CORRUPTION AND HUMAN RIGHTS: INTEGRATING HUMAN RIGHTS INTO THE ANTI-CORRUPTION AGENDA

Christian Gruenberg

CONTENTS

INTRODUCTION

1. There is currently widespread consensus in the anti-corruption movement that the last decade has seen little success in reducing corruption.[1] Countless diagnoses have been made, as well as public campaigns to raise awareness about corruption and its consequences; governments have signed regional and international anti-corruption treaties; and massive institutional and legal reforms have been put through to improve controls on public administration; and yet, in spite of all this, empirical studies show that the promised changes have not been delivered. Even public opinion studies suggest that people are more pessimistic now than they used to be about the future of corruption in their respective countries.[2]

2. This same sense of pessimism pervaded the atmosphere at the International Anti-Corruption Conference held in Guatemala in 2006. A profound feeling of global frustration shaped the agenda at the anti-corruption movement's most important international event, challenging experts to come up with an answer to the pressing question: *Why is corruption still blocking the way to a fairer world?*[3]

3. In response to the challenge thrown down by the anti-corruption movement itself in the form of this disconcerting question, the International Council proposes to look for an answer through human rights discourse and practice. With this report, the International Council contends that human rights and anti-corruption are connected and complementary. The International Council supports the idea that the integration of human rights into the anti-corruption agenda would have the potential to enhance the impact of anti-corruption policies.[4] The report does not wish to suggest, however, that the human rights perspective is the only or the best possible alternative for taking on the challenges facing anti-corruption activists. Rather, the report analyses when and why human rights practice could enhance their impact in certain areas and processes.

4. The report explains why human rights could have value-adding potential for anti-corruption strategies. It also sets forth the main conceptual issues and practices in human rights as they relate to the anti-corruption agenda. Finally, it identifies the key entry points for integrating human rights into anti-corruption strategies, with an eye to enhancing their impact, and with special consideration of marginalised[5] groups' vulnerability to corruption and possible participation strategies for including them in the design and implementation of anti-corruption policies.

---

* Section 5 was developed with Victoria Pereyra Iraola, and section 6 with Pedro Biscay. I am grateful for their invaluable collaboration.

[1] See, among other authors offering empirical evidence for this position, Kaufmann (2003; 2004); Michael (2007); Tisné and Smilov (2004); Shah and Schacter (2004).

[2] See Transparency International´s Global Corruption Barometer: 2007 and 2009: http://www.transparency.org/policy_research/surveys_indices/gcb/2007

[3] See Landell, P. (2006) ''Towards a fairer world: Why is corruption still blocking the way? Goals, Themes and Outcomes'' Transparency International, Guatemala.

[4] For empirical evidence on this argument see: Kaufmann, D. (2004) ''Human Rights and Governance: The Empirical Challenge''. World Bank Institute. See also: United Nations Development Programme (UNDP) (2004) ''The impact of corruption on the human rights based approach to development''. Oslo Governance Centre.

[5] Within this report we define marginalization as exclusion from political participation and access to social resources on the basis of race, gender, class, sexuality and other forms of discrimination. Consequently, these marginalized groups are potentially vulnerable to deprivation and even extermination. For a better understanding of marginalization and other forms of oppression see: Young, I. (2000) ''Five faces of oppression'', in Adams M., (Ed.) (2000), ''Readings for diversity and social justice'', New York.

1. **Power, corruption and violence: a structural perspective**

5. Corruption is essentially an activity carried out by groups with power. Therefore, in order to design and implement effective anti-corruption policies, one must identify and analyse the relationship between corrupt practices and the different ways power operates in that society. From this perspective, the conceptual framework and the tools for studying and confronting corruption should incorporate a structural perspective of power[6] that can explain the social causes that allow certain groups of people, governments and private corporations to control and exploit others economically, politically and socially.

6. In this structural[7] approach, corruption is not seen as a selfish act – isolated and opportunistic – but rather a profoundly social activity, shaped by cultural notions of power, privileges and social status. When this structural perspective of power is used as a lens, corruption can be addressed as an instrument that helps to define, sustain, expand or reduce the social order.

7. In our modern societies any social order involves a process of group differentiation where dominant groups define unequal relationships between polar categories of people: white and non-white, men and women, heterosexual and homosexual, etc., to create social rankings: good and bad, right and wrong, normal and abnormal, to finally link these concepts to biology and imply that rankings are fixed, permanent and embedded in nature.[8]

   Within this system of stratification, corruption mainly benefits those dominants groups with access to power, while it affects and victimises those subordinate groups who suffer oppression. In this social environment, structural corruption will have a direct connection with the concept of structural violence[9], as a form of oppression that denies equal access to political, cultural and economic resources.

8. Although corruption is equally dangerous for all these marginalised[10] groups, it becomes especially dangerous for women when it is combined with the physical, sexual and emotional violence that they face every day. Thus, in different social contexts and for different groups of people, corruption can be deadly.

9. But in real life, there are no "pure" oppressed or oppressor groups. Most people, depending on the social context in which they are situated, can occupy positions of domination or subordination. Thus, whereas in one social context, one group dominates another (for example,

---

[6] In developing the concept of structural power, we draw mainly on the three dimensions of power developed by Lukes' work (1974): visible, hidden and invisible power. From this author we want to remark the idea that the most effective and insidious use of power is to prevent conflict arising by shaping people's perceptions and preferences in such a way that they accept their role in the existing order of things, because they can see or imagine no alternative to it because they see it as natural and unchangeable.

[7] Two excellent examples of anthropological work that use a structural perspective to analyze corruption are: Nuijten, M., and Anders, G. (2007) "Corruption and the Secret of Law: A Legal Anthropological Perspective" Edited by Monique Nuijten, Wageningen University, The Netherlands and Gerhard Anders, University of Zurich, Switzerland. P And Hasty, J. (2005) "The Pleasures of Corruption: Desire and Discipline in Ghanaian Political Culture". Cultural Anthropology.

[8] See Weber L. (2004) "A conceptual framework for understanding race, class, gender, and sexuality", in Hesse Biber and Yaiser (2004)

[9] We follow the work of Iadicola and Shupe on the critical link between corruption and structural violence, see: Iadicola, P., Shupe, A. (2003) "Violence, inequality, and human freedom", Rowman & Littlefield.

[10] Within this report we define marginalization as exclusion from participation in public deliberation and access to social policies, programs and services on the basis of race, gender, class, sexuality and other social categories. Consequently, these marginalized groups are potentially vulnerable to deprivation and even extermination. For a better and deeper understanding of marginalization see: Young, I. (2000) "Five faces of oppression", in Adams M., (Ed.) (2000), "Readings for diversity and social justice", New York: Routledge

whites dominate non-whites), within the subordinated group itself we can identify a sub-group of people who dominate and oppress others from the same group (for example, non-white men dominate non-white women). Patricia Hill Collins[11] defines this social phenomenon as a "matrix of domination", where different systems of domination based on race, class, gender and sexuality are at once interconnected and intertwined. This matrix of domination, however, is not horizontal but rather pyramid-shaped, which means that people, private companies and governments located near the top of the pyramid enjoy greater privileges, have greater control over resources and extract greater profit from corrupt practices than those farther down the pyramid, especially those groups located at the base.

10. In a setting where these unequal, hierarchical and fixed social relationships are routine, corruption takes root when the State is captured[12] by private interests who use their influence to shape regulations, laws, decrees and judicial rulings. And it spreads its roots through pervasive clientelistic networks that make access to social services contingent on votes and servile labour. While the capture of the state allows a restricted group of companies to bend the rules of the game regulating state-market relations in a way that advances their own interests, clientelism allows political parties and governments to manipulate the provision of social services on a discriminatory basis. Viewed from this perspective, corruption tends to sustain and reproduce the exploitation and social exclusion of people, and to impede the exercise of their human rights.[13]

Integrating human rights practice into the anti-corruption agenda

11. By incorporating a structural analysis of corruption, human rights discourse and practice have a great deal to contribute to the debate, design and implementation of anti-corruption policies. Human rights focus their attention on unequal relationships of power and on possible strategies for promoting social change that allows marginalised groups to exercise their rights in order to challenge and resist corrupt and other oppressive practices. In this framework, the interpretation and practice of human rights is transformed into a political project that promotes equality, eliminates discrimination and removes economic, legal and political obstacles that keep marginalised groups from organising and mobilising to fight corruption.

12. While international bodies, governments and NGO's have not agreed on a single definition of the essential attributes of a human rights approach, in general it is safe to say that the attributes that would add the most value to the design and implementation of an anti-corruption policy would basically consist of:

1. Addressing the economic, political and social causes that encourage and reproduce corruption;
2. Recognising that marginalised groups have rights that the State is obliged to act on;
3. Explicitly opposing impunity, abuse of power, discrimination and violence;
4. Addressing gender violence and racism, and explicitly promoting the human rights of women and other groups who suffer discrimination on the basis of their gender, identity, race, ethnic group, ideas, culture, etc.;

---

[11] See, Collins, P. H.. (2000). "Black feminist thought" (2nd ed.). New York & London: Routledge.

[12] See, Kaufmann, D., Hellman, J., Jones, G. (2000) "Seize the state, seize the day: State Capture, Corruption, and Influence in Transition", policy research working paper 2444, The World Bank Institute.

[13] Much of the analysis of structural corruption in this report is based on Johan Galtung's concept of Structural Violence. From this point of view, corruption as structural violence is almost always invisible, embedded in ubiquitous social structures, normalized by stable institutions and regular experience. Thus, corrupt practices are part of the routine working of our society. See Galtung, J. (1969); and Winter, D., and Leighton, D. (2001) "Structural violence". In Christie, D. Wagner, V., Winter, D (Eds.) "Peace, conflict, and violence: Peace psychology in the 21st century" New York: Prentice-Hall.

> 5. Promoting the empowerment of the victims of corruption through participation, accountability and access to information;
> 6. Explicitly using the norms, standards and principles of the international human rights system.

13. In response to the challenging question posed by the anti-corruption movement, the report aims to make a critical analysis of the potential of human rights to complement and reinforce the impact of anti-corruption programmes.

2. GOVERNANCE, POVERTY AND CORRUPTION: A CLOSE RELATIONSHIP

14. In the year 1989, the term "governance" appeared for the first time in a development policy context, in a report by the World Bank on the crisis in Sub-Saharan Africa. The inclusion of this term represents a change in the Bank's corporate policies, motivated primarily by the negative results of the poverty-reduction policies implemented in Africa during the last years of the Cold War.

15. Poverty reduction emerged as a key objective in the development policies of multilateral credit agencies in the early 70's. Enmeshed in an overall strategy that sought to protect underdeveloped countries from the spectre of communism, international aid began to shape international relations between countries in the North and developing countries. International aid grew rapidly until the early 90's, reaching a peak of 60 million dollars in 1992.[14]

16. General consensus regards poverty reduction and economic growth as two key aims of international aid, and yet the way to achieve these aims has changed over time. During the 70's and 80's, the World Bank's development policies focused mainly on economic reforms as the engine that would drive social and economic development. In this way, the Bank began to condition the loans it made on economic reforms that would give priority to free trade, deregulation, and fiscal discipline. This agenda was rapidly adopted by other international agencies.

17. But these loans did not produce the results that were expected. Governments accepted the conditions and obtained financial assistance, but then never implemented the reforms and the funds were used discretionally for purposes other than those agreed to. Instead of encouraging development, international aid propped up corrupt governments that did not promote investment, used up the funds and implemented discretional policies that benefited only the political elite.[15]

18. Criticisms of this strategy were quick in coming. One of the fiercest critics of international aid, Peter Bauer[16] maintains that given the institutional conditions of the governments receiving aid, international aid does not promote sustainable development, but rather turns into a subsidy given by poor people in rich countries to rich people in poor countries. Instead of improving the lives of the neediest, international aid is used to favour the interests of the most powerful.

19. The end of the Cold War, and the evidence that the economic conditions tied to international aid had failed, brought about an important change in the dominant international development

---

[14] See, Aubut, J. (2004) "The Good Governance Agenda: who wins and who loses. Some empirical evidence from 2001". Development Studies Institute, LSE.

[15] See, Boone (1995, 1996); Burnside and Dollar (1997); World Bank (1998); Feyzioglu, Swaroop and Zhu (1998).

[16] Bauer, P. (1984) "Reality and Rhetoric: Studies in the Economics of Development", Harvard University Press, Cambridge. Bauer, P. (1991) "The Development Frontier: Essays in Applied Economics". Cambridge, Harvard University Press.

strategy. The market continued to be the means for encouraging economic growth, but a new paradigm emerged that highlighted the role of institutions and public administration as key areas for fostering a favourable environment for economic development. A new good governance agenda then emerged that redirected attention toward the institutions that set the "rules of the game" that economic agents play by.

Good governance: a very broad and dynamic concept

20. While they do have certain elements in common, not all development organizations and agencies share the same notion of good governance. In fact, due to the vagueness of the term, it has meant different things in different contexts. Some conceptions define governance in economic terms only, focusing on legal and judicial reforms, anti-corruption measures, accountability and transparency in government processes as the main areas to work on. Other definitions see governance through a democratic prism, as the promotion of citizen participation and the search for a new role for civil society.

21. For example, the World Bank defines governance as "the way power is wielded in the management of social and economic resources for a country's development"[17] and a government's ability to design, formulate and implement public policies. The recognition of the key role played by governance in fostering economic development has led to a reformulation of Washington's consensus agenda and raised interest in the political processes that accompany economic reforms. In this way, issues like state capacity and government autonomy take on significance in contexts of market reform and democratic consolidation. In the 80's, the main emphasis had been on economic stabilization and liberalization; the second generation of reforms, however, is trying to reinforce the market economy by strengthening public institutions. In this sense, the World Bank proposes scrutinizing the skill, capacity and will of political authorities to govern effectively in the interests of the common good. The World Bank developed six main dimensions to measure good governance: (1) Voice and Accountability, (2) Political Stability and Absence of Violence, (3) Government Effectiveness, (4) Regulatory Quality, (5) Rule of Law, and (6) Corruption Control.

22. Industrialized countries' development agencies also promote the importance of the governance agenda, but with a slightly different focus. USAID (U.S. Agency for International Development), for example, defines its governance agenda as the competent management of national resources in a way that is fair, open and responsive to people's needs. AID concentrates on promoting better economic and financial administration, strengthening law and justice, promoting the development of the civil society and democratic systems. The Canadian International Development Agency (CIDA), for its part, has adopted the governance agenda with quite a different focus. CIDA describes governance as "wielding power at the different levels of government effectively, honestly, fairly, transparently, and with accountability." (Dreifuss, 2003)

23. Since the year 2000 the good governance concept has developed an approach more participatory and democratic. For example, the United Nations Development Program (UNDP) has also taken up the governance agenda as a key element for sustainable development. The UNDP defines governance as "wielding political, economic and administrative authority to manage a country's affairs on all levels." The UNDP's approach goes beyond the economic sphere to include actions that promote democratic governance, including the work of legislatures, electoral systems, access to justice, decentralization, local government, public administration, transparent accountability, urban development, gender and the fight against corruption.[18]

---

[17] See, World Bank (1992) in Aubut (2004).

[18] See, Dreifuss, S., et al. (2003) "A contemporary analysis of governance" The Asia-Australia Institute. The University of New South Wales.

Anti-corruption reforms within the good governance agenda

24.   The analysis that underlies the good governance agenda accounts for poverty and low economic growth by pointing to poor institutional capacities and high levels of corruption. The persistence of inefficient markets with high transaction costs is attributed to weak property rights and reduced welfare states caused by a high level of corruption. In countries with high levels of corruption, a privileged minority plunders public resources at the expense of the majority. The absence of a system of accountability, together with the poor organizational capability of society at large, enables the minority to exploit and exclude the majority.

25.   In this economic and institutional context, anti-corruption reforms emerge as a leading element of the good governance agenda. The fight against corruption has been a formal part of the World Bank mandate since 1996, and has taken its place as one of the core issues of the good governance agenda. The fight against corruption is conceptualized as a response to the ineffectiveness of the economic reforms that were promoted in the 80's. The scope, limitation and effectiveness of these reforms cannot be analyzed without considering the ideological, theoretical and practical context in which they are situated. In this way, it becomes impossible to analyze anti-corruption reforms and international conventions without examining the conceptual framework that the good governance agenda is based on.

26.   In general, according to this agenda, the fight against corruption is construed as the implementation of much-needed reforms that must be promoted in government in order to allow markets to function freely. The agenda thus proposes regulation as a response to rent-seeking, fiscal transparency as a solution for political corruption and clientelism, and a change in the incentive structure for public officials as a way to reduce extortion, by raising public servants' salaries, increasing the opportunity costs of corrupt practices, promoting social overseers to monitor the public sector, and creating anti-corruption offices to investigate and eventually prosecute acts of corruption.[19]

3.   THE ANTI-CORRUPTION AGENDA: ORIGINS, DEVELOPMENT AND CHANGE

27.   As we remarked above, the anti-corruption policies of the last 20 years were not designed or implemented in an institutional vacuum. These policies were influenced by the good-governance agenda that was designed and promoted in the 1990's by institutions such as the World Bank, the International Monetary Fund (IMF) and the Organisation for Economic Co-operation and Development (OECD). Good-governance concepts and practices shaped the discourse and the tools of the first anti-corruption policies. In general, anti-corruption policies within the good-governance agenda concentrated on "top-down" reforms of a technocratic and procedural nature, massively reforming laws and institutions, but without addressing social or economic causes that sustain and reproduce corruption.

28.   And yet, over the last 20 years the good-governance agenda has not always influenced the design of anti-corruption policies to the same degree, nor has it always been totally hegemonic. The emergence of new actors from civil society, the failure of numerous reforms, the growing disenchantment with the Washington Consensus[20], and the simple passing of time have allowed the anti-corruption to evolve and develop its own identity, although it has never completely

---

[19] See, Khan, M. (2006) "Governance and Anti-Corruption Reforms in Developing Countries: Policies, Evidence and Ways Forward". Research papers for the Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development. United Nations, Geneva.

[20] The phrase "Washington Consensus", created in 1989, refers to a set of measures recommended and imposed by international finance organizations based in Washington. These policies include fiscal discipline, the reordering of public spending priorities in favour of fields offering greater economic profit, tax reform aimed at generating investment incentives, liberalised interest rates, a competitive exchange rate, freedom of trade and direct foreign investment, privatisations, and secure property rights.

disengaged from the ideology and economic support of the good-governance agenda[21] or from its main institutions.

29.   From this perspective, we can see how the current anti-corruption agenda is rooted in good-governance principles, even as it unfolds and evolves toward new types of strategies and programmes. To better understand the transformation of the anti-corruption agenda and to identify possible points of entry for integrating human rights practice, it helps to review briefly the identity, methods and evolution of the anti-corruption movement, and to analyse in detail one of the most powerful and influential actors in this movement: Transparency International.

The anti-corruption movement: main actors and key strategies

30.   What actually constitutes today's anti-corruption movement? This seemingly simple question is not easy to answer. The anti-corruption movement has grown out of the operation of a diverse and numerous collection of local, regional and global institutions[22] both public and private, with different agendas, strategies and even ways to define the word "corruption."

Heterogeneity and diversity

31.   The institutional network forming this extensive and complex movement includes such varied organisations as the Council of Europe, Transparency International, Tiri, U4 Anti-Corruption Resource Centre, the Honduras National Anti-Corruption Council, the European Central University, the Network for Integrity in Reconstruction, the Independent Commission Against Corruption in Hong Kong, and the Yemeni Journalists Against Corruption, among hundreds of others. So even though it defines itself as a movement and may look like a homogeneous movement, there is no consensus within the movement as to the main concepts, measurements and tools for analysing and confronting corruption.

Multisectoral coalitions

32.   As we mentioned above, the anti-corruption movement combines diverse actions by governments, civil society organisations and the private sector. Anti-corruption actions are commonly supported by the formation of wide coalitions among these 3 different sectors. Depending on the context and the case, the different kinds of relationships that arise through these coalitions can help anti-corruption programmes to succeed; at the same time they can raise serious questions about the independence and legitimacy of the actors involved and the strategies implemented.

Networking

33.   The movement works as a network for transferring and sharing knowledge and experience. Although the movement started up with the aim of raising awareness about the causes and costs of corruption, ten years later it has become a knowledge platform through which good practices, manuals and tools are exchanged. In theory at least, governments learn from civil society and vice versa.

---

[21] One of the most lucid critiques of the origins, present and future of the anti-corruption movement can be found in Hindess, B. (2004) "International anti-corruption as a program of normalisation" Paper presented at the annual meeting of the International Studies Association Quebec, Canada.

[22] See Sousa, L. (2005) "Transparency International in search of a constituency: The franchising of the global anticorruption movement". Discussion Paper 05-14, Asia Pacific School of Economics and Government, The Australian National University.

Glocalisation

34.   The movement is global and local at the same time, and brings together actors, jurisdictions and strategies at the local, regional and international levels. Market globalisation influenced the movement's agenda, forcing it to develop new techniques for understanding and addressing the global dimension of corruption in cases involving money laundering, human trafficking, drug trafficking, etc. In this context, traditional strategies such as civic monitoring of public transfers to the educational sector at the local level, rub shoulders with innovative techniques for recovering assets gained through acts of corruption, which involves crossing multiple legal jurisdictions and coordinating banks and governments of different countries.

The anti-corruption industry

35.   The anti-corruption struggle has gone global, and is no longer exclusive to poor countries. Corruption includes all countries, both rich and developing. And it attracts a flow of financing significant enough to develop and sustain an anti-corruption industry made up of consultants, programmes, manuals and workshops. This industry is estimated to move a market of at least 100 million dollars a year. In this scenario an emerging tendency has been detected: economic considerations influence the design and content of the projects, resulting in the design and execution of costly but inadequate programmes that do little to meet local needs[23].

From awareness to action

36.   The movement is now more than 15 years old, and at least two different stages can be discerned in its history. The first sought to raise global awareness about the causes and consequences of corruption, whereas the second stage (still fully underway) faces the challenge of bringing about changes. Concrete action in the first stage tended heavily toward public campaigns, international forums and seminars, the enactment of laws, the creation of indicators and the formulation of diagnoses. The second stage aims more at promoting change by making use of the diagnoses and knowledge consolidated during the first stage. There is a need to prioritise problems, and to identify and support pro-reform actors in all three sectors. In this second stage, anti-corruption programmes must grow more stable, and be custom designed for each of the problems that have been detected, since the one-size-fits-all approach of the first stage is clearly inadequate. Finally, it must be borne in mind that this categorical separation between the first and second stages is entirely artificial, and that some specific situations may well call for a combination of both strategies.

Transparency International: techniques for global mobilization and a toolbox for bringing about change

37.   While the global anti-corruption movement is broader and more extensive than Transparency International, no one would hesitate to describe this non-governmental organisation as one of the most influential global actors within the movement. Founded in 1993 by a group of former World Bank officials, TI grew out of the intersection of three key historical variables: the expansion of democracy, the expansion and transformation of citizens' organisations, and the evolution of the issue of corruption from a minor topic into a worldwide concern[24].

---

[23] See Michael, B. (2005) "The Rise and Fall of the Anti-Corruption Industry: Toward Second Generation Anti-Corruption Reforms in Central and Eastern Europe?" Linacre College.

[24] See Sousa, L. (2005) "Transparency International in search of a constituency: The franchising of the global anticorruption movement". Discussion Paper 05-14, Asia-Pacific School of Economics and Government, The Australian National University.

