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# Human rights and corruption: Problems and potential of individualizing a systemic problem

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*This article examines the advantages and challenges of a deliberate legal-political strategy that addresses corruption at an individual, rather than systemic, level. Empirical research has highlighted the correlations between the extent and nature of corruption and the level of human rights enjoyment. In response to these observations, anti-corruption and human rights policy agendas have been converging at the international and regional levels. However, framing corruption as a human rights violation that incurs international state responsibility poses conceptual difficulties. Additionally, the risks and benefits of this convergence need to be assessed. This article concludes that the human rights approach provides significant added value, outweighing its limitations. Yet, it remains an open question whether human rights are the appropriate normative framework for denouncing and combating corruption. The article suggests that the human rights perspective, by opening up new avenues for monitoring and litigation, effectively supplements the criminal law approach. It argues for a more balanced integration of corruption concerns within human rights frameworks, with equal emphasis on human rights considerations in all anti-corruption monitoring schemes. Such integration would likely foster a positive feedback loop, where anti-corruption efforts enhance human rights conditions, while certain human rights facilitate the fight against corruption.*

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## 1. Introduction

Corruption, the misuse of entrusted power for an undue advantage, stands in complex relationships to human rights. Human rights primarily benefit individuals, in “recognition of the inherent dignity” of each human being, to cite the Universal Declaration of Human Rights (UDHR).<sup>1</sup> In contrast, corruption is a systemic harm, posing threats “to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,” as the preamble of the United Nations Convention against Corruption (UNCAC) puts it.<sup>2</sup>

This article examines the pitfalls and potentials of the recent deliberate legal-political strategy of “individualizing” or “humanizing” such a systemic issue. Section 2 recalls evidence for correlations and causalities between the quantity and quality of corruption on the one side and the level of enjoyment of human rights on the other side; and it distinguishes four types of legal relationships between both issues. Section 3 recounts how the policy agendas of anti-corruption and human rights have been converging on the international and regional levels. Section 4 conceptualizes corruption as a human rights violation that triggers international state responsibility. Section 5 assesses risks and opportunities of the convergence of the policy agendas and concludes that the human rights approach conveys an added value that outweighs its drawbacks. Section 6 explains which concrete measures the human rights-based approaches to corruption imply in practical terms. The contribution ends with a broader reflection on whether human rights are the proper normative framework to denounce and combat corruption.

## 2. Mapping complex interrelations

States perceived to be highly corrupt are at the same time those with a poor human rights record: the states ranked lowest on Transparency International’s Corruption Perceptions Index of 2023 are Somalia, Venezuela, and Syria, all of which have massive human rights problems.<sup>3</sup>

Conceptually, the level of corruption and the prevalence of human rights violations in a country can be seen as two sides of the same coin, as they frequently have common root causes such as weak legal frameworks and institutional frailties. Corruption, characterized by the rule of money, directly opposes the rule of law and, consequently, undermines the protection of human rights.

More concretely, corruption undermines the state’s capacity to guarantee human rights both *materially* and *ideationally*: first, it diverts public revenues and cripples state budgets intended for services, thereby reducing the availability, quality, and

<sup>1</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948), preamble.

<sup>2</sup> U.N. Convention against Corruption, preamble, Dec. 9, 2003, U.N. Doc. A/58/422 (2003), 43 I.L.M. 37 [hereinafter UNCAC].

<sup>3</sup> *Corruption Perceptions Index 2023*, TRANSPARENCY INT’L, [www.transparency.org/en/cpi/2023](http://www.transparency.org/en/cpi/2023) (last visited June 24, 2024).

accessibility of goods and services essential for realizing human rights.<sup>4</sup> Second, corruption erodes public trust in the government, the judiciary, and electoral processes.<sup>5</sup> Additionally, corruption often facilitates and aggravates human rights violations, particularly against vulnerable groups, such as prison inmates, migrants, and children. Overall, corruption frequently operates in the background, serving as a contributing factor to arbitrary restrictions of rights and to discrimination across all sectors of public services, from healthcare and education to law enforcement and the judiciary.

