

# ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

## HUMAN RIGHTS AND CORRUPTION: A COMPILATION OF RESOURCES

### QUERY

Can you compile a list of relevant, recent research on the links between corruption and human rights. Is there any recent literature we can recommend to the class on this issue? What is being done by TI (or other advocacy/researchers) that can be presented to the students?

### SUMMARY

There is a broad consensus in the literature that the fight against corruption and for the protection of human rights are closely intertwined and can mutually benefit from each other. This Helpdesk answer provides a compilation of paper and resources on the linkages between the anti-corruption and human rights agendas.

### PURPOSE

We have been asked to teach a class on Corruption and Human Rights for a post-graduate course.

### CONTENT

1. Overview
2. Resources on Human right and corruption

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Date: 26 April 2016

## 1 OVERVIEW

The literatures explore the linkages between human rights and corruption from different perspectives, mostly investigating: 1) whether corruption can be characterised as a violation of human rights; 2) the effects of corruption on the enjoyment of human rights and 3) whether and how the human rights and the corruption agendas can be integrated.

### Is corruption a violation of human rights?

Corruption undermines the rule of law by allowing the political process to be captured or bought for the benefit of a few rather than having decision made on the basis of lawfulness in procedures formally envisaged for that purpose for the general interest. Some authors argue that as corruption undermines the rule of law, which in turn is a necessary condition for the respect of human rights, then corruption – in a very general sense – is a negation of the very concept of human rights.

In some cases, corruption can constitute a direct violation of human rights, for example by denying access to a fair trial when judicial decisions are bought or undermining the fair and transparent outcome of electoral processes, etc. Even if the primary intention is not per se a restriction of human rights, corruption creates fundamental inequalities in citizens' access to justice and to development services, undermining the enjoyment of basic human rights. Corruption diverts public resources necessary to promote human rights, undermines development outcomes and erodes trust in the government and the judicial system. As such, failing to curb corruption can be seen as a failure of states to adequately provide for human rights - civil, political, economic, social and cultural, as well as the right to development - by depriving citizens access to public services.

Some papers go as far as advocating for categorising corruption as a human right, arguing that the fight against corruption and the fight for protection of human rights both rest on the need for accountable, representative government committed to equality and transparency.

### The effect of corruption on human rights

Where corruption is pervasive, it is practically impossible to protect, respect and fulfil human rights. There is a broad consensus that corruption has a

detrimental impact on human rights standards in a country by weakening the ability of states to adequately respect and protect the enjoyment of human rights, compromising the ability of security institutions to provide for the security of the persons, undermining citizens' access to justice and political representation. In addition, systemic corruption exacerbates inequalities, hampering economic and development outcomes and constitutes an obstacle for the right of all people to "pursue their economic, social and cultural development.

At the same time, there are countries where perceptions of corruption are low and yet, violations of human rights are widespread. In such contexts, anti-corruption prosecutions can conflict with fundamental rights of privacy, due process and fair trial if conducted without respecting human rights standards.

### Can/should the human rights and the corruption agendas can be integrated

Some authors go as far as arguing that where rights are guaranteed and implemented, corruption is expected to drastically reduce. Similarly, it can be expected that reducing corruption may have a positive impact on human rights protection. Therefore, even if not fully synonymous, there is a growing consensus in the literature that the fight against corruption and for the protection of human rights can mutually benefit from each other. Some existing international human rights mechanisms may be useful in the fight against corruption and vice versa. For example, the effective protection of (some) human rights (especially freedom of access to information and freedom of the press) is indispensable for combating corruption.

However, in some cases, anti-corruption measures may themselves violate human rights (violation of the presumption of innocence, especially in the implementation of Article 20 UNCAC, violation of the right to a private life through the use of liaisons and surveillance, damage to reputation through disclosures in the media, violations of property through seizures and asset recovery (Basel Institute of Governance 2015).