38. TI burst onto the good-governance agenda with a bold and challenging proposal: to understand the problem of corruption as a complex social phenomenon, and thus transcend the approach that focused exclusively on state institutions as the main cause and solution of the problem. In this new conceptual framework, civil society becomes the main source of social change. From this perspective, the political will to push through state reforms is not as important as the participation of civil society in pressuring, supporting, promoting and controlling the implementation of anti-corruption reforms. TI proposes a systemic analysis of corruption and bottom-up actions supported by wide-ranging coalitions that include the government, the private sector and civil society. In order the implement this new anti-corruption agenda on a global scale, TI designed its own techniques and toolbox. In the following section we analyse them in detail:

TI's techniques for battling worldwide corruption

i. *Networking*: TI made use of networking to create an organisation that operates globally and locally at the same time. With a strategically-located general secretariat in Berlin, TI networks with such diverse and powerful institutions as the World Bank, the OECD, the Andean Development Corporation, the World Economic Forum, the United Nations, etc. And over 90 national chapters assure TI a local base from a wide range of countries, including Nepal, the United States, Guatemala, Korea, Morocco and Papua New Guinea. This international network has allowed TI to carry out carefully synchronised actions on a global scale, and at the same time to share and propagate good practices that, for example, are first applied in India and replicated shortly thereafter in Mexico and Kenya.

ii. *Development of diagnoses and indicators*: To raise awareness about the problem of corruption and encourage reforms in favour of transparency, TI designed a worldwide corruption ranking, which quickly became famous around the world. The ranking, officially called the Corruption Perceptions Index (CPI) measures corruption on the basis of the perceptions of businesspeople, journalists, academics and risk analysts. The first CPI, published in 1995, covered 42 countries; by 2007, the number had grown to over 180. In 1999, four years after its launch, the Bribery Payers Index (BPI) was published. The BPI complements the CPI: the latter measures the relative level of corruption in states, whereas the former measures corruption in terms of the national origin of companies that pay the most or the least in bribes. The BPI also enables the identification of the sectors most prone to paying bribes, which include the construction and weapons sectors. Finally, these two indices are complemented by the more recent Global Corruption Barometer (GCB), a public opinion poll of over 40,000 people in 47 countries. The GCB seeks to evaluate and consider popular perceptions about corruption, as opposed to the opinion of businesspeople and technocrats. Although the methodology of these instruments has been criticised by different international organisations and governments[25], it has provided powerful leverage for putting the corruption issue on the top of the global priorities agenda.

iii. *The Source Book*: First published in 2000, the Source Book represents TI's normative framework. Its purpose is to provide a conceptual framework for systematically analysing the problem of corruption, identifying its main causes and offering a guide for designing effective anti-corruption strategies. The key idea of the Source Book is the National Integrity System (NIS), described as a holistic approach to the problem of corruption. The NIS operates on the assumption that confronting corruption is not the responsibility of just one public oversight agency. On the contrary, an NIS is built on eleven pillars that represent the main institutions of any society and that operate interdependently: the judicial branch, the Congress, the executive branch, the media, the private sector, civil society, etc. For the NIS

---

[25] See for example: www.oecdobserver.org/news/fullstory.php/aid/296/Transparent_tables.html. See also: Galtung, F. (2005) "Measuring the Immeasurable: Boundaries and Functions of (Macro) Corruption Indices", in "Measuring Corruption", Ashgate (UK).

to reduce corruption and promote transparency, there must be balance in the functioning of the eleven pillars. The NIS provides the conceptual framework for analysing the extent and causes of corruption in a given national context, as well as the effectiveness of the anti-corruption programmes. With this diagnosis, the NIS can improve anti-corruption reforms. The NIS has become a standard reference for other anti-corruption organisations, and even for governments. While human rights are, by definition, an essential part of any NIS, they are not explicitly mentioned in the conceptual framework of the NIS. This last point, as we will see later, opens up a possibility of integrating human rights into the NIS[26].

Toolbox for confronting corruption

39. If TI's early techniques served to awaken the world to the consequences of corruption and to provide a conceptual framework for coming up with solutions, the toolbox offers a practical guide for carrying out concrete actions and bringing about change. The toolbox[27] is a systematic collection of anti-corruption experiences that national TI chapters, as well as other NGO's, have accumulated. These experiences cover a wide range of problems, from corruption in public contracting and international aid programmes, to the exploitation of natural resources and political financing. The tools themselves are the product of the national chapters' imagination, and make use of different participatory techniques to achieve their goals, including artistic expression, the Internet, civic monitoring, the signing of Integrity Pacts and public hearings. The toolbox organises experiences by topic and develops them in a user-friendly way without sacrificing analytic rigor, highlighting useful and practical information so that the tools can be adapted and replicated in different national contexts.

Conclusion

40. Transparency International burst onto the good-governance agenda by altering the theory and the practice of anti-corruption policies, which until then were dominated by a technocratic and apolitical top-down focus on reforms to the state. TI's proposal questioned the exclusivity of the state as the solution to the problem of corruption, and promoted a more inclusive reform agenda through broad-based coalitions made up of the government, the private sector and civil society. In this new conceptual framework, civil society plays a key role in encouraging and sustaining anti-corruption reforms. With this approach, which focused on operationalising change, TI gave priority to the participation of NGO's and the use of citizen participation tools to promote accountability from the grass roots.

41. Although neither TI nor the NGO's or governments that follow its strategies have explicitly incorporated the notion or the practice of human rights into the implementation of their main techniques and tools, some of TI's key institutional arrangements offer entry points for integrating the two movements. The centrality of citizen participation in TI's discourse and practice, the concern for the impact of corruption on poverty, and the holistic focus of its anti-corruption reforms, offer the possibility of synergy and complementarity with human rights practices. In the next section, the report analyses and identifies the principles, areas and processes where the explicit incorporation of the human rights perspective could help to enhance the impact of anti-corruption programmes.

---

[26] See An Evaluation of National Integrity Systems (NIS) from a Human Rights Perspective done by Koechlin for the ICHRP (2007) http://www.ichrp.org/files/papers/132/131_-_Lucy_Koechlin_-_2007.pdf

[27] To access to TI's Toolbox see: http://www.transparency.org/tools/e_toolkit

4. GOOD GOVERNANCE, ANTI-CORRUPTION PROGRAMMES AND HUMAN RIGHTS: POSSIBLE ENTRY POINTS FOR REFORM

42. Even though the good-governance agenda and anti-corruption programs have not yet explicitly incorporated human rights theory or practice, key words like participation, accountability and transparency are central to both agendas, and activists from both movements emphasise them with the same intensity. And yet, an analysis that looks more carefully at theory and concrete experience could help us to discover profound differences in the meanings of these words, in their political implications and in each movement's practices.

Table: Shared principles and standards

Principles/Standards	Good Governance	Human Rights
Participation	Yes	Yes
Accountability	Yes	Yes
Transparency and right to information	Yes (not as a right)	Yes
Non-discrimination	Yes (implicitly)	Yes
Availability	No	Yes
Accessibility	No	Yes
Acceptability	No	Yes
Adaptability	No	Yes

Adapted from ICHRP, 2005

43. The International Council maintains that even though these principles may have different meanings, their shared use has the potential for bridging human rights practice and anti-corruption programmes, and serving as an entry point for integrating human rights into the design and implementation of a new generation of anti-corruption strategies.

44. Next we will analyse the three common principles of participation, transparency and accountability from the human rights and anti-corruption policy perspectives. The analysis will concentrate on identifying the main divergences, and showing how these principles, when renewed from the human rights perspective, could help to enhance the impact of anti-corruption programmes. The principle of non-discrimination, which is fundamental to human rights but only timidly implicit in the good-governance agenda, will cut across our analysis in an attempt to promote the inclusion of marginalised groups in the implementation of the other three principles.

45. And finally, we selected the standards of availability and accessibility as a mechanism for exposing corruption in the provision of basic social services.

Renewing the principles through human rights

46. The relationship between human rights and corruption is a profound and complex one. Acts of corruption can directly violate one or more human rights, and yet recourse to human rights may be the most effective tool for confronting and controlling corruption in a realistic and effective way. From this standpoint, anti-corruption policies could enhance their impact by integrating human rights into the common principles of participation, transparency and accountability. This manoeuvre, however, represents a major challenge because out of the broad array of human rights, it is not at all clear which ones to choose for carrying out this process of integration, since not all human rights are equally necessary[28] or essential for designing an anti-corruption policy.

---

[28] Making this argument does not violate the principle of the indivisibility of human rights. This principle does not imply that the design of a particular public policy must necessarily adduce all the human rights. For example, the justification of a public anti-corruption policy would be grounded in a limited group of civil and political rights, not all of them.

47. In order to better justify and explain this selection process, it is important and helpful to make a distinction among human rights. The conceptual framework developed by the Office of the High Commissioner for Human Rights (2004) allows for a distinction among human rights with constitutive or instrumental relevance for the control of corruption. Rights with constitutive relevance are generally those that guarantee the development of basic capacities for life, for example, the right to health, to education and to food. When corruption distorts the allocation of public resources for schools or hospitals, it is blocking the fulfilment of these human rights with constitutive relevance. On the other hand, there are other rights that have instrumental relevance because they can condition the effectiveness and impact of anti-corruption policies.

48. Within the framework of these policies, rights with instrumental relevance are those that have the potential for improving the institutional conditions that prevent or reduce corruption. In general, civil and political rights of freedom of the press, access to information, participation, and freedom of association are the most important rights in this group, and they can, in turn, be classified as causal or evaluative. The former operate as a direct cause of the control of corruption (e.g., participation), while the latter are a necessary condition for carrying out evaluative or advisory processes that make it possible to design more effective and credible anti-corruption policies (e.g., access to information). In some cases, a single right can be defined as causal or evaluative, depending on the anti-corruption strategy being implemented.

49. This conceptual difference based on the constitutive or instrumental relevance that human rights have with regard to corruption, can be used by public officials or anti-corruption activists as a guide for identifying which human rights are essential for incorporation into the principles of participation, transparency and accountability. In this way, these officials and activists will be better equipped to design more effective anti-corruption policies.

Participation: from voiceless participation to resource control

50. After the structural adjustment programmes pushed by the Washington consensus in the 80's, "participation" became the buzzword in all areas of development politics. This trend had a profound impact on the good-governance agenda, which, as we have seen, sees citizen participation as a key process for controlling public policy management and thus for preventing corruption. And yet this connection between good-governance reforms and the participatory approach often served as a strategy for depoliticising participation processes, and cementing official authority and unequal power relations. At the local level, for example, this strategy frequently reproduced clientelistic relationships and deepened the inequality in resource distribution, enabling the elites to reinforce their dominant position[29].

51. From this standpoint, human rights practice has an important contribution to make to participation strategies for bringing corruption under control. Within the civil and political rights there is a group of rights that enable people to express themselves and participate in the public sphere. These are the right to participation, freedom of expression, the right to form parties, the right of access to information, freedom of the press, the right of association, the right to vote,

---

[29] See for example: Bardhan, P. and Mookherjee, D. (2005) "Decentralization, Corruption and Government Accountability: An Overview". For `Handbook of Economic Corruption' edited by Susan Rose-Ackerman, Edward Elgar. Tendler, J. (1997) "Good Government in the Tropics, The Johns Hopkins University Press, Baltimore. Crook, R. and Sverrisson, A. (2001) "Decentralization and poverty-alleviation in developing countries: a comparative analysis or, is West Bengal unique?, IDS Working Paper 130, Brighton. Cooke, B. And Kothari, U. (edit.) (2001) "Participation: The New Tyranny?". ZED Books, UK.

among others. Each of these rights is valuable in and of itself, but all of them taken together have instrumental relevance for anti-corruption policies because they guarantee the necessary conditions for the autonomous and informed participation of marginalised groups in decision-making processes and the control of public resources.

Rights to participation

52. The right to participation is rooted in the heart of the international human rights system, and occupies a central place in the strategy for confronting abuses of power: the right to participation is basically the right to claim other rights.

Universal Declaration of Human Rights

-Article 20
1.   Everyone has the right to freedom of peaceful assembly and association.
2.   No one may be compelled to belong to an association.

-Article 21
1.   Everyone has the right to participate in the government of his country, directly or through freely chosen representatives.

-Article 29
1.   Everyone has duties to the community in which alone the free and full development of his personality is possible.

---

53. Moreover, the effectiveness and consistence of the right to participation rest on several instrumentally relevant rights. If the aim is to increase the participation of marginalised groups in anti-corruption policies, these groups should have the freedom to organise without restrictions or coercion of any kind (right to association); to express themselves without threats (freedom of expression); and they should have timely, useful and understandable information at their disposal (right of access to information).

54. Ideally, these rights are combined and enhanced in practice to include marginalised groups in the control of public administration. For example, for marginalised groups to be able to challenge and resist a government's corrupt practices, they must be able to organise freely and have enough information at their disposal to express themselves, formulate their demands and expose the corruption. Without these conditions, it is hardly feasible for these groups to confront and expose corruption.

The right to participation in the international human rights system

---

International Covenant on Civil and Political Rights
-Article 19
1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

-Article 21
 The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic

---

society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

-Article 22 (paragraph 1)
Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

-Article 25
Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:
a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
c) To have access, on general terms of equality, to public service in his country.-General observation No 25 (1996): The right to participate in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service (article 25 of the Convention)

International Covenant on Economic, Social and Cultural Rights
-Article 15 (paragraph 1)
 1. The States Parties to the present Covenant recognise the right of everyone: a) To take part in cultural life.

Convention on the Elimination of All Forms of Discrimination against Women (arts 7 and 8)

Convention on the Rights of the Child (arts. 13, 15 and 31)

55. The simultaneous combination of these instrumental rights creates breadth and depth in participatory processes. The combination of these two variables allows standards to be set for guiding the design of open, inclusive and robust participatory processes. From the human rights viewpoint, it is not enough to include marginalised groups (breadth), if they have no influence in decision-making or capacity for resource control (depth). At the same time, these variables allow for the qualitative evaluation of participatory processes: Who participated?, and How did they participate?

Breadth of participation

56. Breadth refers to the degree of diversity and pluralism of the participating individuals and groups, with special attention paid to the inclusion of groups directly affected by corruption and suffering discrimination in terms of gender, ethnicity, age, race, cultural identity. In order to reach this objective, a series of formal rules must be created and applied in order to assure minimal institutional conditions for the inclusion of these groups. In this sense, the Aarhus Convention[30] can be used as a practical guide for public officials and anti-corruption activists to guarantee participatory processes that are genuinely inclusive:

- The groups affected by corruption, and the public at large, must be notified sufficiently in advance so that they can organise and develop effective strategies.
- Participants must have timely access to information regarding the participatory process. This information must be complete, up-to-date, truthful, and understandable (avoiding specialised language)
- Positive actions must be taken to ensure plural participation in the face of economic, linguistic, cultural or geographic barriers.

---

[30] See, the Aarhus Convention: www.unece.org/env/pp/documents/cep43e.pdf

BREADTH IN PARTICIPATION	
(MINIMUM) INSTITUTIONAL AND LEGAL CONDITIONS OF INCLUSION	**INDICATORS**
Enough time to act	Groups potentially affected by clientelism and corruption and the general public must be notified with sufficient warning time to be able to organize and develop effective participatory strategies.
Guaranteed access to "quality" information:	Potential participants need timely access to information on the subject of the participatory process. This information must meet the following minimum attributes: ✓ it must be relevant (including the key issues for discussion and avoid unnecessary, trivial and secondary data); ✓ updated (data and studies with publication date closest to the call); ✓ understandable (avoids jargon and unnecessarily complex language)
Guaranteed standards of adaptability and accessibility	Affirmative actions must be taken to ensure a plural participation against possible economic, linguistic, cultural or geographical (formal/informal) obstacles.

Source: own elaboration

Depth of participation

57. Depth of participation is measured by the participants' degree of influence and impact on decision-making or the allocation of public resources. From this viewpoint, depth can be seen as a continuum between a superficial type of participation on the one extreme, and deep participation on the other. The most superficial degree includes participatory processes aimed at extracting information from people to enhance the effectiveness of public policies. The groups affected by corruption participate, give their opinions, and demand their rights, but the result of the participatory process is not binding. The government thus has no obligation to respond to these demands in particular, or to heed the majority opinion that comes out of the process. At the other extreme are participatory processes that promote direct control over disputed resources.

DEPTH IN PARTICIPATION			
TYPES OF PARTICIPATORY PROCESSES BASED ON THE DEGREE OF IMPACT AND INFLUENCE	**PARTICIPATION AS A CONTINUUM**		
	FROM SUPERFICIAL ⟵———————⟶ **DEEP**		
	Information extraction	Non-binding consultation in specific matters	Co-managment	Social control over the allocation of public resources
FORMS OF CO-OPTION AND POSSIBLE CONSEQUENCES	Control and manipulation of information by the government and powerful groups. As a result, the central objective of the participatory process is not known by the affected groups, neither are the outcomes nor the end use of the information.	The affected groups are excluded or their demands are not taken into account. As a result, dissent is minimized, and the official position and the asymmetrical power relations are legitimized and reinforced.	The selected groups are politically aligned with the government. As a result they reinforce and expand its control over resources. The affected groups are excluded or seriously underrepresented and clientelist networks strengthen their power.	Dominant groups collude with the government to exclude other autonomus groups. As a result clientelist networks and unequal power relations remain untouched. The process just reorders access to resources in favour of powerful groups and reproduce corruption.

Source: own elaboration

Power to participate

58. But in real life, formal rules regulating the breadth and depth of participatory processes are combined and intertwined with informal practices of power. Whereas the former are easy to observe, the latter are less visible and thus harder to detect, prevent and control. To keep formal participatory processes from being co-opted by dominant groups through unequal power relations, public officials and anti-corruption activists must be better equipped to detect and analyse the different configurations that underlying power assumes in participatory processes.

One way to address this problem is by analysing how the different groups involved participate and wield their power to gain access to, demand or hold on to disputed resources[31].

Visible power

59. In this dimension, the exercise of power becomes visible in the formal laws, processes and institutions that regulate participatory processes. At this level, the groups involved try to intervene in the design or reformation of the formal rules in order to broaden or restrict the breadth and depth of participation. Public officials and anti-corruption activists must set minimum standards and monitor compliance with them, in order to guarantee democratic, pluralistic and binding participation.

Hidden power

60. Even though participatory processes may seem to be democratic, pluralistic and binding, some groups with power may have the capacity to restrict access to participation and set their own agenda. This is hidden power: without having to modify the formal rules of the game, it can define who participates and what agenda will be discussed. The most powerful groups lobby to define who is excluded and what issues will not be discussed. Public officials and anti-corruption activists must be capable of implementing a strategy to generate conditions whereby marginalised groups have voice and influence to get their demands onto the agenda and to represent their interests.

Invisible power

61. Of the three configurations that power relations can assume, this one is, in Steven Lukes' view,[32] the most insidious. Power is brought to bear on people so that they become incapable of recognizing that a conflict exists. In this way, people naturalise the injustice they are dealt in life, they avoid questioning their suffering and they internalise as inevitable their position of subordination. This dimension of power is exemplified paradigmatically in gender relationships. In these cases, even though the breadth of participation includes women, the presence of men can inhibit them from speaking and demanding their rights[33]. Thus, even though the formal rules guarantee breadth and depth in the participatory process, one group's symbolic power over another can skew the participation without leaving any trace of co-opting manoeuvres. To detect this kind of invisible power, public officials and anti-corruption activists must develop a deep understanding of the conflicts and tensions that structure the unequal power relations in a given community and, what is even more important, have the capacity for self-reflection in order to avoid reproducing the same discriminatory behaviour.

62. Therefore the combination of these three variables -breadth, depth and power configuration- can allow NGOs, public officials and affected groups to be better equipped to prevent and detect any operation of co-optation of participatory processes and also avoid formal participatory procedures that may hide informal relations of oppression. In the same direction, the following test may be used as a guideline for enhancing breadth and depth of participation:

---

[31] To develop this analysis of power configurations, we drew on the work of Lukes, S. (1974).
[32] Ibid.
[33] Cooke, B. and Kothari,Y. (2001). "Participation, the new tyranny?" Zed Books.

-- COOPTATION TEST –		
BREDTH & DEPTH IN PARTICIPATION	POWER CONFIGURATIONS	INDICATORS OF COOPTATION
BREDTH • Inclusive • Pluralistic • Diverse	**Visible Power**	Formal rules and procedures for participation implicitly or explicitly exclude marginalized groups. Laws or regulations that discriminate against women, afro-desdendants, lesbians, gays, indigenous people, migrants, etc., are the most paradigmatic example.
	Hidden power	The work agenda does not represent the priorities, values, and problems of marginalized groups affected by corruption
	Invisible power	Marginalized groups exclude themselves from participation because of fear of reprisals, lack of self-confidence and critical counciousness, self-censorship, or simple skepticism about the final outcomes..
DEPTH • Information extraction • Non-binding consultation • Co-managment • Control over public resources	**Visible power**	The rules and formal procedures prioritize the collection of information, and non binding consultations, thus reducing the degree of influence by preventing any binding effect, co-managment and direct control over resources.
	Hidden power	The agenda does not represent the interests, the needs, and the values of marginalized groups affected by corruption
	Invisible power	Marginalized group may be present but without voice. Thus they have no influence on any decisión because of fear of reprisals, lack of self-confidence and critical counciousness, self-censorship, or simple skepticism about the final outcomes.

Source: own elaboration

63. Thus, seeing participation as a human right more than as an instrument for achieving greater administrative effectiveness would enable anti-corruption officials and activists to implement participatory processes that would enhance and protect the breadth, depth and legitimacy of the participatory experiences of the anticorruption agenda.

The principle of non-discrimination applied to participation

64. The principle of non-discrimination is one of the fundamental principles of the international human rights system. It is incorporated into the main human rights instruments, beginning with the Universal Declaration of Human Rights. Within this legal framework, all human beings are equal before the law (art. 7) and are entitled to receive equal protection of the law against discriminatory and arbitrary treatment on the part of private agents.

International Covenant on Civil and Political Rights

-Article 2 (paragraph 1)
Each State Party to the present Covenant undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

-Article 3
The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

-Article 24 (paragraph 1)
Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

-Article 26
All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

General observations adopted by the Human Rights Committee, in particular:
- General observation No 28 (2000): Equality of rights between men and women
- General observation No 18 (1989): Non-discrimination
International Covenant on Economic, Social and Cultural Rights

Article 2 (paragraph 2)
Each State Party to the present Covenant undertakes to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

-Article 3
The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

General observations adopted by the Committee for Economic, Social and Cultural Rights, in particular:
- **General observation No 16 (2005):** The equal right of men and women to the enjoyment of economic, social and cultural rights (art. 3)
- **General observation No 3 (1990):** The nature of the obligations of the States Parties (paragraph 1 of article 2 of the Covenant)

> **Convention on the Elimination of All Forms of Discrimination against Women and general recommendations adopted by the Committee for the Elimination of Discrimination against Women**
>
> **International Convention on the Elimination of All Forms of Racial Discrimination and general recommendations adopted by the Committee for the Elimination of Racial Discrimination**

65. There is a direct connection between corruption and discrimination. Corruption distorts the criteria for allocating public resources, which leads to discrimination and arbitrariness. When an individual or group of people is left without access to a public service because they cannot or refuse to pay a bribe, or because they do not belong to a clientelistic network, the principle of non-discrimination is emptied of all meaning. Corruption becomes more dangerous and damaging when combined with discrimination on the basis of race, colour, sex, language, religion, political opinion, national or social origin, sexual orientation or other social status.

66. For public officials and anti-corruption activists, the principle of non-discrimination, combined with and taking into account breadth, depth and power configurations, is a fundamental tool for guaranteeing the inclusion of marginalised groups in participation processes. Many of the strategies implemented by the anti-corruption movement for preventing corruption in the provision of social services or in public contracts have incorporated participatory processes (public hearings, oversight committees, etc.). These participatory strategies face the challenge of identifying the structural causes that keep the segregated groups from participating. For this reason, these processes often end up reinforcing power asymmetry in decision-making and access to resources.

67. In this context, the cross-cutting principle of non-discrimination, combined with the test of cooptation, can be used by public officials and anti-corruption activists as a guide for preventing the manipulation of participatory processes. Otherwise, setting up participation channels with no consideration given to local power structures or conflicts can exacerbate the exclusion of segregated groups or lead to their cooptation.

68. In international experience and specialised literature on social conflicts over access to social services, this phenomenon is known by such varied names as "the tyranny of participation"[34], "voice without influence"[35], "participation as fleeting enthusiasm"[36], and finally as "rhetorical make-up"[37]. All of these expressions denote a kind of participation that is neither authentically democratic nor autonomous, and that has very little chance of identifying and attacking the structural causes of corruption.

Transparency: access to information plus rights

69. Although the word "transparency" does not appear in any of the international human rights covenants, the principle of transparency becomes explicit and moves to the forefront when the discussion turns to the right of access to public information.

---

[34] Cooke, B. and Kothari,Y. (2001). "Participation, the new tyranny?" Zed Books.

[35] Goetz, A.M. and J. Gaventa (2001). 'From consultation to influence: bringing citizen voice and client focus into service delivery.' IDS Working Paper 138

[36] Cohen, J. and Uphoff, N.(1999). 'Participation's place in rural development: seeking clarity through specificity', World Development.

[37] Cernea, M., (2001) 'Knowledge from social science for development policies and projects', in M. Cernea (ed.) Putting People First: Sociological Variables in Rural Development, Washington: 2001/Oxford: Oxford University Press.

70. Within the framework of human rights, the right of access to information is interpreted as a complement to freedom of expression, because with information this expression can be an informed opinion about issues of public interest. Access to information is also a requisite for the development of personal autonomy and the exercise of citizens' rights. It is an essential right for human rights in general because effective access to public information is a pre-condition[38] for enjoying and demanding other civil, political, economic, social and cultural rights, such as freedom of expression, participation, education and health.