Beyond these general observations, empirical evidence has established connections between corruption and human rights abuses. A study on the impact of corruption on human rights in Moldova found that “corruption significantly depletes public resources, which in turn adversely impacts the enjoyment of all” human rights. The “most frequently affected rights that share a causal relationship to corruption are the right to life, to legal representation and a fair trial, as well as to education, health, property, and social protection. Additionally, the most frequently identified victims are vulnerable and marginalized groups.” The study “also identified that human rights violations may be driven by corruption on an individual basis, on a systemic level or a combination of the two.”<sup>6</sup> Another empirical study, conducted by Mexican sociologists, demonstrated that reducing corruption leads to a broader enjoyment of political rights. This conclusion was based on standard indicators for corruption and noncompliance with international human rights norms, while controlling for other factors such as the political regime and the GDP.<sup>7</sup>

These findings call for an examination of the legal connections between corruption and human rights. While some authors advocate for a (new) human right to a corruption-free society,<sup>8</sup> such a right is neither recognized by legal practice nor deemed necessary.<sup>9</sup>

<sup>4</sup> U.N. Comm. on the Elimination of Discrimination against Women et al., Joint Statement on “Corruption and Human Rights,” para. 6 (May 31, 2021) [hereinafter Joint Statement on Corruption].

<sup>5</sup> OFFICE OF UN HIGH COMM’R ON HUM. RTS., UNITED NATIONS HUMAN RIGHTS MANAGEMENT PLAN 2018–2021, at 44, [www.ohchr.org/sites/default/files/Documents/Publications/OMP\\_II.pdf](http://www.ohchr.org/sites/default/files/Documents/Publications/OMP_II.pdf) (last visited June 17, 2024); U.N. HUM. RTS. COUNCIL, GOOD GOVERNANCE, Doc. No. A/HRC/RES/45/9, at 2 (preamble) (2020).

<sup>6</sup> CTR. FOR CIVIL & POL. RTS., THE IMPACT OF CORRUPTION ON THE FULFILMENT OF HUMAN RIGHTS IN MOLDOVA: AN ANALYTICAL STUDY WITH POLICY RECOMMENDATIONS (May 2021), [www.undp.org/moldova/publications/impact-corruption-fulfilment-human-rights-moldova-analytical-study-policy-recommendations](http://www.undp.org/moldova/publications/impact-corruption-fulfilment-human-rights-moldova-analytical-study-policy-recommendations).

<sup>7</sup> Luz Angela Cardona, Horatio Ortiz, & Daniel Vázquez, *Corruption and Human Rights: Possible Relations*, 40 HUM. RTS. Q. 317 (2018) (finding that the connection between corruption and human rights is not constant. Corruption has most impact where people enjoy political, social, and cultural rights at a medium to high level).

<sup>8</sup> Ndiva Kofele-Kale, *The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime under International Law*, 34 INT’L LAWYER 149 (2000); Andrew B. Spalding, *Anti-Corruption: Recaptured and Reframed*, in THE CAMBRIDGE HANDBOOK ON NEW HUMAN RIGHTS: RECOGNITION, NOVELTY, RHETORIC 517 (Andreas von Arnould, Kerstin von der Decken, & Mart Susi eds., 2020).

<sup>9</sup> U.N. High Comm’r for Hum. Rts., Challenges Faced and Best Practices Applied by States in Integrating Human Rights into their National Strategies and Policies to Fight Against Corruption, Including those Addressing Non-State Actors, such as the Private Sector, U.N. Doc. A/HRC/44/27, para. 20 (Apr. 21, 2020) [hereinafter U.N. High Comm’r for Hum. Rts., Best Practices].

Instead, four types of legal relationships between human rights and corruption can be identified.<sup>10</sup> First, certain forms of corruption, such as petty corruption, directly infringe on human rights: for example, a bribed judge compromises the due process and fair trial guarantees of a litigant or an accused, and a corrupt police officer who arrests someone for refusing to pay a bribe unlawfully restricts that person's liberty. Second, more severe forms of corruption, like grand corruption, foster the systemic conditions conducive to human rights violations. Notably, the diversion of funds diminishes the states' ability to provide public services essential to social rights such as housing and healthcare. Third, several human rights, including freedom of information, freedom of the media, and freedom of assembly and association, are instrumental to exposing and combatting corruption.<sup>11</sup> Corrupt governments often infringe upon these rights precisely because they are effective tools against corruption. Fourth, an aggressive anti-corruption agenda can create conflicts with the human rights of suspects and accused, affecting property rights, rights to privacy, due process rights, and the presumption of innocence.