## 2 RESOURCES ON HUMAN RIGHTS AND CORRUPTION

**Corruption and human rights.** Dr Anne Peters. Basel Institute on Governance. 2015  
[https://www.baselgovernance.org/sites/collective.localhost/files/publications/corruption\\_and\\_human\\_rights.pdf](https://www.baselgovernance.org/sites/collective.localhost/files/publications/corruption_and_human_rights.pdf)

Empirically, it can be shown that countries with high rates of corruption (or high levels of corruption perception) are also the countries with a poor human rights record. The question is now whether a particular legal nexus can be identified beyond this coincidence of corruption and inadequate protection of human rights. This working paper investigates this problem in the form of a double question: Can corrupt conduct be conceptualised as a violation of human rights in a systemically compatible way? And secondly: Should corrupt acts be classified and punished as human rights violations? The paper concludes that under certain preconditions, such a legal construction can be undertaken, especially in cases of petty corruption, but that we should do so only within limits – and with awareness of the risks.

**Human Rights & Corruption States' Human Rights Obligation to fight Corruption**  
 Ralph Hemsley. 2015  
[https://www.unilu.ch/fileadmin/fakultaeten/rf/morawa/dok/JTLI\\_Vol\\_2\\_Issue\\_1\\_Hemsley.pdf](https://www.unilu.ch/fileadmin/fakultaeten/rf/morawa/dok/JTLI_Vol_2_Issue_1_Hemsley.pdf)

Corruption deflects monetary funds necessary to promote human rights, it undermines development efforts and it erodes trust in the government as well as the judicial system. Because corruption has a negative effect on human rights, the question arising here is: do states have a human rights obligation to fight corruption? The paper concludes that because corruption directly and indirectly violates human rights, it triggers the states' positive obligation to respect, protect and fulfil human rights. From this follows that states are required to fight corruption due to their duties enshrined under the core human rights treaties.

**Corruption and Human Rights Law in Africa.**  
 Kolale Olaniyan. 2014 (Oxford: Hart 2014).  
<http://www.amazon.com/Corruption-Rights-Africa-Studies-International/dp/1849466378>

This book provides a framework for complementarity

between promoting and protecting human rights and combating corruption in Africa. The chapters make three major points regarding the relationship between corruption and human rights law. First, corruption per se is a human rights violation, insofar as it interferes with the right of the people to dispose of their natural wealth and resources and thereby increases poverty and frustrates socio-economic development. Second, corruption leads to a multitude of human rights violations. And finally, the book demonstrates that human rights mechanisms have the capacity to provide more effective remedies to victims of corruption than can other criminal and civil legal mechanisms. In the African context, the book takes up one of the pervasive problems of governance - large-scale corruption - to examine its impact on human rights and the degree to which a human rights approach to confronting corruption can buttress the traditional criminal law response. It examines major aspects of human rights in practice: the importance of governing structures in the implementation and enjoyment of human rights; the relationship between corruption, poverty, and underdevelopment; and the threat that systemic poverty poses to the entire human rights edifice. It is a significant contribution to the literature on good governance, human rights, and the rule of law in Africa.

**Corruption, Corporations and the New Human Right,** Andrew Brady Spalding, 2014. Washington University Law Review 91 (2014), 1365-1428  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2232670](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2232670)

### Abstract

After Kiobel, we should no longer expect the Alien Tort Statute to become the principal federal statute deterring overseas corporate rights violations. That distinction rightly belongs to the Foreign Corrupt Practices Act, an anti-bribery statute that rests on undisputed principles of corporate liability, contains a clear congressional statement of extraterritorial application, and routinely collects penalties from multinational corporate defendants. Scholars have not associated the FCPA with the human rights agenda, owing principally to an impoverished understanding of rights theory. But freedom from corruption can and should be understood as a human right, one that is as old as social contract theory but new to federal and international law. With specific amendments – one modeled after environmental law and the other after intellectual property - the FCPA can become a more powerful statutory tool for

detering overseas corporate rights violations than the ATS ever was or will be.