71. One example of the instrumental potential of the right of access to information can be found in different citizen experiences in monitoring the principle of progressive realisation of economic, social and cultural rights[39]. This principle obliges governments to fulfil these rights progressively. Consequently, it also implies that governments are obliged to respect the principle of non-retrogression, meaning that governments may not take measures that worsen the ability of marginalised groups to have access to these rights. However, in order to monitor compliance with the non-retrogression, obligation, citizen's require complete, timely and accurate information so that they can make comparisons over time of the social status of different marginalised groups. Without access to this information, it becomes practically impossible to verify compliance with the principle of progressive realisation.

The right of access to information in international human rights instruments

---

Universal Declaration of Human Rights

-Article 19
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

International Covenant on Civil and Political Rights

-Article 19 (section 2)
Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Inter-American Convention on Human Rights

-Article 13 (section 1)
Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

Transparency plus rights

72. *What is transparency?* While there is no consensus definition of what transparency is, most definitions emphasise the fact that an increased flow of accessible, accurate, understandable and timely information is a key factor for determining the degree of transparency in State administration and in markets. The definitions vary depending on the institutions stating them, whether it is the OECD, the IMF or the World Trade Organisation. However, all of these definitions refer to the public nature or to the flow of information, but they never refer directly to the right of access to public information[40]

---

[38] For more detail on the connection between access to information, public participation and access to justice see the Aarhus Convention: www.unece.org/env/pp/documents/cep43e.pdf
[39] Ford Foundation (2004).

73. Until very recently[41] international human rights organisations did not consider the right to information to be a positive obligation of governments; rather they interpreted it as an obligation of governments not to interfere in the flow of information. Not until 2002 did the African Human Rights Commission more explicitly introduce this notion of positive obligation, and in 2006 the Inter-American Court of Human Rights ruled unambiguously in favour of the right of access to public information, when it concluded that:

> [B]y expressly stipulating the right to "seek" and "receive" "information," Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied. The delivery of information to an individual can, in turn, permit it to circulate in society, so that the latter can become acquainted with it, have access to it, and assess it. In this way, the right to freedom of thought and expression includes the protection of the right of access to State-held information, which also clearly includes the two dimensions, individual and social, of the right to freedom of thought and expression that must be guaranteed simultaneously by the State[42].

74. The case that lead to this decision (which has repeatedly been called historical even by those prone to avoid clichés) was a relatively simple one of a request for information about the permission given by the Chilean government to an company form the United States that was planning to conduct logging operations in the area of native forest known as the Rio Condor Valley. The logging company was known to have a poor environmental record and there were suspicions that the Chilean government had not carried out the proper background checks on the company before issuing the permit. The case thus combined the right to information with issues of right to environmental protection and possible government wrongdoing (the logging project was eventually stopped as a result of actions by environmental activists including a Supreme Court challenge). The Chilean government had failed to answer the request filed in 1998 for a copy of the report that should have been produced before the US company was granted the logging permission (even in the court they failed to clarify whether or not this document existed).

75. The question arises why it is so important that access to information is recognized as a fundamental human right. The answer is to be found in the specific elements of the right laid out by the court: not only do governments have the duty to respect this right, but they have to ensure that the mechanisms exist to ensure that it can be exercised in practice. In this regard, it is important to highlight the certain elements of this decision:

- that there is a right to request information that may not be hindered in any way and may not be conditioned on a particular demonstrable interest in knowing the information;
- that there is a corresponding right to receive the information (subject to limited exemptions);
- that there is an obligation on the state to reply to every request, whether providing the information or (in limited cases) denying it;
- that the right to freedom of expression cannot be considered to be fully respected without granting of a right to government-held information;
- that governments are under an obligation to take positive steps to ensure the right to information including (in another part of the judgement) the obligation to establish the mechanisms for filing requests (in other words, to adopt an access to information law) and to train the public officials on how to process requests and how to respect the right.

---

[42] Inter-American Court of Human Rights, *Claude Reyes et al. v. Chile*, Judgment of September 19, 2006 paragraph 77.

76.   For those working on the fight against corruption and in defence of other human rights, these elements are important because they create an enforceable right which is actionable in national and ultimately in international human rights tribunals.

77.   From a human rights perspective, a solid transparency policy should be articulated on two normative levels. At the first normative level, a strict system of public availability should be enacted and applied for administrative documents that might be essential for people's decision-making, and for exercising social control over public administration. At the second level, a system of law should be enacted and applied, guaranteeing the fulfilment of the subjective rights of all citizens to have access to public information without having to justify the cause or interest and including effective mechanisms for filing administrative and judicial suit in the event of non-compliance.

78.   The right of access to public has grown and developed at the national level over the last few decades. Between 1946 and 2007, more than seventy national laws were enacted. On the basis of this extensive accumulated legislative experience, we can say that overall, an ideal access-to-information law (AIL)[43] should be guided by certain basic parameters. The following table illustrates these principles:

Core principles[44]	Example of application
Maximum openness of information	Information-access laws should be guided by the principles of maximum openness of information.
Obligation of transparency	Public institutions should be obliged to make key information public periodically.
Promotion of open governments	Institutions should actively foment and promote the functioning of open governments.
Fully enforceable right	Appeal mechanisms with proper penalties for non-disclosure,
Limited scope of exceptions	Exceptions should be clear and strictly defined; they should be subjected to rigorous tests of "social damage" and "public interest".
Efficiency in access to information	Requests for access to information should be processed quickly and fairly, and there should be a possibility of independent review of all negative responses.
Costs	Citizens should not be discouraged by excessive economic costs. Costs should not exceed those of photocopying or postage.
Open meetings	Meetings at institutions should be open and public.

79.   New laws have learned from the design and implementation of previous laws. These principles have been applied differently, and are more prominent in some AIL's than in others. Even though government reforms promoting transparency have put through in many countries, the desired impact is still limited. Many of the new reforms[45] that have been carried out to improve

---

[43] Mendel, Toby. 2003. Freedom of Information Act: A Comparative Legal Survey. UNESCO, New Delhi. India. Quoted in Ackerman, John and Sandoval. 2005. Leyes de Acceso a la Información en el Mundo. Cuadernos de Transparencia 7. IFAI. DF, México.

[44] Idem.

[45] Fox, J. 2004. Empowerment and Institutional Change: Mapping "Virtuous Circles" of State-Society Interaction, in Ruth Alsop, 2004, Power, Rights and Poverty: concepts and connections.

transparency, *have looked more outward* (with the intention of gaining international credibility) than *inward* (actually increasing and improving access to information).
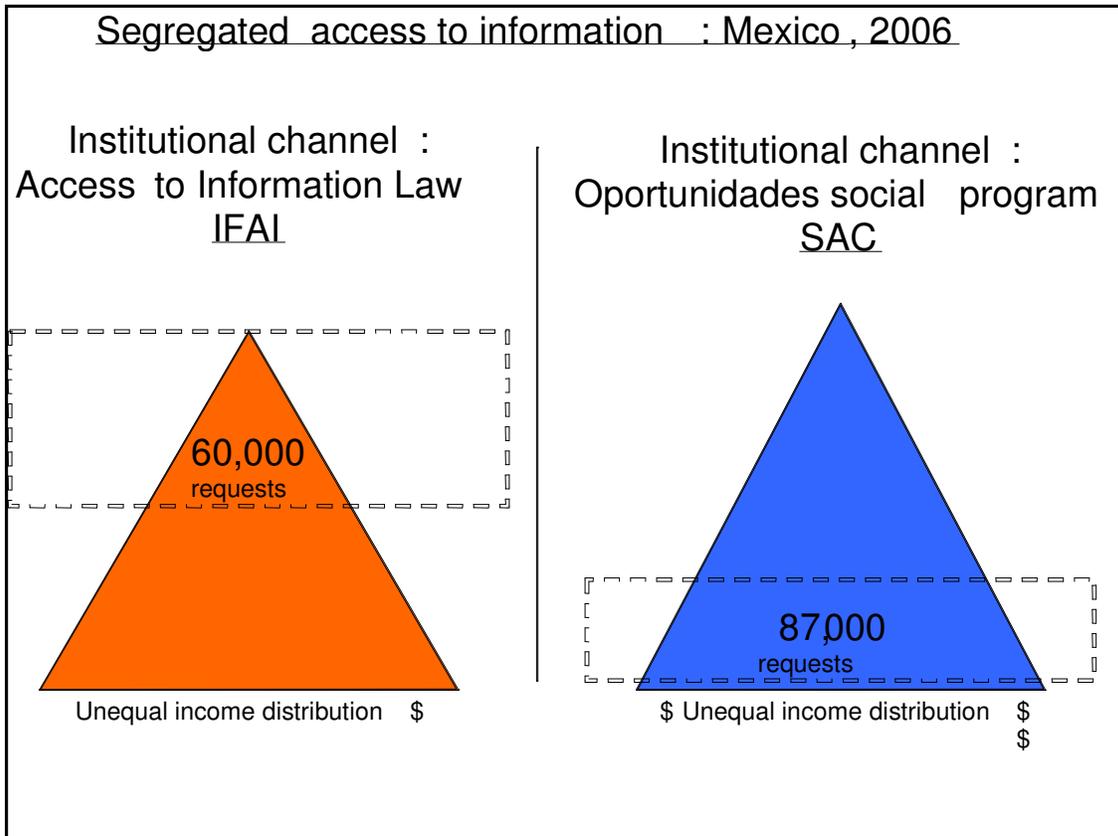
80. Nevertheless, the fulfilment of the right of access to public information requires something more than formal rules. The challenge of making State administration transparent and of guaranteeing people access to information that is in the hands of the State requires governments to take a series of concrete steps. To give an example of this sequence of steps, we can take the case of Mexico: when the Mexican Congress enacted the Federal Law of Transparency and Access to Governmental Public Information (11/6/2002), it left pending the application of the law for a period of twelve months after its taking effect in order to carry out the main administrative reforms that were needed. The effective application of the law calls for trained and motivated public officials, for a civil society that is aware of its right, for new administrative circuits and for an independent and autonomous application agency. Once all of these changes have been put in place, effective monitoring is required of each of the different public agencies making up the State.

81. But enacting a law is just the first stage of a pro-transparency reform; generally speaking, power is needed in order to get public information opened, disseminated and delivered. Thus, the key to implementing transparency policies is paying attention to the incentives of all the actors involved (Weil, 2002). In other words, the reality to keep in mind is that while these policies make progress in the dissemination of public information, they generate substantial costs that are concentrated in small groups of state and private actors, and very diffuse benefits for the rest of society. This particular cost-benefit structure gives very strong incentives to groups who might find their reputation threatened or compromised by the dissemination of this information, to organise and block access to information or to paralyze pro-transparency reforms; while on the other hand, the incentives of the beneficiaries of these reforms tend to be much weaker, which limits the collective action of these groups and in some cases undermines the sustainability of the pro-transparency reforms.

82. The application of human rights principles to transparency policies can help anti-corruption officials and activists to expand the interpretation of the right of access to information as a positive obligation of governments, and to have an impact on the inclusion of this right in the constitutions and national laws of countries where it has not yet been enshrined. Secondly, the operationalisation of human rights principles, and especially the principle of non-discrimination, plays a key role in the de-elitisation of transparency policies, in order to guarantee access to information for marginalised groups. While not all countries with AIL's have evaluated their impact or generated statistical data about their performance, the scarce data published so far tell of a worrisome tendency. According to Darbishire (2007), in the United States, 40 years after the law was implemented, only 10% of requests for information come from journalists and NGO's; most requests are made by businesses or lawyers.

83. In Mexico a similar pattern was detected, with 10% of the requests made by journalists, 20% by NGO's and 30% by businesses. These data suggest that the information request system is largely a domain of specialists[46], engaging a relatively small number of citizens, mainly young metropolitan male with high income. Even some commissioners of the Federal Institute[47] for Access to Information (IFAI in its initials in spanish) have expressed concern about what they consider to be their narrow social constituency, in terms of those who actually use the official information request system. According to Jonathan Fox (2007), in 2006 the Oportunidades social program received more than 87,000 requests for information (including complaints) channeled via the Oportunidades' Citizen Attention program (SAC in its initials in spanish), in contrast to the 60,000 information requests

---

[46] The mexican case is based on: Fox, J. et al. (2007) "Derecho a Saber. Balance y Perspectivas Cívicas", Fundar, Centro de Análisis e Investigación, y el Mexico Institute del Woodrow Wilson International Center for Scholars.
[47] The Federal Institute is the central federal agency charged with ensuring compliance and ruling on citizen appeals to government denials of information requests.

directed via the IFAI to the entire executive branch. The fact that, by definition, all of those Oportunidades information requestors are citizens in extreme poverty, helps to complete the requesters' social profile in Mexico. This social segregation pattern described by Fox would look like this:
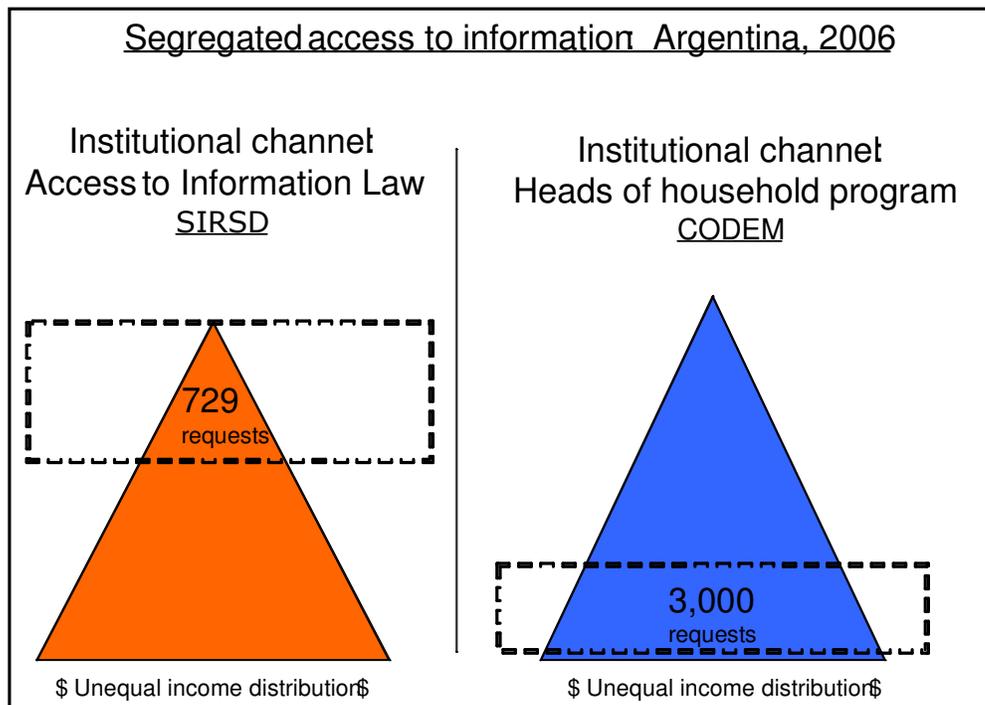
Table 5

Segregated access to information : Mexico , 2006

Institutional channel :
Access to Information Law
IFAI

Institutional channel :
Oportunidades social program
SAC

60,000
requests

87,000
requests

Unequal income distribution $

$ Unequal income distribution $
$

Source: own elaboration based on official data.

84. In the same direction, it is possible to find a similar social pattern using comparable public data from Argentina, where the Sub secretary of Institutional Reform and the Strengthening of Democracy (SRIFD) in its initials in Spanish) plays a similar institutional role to that of IFAI in Mexico and the Commission for Handling Denunciations Involving Employment Programs (CODEM, in its initials in Spanish) plays a similar role to that of SAC in Mexico.

Table 6

Segregated access to information: Argentina, 2006

Institutional channel: Access to Information Law SIRSD	Institutional channel: Heads of household program CODEM
729 requests	3,000 requests
$ Unequal income distribution $	$ Unequal income distribution $

Source: own elaboration based on official data.

85. Finally, a study made by Justice Initiative[48] comparing 14 countries confirmed this stratified pattern and showed that discrimination against marginalised groups[49] negatively affected the number of requests received. While NGO's got a positive response to 32% of their requests for information, marginalised groups got a positive response to only 11% of their requests. These results merely confirm the obvious: in the institutional context of most of our democracies, the asymmetry of information between the government and citizens is skewed even more in favour of the government when the demand for information comes from marginalised groups.

86. The principle of transparency, when interpreted and applied as a human right, is more than a discretionary flow of state information. The recognition of the right of access to information can provide anti-corruption organisations with leverage to press for the enactment of a transparency law, or to monitor it where one is already on the books, demanding its effective fulfilment, and at the same time demanding that governments do nothing to block access to information, and that they take concrete measures make access happen: translating the information into indigenous languages, organising public-interest campaigns, etc.

Democratizing the right to access to public information to enhance communities' upward accountability

The Mexican experience of transparency and access to public information reforms is known worldwide. As shown the effective exercise of the right in Mexico remains almost exclusively a practice of the male elite. According to official data, the social profile of the individual exercising this right is that of a young

---

[48] See, Open Society Justice Initiative (2006) "Transparency and Silence: A Survey of Access to Information Laws and Practices in 14 Countries" Open Society Institute.

[49] Within Justice Initiative's study individuals who identified themselves as members of an excluded or vulnerable group were members of a racial, ethnic, religious, or socio-economic group routinely subjected to discrimination.

metropolitan male with a high income. Interestingly from over 112,000 users in total, only 6,000 account for 50% of the total requests.

Having recognised this problem, the **Instituto Federal de Acceso a la Información Pública (**IFAI)[50] decided to implement the *Proyecto Communidades* to expand and make the right of access to public information more democratic. The IFAI's main objective was to reach out to marginalised communities empowering them to exercise their right to access public information.

The project worked with grass-root organisations in nine different Mexican states. It initiated an educational campaign targetting 116 marginalised communities with limited access to the internet and modern technologies.

The independent evaluation found a number of concrete and positives outcomes:

1) Poor women in the state of Veracruz are now demanding social service benefits after they found out through information requests that their names were on beneficiary lists for health and housing programs—benefits they had never received.
 2) A poor community in the state of Mexico halted a federal construction project on their land after an information request revealed that no environmental impact study had been completed as required by law.
3) Federal prisoners - the majority of whom are too poor to have a lawyer and easily find themselves behind bars for petty offences, used the law to gain access to their personal files. They were initially denied the information, so they appealed, and in a precedent-setting ruling, they won the right to access the files for all prisoners. Once they exercised that right, 36% of them walked free.

Source: Guerrero, J. (2008) "Openness + Transparency= Accountability? The Case of Mexico" Federal Institute for Access to Public Information, presentation to the Organisation of Economic Co-operation and Development.

Democratising the right to access to public information from below including a gender perspective

In Argentina, 84% of the people in households that receive or have received a social programme during the period 2002-2007 agree that social programmes are used politically, while 59% agree that a lack of information inhibits access to social programmes[51].

In this context, RAZONAR, a grassroots women's human rights organisation, established a system to provide information and receive complaints from social programme beneficiaries in the Municipality of Moreno. Moreno has a population of 380,500 habitants, an unemployment rate of 43%, and 22% of households living without satisfaction of basic needs. RAZONAR also takes into account the greater social vulnerability that females usually face in Argentina, where women typically have less income than men, experience a greater rate of unemployment, and are overrepresented in low-income occupations. These indicators are also reflected in the greater number of women in receipt of conditional cash transfers. Currently women account for 75% of beneficiaries in Argentina.
Against this social background, RAZONAR established an alliance with a local community radio to expand access to public information. Radio is a powerful media in Argentina; it can reach people who live in areas with no phones and no electricity. Radio can reach people who can't read or write. The local radio programme provided key information about the range of different social programs; criteria of

---

[50] Interview, Juan Pablo Guerrero, IFAI commissioner and coordinator of Comunidades project, Mexico, City, April 24, 2009.
See MORI Argentina, and CEDLAS, Universidad de La Plata (2007) "Percepciones sobre los planes sociales en Argentina", serie de documentos de trabajo sobre politicas sociales N2, World Bank.

eligibility; recertification of eligibility, amount of the subsidy, frequency and mechanisms of benefit payments; registration processes; and complaints and appeals mechanisms. At the same time, the radio programme invited the people to get in contact with RAZONAR, either to receive more information or to make complaints about corrupt practices prevailing in the social programme. RAZONAR compiled the complaints and handed them over to the Specialized Attorney (UFISES) in charge of investigating and prosecuting crimes committed within social programmes. In parallel, the programme monitored the whole process until final sentencing.

When RAZONAR won the first case, and obtained a favourable sentence ordering the local government to reinstate a female beneficiary who was excluded by discriminatory requirements, the case was widely publicised by the local radio. It was used as a case in point of what beneficiaries of social programmes can achieve if they are informed about their entitlements to complain against abuse of power.

Source: Gruenberg, Ch. (2007) "Transparenting subsidies: promoting a pro-poor reform in public subsidies allocation", 5th International Conference of Information Commissioners", http://icic2007.org.nz/Day_4/Gruenberg_day4_3A.pdf

Accountability: those that wield power and those that have no power

87. International human rights laws do not refer directly to the concept of accountability. The whole structure of the international human rights system, however, rests on the theory and practice of rendering accounts. From the human rights perspective, all people are entitled to rights and governments have the obligation to respect, protect and fulfil these rights. Human rights logic only makes practical sense if the holders of those rights have access to institutional enforcement mechanisms. Therefore, governments have the positive obligation to organise an institutional system whereby all people can accede to accountability mechanisms, just as they have the negative obligation not to block access to accountability mechanisms, especially for marginalised groups.

88. On the other hand, accountability discourse and practice is at the core of any anti-corruption strategy. In the face of corruption, people demand justifications and sanctions. In theory, accountability systems fulfil this dual function of forcing those in power to give explanations about their actions, and of subjecting them to sanctions every time they fail to fulfil their obligations.

89. Accountability is, in short, a relationship between those that have access to power and wield it, and those who have the least power. It is a way to give people a concrete means for controlling the behaviour of politicians to whom power has been delegated.

90. To put it abstractly, accountability describes a relationship by which A renders accounts to B, because A is obliged to explain and justify her actions to B, and/or A is liable to suffer sanctions if her behaviour or justifications do not meet B's expectations.

91. In practice, the operation of accountability can be carried out along two spatial axes[52], the horizontal and the vertical. The spatial axes indicate the axis of operation of control institutions. The concept of horizontal accountability is associated with a system of intra-state controls, while vertical accountability implies the operation of controls by civil society, from outside of the state.

92. This classification highlights the directionality of the control system and the setting in which accountability is operationalised.[53] While horizontal accountability is implemented through a network of institutions within the State, which mutually control and balance one another, vertical accountability takes place outside the State by way of social mobilisation.

---

[52] O'Donnell, (1997).
[53] See appendix 1.

93. In practice, the conceptual differences between the two spatial control axes are not a minor matter. The difference in terms of nature and performance between horizontal and vertical accountability mechanisms has first-order practical implications for the inclusion of the human rights perspective in the design and implementation of anti-corruption strategies.

94. The good-governance agenda pushed for anti-corruption reforms on the assumption that corruption was caused by the failure of state institutions. This agenda reduced the discussion about accountability to technocratic recipes for reforming the State. Most of these recipes shared a top-down orientation, replicating universal reform models without consulting the groups affected by corruption.

95. Although the reform of the State is considered a necessary measure for improving accountability, the implementation of institutional reforms isolated from social participation tends to fail. The excessive trust that the good-governance agenda placed with the State, which was seen as the cause and the solution of the same problem, overstated the capacity of formal institutions to generate social change. From the human rights perspective, social participation is also capable of reforming state institutions.

96. Human rights practice sees vertical accountability as a key instrument in the lives of marginalised groups for taking on corruption that is strategically located between them and access to resources.

Horizontal accountability systems: reforms without results in sight

97. In most countries, the map of accountability institutions is large and varied. We find the executive, legislative and judicial branches fulfilling their classic roles of checks and balances, in a attempt to guarantee a strict republican division of power. The classic system of checks and balances is based on what James Madison envisioned as a system for neutralising power ambitions among the 3 branches of the state: i.e., one branch's power ambitions tend to neutralise, at least in theory, the power ambitions of another branch. Concretely, the executive branch vetoes laws passed by congress; congress decides whether to approve the budget or not, and on very rare occasions impeaches the executive; while the judicial branch reviews the constitutionality of laws passed by congress and the executive. These are the most important instruments of the system of checks and balances for controlling an excessive concentration of power in a single branch of government.