### 3. A uneven integration of the anti-corruption and human rights agendas

From an institutional perspective, the issue of "corruption and human rights" illustrates the phenomena of fragmentation and regime integration within international law. Currently, more than ten universal and regional anti-corruption instruments are in force, yet none explicitly adopts a human rights-based approach. The two Council of Europe conventions of 1999 only mention corruption as a "threat" to human rights in their preambles. In his foreword to the 2003 UNCAC, UN Secretary-General Kofi Annan remarked that corruption "leads to violations of human rights." Only several years later, two NGOs elaborated on the "connection" between corruption and human rights.<sup>12</sup> This relationship has since been explored in academic research<sup>13</sup> and acknowledged by the UN human rights actors.

<sup>10</sup> Matthew C. Stephenson, *Corruption and Human Rights: Exploring the Relationship*, in GROUP OF STATES AGAINST CORRUPTION 22ND GENERAL ACTIVITY REPORT 19 (2021), <https://hls.harvard.edu/bibliography/corruption-and-human-rights-exploring-the-relationship/>.

<sup>11</sup> Cf. UNCAC, *supra* note 2, art. 13(1)(d).

<sup>12</sup> MAGDALENA SEPÚLVEDA CARMONA, INT'L COUNCIL ON HUM. RTS. POL'Y, & TRANSPARENCY INT'L, CORRUPTION AND HUMAN RIGHTS: MAKING THE CONNECTION (2009), <https://assets.publishing.service.gov.uk/media/57a08b6540f0b64974000b10/humanrights-corruption.pdf> [hereinafter SEPÚLVEDA CARMONA, CORRUPTION AND HUMAN RIGHTS]; MAGDALENA SEPÚLVEDA CARMONA, INT'L COUNCIL ON HUM. RTS. POL'Y, & TRANSPARENCY INT'L, INTEGRATING HUMAN RIGHTS INTO THE ANTI-CORRUPTION AGENDA: CHALLENGES, POSSIBILITIES AND OPPORTUNITIES (2010), [https://assets.publishing.service.gov.uk/media/57a08b34e5274a27b2000a0f/integrating-humrights\\_.pdf](https://assets.publishing.service.gov.uk/media/57a08b34e5274a27b2000a0f/integrating-humrights_.pdf).

<sup>13</sup> Zoe Pearson, *An International Human Rights Approach to Corruption*, in CORRUPTION AND ANTI-CORRUPTION 30 (Peter Larmour & Nick Wolanin eds., 2001); CORRUPTION AND HUMAN RIGHTS: INTERDISCIPLINARY PERSPECTIVES (Martine Boersma & Hans Nelen eds., 2010); MARTINE BOERSMA, CORRUPTION: A VIOLATION OF HUMAN RIGHTS AND A CRIME UNDER INTERNATIONAL LAW? (2012); KOLALE OLANIYAN, CORRUPTION AND HUMAN RIGHTS LAW IN AFRICA (2014).

In the American human rights system, the Inter-American Commission on Human Rights (IACtHR) took the lead in integrating corruption into its work. It adopted a seminal resolution on “Corruption and Human Rights” in 2018.<sup>14</sup> One year later, the Commission issued an almost 200-page report on “Inter-American Standards” on corruption and human rights.<sup>15</sup> In parallel, the Court compiled all its corruption-related case-law in a document for the public.<sup>16</sup>

The African Union’s (AU) Convention on Preventing and Combating Corruption of 2003 does mention human rights; however, the AU has not yet integrated human rights into its anti-corruption efforts. Since 2008, the Council of Europe’s (CoE) Group of States against Corruption (GRECO) has been reporting on its cooperation with human rights advocates in monitoring of member states’ compliance with the CoE anti-corruption standards.