**Corruption and Human Rights: Exploring the Relationships.** Berihun Adugna Gebeye. 2012  
<http://www.du.edu/korbel/hrhw/workingpapers/2012/70-gebeye-2012.pdf>

**Abstract:**

Corruption is a universal problem undermining universal value- human rights. However, on the contrary, guarantying human rights in general and ensuring non-discrimination and participation in particular are useful preventive tools for corruption as they ultimately empower the society and create social accountability. The article explores the relationships between corruption and human rights. It is argued that, the struggle to promote human rights and the campaign against corruption share a great deal of common ground. Both are struggling for the orderly and decent life of humans rooted in dignity and equality. The article concludes the discussion by asserting that an integral approach is essential to overcome the problems of corruption and the violations of human rights.

**The negative impact of corruption on the enjoyment of human rights.** 2013 Opening statement by Navi Pillay, High Commissioner for Human Rights,  
<http://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/Corruption/OHCHR.pdf>

In this opening statement, the High Commissioner for Human Rights outlines how corruption negatively impacts the enjoyment of all human rights – civil, political, economic, social and cultural, as well as the right to development, which underscores the indivisible and interdependent nature of human rights.

**Corruption: A Violation of Human Rights and a Crime Under International Law?** Martine Boersma, 2012. (Cambridge: Intersentia 2012)  
<http://library.law.yale.edu/research/guides/resources/corruption-violation-human-rights-and-crime-under-international-law>

This book argues that human rights law and international law can certainly contribute to fighting corruption by giving a human face to both the victims and perpetrators. The author critically analyses the components of corruption, as well as scrutinises the global approach to corruption via human rights treaties and governing bodies. This book argues that

these areas of law can certainly contribute to fighting corruption, by giving a human face to both the victims and perpetrators. The book commences with a broader analysis of the 'multi-headed monster' named corruption, looking into issues of definition, measurement, and consequences. This is followed by an overview of the content and functioning of the global and regional anti-corruption treaties that are currently in force, including the United Nations Convention against Corruption. The book then considers whether or not corruption can be qualified as a violation of internationally recognized human rights, enshrined in the International Bill of Rights. It is argued that corruption, especially in the public sector, can have a severe negative impact upon both civil and political rights, as well as upon economic, social, and cultural rights. Moreover, the study examines to what extent this is recognised by the human rights supervisory mechanisms at the global and regional level. The concluding observations and case law of the human rights treaty bodies are scrutinised, as well as the outcomes of the various Special Procedures and the Universal Periodic Review System of the UN Human Rights Council.

**Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities.** International Council on Human Rights Policy 2010  
[http://www.ichrp.org/files/reports/58/131b\\_report.pdf](http://www.ichrp.org/files/reports/58/131b_report.pdf)

Developing a clear description of the conceptual links between human rights and corruption was important and had not been done. However, a conceptual model alone will not suffice because, to become an effective tool against corruption, human rights need to be applied in context. This report compiled by the International Council on Human Rights Policy follows a first report published in 2009 (see below) and examines issues of implementation. This report looks at where and how the use of a human rights framework might strengthen national and local anti-corruption programmes and at how key human rights principles can be operationalised in anti-corruption work. Having explained the different approaches that the human rights and anti-corruption disciplines respectively take to regulation and core policy issues, it identifies opportunities for synergy and cross-fertilisation. The report seeks to be a practical guide for public officials and other anti-corruption practitioners. It includes cases and policy

recommendations and addresses the obstacles and challenges that are likely to arise when anti-corruption programmes integrate human rights.

**Corruption and Human Rights: Interdisciplinary Perspectives.** Martine Boersma/Hans Nelen (eds.), 2010 (Cambridge: Intersentia 2010)  
<http://intersentia.com/en/shop/vakgebied/law/criminal-law-and-criminal-procedure/corruption-human-rights-interdisciplinary-perspectives.html>

This book offers the reader a broader view of the human rights approach towards combating corruption - including the arguments of those who oppose this approach - while it also considers how corruption may violate individual civil, political, economic, social and cultural human rights.