98. Over the last two decades, according to the paradigm of good-governance institutional reforms, a series of new accountability institutions has been created in most countries of Latin America, Asia and Africa: ombudsmen, anti-corruption offices, general auditors and inspectors' offices are some of the main institutions.

99. But the number and variety of control institutions does not guarantee better accountability. On the contrary, for these new accountability institutions to control the concentration and abuse of power without infringing on each other, competing or neutralising each other, they must find a way to coordinate their efforts and operate like a network of agencies, and have a judicial branch that is committed to the practice of rendering accounts, in order the close the system from above[54].

100. Many of these new accountability institutions, however, are not empowered with the jurisdictional authority to apply sanctions. Therefore, the impact of their reports, rulings or resolutions depends, in the final analysis, on the degree of commitment and activism that judges have in the face of corruption.

---

[54] O'Donnell (1999).

101. This proliferation and variety of new horizontal accountability institutions created over the last two decades, under the influence of the good-governance agenda, can be grouped into the following three overall categories.

Supreme auditing institutions
• *General Comptroller's Office*
• *Accounts Tribunal*
• *General Auditor's Office*
• *Accounts Court*
• *Inspector General's Office*

Denunciation and investigation agencies
• *Attorney General's Office*
• *Public Prosecutor*
• *Inspector General's Office*

Agencies for defending citizens' rights
• *Ombudsman*
• *Human Rights Defence Office*
• *National Human Rights Commission*

Source: Carrillo, 2004.

102. The above table shows us that there is a wide variety of these institutions, and that within each category, and from one category to the next, we will find an extensive diversity of institutional arrangements depending on the institutional location, the degree of functional autonomy, the source of financing, the rules for selecting and appointing officers, and the degree of obligation of their rulings, among other important institutional design variables.

The role of oversight bodies is central to fulfilling expectation of increased accountability and reduced corruption

103. However, neither the number nor the variety of these new control institutions was enough to reduce corruption over the last 2 decades of reforms.[55] These reforms were doubtless important, but they cannot be implemented successfully unless all actors interested in improving accountability are involved. Civil society in general, and marginalised groups in particular, have a

---

[55] See for example: PNUD (2002) "Human development report 2002. Deepening democracy in a fragmented World" Oxford University Press. .O'Donnell G. (2003) "Horizontal accountability: the legal institutionalization of mistrust" In Democratic Accountability Mainwaring S, Welna C (eds). Mainwaring S, Welna C (eds). (2003) "Democratic Accountability in Latin America" Oxford University Press: Oxford. Grindle M. 2004. "Good enough governance: poverty reduction and reform in developing countries". Governance 17(4). Third Vienna Dialogue on Democracy (1997) on "Institutionalizing Horizontal Accountability: How Democracies Can Fight Corruption and the Abuse of Power." www.ned.org/forum/reports/accountability/report.html

fundamental role to play during these processes, influencing the design and lobbying for the reforms to be put through.

Vertical accountability: new forms of resistance against corruption

104. Traditionally, vertical accountability is associated with the electoral dimension, with the possibility that citizens in reasonably free and regular elections can punish or reward politicians by voting for or against them in the next election. And yet, there is a consensus among democracy analysts that voting as a mechanism is too imperfect[56] to control the behaviour of public officials.

105. By contrast, a wider interpretation of the theory and practice of vertical accountability made from the human rights perspective would include numerous innovative social accountability mechanisms that are being implemented between electoral campaigns, with ongoing activity by different social actors: civil associations, NGO's, cooperatives, universities and social movements.

106. The line is blurred between this concept of vertical accountability and the wide-ranging concept of participation analysed in the previous section. In fact, vertical accountability is nothing other than pure participation. Within the framework of this report, however, we chose to differentiate these concepts and refer to vertical accountability as a kind of social accountability[57] that promotes citizen participation focused exclusively on controlling corruption in the management of programmes, governmental action and even non-state agents.

107. For human rights, the practice of accountability implies a shift from the exclusivity and over utilisation of horizontal systems of intra-state controls, toward a wider model that includes the vertical accountability model used by marginalised groups seeking to confront and expose corruption.

108. From this perspective, vertical accountability strategies are built and developed in the daily struggle of marginalised groups through the exercise of their human rights in the face of corruption. For these groups, corruption represents a barrier to access to vital resources such as health, education, housing, jobs, basic income, water, land and minerals.

Human rights, access to resources and accountability in the face of corruption[58]

109. The delicate relationship between human rights, access to resources[59] and accountability is fundamental for the lives of marginalised groups. The ability of these groups to leave poverty and discrimination behind depends in part on the balance established among the three variables. But there is a fourth destabilising variable. Corruption is strategically located at the intersection of the three variables, denying rights, manipulating access to resources, and capturing accountability institutions.

---

[56] Przewroski and Stokes maintain that on the one hand, "democratic institutions do not contain effectivisation mechanisms for prospective representation" and, on the other hand, "retrospective voting, which takes as information only the past performance of officials, is not incentive enough to make governments act responsibly." In a more recent paper, Przeworski insists that "elections are inherently a crude instrument of control since voters have only one decision to make on a whole package of government policies implemented over a whole administration." Przeworski, Stokes, and Adapted from Manin (comps), Democracy, accountability and representation, Cambridge University, introd., 1999.

[57] The phrase used in Spanish, "rendición de cuentas social," is an imperfect translation of the concept referred to in English as "social accountability."

[58] This section analyze the theory and practice of social accountability through the perspective of an adaptation of the framework developed by Meter Newell and Joanna Wheller (2005) to better understand the impact and consequences of corruption on the dynamics between human rights, resources and accountability.

[59] We use the concept "resources" in the widest sense of the word to refer to all social services and goods and natural resources needed to lead a dignified life, without sacrificing capacities.

110. Corruption impacts human rights by distorting three basic rules that regulate access to resources and their distribution:

  i.   Rule of <u>allocation</u>: defines criteria for distributing public resources;
  ii. Rule of <u>inclusion</u>: defines who participates, how, when and in what processes; and
  iii. Rule of <u>accountability</u>: which determines the responsibilities of each of the actors involved and the mechanisms for enforcing victims' rights.

Accountability

CORRUPTION
Modifies rules of:
Allocation
Inclusion
Accountability

Rights   Resources
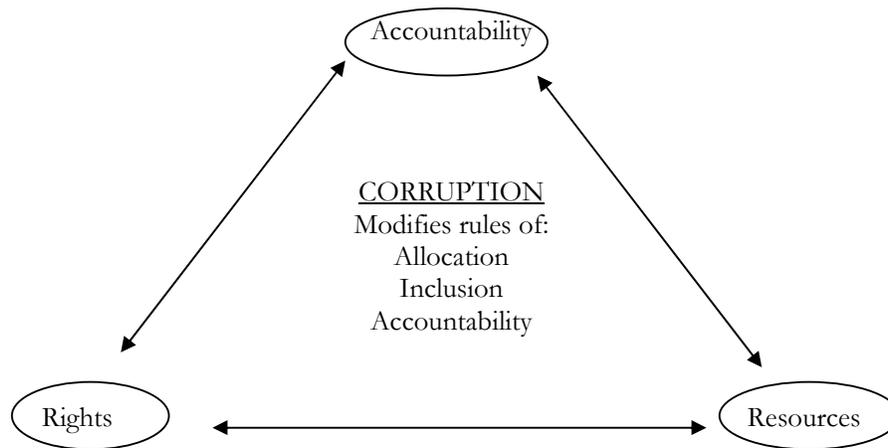
Source: Adapted from Newell and Wheeler, 2005.

Human rights and accountability in the face of corruption

111. In the human rights perspective, people are entitled to rights, while governments, together with other non-state actors, are obliged to respect them. For the international human rights system, governments that create and sign these treaties have the main responsibility for protecting these rights. In order to fulfil this obligation, states create institutional accountability systems, but they must also take concrete steps to guarantee universal and equal access to these systems. Corruption, by way of bribes to judges, inspectors, legislators, police, customs officers and other key officials of control institutions, skews the accountability rule (determines the responsibilities of each of the actors involved and the mechanisms for enforcing victims' rights) in favour of the powerful. This phenomenon disproportionately affects women who are victims of crimes committed by criminal networks that penetrate multiple accountability institutions at the global, national and municipal levels. For example, the trafficking and exploitation of women is an activity headed by men who operate by simultaneously bribing other men: legislators, judges, police, migration officials, etc., in one or more countries.

112. When State corruption becomes structural, institutions end up overlooking the demands of marginalised groups, as if these demands simply did not exist. And in the worst cases, when these demands take on too much visibility in the public opinion, the state represses them.

113. As a result of corruption in horizontal accountability systems, civil society organisations, and particularly marginalised groups, choose to combine alternative social accountability strategies from the bottom up, to pressure and activate control institutions, or to directly monitor access to resources in the power of the State and other non-state actors.

Human rights and access to resources in the face of corruption

114. In the view of Transparency International[60] corruption is the number-one risk facing the Millennium Development Goals. In the daily lives of poor, marginalised people, the payment of a bribe to a policeman can mean not enough money to buy food. Over the cycle of public policies, corruption can distort the design and allocation of social programmes against poverty and siphon off funds assigned to basic infrastructure projects. In this case, corruption alters the rule of allocation (defines the criteria for distributing public resources and services), by modifying eligibility criteria for access to the state's social resources, thus blocking the fulfilment of marginalised groups' economic and social rights. When the relationship between human rights and resources is mediated by corruption, this relationship becomes the source of numerous social conflicts.

115. In recent years, neo-liberal policies and globalisation have increased, and in some cases escalated tensions growing out of social conflicts. As a result of the privatisation of public services, many groups that are marginalised by poverty have been excluded from access to water, health care, education, electricity, etc. The irresponsible exploitation of natural resources by transnational corporations that pay bribes to influence the regulation of the sector and deactivate institutional controls is without a doubt one of the worst scenarios possible for the rights of communities that depend on these resources (indigenous groups, peasants, etc.). Arrayed against these communities, corporations are powerful enough to buy off the decisions of high public officials and to disorganise and fragment the collective actions of the affected communities through the application of discretional philanthropic programmes and economic blackmail against prominent social leaders.

Resources and accountability in the face of corruption

116. The nature of the resource for which marginalised groups claim their rights has concrete implications for the strategies of all the actors involved. Corrupt practices do not operate the same way when it comes to social resources (health care, housing, etc.) managed by the state itself or by private companies providing public services, as with non-renewable natural resources exploited by transnational corporations. The management of each of these resources involves the operation of different control institutions. A closer analysis of the design and performance of each of these institutions reveals important differences for the different actors involved.

117. Some institutions are less transparent than others, more closed to participation, more exposed and closer to the affected groups, more bureaucratic, etc. If consideration is given to the history, performance and particular characteristics of each of the accountability institutions involved, the impact of corruption will have different effects on the rule of inclusion (which defines who participates, how, when, and in which processes), and on the rule of accountability (which determines the responsibilities of each of the actors involved and the mechanisms for enforcing victims' rights).

118. To put it in practical terms: a corporation does not face the same economic or political costs when trying to influence the decision of the Ombudsman, who is likely to be very prominent in the public eye, as when trying to influence an anonymous official in a gray suit in charge of a regulatory agency, who probably left the corporation through the revolving door that leads to the regulatory agency and will be back at the corporation after his mandate is over. From this same standpoint, marginalised groups will have more direct access to the office of the Ombudsman, with whom they have probably shared information on some previous case, than to the bureaucratic maze they must negotiate in order to gain access to sensitive information in the hands of an agency that regulates a privatised public service.

---

[60] See Transparency International (2006) "Poverty, aid and corruption", policy paper. www.transparency.org

119. By this same logic, the mobilisation of groups affected by corruption in sectors associated with key resources for a country's economy will run up against greater government and private resistance, often reaching the point of the criminalisation of the social protest. Paradigmatic examples include the drilling of oil in Nigeria or soybean cultivation in Argentina. Essential questions cut across the relationship between resources and accountability: How is power wielded? Who controls the resources in a given society?

Renewing the theory and practice of accountability

120. A technocratic and apolitical interpretation of the theory and practice of accountability has very little chance of yielding results that are favourable to the demands of marginalised groups. The contentious relationship between corruption and human rights is framed by deeply unequal power relations defining who controls whom, and by what means.

121. Rethinking accountability strategies with an approach that is more sensitive to unequal power relations would imply taking three fundamental variables into account: 1) the contested resource; 2) the right to this resource; 3) the cause of the corruption. In the following sections we develop each of these variables separately:

   i. The contested resources

122. Access to resources is a central concern in the lives of marginalised groups; the fulfilment of their economic and social rights depends on it. Resource-access issues spark the greatest social conflicts. The material nature of the resource in question has concrete implications for the form and content of the conflicts and the possible strategies for resolving them. Thus, the main actors involved and the type of infrastructure and processes involved will depend on the nature of the contested resource, be it water, land, health care, housing, food, education, jobs or minerals.

   ii. Rights and obligations

123. By definition, human rights imply the obligation to respect them. One key aspect of the integration of human rights into an accountability policy is the possibility of clearly identifying who is entitled to a right and who bears the obligation to respect it. Since corruption involves multiple actors, the clear assignment of responsibilities makes accountability easier. This approach helps to more precisely identify the main parties responsible for acts of corruption that affect human rights. From this viewpoint, governments have obligations as public-service providers and as market regulators, while private companies may have responsibilities as public-service providers and for engaging in activities that represent risk for the health of people and the environment. A precise definition of who is entitled to rights as opposed to who bears the obligations is a key factor for designing and implementing an anti-corruption policy capable of preventing or exposing corruption.

124. The inclusion of private companies in this point is a delicate issue for the human rights approach, and therefore requires more detailed analysis. It is true that international human rights laws were made by states and for states, but it is also true that this traditional focus is changing, slowly but steadily. In this context, human rights laws can be used to demand that companies render accounts of their activities indirectly through the state, which is obliged to regulate them, or the demands can be made directly to the companies themselves. As we will see later in more detail, the combination of human rights standards with the international anti-corruption legal framework opens up new opportunities for addressing companies directly to demand that they render accounts for their activities. The direct connection that exists between corruption and human rights violations makes it possible to combine and coordinate actions from the human rights and anti-corruption movements against companies that are potentially responsible for human rights

violations caused by acts of corruption. This is a new field of research and activism for both movements, affording human rights activists the opportunity to use new legal instruments capable of holding companies directly responsible for acts of corruption, while the anti-corruption movement could complement its traditional focus on economic quantification of damages caused by corruption, with the moral weight of human rights language articulated by the direct victims of corruption. This new field invites experimentation and challenges the imagination of both movements.

iii. Causes and consequences of corruption

125. There is consensus between the anti-corruption and human rights movements concerning the gravity of corruption's impact on human rights fulfilment. The anti-corruption movement has studied and pinpointed[61] the causes of corruption in the main areas of the state that are directly linked to the fulfilment of the rights to health, education, water, housing, etc. It has likewise investigated the relationship between corruption and the exploitation of natural resources, and defined corruption as the main cause of the degradation of renewable natural resources[62]. Corruption may be difficult to detect in these areas, but that does not make it impossible to prevent. To this end, Transparency International has developed a method for mapping corruption risks in all of these areas. This method makes it possible to identify, in an orderly and systematic fashion, the array of risk factors that can give rise to acts of corruption, to identify the vulnerable aspects of the process and to foresee possible damages. This method has been applied extensively to public contracting processes for goods and services, privatisations and even international anti-poverty programmes.

126. The combination of these three variables would make it possible to apply a new conceptual framework to traditional accountability strategies centred on horizontal intra-state accountability processes. There is no call for abandoning these strategies or the inevitable institutional reforms to make horizontal accountability more responsive to the demands of marginalised groups, but it is also necessary to explore new forms of accountability in order to include the immediate victims of corruption and to modify the unequal power relations that smooth the way for corruption between governments and private companies.

127. Furthermore, this new approach to traditional accountability could complement the initiatives taken by other organisations in the anti-corruption movement, like Transparency International, which also give priority in their agendas to the implementation of vertical accountability strategies.

128. This new conceptual framework offers three important advantages for anti-corruption programmes: 1) it facilitates the identification of the resources and the rights affected by corruption; 2) it makes it possible to individualise the victims and the main parties responsible; and 3) it analyses the risk factors for corruption during the different stages of contracting and providing public services, and in the exploitation of natural resources.

TABLE 1

---

[61] See Transparency International's Global Corruption Report 2006, London: Pluto Press (2006); Transparency International (2007) "Corruption in the education sector", working paper No. 4, 2007.

[62] See Transparency International (2007) "Corruption and renewable natural resources", working paper No.1, 2007.

Conceptual framework for guiding new vertical accountability strategies

Who?	Type of strategy		Right claimed	Resource/service involved	Corruption: risk factors	Main parties responsible for corruption
	Formal	Informal				
Landless families (Brazil)	Legal actions[63]	Large-scale peaceful occupations of agricultural land	Right to land	Sustainable use of land, nature, food production, and housing	- Money laundering - Corporatist land grabbing - Bribes to the police and judges	- Federal and state public officials - Judges - Police
Neighbourhood association (Mombasa, Kenya)	International HHRR? treaties	- Blocking illegal construction - Alliance with media - Mobilising residents	Right to housing	Access to dignified housing	- Clientelism in the allocation of housing deeds -Public land grabbing	- National and local governments - Landowners
Jobless movements (Argentina)	Participation in municipal consultative councils	Roadblocks and urban picketing	Right to social inclusion	Minimum income and food	- Clientelism in the allocation of social programmes	- Executive branch - Development Ministry - Local governments
Parivartan people's movement (New Delhi, India)	Right of access to information	Gandhian passive resistance tactics and public hearings	Right to food	Food	- Fake records - Clientelism in food allocation	- National, state and local governments - Ration dealers

Source: adapted from Newell and Wheeler, 2005.

Challenging corruption through collective action for the right to housing

Public housing programs tend to be a source of corrupt policies,[64] where the number of households entitled to receive the subsidy exceeds the number of places in subsidized units, and where public officials have discretion to determine who meets the requirements. Thus, bribes may be paid to gain access to housing by qualifying[65] and not-qualifying[66] people. In this context of fixed supply and lack of accountability, the most common practice is the operation of double lists, one for the honest applicants, and another faster moving queue for those who make payoffs

In Kenya, widespread land grabbing and corruption among bureaucrats and politicians in charge of particular programs have characterized public housing programs since the 90s. Examples include: direct allocations without presidential delegation of powers; allocation of public land already designated for other purposes; and multiple allocations of the same piece of land. In this context, the tenants associations formed the Shelter Committee of ILISHE Trust, which brought together community based low income groups to challenge and expose the illegal allocation of public land.

The struggle for the right to housing by council tenants in Kenya has combined different strategies aimed at securing legal recognition of a right to adequate housing: it facilitated the participation of victims of corruption through tenants associations and the creation of a larger committee as an

---

[63] The MTS' legal strategy integrates juridicial action into broader political mobilisation, politicising struggles before they become juridified, and mobilising sophisticated legal skills from diverse actors. See Houtzager, P. (2005) "The Movement of the Landless (MST) and the juridical field in Brazil" IDS Working Paper 248.

[64] Susan Rose Ackerman (1999) "Corruption and Government: causes, consequences and reform", | Cambridge University Press.

[65] i.e. those who meet the housing policy requirements.

[66] i.e. those who do not meet the housing policy requirements.

umbrella organization; it used the media and public forums to gain support as well as to shame and praise policies; and it blocked illegal constructions as a direct form of vertical accountability.

This case shows how it is possible for weak social groups to challenge corruption by gaining media attention, combining formal and informal strategies for accountability, and by invoking international conventions on human rights in the absence of national legislation granting the right to shelter. Although the direct actions of the Shelter Committee have not yet generated institutionalised changes in the practices and procedures of the Housing Development Department, they have helped to reduce some of the worst damages caused by the corruption.

Source: Celestine Nyamu Musembi, "From protest to proactive action: building institutional accountability through struggles for the right to housing", in Newell, P. and Wheeler, J (2006) "Rights, recources and the politics of accountability". Zed Books, pp.122-143.

Fighting clientelism and realizing social rights on the road
In 2002 the Federal Government of Argentina implemented a conditional cash transfer program called the Heads of Households Program. It targeted almost 2 million people who had been made unemployed in record time with the aim to reduce the impact of one of the worst institutional and economic crises in Argentine history following a period of structural adjustment. Given the scale, the tight timeline, and the long history of clientelism in the implementation of social programs, the Heads of Household Program proved to be an unprecedented institutional and political challenge.

In this complex political and social context, the *piqueteros (piketers)*, a social movement of well-coordinated low income unemployed people organised in numerous autonomous associations, struggled for accountability and challenged clientelism against traditional political brokers of the main political parties. The piqueteros implemented a broad array of tactics for demanding accountability and realizing the right to social inclusion, as the right to an adequate standard of living for an individual and his/her family, including food provision, clothing and adequate housing.

The piqueteros' main strategies took place outside but also inside formal institutions. They were called *piqueteros* because they carried out massive protests by organizing road blockades as their main political tactic to push the national government to deliver the Heads of Household Program, as well as other social programs, directly to the piqueteros movement in order to bypass political brokers. Those active in the roadblockades supported the idea that the most significant benefits of belonging to the piqueteros struggle was to "conquer" those social programs, instead of just being passive recipients of social assistance through clientelistic networks.

The piqueteros also channeled their voice and participation through Municipal Consultative Councils, which aimed to improve transparency, monitoring, and accountability during the implementation of the Program. They were also required to hold a public selection process and to ensure that at least two-thirds of their members were drawn from non-governmental institutions (unions, businesses, faith-based and social organizations).

By combining formal and informal social accountability tactics, the piqueteros have obtained benefits for their members and expanded their political influence, acquiring control of approximately 10% of the total amount spent by the State on the Heads of Household Program.

Source: Svampa, M. and Pereyra, S. (2003) "Entre la ruta y el barrio: La experiencia de las organizaciones piqueteros", (2003) Biblos, Buenos Aires, pp. 88-98.

Exposing corruption using information and Gandhian tactics to secure the right to food

In India, the problem of corruption in public services affecting the day-to-day needs of citizens is a structural problem. While it is not an exception, the Public Distribution System (PDS) is plagued with endemic corruption.[67] The PDS provides food (rations) at highly subsidised rates to poor people. The ration is distributed to the people through a chain of shops called ration shops all over the country. The Government issues licenses to private people to run these shops and the shopkeepers get a commission from the Government to do so. Corruption takes place in records. Shopkeepers forge the signatures or thumb impressions of the individuals entitled to the rations and subsequently siphon them off.

Parivartan, a people's movement for the promotion of participatory democracy, launched a campaign to eradicate corruption from the PDS by implementing a social audit of all the ration shops and expose the corrupt practices of the PDS dealers. To achieve this objective, Parivartan combined different strategies, from the use of the right to public information to various tactics of mass mobilization. For example, on 29 August 2003, three hundred people from across the city of New Delhi met to file applications under the Right to Information Act (2005). Additionally, Parivartan holds public hearings and also employs Ghandhian passive resistance tactics when the authorities fail to respond to their requests or ignore their demands. For example when formal procedures allowing for access to information are not enough, people wait at government offices as long as necessary, until public officials will deliver an acceptable response.

Although the substantial use of the right to public information and the implementation of various types of direct actions of social accountability have achieved positive results for some groups, the food system continues to operate without transparency and some volunteers of Parivartan have been threatened and physically assaulted by ration dealers. The fight against corruption in the Public Distribution System continues.

Source: www.righttofoodindia.org and www.parivartan.com

The right to land and the struggle of the Landless Workers Movement against corruption

Brazil's Landless Workers' Movement (MST) is widely known as one of the most important progressive social movements. They received Sweden's 'The Right Livelihood Award' in 1991, which is commonly known as the 'The Alternative Nobel Prize,' and Noam Chomsky has called it "The most important and exciting popular movement in the World."
The MSST is a non-violent, revolutionary movement campaigning for a more egalitarian Brazil. The MST's principal strategy has been to pressure federal and state government using large-scale, peaceful occupations of agricultural land in order to expropriate and redistribute privately-held land.

However, little is known about the MST's fight against corruption as part of their strategy to achieve the agrarian reform. In this the MST challenges a complex social matrix of colonial legacy, unequal distribution of wealth, and racism. In this context, public institutions such as the police, the army, the judiciary and public officials are more accountable to the landholder elites than to the civil society or the victims of rural violence. Thus, the exercise of power with impunity allows the landholders to practice corruption, intimidation, and violence without fear of any possible consequence.
In response to this kind of abuse of power, the MST has targeted particular properties which are involved in money laundering, and other corrupt activities within the national financial system. In these cases, the MST has demands that those particular properties must be returned to the State for the creation of projects on agrarian reform settlements.