EU institutions started to establish a link between corruption and breaches of human rights around 2013 during the legislative debates that led to the adoption of the EU Magnitsky Act, which imposes sanctions on human rights violators. Currently, the EU Parliament is developing a global anti-corruption strategy. In this context, Parliament recommends that other relevant EU institutions “acknowledge the linkage between corruption and human rights and that corruption is an enormous obstacle to the enjoyment of all human rights.” It also advises “adopt[ing]. . . a human rights-based approach in the fight against corruption, with victims of corruption placed at its core.”<sup>17</sup>

In 2003, the former Human Rights Commission created the role of a special rapporteur on corruption and its impact on the enjoyment of human rights, though the three subsequent reports generated by this mandate did not lead to further political action. In 2007, the Office of the UN High Commissioner for Human Rights took up the issue, and in 2013 it articulated the “Human Rights Case against Corruption.”<sup>18</sup> Since then, the High Commissioner has developed “Best Practices to Counter the Negative

<sup>14</sup> Inter-Am. Comm’n H.R., Res. 1/18 (Corruption and Human Rights) (Mar. 2, 2018). See HURST HANNUM, *RESCUING HUMAN RIGHTS: A RADICALLY MODERATE APPROACH* 51 (2019) (calling this resolution “a prime example of the confusion and political babble”).

<sup>15</sup> Inter-Am. Comm’n H.R., *CORRUPTION AND HUMAN RIGHTS IN THE AMERICAS: INTER-AMERICAN STANDARDS* (Dec. 6, 2019), [www.oas.org/en/iachr/reports/pdfs/CorruptionHR.pdf](http://www.oas.org/en/iachr/reports/pdfs/CorruptionHR.pdf). For an analysis of this report, see Claudio Nash Rojas, *Nuevos desarrollos sobre corrupción como violación de Derechos Humanos: El Informe “Derechos Humanos y Corrupción” de la Comisión Interamericana de Derechos Humanos* [New Developments on Corruption as a Violation of Human Rights: The “Human Rights and Corruption” Report by the Inter-American Commission on Human Rights], 45 *CUESTIONES CONSTITUCIONALES* 205 (2021).

<sup>16</sup> Inter-Am. Ct. H.R., *CUADERNILLO DE JURISPRUDENCIA DE LA CORTE INTERAMERICANA DE DERECHOS HUMANOS NO. 23: CORRUPCIÓN Y DERECHOS HUMANOS* [JURISPRUDENCE BOOKLET OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS NO. 23: CORRUPTION AND HUMAN RIGHTS] (2019) [hereinafter IACTHR BOOKLET NO. 23].

<sup>17</sup> European Parliament Recommendation of 17 February 2022 to the Council and the Vice President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy concerning Corruption and Human Rights (2021/2066(INI)), para. 1(a), [www.europarl.europa.eu/doceo/document/TA-9-2022-0042\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-9-2022-0042_EN.html).

<sup>18</sup> Navi Pillay, U.N. High Comm’r for Human Rights, *Opening Statement of the Panel on the Negative Impact of Corruption on Human Rights* (Mar. 13, 2013), [www.ohchr.org/en/statements/2013/03/opening-statement-navi-pillay-high-commissioner-human-rights-panel-negative](http://www.ohchr.org/en/statements/2013/03/opening-statement-navi-pillay-high-commissioner-human-rights-panel-negative).

Impact of Corruption on the Enjoyment of All Human Rights”<sup>19</sup> and has reported on challenges integrating human rights into the fight against corruption.<sup>20</sup>

In parallel, the Human Rights Council (HRC) tasked its Advisory Committee with researching the issue, leading to a 2015 report.<sup>21</sup> Since 2012, the HRC has adopted several resolutions specifically addressing the negative impact of corruption on human rights,<sup>22</sup> and has consistently highlighted the corruption–human rights nexus in further resolutions on good governance and the repatriation of funds.<sup>23</sup>

Various UN Human Rights Treaty Bodies have begun to scrutinize state anti-corruption measures and address them in their concluding observations on the member states’ periodic reports to the various treaties.<sup>24</sup> For instance, in 2022, under article 40 of the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee expressed concerns and recommended heightened anti-corruption measures in Bolivia, Cambodia, Georgia, and Ukraine.<sup>25</sup> In 2021, a Joint Statement on “Corruption and Human Rights” by seven UN Human Rights Treaty Bodies summarized the practice of these bodies, citing concluding observations and general comments on the “pernicious impact of corruption on the enjoyment of human rights.”<sup>26</sup>