**Corruption and Human Rights: making the connection.** International Council on Human Rights Policy 2009  
[http://www.ichrp.org/files/reports/40/131\\_web.pdf](http://www.ichrp.org/files/reports/40/131_web.pdf)

The commitments that states have made to combat corruption have run parallel with their commitments to promote and respect human rights. However, international anti-corruption conventions rarely refer to human rights; and major human rights instruments rarely mention corruption. This report focuses on the human rights recognised in major international treaties. These rights are legally binding on states that have ratified them (state parties). The report builds a case for saying that, where rights are guaranteed and implemented, corruption will drastically reduce. The project does not advocate human rights as a policy panacea for every challenge faced by anti-corruption specialists, however. Rather, it examines when and how the use of human rights might improve performance in specific areas; it also identifies the limits of a human rights approach in this field. The goal is to provide an operational framework that will make it possible to apply human rights principles and methods usefully in anti-corruption programmes.

**A human rights approach to the economic analysis of bureaucratic corruption.** Ifediora, John 2009. <https://mpira.ub.uni-muenchen.de/25087/index.html>

[Abstract](#)

The traditional arena of human rights discourse and practice made little or no allowance for the rapidly growing international phenomenon of bureaucratic corruption. This paper argues that the traditional approach analysing bureaucratic corruption is too limited, and fails to recognise the broader social impact of corruption on individuals and collectivities. It recommends adopting a rights-based approach to the analysis of bureaucratic corruption and its effects on fundamental human rights. Bureaucratic corruption, where endemic and sustained, leads to suppressions of human rights through its damaging effects on economic development. It is further posited that when states, cognisant of prevalent corruptive practices, either fail to take preventive measures or tacitly encourage its observance, are derelict in their duties and the obligations assumed as signatories to the United Nations' International Covenant on Economic, Social and Cultural Rights (ICESCR).

**The Impact of Corruption on the Human Rights Based Approach to Development.** 2004. UN Development Programme – Oslo Governance Centre,  
[http://www.albacharia.ma/xmlui/bitstream/handle/123456789/30538/0284The\\_Impact\\_of\\_Corruption\\_on\\_the\\_Human\\_Rights\\_Based\\_Approach\\_to\\_Development\(2005\)r.pdf?sequence=1](http://www.albacharia.ma/xmlui/bitstream/handle/123456789/30538/0284The_Impact_of_Corruption_on_the_Human_Rights_Based_Approach_to_Development(2005)r.pdf?sequence=1)

Corruption affects the poor disproportionately, due to their powerlessness to change the status quo and inability to pay bribes, creating inequalities that violate their human rights. The Human Rights Based Approach (HRBA) with its main elements of Express Linkages to Rights, Accountability, Empowerment, Participation and Attention to Disadvantaged Groups, has been developed specifically to address these inequalities and to ensure that the poor and disadvantaged are also equal partners in development. However, if corruption creates fundamental inequalities in the poor's access to justice and to development services, the results envisaged by the HRBA cannot be achieved. Therefore, anti-corruption should be added to the main elements of the HRBA that have now generally been agreed upon.

**An International Human Rights Approach to Corruption,** Zoe Pearson, 2001. in: Peter Larmour and Nick Wolanin (eds.), *Corruption and Anti-Corruption* (Canberra 2001), 30-61.  
<http://press.anu.edu.au/./ch031.pdf>

This paper examines the effect of corruption on

fundamental human rights. It argues that tolerance of corruption by states results in breaches of human rights and that existing international human rights mechanism may therefore be useful in the fight against corruption. It does not propose the establishment of new human rights. Essentially, the fight against corruption and the fight for protection of human rights both rest on the need for accountable, representative government committed to equality and transparency.