---

[67] Okar, S. (2007) "Corruption and right to food in India", The Human Rights Law Network (www.hrln.org)

The most paradigmatic case linking corruption to Brazil's powerful landowning elite is the Agropecuaria Santa Barabara Case. It involves the biggest cattle herd in Brazil, and the second largest in the World, related to a company controlled by an international banker with former ties to Citigroup who is involved in a major financial and political scandal that reaches into the U.S. courts and financial system.

After one judge blocked the registration of Agropecuaria Santa Barbaras' title to the farm, the State reclaimed its legitimate ownership of the area. Subsequently, a federal judicial order was issued to arrest the banker because the investigation found evidence of potential fraudulent management. The MST organised several hundred landless rural families to peacefully occupy hundreds of hectares on three farms belonging to Agropecuria Santa Barbara. The MST demanded the return of the land for redistribution based on agrarian reform settlements.

Source: Wright, A. and Wolford, W. (2003) "To inherit the earth: the landless movement and the struggle for a new Brazil," Food First Books. Also see: http://americas/irc-online.org/am/6140

129.   The four cases selected in this sample are an example of how vertical accountability strategies operate from the human rights perspective. The four cases are headed by the victims of corruption themselves, or in alliance with an NGO, as in the case from India. This factor implies that the holders of the contested right are the leading players in the collective action, which serves to reinforce the legitimacy and moral force of the claim.

130.   All the cases combine formal and informal, collaborative and confrontational strategies. The tactical use of various strategies can occur simultaneously or separately. Some strategies can move forward and then fall back to the same point of departure, only to begin again with a different strategy. The social and political context is not stable; actions are generally framed in a series of conflict and negotiation cycles. It is important to highlight this point to show that vertical accountability does not reject *a priori* the use of institutional channels, but rather includes them as a way to broaden and complement its repertory of vertical and direct actions for demanding greater accountability in response to the abuse of power that characterises corruption at the expense of marginalised groups.

131.   In the four cases examined, conflicts are associated with the struggle to gain access to social resources that are basic to fulfilling different human rights: water, housing, health, education and basic income. The contested rights and the precise identification of the resources help to individualise the main responsible parties involved in the conflict.

132.   Finally, the nature of the contested resources helps to identify and analyse the main risk factors for corruption in each of the public services, government programmes or administrative processes involved. This makes it easier to design customised strategies for each of the problems and institutions involved, with due consideration given to their main institutional arrangements, their strengths and weaknesses, thereby enhancing the effectiveness of the anti-corruption programmes.

The principles of availability and accessibility applied as standards for exposing corruption in public services

133.   Human rights practice has developed tools for measuring the fulfilment of social rights. These 4 standards: availability, accessibility, acceptability and adaptability, are used by the human rights movement to measure the degree of implementation of heath services, education, housing, food and drinking water. At the same time, these services and other infrastructure projects that are fundamental for raising the living standards of marginalised groups are generally implemented locally and thus susceptible to political manipulation. Corruption can skew allocation criteria,

prices, the size of the project, the quality of the service or project and its geographical location.

134. Three groups are normally involved in the process of contracting public services and projects: politicians and bureaucrats, the potential beneficiaries of the service, and private-sector companies. Without a doubt, the most vulnerable of the three groups is that of the potential beneficiaries; the asymmetry of information, corruption and lack of transparency mean that they suffer the worst consequences, with marginalised groups bearing the brunt of the direst effects.

135. In this context, the standards of availability and accessibility can be turned into powerful tools for exposing corruption in public services and projects.

136. According to the principle of availability, the service should be available in sufficient quantity and quality to meet the needs of the community in question. Secondly, according to the principle of accessibility, the services should be allocated and provided to the entire community without discrimination. This implies that physical access to the sector's locations, goods and services is safe and does not discriminate against marginalised groups. Economic access to the service is also guaranteed regardless of whether it is public or private; it should be accessible to all groups.

137. Corruption in the provision of public services affects and distorts mainly these two principles in a wide variety of ways, ranging from under-provision of services, bad quality services, under-utilisation of materials in detriment to the project, incomplete or non-existent projects, to the need to pay surcharges for the delivery of the public service, or simply the impossibility of having access to the public service due to bureaucratic obstacles or discrimination. These are some of the ways corruption has a tangible impact on the provision of health and education services, and on public contracting in general.

138. With its more than 10 years of experience, the anti-corruption movement has managed to develop tools and technical skills for monitoring complex processes of public contracting. Anti-corruption organisations can take advantage of human rights discourse and practice to complement their technical work on complex calls for bids and administrative procedures, in order to lay bare human rights violations caused by corruption in public contracting. The complementary nature of the two approaches, one technical and the other based on the language and exercise of rights, could serve to enhance anti-corruption strategies by paying special attention to the most vulnerable groups.

5. INTEGRATING HUMAN RIGHTS INTO FOUR CORE ISSUES OF THE ANTI-CORRUPTION AGENDA

139. In this section we present a simple exercise to show how human rights principles can be integrated into anti-corruption programmes and what value would thus be added. For this we selected four core work areas on the anti-corruption agenda, bearing especially in mind the design and implementation of Transparency International's main tools in these four areas: 1) Diagnoses and indicators; 2) Public contracting; 3) Political financing; and 4) Political clientelism. We will analyse each of these areas separately:

If it is not measured, it does not exist

140. The design of anti-corruption programmes is an activity that demands data. To combat corruption effectively it is essential to be able to measure the causes and consequences of the problem systematically. The level of data breakdown is important to zero in precisely on the victims, the damages and the institutions that are most affected by corruption.

141. The anti-corruption movement is part of a data revolution[68] that is taking place in the field of social sciences. In different disciplines, concepts like freedom, democracy, violence and inequality are being measured and quantified through different indices and indicators. This data is used by organisations like Amnesty International, the World Bank or the United Nations to spark debates, recommend policies and promote reforms. The Millennium Development Goals are a perfect example of this phenomenon.

142. The anti-corruption movement is a leading player in this data revolution. Over the last 10 years it has developed an impressive battery of data using different diagnostic tools. The variety of these analytic tools ranges from opinion polls to general/sectorial institutional diagnoses. This data is used first to raise awareness about the problem of corruption. In a later stage, based on new quali/quantitative techniques, the data is being used to design and implement strategies that are better adapted to local contexts and people's real needs.

143. In this scenario, human rights have a concrete contribution to make in the development of new research questions that would enable the anti-corruption movement to broaden the scope of its research. This requires knowing the conceptual, methodological and ideological premises that underlie the instruments of analysis. A recent study published by Transparency International and UNPD (2006) can serve as a basis for carrying out this analysis. The study maps over 100 tools in 17 countries. Each is described in terms of its scope, source, methodology, purpose and impact. The study also looks at each tool in terms of the degree to which the information it gathers is broken down by gender and poverty levels. With regard to this last issue, the report explains that only 20% of the instruments address the dimensions of gender and poverty, which implies that the other 80% of the data fail to highlight the causes and impact of corruption on people in situations of poverty and on women in particular.

144. In order to make these marginalised groups' problems and suffering visible in the surveys, it is essential to take an epistemological position that is sensitive to unequal power relations. Epistemology, as a theory of knowledge, defines who knows and what can be known. Research done from a human rights perspective could lead to the gathering of new data that could help to account better for the connection between corruption and discrimination, poverty and patriarchal prejudices. Concretely, the human rights movement could collaborate with public officials and anti-corruption activists in developing conceptual frameworks and research questions that would contribute to a more accurate analysis of the relationship between marginalised groups and corruption.

Public contracting and human rights

145. Corruption in public contracting is among the 5 core issues[69] on the international transparency agenda. Governments purchase and contract goods and services to meet the social demand for public assets such as education, health, infrastructure and housing, among others. For each extra dollar paid over the lowest possible price, the production of these public assets is proportionally reduced. In general, governments spend roughly 70% of the national budget[70] on the contracting of goods and services, and while there are no precise statistical data on the average percentage of surcharges paid by governments due to corruption, Transparency International makes a conservative estimate of 20 to 25%. But aside from the price, corruption in the purchasing and contracting system distorts the efficient allocation of public resources, and as a result, public investment is channelled to projects and services that do not meet people's real needs, but rather

---

[68] See Ignatieff, M. (2005) "Measurement and Human Rights: tracking progress, assessing impact", Carr Center Project Report, Harvard University.

[69] The five core issues are: 1) Corruption in politics; 2) Corruption in public contracting; 3)Corruption in the private sector; 4) International anti-corruption conventions; 5) Poverty and development

[70] See, www.transparency.org/global_priorities/public_contracting

serve the private interests of public officials and private-sector companies. In short, contracting processes are complex, transparency is limited and corruption is hard to detect.

146. Transparency International has developed numerous instruments for promoting transparency in this important sector. Without a doubt, the Integrity Pact (IP) is one of the most important and widespread tools on the global scene. Countries as disparate as Mexico, Pakistan, Korea and Nepal have adapted IP to their local contexts. In some countries, like Colombia, up to 100 pacts have been implemented. The tool's flexibility has led to its massive replication, covering diverse types of contracting ranging from airport construction to concessions for solid-waste collection.

147. In general terms, IP's are voluntary agreements between the government that puts the provision of a good or service up for bidding on the market and the companies that tender bids. The government assures transparency in the design of the bidding conditions and in the process of awarding the contract. It also guarantees that no public official will demand the payment of bribes. The companies tendering bids, for their part, pledge not to offer bribes and to denounce employees that do so. Through this strategy of self-regulation, Integrity Pacts set down new rules for civil society to see, and establish them simultaneously and by mutual accord between the government and the bidders, with the intention of modifying the incentives and opportunities for the payment of bribes in selected public bidding processes.

148. In legal terms, Integrity Pacts are simply a commitment to apply and respect the country's existing laws; in operating terms, however, this model helps to gradually modify the tangled skein of political and economic interests in public contracting in societies where corruption is a structural phenomenon.

149. The participation of civil society during the implementation of this tool is relatively limited. In most cases, civil society is represented by a social witness invited by Transparency International who should have a combination of two key attributes: technical competence and ethical integrity. The social witness is present during the entire process of implementing the IP, or at least in the most relevant stages. Some experiences have included collective actors as witnesses: consumer associations, universities, NGO's, etc. And in a very limited number of experiences, the IP was complemented by public hearings for a more open discussion of the design of the contracting terms and conditions.

150. From the human rights viewpoint, this dimension of the IP could be strengthened by including other social actors[71], identifying especially those groups that stand to be affected by corruption in each particular sector. This issue becomes more compelling when it comes to privatisations of public services, or when bids are tendered on large public infrastructure projects such as the construction of a dam. This type of contracting is especially prone to corruption, and can generate significant social conflict.

151. The integration of human rights into the theoretical and practical framework of the IP could help to complement the role of the social witness by identifying and including the potential victims of the corruption that tends to occur in this type of contracting. The active participation of these groups and the identification of the contested rights could reinforce the transparency, accountability and legitimacy of the Integrity Pact's results. As shown in the experience of some national chapters of Transparency International, public hearings can be used as a complement to IP's to increase the breadth and depth of participation, especially when concrete measures are taken to include segregated groups or people who have trouble participating in public spaces due to language and cultural barriers.

---

[71] See Ospina R. (2008) "Experiencia de implementación sistemática de Pactos de Integridad para la contratación pública en Colombia" en Zalaquett, J. y Muñoz, A. (Edit.) (2008) 'Transparencia y probidad pública: Estudios de caso de América Latina", Centro de Derechos Humanos, Chile.

152. Finally, the new ethical rules imposed by IP's have the greatest impact and effectiveness during the stages of evaluation and selection of bidders up to the awarding of the contract. But their effectiveness gradually diminishes as the service or project is executed and time passes. This represents a new challenge for anti-corruption officials and activists, because the control of corruption during the execution stage becomes costlier and more complicated. The participation of potentially affected groups takes on a fundamental role in this stage, as they monitor the availability and accessibility standards in the provision of the public service, and in the control of the social impact generated by large infrastructure projects.

153. Thus, the participation of these same groups in the early stage of the process, monitoring the call for bids, the selection of bidders, and the awarding of the contract, closes a virtuous circle when combined with ongoing monitoring of the second stage of execution, which reduces opportunities for corruption.

Political financing as a cause of inequality

154. Transparency in political financing is another of the 5 core issues on Transparency International's agenda. National chapters have monitored dozens of political campaigns and drawn up reports on the lack of transparency in electoral processes. Recently a comparative study was published[72] on all that has been done up to now in this research area, which affords an evaluation of the transparency in 8 countries by means of quali/quantitative indicators that measure ten dimensions of political financing. On the basis of the accumulation of these monitoring experiences and the publication of rigorous reports, Transparency International has achieved concrete reforms improving transparency in several countries.

155. However, these strategies have focused mainly on transparency in the regulation of money in politics, while other key issues have been less developed. The influence of illegal financing on political competition also affects and distorts political equality with the following consequences. On the one hand, the flow and distribution of economic resources in the political process directly affect the equality among political parties and candidates. Since electoral spending translates immediately into political communication, the greater financial capacity of some candidates to inform more and better can effectively stifle or choke off the political communication capacity of other candidates with less financial capacity.

156. Moreover, the unequal distribution of economic power in society can affect people's political equality to participate and exert influence during the electoral process. When economic inequality influences electoral processes and is combined with corruption, participation is restricted. People with less economic power, especially poor people and other marginalised groups, lose the opportunity to influence public policy design as a way of improving their situation and having their rights recognised. From this point of view, political inequality and corruption in electoral competition perpetuate the unequal distribution of wealth and exclude poor people from political debate.

157. Transparency International's experiences have made progress in the study and control of political financing with an eye to reducing political corruption. But this focus has so far covered only part of the problem. In general, studies of transparency in political financing have not taken sufficient account of the implications of this financing in maintaining social exclusion. The integration of the human rights perspective into this core component of the anti-corruption agenda could help to highlight the role of political financing in the promotion of gender equality and the inclusion of marginalised groups.

---

[72] Transparency International and the Carter Center (2007) "Crinis project: Money in politics, everyone's concern" TI, Berlin. http://www.iadb.org/europe/files/news_and_events/2007/conf-july-12-2007-Crinis-brief.pdf

158. For this objective to be attained, political financing can be regulated in such a way as to guarantee the political participation of marginalised groups and ensure a percentage of female candidates. The high costs of elections together with corruption always favour political parties linked to the private sector or the official candidate, and put obstacles in the way of female candidates and marginalised groups lacking access to private financing. In this context, the regulation of public financing can be used as an instrument of social change to encourage the inclusion of these new political actors. Once inside the political competition, they will most likely have strong incentives for supporting pro-transparency reforms as a political strategy for curbing corruption, the economic advantages of the majority parties and at the same time to open up new spaces for excluded groups.

Political clientelism beyond electoral campaigns

159. Clientelism occupies a central place in studies of political financing. Transparency International, through its different national chapters, has developed different ways of diagnosing and monitoring the practice of clientelism during electoral campaigns[73]. The concept of clientelism used in the framework of anti-corruption programmes merely defines it as a method of political mobilisation by means of exchanging money for votes during electoral campaigns.

160. From the human rights standpoint, however, clientelism is more than exchanging money for votes. Clientelism operates as a relationship built on the basis of extortion that blocks the implementation of any kind of universal social policy. It is an asymmetric power relation by which one person controls the needs of another by deploying his status and greater access to public or economic resources. In this way, a more wide-ranging concept of the phenomenon of clientelism goes beyond electoral processes and takes in private companies as well.

161. From this perspective, one enduring variant of clientelism is based on the design and implementation of social policies, especially the management of targeted social programmes. The clientelistic manipulation of social programmes impedes the fulfilment of social rights in diverse ways. To be assigned to a social programme, the potential beneficiary must turn over part of the subsidy, which drastically reduces her income for meeting basic needs. In another version of clientelism beneficiaries must perform humiliating or servile tasks in exchange for registry in a social programme. In the case of women, clientelism is combined with machismo and tends to take the form of sexual clientelism: access to social programmes is mediated by sex.

162. Clientelism is not a practice exclusive to states or political parties; private companies also engage in it. The practice of clientelism is quite widespread among companies facing social conflicts with marginalised groups as a result of the social impact of their activities. These companies copy the state's cliental model as a way of fragmenting social mobilisation[74]. Imitating the state and often making use of the same state clientelistic networks, companies design their own social programmes in order to set up clientelistic relationships with local organisations and deactivate collective action.

163. In this context, the human rights perspective can complement the concept that anti-corruption programmes have of political clientelism as a phenomenon confined to electoral campaigns.

---

[73] See, Speck, B. and Weber Abramo C. (2001) "Transparência Brasil/ Ibope Survey – Summary Report", www.transparencia.org.br. See also, El Mercado del voto, votebien.com, 25 January 2002, available at www.terra.com.co/ elecciones_2002/cubrimiento_especial/financiacion/25-01-2002/nota47324.html.

[74] See Newell, P., et al., (2006) "Corporate accountability and citizen action". In Newell, P. Wheeler, J. (eds.) (2006) "Rights, resources and the politics of accountability", Zed Books, UK. See also , Arjjumend, H. (2005) "Tribals, state and industry: people's struggle for land-based resources in Santal Parganas, Jharkhand" Grassroots occasional papers, #2. Grassroots Institute, India.

Clientelism is a paradigmatic example of how unequal power relations are built and operate in our societies. Thus, the centrality of power abuse in human rights strategies could help to widen the scope of anti-corruption programmes into new forms of clientelism in social relations.

6. INCLUDING THE GENDER PERSPECTIVE IN ANTI-CORRUPTION PROGRAMMES

164. Early anti-corruption programs were designed on the premise that corruption was gender-neutral and therefore affected men and women in the same way. From this standpoint, everything that could be observed and said about the connection between corruption and men applied equally to women. This androcentric bias has not been exclusive to the theory and practice of anti-corruption policies; most scientific and cultural undertakings considered and accepted as valid have been carried out in social spheres dominated by men. In this context, the physical and social sciences have developed from a positivist epistemology, which has been influenced by social and cultural forces characterised as patriarchal, heterosexist and racist[75] .

165. Over the last 30 years, however, feminist, post-structuralist, post-colonialist and post-modernist theory have sought to expose, denaturalise and transform oppressive power relations suffered by women, but also by other marginalised groups: homosexuals, lesbians, indigenous, blacks, etc.

166. From this perspective it becomes easy to see how gender inequality leaves its mark on the design and operation of public institutions. Thus, in patriarchal institutional environments[76] women are unable to accumulate enough power to challenge corruption or clientelistic practices. As a result, women can be victims of special kinds of corruption and clientelism based on gender inequality, such as the sexual abuse of poor women as a condition for receiving the benefits of a social program or having access to a public service.

167. There is currently a general consensus[77] that corruption impacts women and men differently, and yet the rigorous incorporation of the gender perspective in the design and implementation of anti-corruption programs is still an atypical, almost exceptional practice within the anti-corruption movement. In this sense, the integration of human rights could help to incorporate and strengthen the gender perspective in the design and implementation of anti-corruption programs. The international human rights framework, and especially the principle of non-discrimination, could be used as a practical guide for attaining this objective.

> *What does it imply to incorporate the gender perspective?*
> The incorporation of the gender perspective refers to the "process of examining the implications for women and men of any type of planned public action, including legislation, policies or programs, in any area. It is also a tool for making men's and women's interests and needs an integrated dimension in the design, implementation, monitoring and evaluation of policies and programs in all types of political, social and economic areas. The ultimate goal is to attain gender equality."[78]

---

[75] For an excellent anthology on this topic, see: Hesse Biber, S. And Yaiser, M. (2004)

[76] Within the framework of this study, we understand patriarchy to mean the system of masculine dominance over the public and private spheres, used to perpetuate men's privileges and the subordination of women. Patriarchy is based on gender inequality and makes the man's power and his privileges seem normal and natural, instead of socially produced and constructed.

[77] See Goetz, A. M. (2003). "Political cleaners: How women are the new anti-corruption force. Does the Evidence Wash?" Institute of Development Studies, University of Sussex

[78] See Montaño, S. El buen gobierno desde una perspectiva de género, International seminar on gender parity and political participation in Latin America and the Caribbean, Santiago, Chile, October 5 and 6, 2006, Economic Commission for Latin America and the Caribbean (CEPAL).

More women, less corruption?[79]

168.   In the late 90's, a new wave of research began to study the connection between corruption and gender relations, analysing how women could contribute to the fight against corruption. A series of statistical and econometric analyses published by the World Bank, among others, showed that public institutions with a greater number of women were less corrupt. This seemed to be the case in both macro studies (that correlated corruption variables with the proportion of women in the legislative and executive branches of different countries[80]), and in the analysis of empirical experiences of public institutions made up entirely of women as a strategy for combating corruption[81]. Both analyses were based on the sexist myth that women are less corrupt, more upright and more honest than men.

169.   It is a tempting argument, but it does present several problems. Ironically, the notion that women are more virtuous than men was used for centuries by philosophers and politicians in Ancient Greece and Modern Europe to keep women out of public life. The image of women as mothers, homemakers and caregivers is redefined in the 90's as an instrumental virtue in the fight against corruption. In this sense, the challenge of including women in public life is no longer defended as a human right, but reduced to an instrumental argument. Thus, the intention of including women in public institutions ends up assigning them to the same stereotype for which they were excluded from political power for centuries.

170.   The argument also presents several methodological difficulties[82]. Although there is a general negative correlation between the number of women in government and the incidence of corruption, this does not imply causality. In fact the very exclusion of women from political and economic power can be a rational explanation that accounts for their exclusion from corruption networks as well. Both access to political power and opportunities for corruption function and are created through networks formed and maintained by men. Men's access to political power in developing countries is often based on the creation and maintenance of clientelistic networks that are run and dominated mainly by men. Thus gender relations may be limiting women's opportunities to engage in corrupt practices.

171.   Women's opportunities to engage in acts of corruption are also limited by "sexual controls", i.e., by the danger of being discredited for inappropriate sexual behaviour. This is the case for example, of the women employed as traffic police in Peru: they refuse to accept bribes for fear they will be seen as prostitutes. Whether this reaction will hold over time or is just a passing response to the inclusion of women in public life, remains to be seen.

172.   The focus of the discussion, therefore, should not be the imagined virtues assigned to gender roles, but an in-depth analysis of the impact of gender relations on the structures of opportunities for corrupt practices. The structures of opportunities for engaging in corruption (inclusion in and/or exclusion from corruption networks, sexual controls, among others) are different for men

---

[79] To reflect in greater depth on the danger of trivialising the inclusion of the gender perspective in anti-corruption programs, see: Woodford-Berger, P. (2007)" Gender mainstreaming: what is it (about) and should we continue doing it?. In Cornwall, A., et al. (2007) "Feminisms: contradictions, contestations and challenges in development", Zed Books, UK.

[80] See Dollar, Fishman and Gatti (1999), also Hung-En Sung, 2003.

[81] These experiences sought to feminize notoriously corrupt agencies as a strategy for combating corruption. This is what the President Fujimori's government in Peru did, for example, in 1998 when it created a traffic police force made up entirely of 2,500 female officers. Another example was the creation of an all-female anti-corruption force for the Mexican Customs Service in 2003. In Uganda, a similar vision was behind the selection of women to occupy most of the positions in the treasuries of local governments. (Goetz, 2003).

[82] One of the most consistent criticisms of this kind of policy for incorporating women into public space can be found in: Aloisio and Muñoz, (2006).

and women, and this goes a long way to explaining why political institutions made up of women tend to be less corrupt than those made up of men. Thinking about structures of opportunity for corruption from a gender perspective forces us to explore new questions. Does the corruption of public officials impact men and women the same way? Do women face different kinds of corrupt practices on the part of public officials than men do? The following section briefly explores these questions.

The impact of corruption on women

173.   Even more important than studying what women can do to combat corruption is asking ourselves whether corruption affects men and women the same way. This implies studying the impact of corruption on women and the challenges that anti-corruption strategies face in including the gender perspective and protecting women's human rights.

174.   Most of the people living in poverty on less than one dollar a day are women[83]. This is explained not only by the fact that women are paid lower salaries than men in the formal and informal markets, but also because they have fewer opportunities of access to education, land, credit and other productive assets as a result of gender discrimination. Also, women tend to assume the domestic responsibilities of taking care of children and older adults, which brings with it greater expenses and greater difficulties in finding a job. Another essential aspect to understanding how corruption affects women is that they not only face economic coercion; they are also exposed to physical and sexual violence, inside and outside the home.