The prevalent narrative among international actors is that corruption negatively impacts the enjoyment of human rights.<sup>27</sup> This is expressed in various terms, such as corruption having an “adverse,” “detrimental,” or “strong negative” impact on human rights; that it “undermines” and “impairs” the realization and enjoyment of these rights; and that it has a “grave and devastating effect” in that regard, posing a significant obstacle to the enjoyment of human rights.<sup>28</sup> A political pledge by all UN member states to jointly combat corruption again underscored the possible negative implications of corruption on the full spectrum of human rights, and suggested that preventing and combating corruption could enhance human rights conditions.<sup>29</sup>

To summarize, the connection between corruption and human rights realization has been recognized globally, with the notable exception of Asia, soon after the issue

<sup>19</sup> U.N. High Comm’r for Hum. Rts., *Best Practices to Counter the Negative Impact of Corruption on the Enjoyment of All Human Rights*, U.N. Doc. No. A/HRC/32/22 (Apr. 15, 2016).

<sup>20</sup> U.N. High Comm’r for Hum. Rts., *Best Practices*, *supra* note 9.

<sup>21</sup> FINAL REPORT OF THE HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE ON THE ISSUE OF THE NEGATIVE IMPACT OF CORRUPTION ON THE ENJOYMENT OF HUMAN RIGHTS, U.N. Doc. No. A/HRC/28/73 (Jan. 5, 2015) [hereinafter U.N. REPORT ON THE NEGATIVE IMPACT OF CORRUPTION].

<sup>22</sup> See U.N. Hum. Rts. Council, *The Negative Impact of Corruption on the Enjoyment of Human Rights*, A/HRC/RES/47/7 (July 26, 2021) [hereinafter U.N. Hum. Rts. Council, *The Negative Impact of Corruption*].

<sup>23</sup> See, e.g., U.N. Hum. Rts. Council, *The Negative Impact of the Non-Repatriation of Funds of Illicit Origin*, U.N. Doc. A/HRC/RES/46/11 (Mar. 26, 2021).

<sup>24</sup> For a systematic overview, see Lázaree Eeckeloo, *Corruption and Human Rights: The Approach of the United Nations Treaty Bodies*, Ctr. for Civ. & Pol. Rts. (July 2019), [https://ccprcentre.org/files/media/Corruption\\_et\\_droits\\_lhomme\\_ENG.pdf](https://ccprcentre.org/files/media/Corruption_et_droits_lhomme_ENG.pdf).

<sup>25</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

<sup>26</sup> Joint Statement on Corruption, *supra* note 4.

<sup>27</sup> See *Ramírez Escobar v. Guatemala*, Inter-Am. Ct. H.R. (Ser. C) No. 351, ¶ 242 (Mar. 9, 2018); Inter-Am. Comm’n H.R., *supra* note 15, chs. 2.D and 2.E.

<sup>28</sup> See, e.g., Joint Statement on Corruption, *supra* note 4.

<sup>29</sup> G.A. Res. S-32/1, annex (June 7, 2021).

surfaced in international policy and law. Significant contributions to this recognition include HRC’s Advisory Committee’s 2015 report<sup>30</sup> and the IACCommHR’s 2019 development of standards.<sup>31</sup>

However, this integration has been uneven. The UN Office for Drugs and Crime (UNODC), which acts as the secretariat for the UNCAC, has only occasionally linked corruption to human rights.<sup>32</sup> In 2015, the Conference of the State Parties to UNCAC (COSP) acknowledged human rights for the first time in a dialogue with the HRC, reflecting the Council’s Resolution 29/11<sup>33</sup> by recognizing “the negative impact of corruption on the enjoyment of human rights” in preambles and operative clauses of its resolutions.<sup>34</sup> In contrast, the OECD Anti-Bribery Convention’s monitoring body, the Working Group on Bribery in International Business Transactions, has not addressed human rights in its reports or recommendations. Similarly, the International Association of Anti-Corruption Authorities (IAACA), dominated by Asian states and founded in 2006 to implement UNCAC, and even the more Western-influenced International Anti-Corruption Coordination Centre (IACCC) have not committed explicitly to human rights in their mandates.

