourhood and the rest of the world in upholding the rule of law and fighting corruption through technical assistance and financial support to organisations and institutions. Moreover, it has implemented projects targeting corruption in collaboration with international institutions such as the UNODC and the Council of Europe. The EU has the ambition to play a leading role in the global fight against corruption. The new EU sanctions mechanism against human rights violations does not include corruption alongside human rights violations as a trigger of the mechanism, unlike the similar sanctions regimes of the United States and Canada. The European Parliament advocated that corruption should be covered by the mechanism, but this proposal was not retained by the Council.

As potential agents of corrupt acts, private companies have a role to play in addressing the harmful impact of corruption on human rights. The European Commission’s plan to establish a human rights due diligence obligation, which has been strongly supported by the Parliament, will reinforce the impact of existing disclosure obligations.