175.   As a result of their social role as caregivers, women face greater vulnerability to risks and/or dependence on public services. Unlike men, women take greater responsibility for providing health care and education for children, and often for older adults in the family as well. They also need special care and medical attention in public hospitals during pregnancy. Corruption affects women due to their dependence on public services in several ways. Corruption distorts the budget allocated for social services, especially health and education, which diminishes the quantity and quality of public assets and services. Corruption also affects women on an almost daily basis when they have to pay a bribe to get an appointment at the hospital, to enrol their children in school or to get a prescription filled for older adults in their care. Within the family as well, government corruption impacts decisions by discriminating against women and limiting their opportunities. Thus, a family living in poverty that has to pay a bribe to send their children to the public school will probably give priority to the boys' education.

176.   But the effects of corruption on women go beyond social services. Women's lack of access to the resources of political and economic power excludes them from the same networks that permit and perpetuate access to government power. On the one hand, corruption in the legislative and executive branches keeps laws on the books that discriminate against women and uphold psychological, sexual and physical violence against women. And corruption in the judicial branch can discriminate against women who do not have the means to pay bribes to gain access to the justice system.

---

[83] See, United Nations Division for the Advancement of Women (UNDAW) (2000) "Gender Equality, Development and Peace for the 21st Century" (New York: UNDAW); United Nations Development Programme (UNDP) (2001) "Human Development Report 200"1 (Oxford: Oxford University Press); Department for International Development (DFID) (2000) "Poverty Elimination and the Empowerment of Women" (London: DFID); www.un.org/womenwatch/daw/followup/session/presskit/fs1.htm.

Clientelism and gender relations: where two unequal power systems intersect.

As described above, political clientelism can be defined as an unequal power relationship between a person (the patron) that has access to power, resources and status and who provides protection, services and favours to other persons (the clients) in exchange for social, political and electoral support. In a similar way, gender relations are constructed over unequal power relations between men and women. The phenomenon of clientelism has been studied extensively for the past 50 years from various sociological, anthropological, economic and political science perspectives. However, mainstream research on clientelism has not considered gender differences, assuming that women and men are affected in a similar way.

Feminist scholars have been leading the way by drawing attention to the perpetration of violence against women, by men, and the relationship of this violence to power, inequality and social structure. In this sense, the use of violence (physical, psychological, emotional and sexual) under clientelistic arrangements unveil the dual obstacles of patriarchy and clientelism, that women living in poverty face in their struggle to satisfy basic needs.

Cash transfers and gender relations
In this social context, for the past decade, conditional cash transfers (CCT) have become one of the most important policy instruments used by governments to tackle poverty in Latin America and other developing countries. CCTs differ from the design of earlier social programs in three ways. First, they are associated with the policy of subsidizing demand, not supply. Second, these programs have a two-fold objective: a short-term objective that seeks to enhance people's income (cash subsidy), and an objective that seeks to accumulate human capital over the medium-term (education and health) in order to break the intergenerational cycle of poverty. Third, the schemes target women, by transferring the subsidy to women and endowing women with the responsibility of fulfilling health and education related obligations on behalf of the family.

CCTs are generally implemented in countries that provide little access to public information, with restricted channels of participation and a weak, if not inexistent tradition of institutional accountability. Moreover, the CCTs target women in an environment where local governments, responsible for the implementation of the programmes often using local brokers, tend to employ a patriarchal and authoritarian attitude. The perspective of gender is commonly ignored or underestimated in the design and implementation of programmes in these contexts.

A preliminary statistical and qualitative analysis of 4.890 complaints against clientelism that were presented in the context of the largest conditional cash transfer programme in Argentina (*Plan Jefes y Jefas*) shows a gendered pattern of clientelism. In regards to the complainant's gender, women are twice as present as men. There are two main explanations for this pattern. The first one relates to the over-representation of women listed as beneficiaries of the programme. Though not designed specifically for women, more than 75% of its beneficiaries were women. A second explanation, confirmed during the qualitative analysis, refers to a lack of gender perspective in the design and operation of the programmes, along with the strong patriarchal institutional framework under which they were implemented. From this perspective, a social programme that is strongly focused on women but is not sensitive to unequal gender relations would have a different impact and produce different outcomes between men and women.

This pattern was even stronger when the relational aspect of clientelism was taken into account from a gender perspective. The data allows for an analysis of the relationship between complainant and defendant, where 32% of all complaints come from women who were victims of male abuse, while only 6% of males were victims of abuse perpetrated by a female.

Within clientelistic relations, recipients of the CCT's are often intimidated into carrying out work for the patrons of the programmes under threat that their subsidy will be cancelled if they refuse. The data

shows how demands for inappropriate work differ based on whether the recipient is male or female. Men were normally asked to work on the private business of patrons or brokers, and/or to contribute to construction activities on their own homes or rooms used for political meetings, while women would face sexual harassment and were used as cleaning ladies for different politicians and patrons.

The data suggests that in a patriarchal society where women are inevitably poorer than men and have less social and political power, clientelistic practices are not gender neutral. From this perspective, it is essential to develop a feminist critique of CCT and other social programmes targeted (directly or indirectly) at women. By focusing on the different ways in which clientelism in social programmes affects women living in poverty, it will be possible to transform the underlying power structures that create and reproduce the opportunities for corruption and discrimination against women.

Based on Gruenberg, Ch., Pereyra Iraola, V. (2008) "Clientelism, poverty and gender: conditional cash transfers on the loop" CIPPEC and EADI.

Women and corruption in social services

Health

177. The right to health is defined as the right of people to enjoy the highest possible standard of physical, mental and social health. Health is one of people's basic human rights and should be guaranteed through actions that ensure that all members of society have access to adequate medical coverage, especially the sector with the fewest resources and the greatest risks of contracting disease. Aside from high-quality medical attention, the right to health should also ensure access to resources that are sufficient for meeting the population's demands, including hospital beds, medicines and sanitary supplies. Because of its immediate association with the right to life, the right to health is one of the human rights that are most emphasised and recognised by the international human rights system.

178. Government corruption is a deadly threat to this right in most developing countries, and affects women disproportionately. The most common corrupt practice in the health sector is the payment of bribes to nurses and doctors to obtain medical attention in first-aid facilities and public hospitals. In hospitals saturated with doctors' appointments, paying bribes can be the only way to avoid long bureaucratic waits to see a doctor. Even in emergency cases, health professionals may neglect a patient unless they are paid. In the city of Bangalore, in southern India, one of every two women who go to a maternal hospital must pay extra if she wants a doctor to be present when her baby is born. An independent survey conducted by the NGO Centre for Public Affairs showed that patients in this city pay 22 USD on average to receive adequate medical attention. Another common related practice is demanding extra payment for a hospital bed when hospitalisation is required. If they do not bribe the nurses or doctors, patients run the risk of having to sleep on the floor of the hospital without a mattress. This increases the risk of infection for pregnant women.

179. A qualitative study done in Ghana[84], reveals the degree to which corruption in hospitals affects women's rights. *"Women face the greatest burden of bribes. Pregnant women, with reproductive problems but without money to pay bribes, do not receive care. Thus they leave the hospital frustrated and they do not return to seek pre- or post-natal care. Most women in Ghana give birth at home for this reason. The risk of infection increases for mother and child when the baby is not born in a hospital."* According to this same study, 80% of all childbirths take place in the home on account of bribes in the health sector, with a third of births resulting in the baby's premature death, and 30% of women dying in labour due to complications in the pregnancy.

---

[84] See the study carried out by the ICHRP in: Alolo, N. (2007) "Corruption, human rights and gender: an empirical investigation" ICHRP, Geneva. http://www.ichrp.org/files/papers/134/131_-_Namawu_Alolo_-_2008.pdf

180. Another corrupt practice in the health sector is the skimming off of medicine and hospital supplies into health professionals' private clinics and pharmacies, where they are sold at higher prices, creating scarcity in government facilities. Medical caregivers have a wide variety of opportunities to engage in corrupt practices due to the great influence they have over medical decisions, for example, to prescribe medication, determine a patient's length of stay in the hospital, order tests, refer patients for appointments or additional outpatient services. One common related practice is demanding a bribe before prescribing an appropriate medication under mandatory social security. A doctor can prescribe an inadequate, cheaper medicine and take the "right drugs" to his or her private practice and sell them to the public at inflated prices. This practice impacts women the most, since they use public hospitals the most – either for their own needs or to seek health care for the children and older adults of the household. *"The purchasing systems in hospitals are easily manipulated by health sector employees. Doctors can prescribe the wrong medicines (…) the impact of gender is that women suffer more, especially in gynecological and maternal clinics. The wrong medicines and sutures can lead to premature deaths during pregnancy and childbirth. This type of corruption threatens women's right to life"*[85].

181. Closely related to the right to health is the right to water, specifically, the right to drinking water. Corruption blocks the right of access to drinking water in several ways. One of the most common is demanding a bribe for connection to drinking water pipelines, when the alternative is to depend exclusively on drawing water from contaminated rivers and reservoirs. In many developing countries, women are in charge of obtaining water for the family, and thus suffer most if the local official decides to disconnect her house from the running water supply. A study done in Ghana describes this situation: *"Even though both sexes suffer the consequences of corruption in the water sector, the consequences of corruption take on different forms for men and women. In Ghana, drawing water is women's responsibility. If supplies of water are interrupted, women have to walk up to five kilometres to find water."*

Education

182. The human right to education states that primary education should be free for all and that secondary education, in its different forms, including technical and professional secondary education, should be generalised and accessible to all, by as many means as are appropriate, and in particular by the gradual introduction of free instruction. The right to education should pursue the full development of the human personality and the sense of human dignity, and should strengthen respect for human rights and fundamental freedoms.

183. Corruption in the educational sector threatens this right in several ways. The educational sector comprises one of the government's largest budgetary outlays, and corruption opportunities are rife. The most common cases include everything from bribes for obtaining a teaching job to bribes for enrolling in a school or passing an exam. This creates a situation of inequality, because students who did poorly on the final exam to get into secondary school or university but have resources to pay the bribe, ensure themselves special consideration for admission. In general, vacancies are rare, so students with few resources, regardless of their academic record, are rejected by the best public education institutions in favour of students who pay bribes. This, in turn, leads to greater inequality for women. In 1999, in Pakistan, only 47% of the women of Sindh Province were reported to be attending school even though school is free in this country, school uniforms are not required and textbooks are handed out free of charge. And yet parents reported that the main reason they did not send their daughters to classes was the (unofficial) cost of school and school materials. Forced to decide how to invest scarce family resources, they gave priority to their sons' education[86].

184. The impact of bribes on the educational sector also encourages physical and sexual violence against women. Low-income women are sexually subjected in exchange for admission into

---

[85] See Alolo N., 2007 http://www.ichrp.org/files/papers/134/131_-_Namawu_Alolo_-_2008.pdf
[86] See, Community Information and Epidemiological Technologies (CIET), 1999.

school, or a passing grade on exams. A study on sexual violence in Botswana (2001) revealed that 67% of the women surveyed reported having been sexually harassed by their professors. 11% of the women had considered dropping out of school because of the sexual harassment they endured from their professors, and 10% agreed to have sexual relations for fear that otherwise their grades would be affected.[87]

Judicial Sector

185. The judicial sector is one of the areas that are most vulnerable to corruption: access is denied to justice and the basic human rights to a fair and impartial trial, or even sometimes to any kind of trial at all. One of the most common corrupt practices is the obligation to pay bribes, in monetary or non-monetary terms, to judges, prosecutors and other operators of the judicial system in order to obtain a favourable ruling, invalidate evidence or simply file an appeal. Other court officials, such as clerks in charge of judicial records and files, are bribed to make files disappear. With less access to the economic resources needed to pay these bribes, women suffer disproportionately. Like in the educational sector, judicial corruption also encourages physical and sexual violence against women. A study of corruption and gender in Ghana[88] gives an account of how some male judges sexually abuse women in exchange for a favourable sentence. *"Women suffer injustices because they do not have enough money to gain access to justice. Justice in Ghana is expensive because it must be bought with bribes. Women who cannot pay in cash, pay with sexual favours."*

186. But bribes are not the only way judicial corruption puts women's rights at risk. A corrupt justice system violates human rights in general, but the situation is worse when the system encourages and protects crimes based on physical, emotional and sexual violence against women. A study of the criminal justice system in Nepal conducted by the Asian Human Rights Commission[89] (AHRC) showed that 21% of the victims of trafficking of women and/or rape reported that the suspected perpetrators had been released before the investigations were completed and that, in most cases, the victim's testimony had been ignored. In 60% of the cases, the victims had not been informed when they had to appear in court. If the victims did nevertheless appear to testify, 56% of those interviewed stated that they were subjected to offensive interviews and intimidating interrogations by the police and judicial personnel, and that they received unfair treatment from the judges.[90] Similar treatment was found in cases of domestic and family violence.[91]

Legislative and Executive Sectors

187. Political corruption in the legislative system is especially damaging to women when it leads to the enactment and/or non-reform of laws and norms that discriminate against women and threaten their rights, for example, in the case of criminal and civil laws that contradict the principle of equality, and laws regarding sexual harassment, rape, domestic violence, and exploitation and trafficking of women. Another clear case is when budget decisions systematically discriminate against women.

188. Within judicial, legislative and executive corruption, the most serious case is, without a doubt, the exploitation and trafficking of human beings. The business of exploitation and trafficking of human beings is growing around the world. At least two million people, of which 85% are women, are estimated to be sold for sweatshop labour, prostitution, arranged marriages, illegal

---

[87] See, CMI. (2006). "Corruption in the Education Sector". U4 Issue. Chr. Michelsen Institute.

[88] See, Alolo N., 2007. http://www.ichrp.org/files/papers/134/131_-_Namawu_Alolo_-_2008.pdf

[89] Asian Human Rights Commission (AHRC) (2000): Impact of Corruption in Criminal Justice System on Women, AHRC Publications, February, Vol. 10 No. 2.

[90] See GTZ. (2004) "Corruption and Gender. Approaches and Recommendations for TA: Focal Theme: Corruption and Trafficking in Women".

[91] See, Program Against Corruption and Organized Crime (PACO, 2004) "Gender and Corruption in South East Europe: Making and Impact" Council of Europe.

sale of organs, among other purposes. The United Nations estimates that this market generates an annual profit margin of 7 billion USD- an amount comparable to that of drug and arms trafficking. The most important destinations are Europe, Japan and the United States, but human trafficking also takes place within the borders of Asia, Africa, Latin America and the Caribbean[92].

189. The entire criminal market that drives human trafficking and exploitation is based on a network of corruption that cuts across all levels of the executive, legislative and judicial branches in countries of origin, transit and destination. This involves both local-level acts of corruption (issuing travel, residency and work documents for kidnapped women; arranging houses of prostitution in the destination countries) and corruption at the highest levels, which prevents the effective regulation and application of laws against the exploitation and trafficking of human beings. There have been countless cases of human trafficking involving public officials, including judicial, police and diplomatic personnel, among others. In the year 2005, Amnesty International denounced the case of a Moldovan woman and other women from Eastern Europe, victims of trafficking of women for sexual exploitation, in which Montenegrin politicians, judges, police officers and other officials were involved. Politicians, judges, police officers and other public officials of Montenegro were accused of torturing and raping several Eastern European women who were being kept as sex slaves. Another account of the scope of public officials' involvement in human exploitation was given by victims of human exploitation and trafficking in Burma. Several women denounced the direct involvement of both Burmese and Thai officials in the exploitation of women. Some women declared that they were transported to tourist resorts in Thailand by armed and uniformed police, often in police vehicles. Once in Thailand, the police protected and patronised the bordellos where the women were exploited[93].

7. POSSIBLE TENSIONS AND CLASHES BETWEEN ANTI-CORRUPTION AND HUMAN RIGHTS POLICIES

190. The tension between human rights and anti-corruption policies is a result of the assumption that the effective criminal control of corruption must compromise human rights standards to a certain extent, but that these standards would in any event be downplayed from the anti-corruption policy standpoint. There is in fact quite a bit of evidence to bear out this assumption: standards agreed to by the international community authorising a shift in the burden of proof against defendants, the use of suppositions as evidence in criminal cases, the offer of immunity and criminal privileges to defendants who provide information, etc.

191. This issue poses problems at two different but not mutually exclusive levels of analysis. In the first place, there is the question of what measures to take to simultaneously strengthen human rights and anti-corruption standards, so that corruption investigations can be conducted without violating the human rights of the parties involved: defendants, witnesses, victims and forensic experts that participate in the cases. This first level of analysis presents different kinds of difficulties, especially because in countries with poor institutional quality and high levels of political and economic corruption, the most powerful groups can derail the investigation process by skewing the operation of the justice system in their favour and against the individual and collective victims. This situation, which gives rise to a distorted application of human rights standards of protection –overprotecting the rights of those accused of corruption while leaving witnesses and victims unprotected – encourages corrupt practices and discourages the active participation of civil society.

192. At a second level of analysis, the tensions existing among the three factors that are implicit in the question of how to combat corruption while respecting human rights (1. anti-corruption

---

[92] See GTZ (2004).
[93] See AATW, (2003) "Manual Derechos Humanos y Trata de Personas". Alianza Contra la Trata de Mujeres. Bogotá-Colombia.

measures; 2. standards of human rights protection and 3. investigative effectiveness) call for fundamental reformulations of the crime-policy grounding of the model of investigation and criminal prosecution of corruption in the different countries that are concerned with this problem. These reformulations are justified by two clear-cut reasons:

a. The refusal to use investigation models that minimise respect for essential human rights standards in exchange for policies and tools for investigation and criminal prosecution that undermine the system of trial guarantees for the sake of investigative effectiveness. This acceptance of investigative models that downplay respect for human rights and fundamental guarantees of criminal trials can be perceived in some international instruments, in local legislation, and in the justification given by certain judges, police officers and politicians when they maintain that crimes committed in secret and with government complicity call for downplaying the scope of some human rights standards.

b. Unlike the previous point, the tension among these three factors can be regulated differently by implementing models for the investigation of corruption that strengthen investigative effectiveness variable without jeopardising the human rights variable. In the last part of this section we take a look at this issue.

Legal designs vs. procedural guarantees

193. One dimension of the tension that is at play here centres on the legal design of tools for prosecuting crimes of corruption. On this point, the United Nations Convention against Corruption (UNCAC) sets forth in one rather worrisome passage that *"…each State Party may adopt more strict or severe measures than those provided for by the present Convention for preventing and combating corruption…".[94]* This discretionary area is disturbing when analysed in the context of other anti-corruption measures in the convention that put pressure on respect for basic human rights standards.

194. In this sense, the criminal offence of illicit enrichment as foreseen in the UNCAC is a paradigmatic case of norms with a direct impact on human rights standards. The regulation of this crime in local laws reveals a clear clash with the principle of innocence and the prohibition against shifting the burden of proof.

195. These two principles represent rules that are essential to the principle of due process and under no conditions may they be restricted by the State. The principle of innocence is the most important guarantee in the proceedings, because it protects the defendant from the possibility of being considered guilty before a conviction has been handed down. This guarantee is unwaivable as it aims to keep the State from punishing people without proof of the crime or with insufficient or invalid evidence. The principle of innocence is directly related to the shifting of the burden of proof. It is not the defendant's but the State's obligation to prove that a crime has been committed and that the defendant is responsible for it. If it were the defendant's obligation to demonstrate innocence, then the principle of innocence would lose its constitutional meaning. Likewise, the accused always has the right not to testify against himself due to the constitutional protection afforded by the prohibition against self-incrimination. This chain of fundamental principles is of vital importance for due legal process. Without these principles, there is no valid criminal trial, there is no procedural possibility of applying a sentence, there is no conviction based on previous law and there is no legality in the criminal proceeding.

196. The crime of illicit enrichment, both in the convention and in local anti-corruption laws, is justified by the need to make it easier to punish public officials involved in corruption cases when proof of the means of acquiring the unjustified wealth (bribery, graft, embezzlement or

---

[94] UNCAC: Art. 65.2

misappropriation) is difficult or impossible to produce. In this situation, which points up a weakness of the State, illicit enrichment serves as a subsidiary criminal definition that gives priority to the effectiveness of investigation over the protection of the defendant's rights within a criminal proceeding. The cost of this prosecution strategy is the weakening of the entire system of procedural guarantees and therefore, the weakening of the Rule of Law.

197. The normative design of this law generally adopts wordings that oblige the accused to justify the origin of her personal wealth. In this sense, the problem is not so much the fact that the public official has to justify, but that an incomplete, untenable or blatantly false justification leads to a criminal conviction involving loss of freedom. Having to justify is a legitimate consequence of holding public office, but its omission cannot generate punitive consequences against the accused, because it is simply unconstitutional to shift the burden of proof or to affect the principle of innocence.

198. Different solutions to this problem have been proposed. The first rejects the legal validity of the definition itself due to the unconstitutionality of its affecting the fundamental principles we have just mentioned. This first response is technically valid but it neutralises the use of the definition of the offence.

199. To avoid this, some authors maintain that the offence is a complex definition made up of an action (*enrichment*) and an omission (*failure to justify the enrichment*). This response thus maintains that the offence does not affect basic procedural principles or guarantees because public officials have an express duty to justify the increase in their personal wealth because the exercise of public office obliges them to render accounts of their acts. By this argument it can be maintained that upon assuming office, public officials tacitly *"waive"* certain constitutional rights such as the principle of innocence and the prohibition against self-incrimination: public office subjects them to a higher degree of accountability before society. If the court summons them to explain the origin of an unjustified increase in personal wealth, they may not claim a violation of human rights principals because they would be acting against their own acts. If they accepted public office, they did so with all the implications and consequences that the decision entails.

200. To avoid shifting the burden of proof and affecting the principle of innocence, the structure of the definition of the offence must be reformed by eliminating the clauses that demand that public officials justify the origin of their property and assets. And the definition must be reconstructed as an offence consisting of unduly enriching oneself and not of failing to offer satisfactory justifications to the court.

201. Within this same logic, the problem of shifting the burden of proof is also analysed. Human rights standards forbid such a shift in criminal proceedings, but not in civil and administrative proceedings. Thus, legally authorising the shift of the burden of proof in order to obtain a conviction implies designing a model that is contrary to human rights.

202. Moreover, the discussion of shifting the burden of proof contains conceptual subtleties that, when analysed in the light of the wording of the definition of the offence of illicit enrichment, reinforce the idea that the best institutional response consists of eliminating from the criminal code the burden of justifying the origin of the increase in personal wealth. The burden of proof involves two types of tasks: *producing and persuading*. The former involves producing and presenting the necessary evidence for introducing a factual issue within a judicial proceeding, while the latter consists of actions, strategies and resources aimed at convincing the judge about the way in which the facts took place. In criminal cases, it is up to the accused to produce the evidence and persuade the judge. In some cases it might be logical for the accused to have to produce the evidence, especially when he claims some situation that frees him from responsibility (legitimate defence, non-imputability, ignorance, good faith, etc.). Under no circumstances, however, would

it be acceptable for the accused to be obliged to convince the judge of his innocence, in this case, that he did not engage in illicit enrichment.

203. In this context, the most adequate design for this definition consists of eliminating the demand of justification as a duty of public officials, not only because there is no legal obligation to do so, but because human rights standards do not allow it.

Organisational reforms and prosecution of emblematic cases

204. The independence of the Judicial Branch is an essential aspect of democracy and fulfils a key function in the control of corruption. This principle is also extensive to the Prosecutor's Office: if it does not have enough independence and integrity, investigations will be subject to the whims of the government. Strengthening judicial independence demands taking measures against the structural conditions that underlie corruption within the judicial system.

205. Here there are two levels of intervention that must be analysed. Let us begin with lost trust. Recovering society's trust in judges and prosecutors requires visible changes in their performance in specific cases. The glaring inefficiency in cases of corruption and economic crime shows that judges are far from recovering this trust. A rigorous and sustainable strategy must be implemented by working toward the definitive resolution of paradigmatic corruption cases because this would enhance credibility by signalling zero tolerance of corruption. This strategy is popular, and known throughout the world as "catching the big fish."

206. Secondly, making a dent in the conditions that encourage and facilitate corruption requires working on the structural reform of the justice system. It is not enough to improve procedures for selecting judges, performance evaluation systems, disciplinary systems, term limits, etc., if the hierarchical organisation is left intact, along with the secret written ritualism, the structural ineffectiveness in case management, the absence of investigation models that use complex and dynamic strategies to solve cases of corruption and economic crime and give the real victims in each case a greater role to play.

207. These measures are essential for strengthening judicial independence, especially when cases of corruption are investigated. As this report has asserted, corruption is an activity of powerful groups with the economic and political capacity to bring pressure to bear on judges and prosecutors so that they apply strategies of impunity on behalf of the accused.

Judicial transparency and access to information

208. Judicial systems should be transparent enough to allow society to monitor their activities and promote accountability regarding the fulfilment of their duties. The rule of transparency should be applied to all the dimensions that make up the structure of the judicial system: appointments, promotions, discipline, investigation, rulings, sentences, performance, removal, etc.

209. In two concrete cases, judicial transparency and information about the causes justifying judges' and prosecutors' decisions are important for the relationship between the corruption investigation policies and human rights.

210. On the one hand, there have been allegations of arbitrary arrests of people in the context of investigations of corruption. Cases have been detected in which this type of measure is carried out for the purpose of threatening people who file complaints, or of extorting people involved in the cases who have information that they have not revealed to the justice system.

211. On the other hand, in many investigations of corruption, some of the accused, with the complicity of judges and prosecutors, have falsely sued their accusers and principal witnesses of the acts of corruption under investigation, in an attempt to intimidate the victims.

212. Given situations such as these, greater levels of transparency and access to information is a basic condition for evaluating the reasonability of certain measures that restrict the human rights of both victims and the accused in these cases.

213. Greater levels of transparency combined with access to information and public scrutiny of these kinds of measures that restrict due process, could help to reduce abuses of power on the part of operators within the justice system.

Witness and victim protection

214. The effective prosecution of crimes of corruption does not require only a penal code that defines criminal behaviour and independent investigations of people linked to this kind of behaviour. This is not enough because corruption operates by means of secret mechanisms that only those directly involved know about. For this reason, in order to improve prosecutorial effectiveness, it is vital to have the active participation of witnesses to provide information about essential aspects such as the final destination of money paid as bribes, the structure of the graft in the case, and the way to obtain accounting documentation of simulated operations where money is handed over. At the same time, this type of crime tends to go hand in hand with extortion and even violence, so that the truth is kept secret and cannot be uncovered. Breaking the secret and the silence that envelops corruption is the most effective strategy for controlling it and punishing those who are really responsible.

215. A key witness may very well have key information that will advance the investigations, but at the same time, she may have good reasons to keep quiet if she feels her life, her physical safety or that of her family is in danger. The State must implement firm policies to create conditions of protection and safety for witnesses and accusers and the people closest to them.

216. International instruments demand that States take steps to create official witness-protection programmes in corruption cases [95]. A well-designed programme for protecting witnesses of acts of corruption should consider a series of fundamental variables:

- Determination of the type of relevant aggressions or threats (reprisals, types of discrimination, physical threats, psychological threats, revenge, harassment, etc.)[96]
- The creation of mechanisms for evaluating the truthfulness of the information provided by the witness or accuser: the UNCAC refers expressly to this point in the clauses "…**in good faith and on reasonable grounds…"** Art. 33.1).
- The creation of a system of penalties for cases of bad faith.
- Mechanisms for evaluating risks or threats claimed by the witnesses or accusers: this will help to determine the type and intensity of protection to be provided by the State.
- Systems for classifying measures into short-, medium- and long-term.
- Identification and design of essential protection systems according to the type and intensity of the threat: assignment of police guards, measures for protecting physical safety, change of identity, change of job, relocation to a different city, region or country.
- Design of immunity programmes for members of criminal organisations.
- Procedural mechanisms for taking depositions and testimony long distance.

---

[95] See UNCAC, articles 32 and 33.
[96] http://www.afdb.org/portal/page?_pageid=473,18222281&_dad=portal&_schema=PORTAL.

- Coordinated systems and policies that promote the cooperation between different States for the mutual relocation of witnesses.
- Compensation mechanisms for cases of victimisation of witnesses and people close to them.
- Measures of psychological containment and assistance.

217. The United Nations Office on Drugs and Crime (UNODC) has produced a series of documents as a kind of toolbox systematising the main aspects of witness-protection programmes. The documents, entitled *"The global programme against corruption – UN Anticorruption toolkit"* (numeral 33) outlines these aspects clearly. In the same document, several legal models are mentioned that could be useful for designing an adequate protection system *(Australia: Whistleblower Protections Bill, 1992 (New South Wales) – Whistleblower Protections Act, 1994 (Queensland); UK: Public Interest Disclosure Act 1998, USA: Whistleblower Reinforcement Act of 1998)*.

218. Aside from state programmes intended to offer protection to victims, witnesses and accusers in corruption cases, civil society organisations have come up with initiatives for the regulation of these mechanisms. In the Republic of Paraguay, an NGO created a Protection Programme for Those Denouncing Acts of Corruption[97]. The purpose of the programme was to use new technologies to generate initiatives and protection measures for those denouncing corruption.

219. With this purpose in mind, an interactive database was created for receiving accusations of acts of corruption in the National Public Administration. The main strength lies in the fact that the whistleblower is not individualised with his identity but rather with a number generated automatically by the system. The protection system works by means of three mechanisms in sequence: 1. mechanisms for filing denunciations by electronic mail; 2. mailbox for leaving denunciations; 3. software for administering denunciations with a data-encryption system for the information about the whistleblower.

220. These databases were implemented in pilot programmes in three public institutions related to the judicial system: a. General Directorate for Public Contracting of the Treasury Ministry; b. General Directorate for Public Registries under the Supreme Court of Justice; c. General Inspector's Office of the Attorney General.

221. This civil-society initiative promotes actions aimed at the creation or improvement of protection systems, regardless of the state policies being developed (or not) along the same lines. The project shows that the use of new technologies, especially those that use on-line platform systems and installed databases, can help to leave behind the paradigm of the isolation model for those who blow the whistle on acts of corruption.

Asset recovery vs. human rights

222. The most modern anti-corruption instruments include different asset recovery mechanisms aimed at attacking the generation of illicit profit through crimes of corruption. In this sense, the UNCAC recognises that asset recovery is one of the most significant purposes of the convention (Article 1), and therefore, it contains a specific chapter regulating the main systems, procedures and stages involved in any asset-recovery process (Chapter V).

223. This class of tools offers the possibility of obtaining concrete results through the confiscation of fraudulently obtained assets, thereby holding out the possibility of repairing, partially or totally, the damage that these crimes produce for society and the State.

---

[97] See http://www.inecip.org.py.

224. In spite of the effectiveness of these measures for genuine control of the corruption phenomenon, in many cases the issuance of restrictive orders on property (freezing, impoundment or confiscation) can generate conflicts with human rights standards. Here there are two possible levels of conflict: a. Asset recovery vs. Property Rights; b. Asset recovery vs. Principle of innocence.

Asset recovery vs. Third-party property rights

225. A standard asset recovery process is made up of four stages in sequence. The first stage is **locating the assets**: in this stage, investigative steps are taken to identify and track down assets by scrutinising financial transactions, operations, reports and accounts considered suspicious in different jurisdictional territories. The second stage is **freezing and impoundment**: here restrictive measures are taken against assets, such as temporary freezing (*blocking of bank accounts by an administrative investigation authority – FIU's*), or stronger measures such as impoundment which is carried put by seizing property. The latter measure is more restrictive than the former, requires a greater standard of proof and can only be ordered by a judicial authority. The third stage consists of **definitive confiscation**: once the assets are tracked down and there is assurance that they will not "flee" to jurisdictions where access is difficult, they are recovered by means of a judicial warrant ordering the confiscation of assets. The fourth and last stage consists of determining the destination of the confiscated assets in benefit of society and the State.

226. In any of these three stages there are potential conflicts with human rights standards[98]. But the greatest impact on rights to property is felt in stage three because that is where assets are definitively forfeited to the State.

227. Comparative legislation and international instruments set forth two different confiscation models[99] depending on whether they are applied to objects or values[100]. In general, it is held that the confiscation of objects is equivalent to a powerful criminal penalty consisting of forfeiting property to the State, which then becomes the owner of that object as of the moment the crime itself was committed. When this method of confiscation is applied to the instruments of the crime (*this refers to the material means used to commit the crime: the weapon, false passport, automobile used to transport drugs, etc.*), not many problems arise because the grounds are the imposition of the same criminal penalty for the commission of the crime.

228. The most difficult problem arises when the effects of this model extend to the product of the crime (*i.e., the assets generated by means of the crime: money obtained by asking for a bribe, interest earned by depositing this money in a financial instrument, etc.*). Since the decision to confiscate falls on an identified object, if this object was transferred to other people by the person involved in the crime from which it originated, the measure could affect the rights of a third party. This situation could occur if the State overextends its reach when applying the recovery tool.

229. Given a problem such as this – *produced by the transferable nature of property* – the rights of the good-faith third party should be strengthened (UNCAC: 55.9 – CNU Vienna: 5). Confiscation can

---

[98] In the first stage, the right to privacy of the people under investigation could be jeopardized. International instruments, however, have given priority to financial transparency as an essential value for investigating crimes such as asset laundering and economic fraud. These decisions, implemented by means of policies that prohibit bank, fiscal, commercial secrecy, etc., attempt to break the anonymity that guarantees the impunity of economic crimes and corruption. Without these tools, the successful cases of recovery would never have been resolved in society's favour. What we have here is a *qualified right*, susceptible to undergoing reasonable restrictions for the sake of strengthening a democratic society. At this level, no major problems arise except for the use of special investigative techniques such as undercover agents or wiretaps, which must always be ordered by a competent judge on the basis of a previous norm authorizing this level of restriction, according to clear rules governing the intervention.

[99] Common-law systems speak of seizure, but it is equivalent to regulated confiscation in continental systems.

[100] See Guy Stessens, *Money Laundering. A New International Law Enforcement Model*, Cambridge University Press, 2000, pp. 29ff.

result in the definitive forfeiture of property if the transfer to third parties **was not in good faith**: if the third party knew of the illicit origin of the asset or had sufficient reason to know of it, he cannot allege that he acted in good faith. The protection of property rights is not absolute and does not extend to anyone who is not considered an innocent owner.

230. The most appropriate solution would be to set up clear rules about the scope of the term "good-faith third parties," and to create procedural participation bodies that guarantee third parties effective access to the courts, the right to be heard and to appeal the sentence before a superior court. These measures are necessary to protect their rights.

231. Value-based confiscation is the other model: it does not imply any transfer of property but rather a judicial order to pay a certain amount of money. This order affects goods and assets regardless of their origin or form of acquisition. The admission of this type of measures, even against licitly obtained assets, is valid as long as it does not exceed the equivalent value of the product of the crime. In those cases where the equivalent value is exceeded, the confiscation could result in a form of criminal fine. While the two are similar in the sense that they set forth the obligation to pay an amount of money to the State, there are salient differences, especially regarding the determination of the amount to be paid. If the confiscation warrant corresponds to the equivalent value that was produced by the crime, the criminal fine may include additional charges such as the severity of the crime and the personal circumstances of the accused. For this reason, if the warrant ordering confiscation of value unreasonably exceeds the equivalent value produced by the crime, rights to property could be affected.

232. The main difficulty with this model arises when confiscation is ordered against insolvent individuals or those who do not have sufficient assets. In certain cases, the order could be redirected to third parties, but not always. Doing this in an uncontrolled fashion would imply affecting property rights. The only route possible is to demonstrate some kind of complicity between the insolvent person and the third party, whereby the transfer of property is in bad faith. Once the third party's bad faith is proven, a revocation order is issued declaring the property transfer invalid. Here again, similar problems arise that must be resolved by means of procedural mechanisms that guarantee the third party access to the court to demonstrate that there was no complicity on her part.

233. The aforementioned international conventions consider both confiscation models but they tend to give priority to the value-based model, which offers a better platform for taking asset-recovery actions because it implies less risk to property rights.

Asset recovery vs. principle of innocence

234. The possible conflicts between the use of asset-recovery mechanisms and the principle of innocence can occur in two situations. The first is if the order to confiscate is issued before a definitive conviction is handed down; the second, if the burden of proof is shifted.

235. These problems are related, and yet different. The issuance of confiscation orders before conviction could affect the principle of innocence if the definitive verdict is not guilty. Here it could be argued that the asset recovery affected the principle of innocence because the participation of the accused in the crime was not proven (*as long as the confiscation was directed against assets of that person*).

236. If the decision to confiscate identified assets is based on a shifting of the burden of proof, the owner of the assets would be obliged to account for the assets' licit origin. In this case, if the owner of the asset is the same person being investigated for crimes of corruption, he would find himself in a situation similar to that of illicit enrichment.

237. On both the first and the second assumption, possible conflicts with the principle of innocence are due to the articulation of asset-recovery actions in criminal-justice terms. Broadly speaking, in comparative law there are two main methods for recovering assets: criminal proceedings and civil proceedings[101]. When recovery proceedings (*based on value or object*) are initiated as a criminal forfeiture, problems with the principle of innocence arise.

238. It is impossible to avoid clashes in these cases because the system of procedural guarantees will always give priority to the presumption of innocence and the prohibition of shifting the burden of proof: these are two unassailable principles of liberal criminal law, although legal designs tend to weaken force the system of guarantees, as happens with the crime of illicit enrichment. But this is not an acceptable solution, either from a crime-policy perspective or from a constitutional perspective. The State's ineffectiveness in prosecuting corruption can never be used as a justification to weaken the system of guarantees

239. One possible solution for avoiding clashes with the system of guarantees is for the order to confiscate assets to be issued as a consequence of a criminal conviction. But in this case, we would not be discussing a recovery procedure, but a confiscation of assets applied as an accessory consequence of a criminal sentence.

240. The liberal tradition of criminal law regulated the confiscation of assets as an accessory penalty and therefore, applicable only if there is a conviction on the main charge. The truth is that the complexity, flexibility and profit motive of crimes of power (economic crime, drug trafficking, organised crime, corruption) have shown that the best control policy for this dimension of crime is not imposing criminal sanctions, but prosecuting the financial circuits that underlie the reproduction of criminality. This is why the confiscation of assets has gradually come to the forefront in criminal prosecution, and the place it traditionally occupied in the penal code no longer makes sense.

241. Problems arise when asset recovery is confused with confiscation of assets. It is true that recovery proceedings include confiscation, but the grounding in crime policy, as well as the procedural articulation, are different from those of a simple confiscation. Thus, if the confiscation is implemented within criminal proceedings and does not respect the rules of the system of guarantees governing them, constitutional rights are violated. The most effective option is not to integrate the confiscation within the criminal proceedings or to order it in violation of constitutional guarantees; the recommended route is to implement it under civil forfeiture proceedings.

242. Civil forfeiture proceedings can be filed by means of civil actions against people or against assets [102]. In either case, the main advantage is that the procedural rules of criminal law do not apply. This factor implies that the burden of proof can be dynamic or be shared between the parties and that the order of confiscation can be issued at any time as long as a reasonable connection has been demonstrated between the asset and its illicit origin. Thus, the obligation of having a criminal conviction for the main charge is no longer a condition for the legality of the measure. The action of recovering assets does not seek to establish criminal responsibility but to pass judgment on the origin of an asset: if it is licit, then the action does not proceed; if it is illicit, the confiscation is ordered and the asset is forfeited to the State.

243. The best solution for implementing efficient models that at the same time respect human rights standards, is to pursue asset recovery in civil courts. It does not matter whether this happens inside or outside of the criminal proceedings, as long as clear procedural rules are followed in each case. If what is under investigation is the **origin of the assets**, then we are discussing a

---

[101] Idem ant; Dee R. Edgeworth, *Asset Forfeiture. Practice and Procedure in State and Federal Courts*, ABA Publishing, 2004, USA.

[102] See Dee R. Edgeworth idem ant., pp. 7.

judgment of responsibility regarding the assets; on the other hand, if the **commission of crimes** is under investigation, then we are discussing a judgment of personal responsibility for the crime committed.

Toward a redefinition of the problem

244. The tensions generated by the potential impact of anti-corruption policies on human rights standards must be seen from a different conceptual framework. The main reason is that never, under any circumstances, is it a good solution to undermine the system of constitutional guarantees for the sake of strengthening prosecutorial effectiveness. Going down this road means charging the costs to people's fundamental rights. Moreover, in spite of what anti-corruption officials might believe, valuing prosecutorial effectiveness over the system of guarantees does not assure successful results in controlling corruption.

245. It is the design itself of the main anti-corruption laws that gives rise to the tension between anti-corruption policies and human rights standards. This tension could be eliminated, however, with the adoption of prosecutorial models aimed at enhancing effectiveness without affecting human rights standards. In this sense, models for prosecuting corruption should adopt three basic structural measures. The main ideas are presented below:

Strategically redefine prosecution methods

246. Crimes of corruption are investigated as occurrences in isolation of the context in which they occur. This focus makes it difficult to approach the criminal phenomenon systematically, because it puts the facts of the case in the foreground and the structure in the background, i.e., the set of common patterns that give shape to the phenomenon of corruption in a given sector of the market and the State. Crimes of corruption do manifest themselves as individual cases, but they always involve a whole array of actors, circuits, logics and practices that make the phenomenon more complex than a single case. Zeroing in on the case and overlooking the structure could, in the best of cases, impact the people involved in the case, but it does nothing to alter the structure that feeds and reproduces corruption. In more concrete terms, it is not effective to prosecute one case of corruption by concentrating the investigation on determining whether a certain public official accepted/offered bribes, if the whole network of front companies used to cover up money transfers is overlooked, or the mode of participation of a certain area of the State, or the specific dynamics of the market sector in which the case took place, etc. The payment of bribes, graft, illicit enrichment – these more than individual illicit acts constitute processes of criminal interaction that are associated with other criminal phenomena such as tax evasion, business fraud, financial crimes, fraud against the State, money laundering, human trafficking and other associated activities linked to organised crime.

247. Strategically redefining prosecution methods means that the State decides to prosecute corruption by trying to dismantle the components that define the structure of corruption. By losing sight of the overall picture of the informal patterns and processes that channel corruption, prosecutors and judges are left trapped in the tension between anti-corruption policies and human rights: charging the costs of this tension to human rights does not advance effectiveness because the criminal prosecution has no clear strategic direction. It is necessary to redefine this direction by setting objectives for anti-corruption policies that reorient the criminal prosecution of individual cases in favour of the overall control of structural corruption – *where the punishment of those responsible is a means and not an end in itself.* This could help to overcome the tension.

Strengthening the systems of information production

248. Since crimes of corruption are the product of a power structure, it becomes necessary to develop new techniques for generating and managing the greatest amount of information possible regarding the processes, actions, institutions and actors that form the underpinnings of corruption. Sophisticated tools must be designed for storing, processing and analysing information on the financial, fiscal, commercial and criminal background, as well as the properties of individuals and legal entities that directly or indirectly participate in corrupt practices. Strengthening information-production systems by using consolidated databases is one necessary condition for transcending the model of criminal prosecution of individual corruption cases and reorienting the strategy toward a model focused on the operation of corruption as a structural social phenomenon.

249. This second level of work can also help to overcome the tension between human rights and anti-corruption policy because the production of information through different methods and techniques goes beyond the procedural mechanisms of producing evidence (testimony, expert testimony, documentary records). While the determination of the existence of a crime and the criminal responsibility for that crime can only take place within criminal proceedings, the investigation of corruption cannot be confined to these narrow margins. The production of information can use different sources taken directly from social reality. Once the information is produced, discussion can proceed about how to integrate it into the process and about its legal validity.

Implementing new mechanisms for prosecuting cases

250. When the potential clashes between asset recovery and human rights were analysed, we stressed the importance of maximising civil recovery proceedings because they offer advantages for recovering assets without violating human rights. This option is justified by the need to take advantage of other segments of the justice system for processing social conflict (corruption is a social conflict that brings to light the unequal distribution of resources and power among different social sectors and groups) that criminal law cannot channel properly or efficiently.

251. The impunity that results from the low conviction rate in this area is the most compelling proof of this phenomenon. It is clear that the use of punitive mechanisms does not in itself provide significant solutions, because in the first place they do not lead to convictions that might symbolically express the state's intolerance of corruption, and in the second place because it does nothing to repair the economic and social damages caused by corruption.

252. The use of mechanisms that attempt to repair the damages caused by corruption offers more effective responses in preventive and social terms. Depriving the corrupt of their ill-gotten gains has a clear discouraging effect on the structure of corruption. Another way to dismantle the structure of corruption is by cutting off the circuits of illicit financing that feed it. These objectives can be achieved by means of other kinds of mechanisms that do not focus on criminal punishment, but on civil restitution.

Rearticulating social demands from the human rights perspective

253. Corruption expresses the illicit behaviour not only of public officials, but also of the businesspeople that corrupt them. Without the direct participation of businesses, corruption would be a marginal problem, because businesses are the lead players in this problem. Of course, the corrupt official plays a key role in making corruption happen, but only businesses have the economic wherewithal to influence the gross national product and economic development. As we

said before, corruption expresses a conflict about the ways resources are distributed among powerful and weak sectors of society. This conflict, which indirectly manifests itself as an appropriation of public assets or as an abuse of delegated trust, makes corruption an effective market tool, but most especially for those businesses that define the oligopolistic character of their market.

254. The accumulated experience of the development of the corruption phenomenon in developing countries demonstrated that natural resources constitute strategic sectors for businesses, because it is in that sector where the countries' greatest social wealth is generated. The lack of adequate regulation of mechanisms for bidding on exploitation licenses, concessions and extensions; inadequate control systems for public works projects; inadequate control of natural resource extraction; deficient environmental impact evaluation and the feeble defence of indigenous peoples' rights, all represent golden opportunities for developing high-profit business enterprises. The regulatory weaknesses in these areas generate additional advantages because they allow companies' direct foreign investment to take over strategic natural resources (petroleum, gas, mining, water) while eliminating or minimising the economic costs of adjusting their operations to human rights standards.

255. Thus there is a direct connection between corruption and natural resources: businesses engage in corruption in order to secure and control the countries' resources, while denying the social impact caused by their irresponsible extraction. From the human rights perspective, corruption harms economic, social, cultural and environmental rights, all of which are a necessary condition for reducing poverty and achieving sustainable development. This is another level at which corruption affects human rights: businesses that pay bribes affect human rights when they usurp the natural resources of poor (*but, paradoxically, resource-rich)* countries.

256. This realisation makes an interesting starting-point for exploring new Corporate Social Responsibility (CSR) mechanisms being developed around the world, because they can be used to reconnect anti-corruption demands with demands for the protection of the human rights of marginalised groups (the poor, women, indigenous groups, children, etc.), from the double perspective of the role of businesses in the development of corruption and of the impact they have on human rights. These mechanisms can be useful for anti-corruption activists because they encourage direct action by those directly affected by corruption.

257. Within the OECD framework there is a CSR platform based on a series of principles, recommendations and voluntary standards that make up the **OECD Guidelines for Multinational Enterprises.**[103] The purpose of the Guidelines is to guarantee that businesses participate in markets with respect for the basic public policies that form the basis of the Rule of Law and democracy. For this reason, these Guidelines consist of different principles that set good-practice standards in the areas of labour relations, the environment, fiscal responsibilities, consumer rights, competition, corruption and other issues.

258. The Guidelines are not just a document of good intentions; the States adhering to them have a body for dealing with complaints filed by groups affected by the actions of multinational enterprises. In this way, the Guidelines also facilitate the creation of **National Contact Points** in each of the countries that have adopted the guidelines, which may or may not be members of the OECD. The purpose of these mechanisms is not to determine the legal responsibility of these companies but to encourage dialogue and participation between the companies and the complainants, in order to find solutions that guarantee business behaviour that respects the countries' legislation and the principles set forth in the guidelines.

259. The advantage of these mechanisms is that they give priority to finding solutions to the conflicts and damages that the companies have caused to conditions that are essential to the lives of the

---

[103] See http://www.oecdwatch.org/.

people living where the companies carry out their activities. The mechanisms also allow affected groups to channel their complaints directly against the company within an institutional framework that, as we said, does not attempt to impose sanctions, but to encourage solutions based on dialogue between the parties.

260. While the use of this type of tool is still quite new, anti-corruption activists should consider the potential it offers for channelling complaints, making conflicts visible and achieving concrete results for those affected. There is still much to explore in this area. The Guidelines offer the possibility of connecting human rights and control of corruption because this latter phenomenon is not – *as we said before* – an isolated event but a complex process of interconnected actions such as tax evasion, discrimination (by gender, class, ethnicity, age, etc.), environmental degradation, market competition and regulation; all of these actions manifest a specific dimension of the social and economic damage caused by corruption.

From the self-regulation of companies to litigation

261. The United States' **Foreign Corrupt Practice Act (FCPA)** was created in 1977 to penalise the offer or actual giving of any kind of payment to public officials by any [104] individual, company, executive, employee or agent of U.S. companies, or companies that trade on the U.S. stock market, as long as it is intended to obtain or maintain business.

262. This situation opens up a whole array of opportunities for filing suits against companies that resort to paying bribes, thus affecting human rights during the execution of their projects. This could be the case of a company that pays bribes to obtain a concession (or to maintain one already granted) to exploit hydrological resources and then impacts the environment by diverting the natural flow of rivers adjacent to the exploitation area. The diversion of the river's course does not only damage the environment; it also affects the local indigenous communities. This situation would involve the violation of environmental rights as well as the rights of original populations, all caused by the payment of bribes. If the company has U.S. capital or trades on the U.S. stock market, one option worth evaluating is filing suit in U.S. courts. These lawsuits could be pursued in conjunction with the State Prosecutor; human rights groups could also participate as **amici curiae**[105] when the case involves the public interest (*human rights cases tend to involve significant public interest*).

263. This situation opens the way for a strategy of hard litigation unlike the soft-litigation mechanism recommended in the framework of the OECD Guidelines. The former is more complex and costlier than the latter. However, if there is sufficient evidence of the payment of bribes[106], it can

---

[104] "…In 1998, Congress amended the FCPA to implement the Organization of Economic Cooperation and Development ("OECD") Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Convention"). The amendments expanded FCPA coverage to "any person" (defined as any American citizen, national or resident, or American corporation). Under FCPA, any United States person or entity violating the Act outside the United States is subject to prosecution, regardless of whether any means of interstate commerce were used…." http://www.nationalsecuritycrimes.com/foreign-Corrupt.htm.

[105] The amicus curiae is an institution of international human rights law that allows civil society organizations (human rights, trade unions, consumers, feminists, sexual diversity, etc.) to participate by making arguments in cases involving significant public interest. The tool is useful because it offers an adequate channel for organizations to formulate their points of view on conflictive issues brought before local and international courts. Argentina has had positive experiences in this regard: human rights organizations made use of the resource to push for the judgment and punishment of the dictators responsible for the genocide and forced disappearance of people. In the field of anti-corruption policy the resource has also been used to make it easier for society to find out about the most emblematic corruption cases. The amicus curiae is considered in the Regulations of the Inter-American Court of Human Rights, where amicus curiae briefs have been submitted to offer arguments on issues as varied as the death penalty, freedom of trade unions, and original peoples.

[106] The FCPA makes a distinction between bribes and "grease payments". The latter would be permitted as long as the local countries' legislation does not decree otherwise.

be useful for obtaining criminal and civil punishment for the behaviour of certain companies, as well as suspension of the legal entity[107]. On the other hand, while the OECD strategy may be considered *soft* because it does not look to impose sanctions but to come up with responses that repair or modify corporate conduct, it is still a powerful tool. An effective medium-term response can be more effective than one that results from an exceedingly drawn-out process.

264. But above all, it is with these two models in combination that work should be done: their joint use points to a new, more pro-active kind of litigation that goes beyond the traditional conception where arguments are made exclusively within the parameters of the case and before judicial authorities. The strategic deployment of these two models can enhance the defence of human rights when they are affected by the corrupt behaviour of companies engaged in natural resource extraction or extraction of any kind, because the demands for a solution to real problems are channelled onto the two tracks at the same time. The combination of the two models also enhances the development of accountability measures because organisations can act both inside and outside the judicial system and even in the jurisdiction of other States or before international bodies.

265. These tools offer new opportunities that should be examined and explored by the anti-corruption movement in alliance with the human rights movement, to control companies that carry out their activities on the basis of bribes.

8. CONCLUSION

266. Despite the multidimensional relation existing between corruption and human rights, both movements continue to act in isolation. As this report demonstrated, human rights standards and practices are connected with anti-corruption strategies and complement them. Many entry points have been identified for integrating human rights into different areas and processes of anti-corruption programmes.

267. Without rejecting anti-corruption strategies focused exclusively on state reform, the human rights movement proposes to complement them with investigations that are effective but also respectful of human rights, with more inclusive participatory processes that pay special attention to marginalised groups, and by highlighting the impact of corruption on the relation between human rights, access to resources and accountability.

268. The report also makes it clear that the global anti-corruption agenda headed by Transparency International shares fundamental principles with the human rights movement. Although Transparency International does not explicitly name or use human rights standards, some of its core concerns, such as the impact of corruption on poverty, the holistic approach to the phenomenon of corruption, and the central role played by civil society in bringing about change, mean that the integration of human rights would not introduce radical changes into the programmes that Transparency International and other NGO's have been implementing, because it would bring out common principles as well as synergy between human rights and anti-corruption policies.

269. Finally, should the anti-corruption movement manage to integrate and operationalise human rights principles into the design and implementation of their diagnoses and tools, it would probably find that its anti-corruption programmes yielded stronger results. From the human rights perspective, an alliance between the two movements could be a solution for taking up the challenge issued by the anti-corruption movement itself, the challenge of clearing the way for a fairer, corruption-free world.

---

[107] See Lay-Person's Guide to FCPA , www.usdoj.gov/criminal/fraud/docs/dojdocb.html

9. RECOMMENDATIONS

270. The purpose of this section of the report is to present a guideline of recommendations for public officials and anti-corruption activists to consider.

Good governance, anti-corruption programmes and human rights: possible entry points for a reform

271. Next we present a series of recommendations for enhancing the impact of anti-corruption programmes in the application of the principles of participation, transparency and accountability.

Participation

❖ Participation should be framed within an institutional context that guarantees other instrumental rights that are needed for substantive participation: the right of access to information, freedom of expression, freedom of assembly, etc. Without the assurance of these guarantees, participatory processes run the risk of being co-opted by governments or private companies.

❖ Participatory processes should be subjected to the test of breadth and depth. Breadth determines the degree of pluralism in participatory processes: the greatest number possible of groups should be included, especially groups potentially affected by corruption and specific victims of corruption. It is important to bear in mind that when inviting the most vulnerable groups to participate, positive steps should be taken to overcome people's fear and scepticism in the face of corruption. The last point should pass the test of adaptability so that the participatory processes adapt to the language and culture of marginalised groups. Finally, the depth test determines the degree of influence the participants have over decision-making or control of resources. The people and groups that participate should also have an influential voice, and this influence should be on substantive issues that allow them to confront and expose corruption.

❖ There should be a complete picture of the actors and conflicts underlying any participatory process. When structural social conflicts are being discussed, it is not enough to guarantee a formally broad and inclusive invitation to participate. In this scenario, it is essential to be able to answer the following questions: Who excludes and why? Who is excluded? Who excludes themselves?

❖ An analysis of the power configuration within the framework of participatory processes must be made in order to identify and differentiate among power relationships based on forms of visible, hidden or invisible power.

❖ Accounts should be rendered about the results of the participation. This implies explaining and justifying in a timely fashion how the participation of the affected groups was taken into account and to what degree it influenced the final decision.

Transparency

❖ Steps should be taken to legislate the right of access to public information. Fewer than 80 countries have this kind of legislation. Although a law does not assure the fulfilment of the right, it does allow demands for access to information to be framed with the language, guarantees and moral force of human rights. The sustained practice and demand of access to

information by NGO's tends to produce incremental changes within the State, even though the political will to support the pro-transparency reform is weak.

❖ In those countries where the law exists and operates, governments and NGO's must take concrete steps to promote pro-transparency reform. Governments should train public officials, reform administrative processes and make the right known through public-interest campaigns.

❖ Governments should take positive steps to pass the adaptability test. Access to public information should be facilitated, especially for marginalised groups. To this end, the system must be adapted to generate understandable information through accessible channels.

Accountability

❖ State reforms focused on accountability systems should incorporate the participation of groups affected by corruption. Reforms that are isolated from the participation of anti-corruption NGO's and groups affected by corruption generally tend to fail.

❖ Experiences of vertical accountability should take into account the complex relations interconnecting rights, resources, accountability and corruption. This approach brings to light conflicts that exist around access to resources. This makes it possible to accurately identify the holders of those rights, the people and institutions obliged to respect the rights and to anticipate the main risks of corruption.

Including the gender perspective in anti-corruption programmes

272. Designing an anti-corruption strategy with a perspective on gender implies much more than increasing the number of women employed in the public sector or in NGO's It implies generating anti-corruption policies that include and evaluate their impact on gender relations by keeping in mind the consequences of corrupt practices in the concrete situation of the most marginalised women of our societies. In the following section we summarise the main recommendations to keep in mind in designing an anti-corruption policy from a gender perspective:

Promote participation from a gender perspective

273. Participatory strategies with a gender perspective are key tools for strengthening transparency and accountability, and preventing and limiting government corruption. These include the creation of an anti-corruption coalition with a gender perspective that combines and strengthens the work of organisations active in anti-corruption programmes and women's organisations. In this way, consultation and cooperation bodies should be set up between organisations that work on corruption-specific issues that are relevant to women, such as the exploitation and trafficking of women, and non-governmental organisations that promote transparency and social accountability. It would also be important to promote training in gender issues for local NGO's and governments.

274. Participatory budgeting from a gender perspective, for example, promotes social participation while bearing in mind gender equality, which allows for the empowerment of women and brings to light the specific impact of corruption on women's rights. At the same time, it gives the local community (and women in particular) access to the tools they need to control and audit budgetary investment, thereby limiting opportunities for corruption.

275. One example of this type of participatory experience includes the introduction of anti-corruption strategies in the health and education sectors. This implies, for example, promoting transparent

financial administration and local participatory administration in schools, with the participation of school committees representing parents, students and local organisations. If the gender perspective is included in this kind of experience, it becomes possible to create specific mechanisms for controlling and promoting social accountability that includes and evaluates the fulfilment of women's right to receive corruption-free public services.

Promote anti-corruption strategies together with assistance and advisory services that promote women's rights

276. Anti-corruption strategies must be complemented by campaigns to reduce institutional, material and procedural discrimination against women. To be effective, an anti-corruption strategy with a gender perspective must consider women's access to public services, the judicial system and public power. To this end, specialised institutions must be created to deal with women's denunciations and demands. Such is the case, for example, of the Group of Users of the Maternity Free of Charge Law in Ecuador who promote accountability and fulfilment of the law in public hospitals and community clinics by documenting cases of corruption and bad practices while at the same time training and informing women of their rights to receive care free of charge during pregnancy and breastfeeding.

Focus on the exploitation and trafficking of women as an integral part of anti-corruption strategies

277. In spite of the connection between the struggle against corruption and the exploitation and trafficking of women, there are still few studies that systematically analyse the prevention and combating of corruption associated with the trafficking of women. A powerful synergy can be created, however, by combining the two strategies. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, of the United Nations Convention against Transnational Organised Crime (2000) expressly cites the trafficking of women as a corrupt practice and includes measures for combating and preventing corruption in the issuing of travel documents. And yet, the exploitation and trafficking of women involves much more than corruption in travel documents. In some countries, most of the human trafficking takes place within the national borders, which implies local practices of corruption that must be taken into account.

278. For this it is important to promote an intense debate that mobilises political will to combat the exploitation and trafficking of women, including concrete steps for investigating the capture of the state and administrative corruption at all levels of the state. Coherent joint strategies must be created to combat the exploitation and trafficking of women and the corrupt practices associated with these crimes. These strategies should include the creation of task forces with key representatives from the ministries of the Interior and Justice, plus specialised prosecutors, police and criminal investigation agencies, together with immigration authorities. Civil society organisations are key players to include in these task forces, where they can promote development strategies, and plans for action, implementation and monitoring.

279. Joint strategies also mean enacting laws that ratify international standards and conventions, and bringing national legislation into line in criminalising, combating and preventing the exploitation and trafficking of women, as well as the associated corruption, organised crime and money laundering. This includes creating the guarantees of protection necessary for key victims and witnesses and the comprehensive reintegration of victims into their homes. Other actions associated with this joint strategy are the regulation of the financing and transparency of political parties, of the income of parliamentarians and other government members who occupy positions of risk, among others. Finally, specialised units should be created to combat the exploitation and trafficking of women and corruption, by promoting interdisciplinary investigative agencies with the necessary resources and competencies for detecting, prosecuting and preventing corruption in the exploitation and trafficking of women[108].

.[108] See GTZ (2004)

Generate specific information for evaluating the consequences of corruption and anti-corruption policies from a gender perspective

280. To be able to evaluate and design anti-corruption policies that consider the rights of women, it is essential to obtain precise information about the consequences of corruption for women. For this it is necessary not only to consult groups of women at the local and regional level as well as anti-corruption activists, but also to generate and apply methodologies that shed light on the differential effects of corruption on men and women. This involves creating diagnostic instruments (for example, the combination of surveys on corruption and gender) and communication instruments that point up the connections that exist between discriminatory practices and corruption.

281. Generating information about the impact of corruption on women means examining and measuring how corruption affects men and women differently, and analysing the differential impact of anti-corruption laws and the difficulties of implementing strategies for fighting against corruption. Only with quality information is it possible to examine the public policy options available for preventing and limiting corrupt practices from a gender perspective.

282. Absent this information, there is a danger of promoting policies that are not effective and that, in the worst of cases, reproduce the conditions that exploit and exclude women. The research that related gender studies and corruption in the 1990's presented a limited and biased view of these issues, promoting the inclusion of women in public institutions as instruments for fighting against corruption, but without considering the fulfilment of their rights. These studies ignored the need for reforming and transforming the underlying power structures that create and reproduce the opportunities for corruption and discrimination against women. This task, which represents a greater long-term challenge, is particularly relevant for bringing about radical social change in the unequal relations between men and women.

Possible tensions and clashes between anti-corruption policies and human rights

283. This section of the report presents the main recommendations to be borne in mind especially by judges, prosecutors, lawyers, legislators and NGO's. These recommendations should be adopted in order to balance the objectives of controlling corruption with respect for human rights.

- Legislation should eliminate all types of statutes that require public officials to give explanations about the origin of questionable money when the result can be the imposition of a sentence that deprives them of their freedom.

- It is up to prosecutors to demonstrate that a public official incurred in illicit enrichment if they wish to seek a criminal conviction for this act.

- Public officials should render accounts to society about the origins of the wealth produced in their exercise of public office. This responds to the most elementary condition of democracy, but this obligation should be tied to a different kind of state response, such as for example the confiscation of property that is not declared or that lacks legal justification.

- The independence of the judicial system demands structural reforms that modify the hierarchical, bureaucratic and opaque organisation regulating judicial activity, which makes corruption a routine practice in the system.

- The lack of adequate systems for protecting witnesses increases the vulnerability of victims of corruption, while reducing the possibility of taking advantage of the information resources that witnesses have.

- An adequate witness-protection system should include mechanisms for identifying risks; short-, medium- and long-term protection options; protection mechanisms in accordance with the scale of risk involved, and sanctions for duplicitous witnesses.

- Asset recovery can affect rights to property if the systems do not implement adequate measures giving alleged owners recourse to the courts to defend their ownership of the assets. Recovery systems should design mechanisms to protect the rights of innocent or good-faith third parties.

- Asset recovery can also affect the principle of innocence and shift the burden of proof if confiscation orders are issued in criminal proceedings before the requirement of a previous conviction is fulfilled.

- The most appropriate solution for avoiding these problems is to regulate recovery systems so that they allow for civil proceedings for confiscating assets. The civil confiscation of assets offers distinct advantages for recovery because it is not punitive by nature but reparative. In addition, the use of civil means of confiscation allows for the use of less demanding criteria of evidentiary production than those called for in criminal proceedings.

- Tensions between human rights and anti-corruption policies could be resolved adequately and prosecutorial effectiveness improved if prosecution models are redesigned in a way that considers strategic criteria focused on dismantling the underlying structure of corruption.

- Improving prosecutorial effectiveness demands redesigning prosecutorial models in accordance with strategic ends but also by maximising case investigations and making use of all the information available. New technologies such as the use of databases could contribute a great deal in this regard.

- Alternatives for prosecuting corruption should also be implemented, giving priority to the reparation of damages caused to society. Assets recovery by civil means is a good option in this sense.

- Anti-corruption NGO's could also articulate claims against corruption from a human rights perspective by making use of new opportunities for participation, such as those proposed indirectly by the OECD Guidelines for Multinational Enterprises and the U.S. law against corrupt practices in foreign countries.

- The use of these tools is useful for promoting channels for filing claims, for bringing conflicts to light and for opening up spaces for dialogue between companies and groups affected by corruption.

			WHAT IS CONTROLLED?		
			ACTORS	POLITICIANS	BUREAUCRATS
WHO CONTROLS?	Horizontal	**Checks**	Executive branch	-Veto	-Regulation -Administr. control -Selection and removal of personnel
			Legislative branch	-Impeachment -Investigative committees -Veto	- Regulation -Administr. control -Selection and removal of personnel
			Judicial branch	-Judicial review	-Judicial review
		Assigned	Control institution Ombudsman, Accounts tribunals, Inspector's office, Auditor's office		
	Vertical	**Social**	-Media -Civil associations -NGO's -Social movements -Committees -Citizens	-Investigation and public denunciation -Social mobilisation and public denunciation -Denunciation in control agencies -Litigation	-Investigation and public denunciation -Social mobilisation and public denunciation -Denunciation in control agencies -Litigation
		Electoral	-Individual citizens	-voting	

BIBLIOGRAPHY

AATW, (2003) "Manual Derechos Humanos y Trata de Personas". Alliance against the Trafficking of Women. Bogotá-Colombia.

ACNUDH (Office of the High Commissioner of the United Nations for Human Rights) (2004). "Los derechos humanos y la reducción de la pobreza. Un marco conceptual." Geneva.

Aloisio C., Muñoz, Ch., (2006) "Género y corrupción: ¿Son las mujeres un arma eficaz en el combate contra la corrupción? ¿Y es deseable que lo sean?". Universidad Católica del Uruguay and Universidad de la República, Uruguay.

Alolo, N. (2007) "Corruption, human rights and gender: an empirical investigation"

Amartya S. (1999) "Development as Freedom", Random House, NY.

Aubut, J. (2004) The Good Governance Agenda: who wins and who loses. Some empirical evidence from 2001. Development Studies Institute, LSE.

Arjjumend, H. (2005) "Tribals, state and industry: people's struggle for land-based resources in Santal Parganas, Jharkhand" Grassroots occasional papers, #2. Grassroots Institute, India.

Avritzer, L. (2002) " Democracy and the Public Space in Latin America" Princeton University Press .

Baden, S. (2000) "Gender, Governance and the Feminization of Poverty", *Women and Political Participation: 21*P*st*P *Century Challenges*, New York: UNDP

Bauer, P. (1984) "Reality and Rhetoric: Studies in the Economics of Development", Harvard University Press, Cambridge..

Bauer, P. (1991) "The Development Frontier: Essays in Applied Economics". Cambridge, Harvard University Press.

Boone, P. (1995), The Impact of Foreign Aid on Savings and Growth, Working Paper, LSE.

Boone, P. (1996), Politics and the Effectiveness of Foreign Aid, European Economic Review, Vol.40, pp.289-329.

Burnside, C. y Dollar, D. (1997), Aid, Policies, and Growth, Policy Research Working Paper 1777, The World Bank, Development Research Group, Washington D.C.

Carrillo (2005) in Zovatto, D. et al. "La Política importa: democracia y desarrollo en América Latina". BID and IIDAE.

Christie, D., Wagner, R., and Winter, D. (Eds.). (2001). Peace, Conflict, and Violence: Peace Psychology for the 21st Century. Englewood Cliffs, New Jersey: Prentice-Hall.

Collins, P. H. (2000). Black feminist thought (2nd ed.). New York & London: Routledge.

Cornwall, Andrea and Brock, Karen. (2005) "Beyond Buzzwords". United Nations Research Institute for Development. Programme Paper Number 10.

Cornwall, A. (2003) "Perspectives on Participation for Poverty Reduction". Sida Studies No. 2.

CMI. (2006). "Corruption in the Education Sector". **U4 Issue**. Chr. Michelsen Institute.

Galtung, J. (1969). Violence, peace and peace research. Journal of Peace Research. Vol.6, #3.

Hindess, B. (2004). "International anti-corruption as a programme of normalisation" Paper presented at the annual meeting of the International Studies Association, Canada

Dollar, Fishman and Gatti. (1999). "Are women really the "fairer" sex? Corruption and women in government" Policy Research report on Gender and Development. Working Paper. Series No. 4. World Bank, October 1999.

Dreifuss, S., et al. (2003) "A contemporary analysis of governance" The Asia-Australia Institute. The University of New South Wales

Feyzoglu, T., Swaroop, V. and Zhu , M. (1998), A Panel Data Analysis of the Fungibility of Foreign Aid, World Bank Economic Review, Vol.12.

Ford Foundation, (2002): "Promesas que cumplir: el presupuesto público como herramienta para promover los derechos económicos, sociales y culturales". Ford Foundation, Mexico.

Fox, J. (2004). Empowerment and Institutional Change: Mapping "Virtuous Circles" of State-Society Interaction in Ruth Alsop, 2004, Power, Rights and Poverty: concepts and connections

Gruenberg, Ch. and Pereyra Iraola, V. (2007). "Participation, transparency and accountability in targeted social programs: Case study handbook". Tinker Foundation and Participa, Chile

Goetz, Anne Marie. (2003). "Political cleaners: How women are the new anti-corruption force. Does the Evidence Wash?" Institute of Development Studies, University of Sussex.

GTZ. (2004) "Corruption and Gender. Approaches and Recommendations for TA: Focal Theme: Corruption and Trafficking in Women"

Hesse Biber, S. And Yaiser, M. (2004) "Feminist perspectives on social research" Oxford University Press

Hindess, B. (2004) "International anti-corruption as a program of normalisation" Paper presented at the annual meeting of the International Studies Association Quebec, Canada.

 IDS Working Paper 227 (2004). Garvey, N. and Newell, P. Corporate accountability to the poor? Assessing the effectiveness of community-based strategies

Ignatieff, M. (2005) "Measurement and Human Rights: tracking progress, assessing impact." Carr Center Project Report. Harvard University.

Khan, M. (2006) "Governance and Anti-Corruption Reforms in Developing Countries: Policies, Evidence and Ways Forward". Research papers for the Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development. United Nations, Geneva.

Kaufmann, D. (2003). "Rethinking Governance: Empirical Lessons Challenge Orthodoxy". Available at: http://www.worldbank.org/wbi/governance/pubs/rethink_gov.html

Kaufmann, D. (2004) "Corruption Matters: Evidence-Based Challenge to Orthodoxy ". In Journal of Development Policy and Practice (2004), volume 1, no. 1. Canadian International Development Agency.

Landell, P. (2006) "Towards a fairer world: Why is corruption still blocking the way? Goals, Themes and Outcomes" Transparency Internacional, Guatemala

Lukes, S. (1974). "Power: a radical view". Macmillan London.

Michael, B. (2007). "Drafting implementing regulations for international anti-corruption conventions", Linacre Collage and the American University in Paris.

Michael, B. (2005) "The Rise and Fall of the Anti-Corruption Industry: Toward Second Generation Anti-Corruption Reforms in Central and Eastern Europe?" Linacre College

Newell, P. and Wheeler, J (2006) "Rights, resources and the politics of accountability". Zed Books.

Newell, P., et al.,(2006) "Corporate accountability and citizen action". In Newell, P. Wheeler, J. (eds.) (2006) "Rights, resources and the politics of accountability", Zed Books, UK.

Open Society Justice Initiative (2006) "Transparency and Silence: A Survey of Access to Information Laws and Practices in 14 Countries" Open Society Institute.

PACO (2004) "Gender and Corruption in South East Europe: Making an Impact. Council of Europe".

Sousa, L. (2005) "Transparency International in search of a constituency: The franchising of the global anticorruption movement". Discussion Paper 05-14, AsiaPacific School of Economics and Government, The Australian National University

Sung, Hung-En. (2003). "Fairer sex or fairer system? Gender and corruption revisited". Social Forces 82: 703 – 723.

Transparency Internacional, (2004) National Integrity Systems: Country Study Report. TI- UK.

Weber L. (2004) "A conceptual framework for understanding race, class, gender, and sexuality", in Hesse Biber and Yaiser (2004).

Winter, D., and Leighton, D. (2001) "Structural violence". In Christie, D. Wagner, V., Winter, D (Eds.) "Peace, conflict, and violence: Peace psychology in the 21st century" New York: Prentice-Hall.

Woodford-Berger, P. (2007) "Gender mainstreaming: what is it (about) and should we continue doing it?. In Cornwall, A., et al. (2007) "Feminisms: contradictions, contestations and challenges in development", Zed Books, UK

World Bank (1998) "Assessing aid: what works, what doesn't and why", World Bank Policy Report, Oxford University Press for the World Bank, New York.

Young, I. (2000) "Five faces of oppression", in Adams M., (Ed.) (2000), "Readings for diversity and social justice". New York: Routledge.