So, while human rights entities have fully embraced the issue of corruption, international and transnational anti-corruption bodies have seldom mentioned human rights and have not adopted a human rights-based approach. The human rights institutions see potential benefits in incorporating anti-corruption measures into their scope, using them as tools to enhance human rights conditions in countries they review. Conversely, anti-corruption bodies have not recognized how a human rights focus could bolster their core mission, nor have they expanded their mandates to include a role as human rights defenders.

#### 4. Assessing corruption as a human rights violation with implications for international state responsibility

The preceding sections have shown that acts of corruption are widely regarded as undermining the ability of states to live up to their human rights commitments. This section explores the legal requirements for conceptualizing corruption as an actual

<sup>30</sup> U.N. REPORT ON THE NEGATIVE IMPACT OF CORRUPTION, *supra* note 21.

<sup>31</sup> Inter-Am. Comm’n H.R., *supra* note 15.

<sup>32</sup> U.N. Office DC, *Legislative Guide for the Implementation of the United Nations Convention against Corruption* at iv (2d rev’d ed. 2012).

<sup>33</sup> Hum. Rts. Council Res. 29/11, The Negative Impact of Corruption on the Enjoyment of Human Rights, U.N. Doc. A/HRC/RES/29/11 (July 2, 2015).

<sup>34</sup> Conference of the States Parties to the U.N. Convention against Corruption, Res. 6/6, Follow-Up to the Marrakech Declaration on the Prevention of Corruption, preamble (Nov. 2–6, 2015); Conference of the States Parties to the U.N. Convention against Corruption, Res. 6/8, Prevention of Corruption by Promoting Transparent, Accountable and Efficient Public Service Delivery through the Application of Best Practices and Technological Innovations, preamble (Nov. 2–6, 2015); Conference of the States Parties to the U.N. Convention against Corruption, Res. 6/10, Education and Training in the Context of Anti-Corruption, preamble; para. 8 (Nov. 2–6, 2015).

violation (breach) of human rights that is apt to trigger the legal responsibility of a corrupt state under international law.<sup>35</sup>

#### 4.1. Case law

To date, no international or regional court has categorically defined corruption as a human rights violation. Instead, corruption has been treated as a contextual element, contributing to the circumstances of a human rights violation, particularly in cases involving provisional measures.<sup>36</sup> The Inter-American Court of Human Rights (IACtHR) judgment concerning illegal adoption schemes in Guatemala came closest to recognizing such a linkage: the Court underscored the state's duties to prevent, punish, and eradicate corruption—stemming from its commitments under UNCAC and the Inter-American Convention against Corruption. The Court also noted that the international adoptions took place “in a framework of corruption,” which “had strong negative impact on the enjoyment of the human rights of the children and their biological parents.”<sup>37</sup>

In a case concerning corruption in the Nigerian education sector, the Community Court of Justice of the Economic Community of West African States (ECOWAS) dwelled on “conclusive findings of corruption that per se will not amount to a violation of the right of education.” It acknowledged that embezzlement, theft, and mismanagement of funds have a “negative impact on education since [they] reduce the amount of money made available to provide education to the people. Yet it does not amount to a denial of the right to education, without more.” In the absence of “a clear linkage between the acts of corruption and a denial of the right to education,” a human rights violation could not be found.<sup>38</sup>

#### 4.2. Breach of an international obligation

Extrapolating from existing case law, outlined in Section 4.1, this section further analyzes the necessary legal elements for a judicial determination of a human rights violation through corruption. The first element required is the breach of an international obligation by a state.<sup>39</sup> Corruption can impair obligations stemming from all recognized international human rights.<sup>40</sup> In practice, social rights are most affected,

<sup>35</sup> See further Anne Peters, *Corruption as a Violation of International Human Rights*, 29 EUR. J. INT'L L. 1251 (2018).

<sup>36</sup> For IACtHR case law, see IACtHR BOOKLET NO. 23, *supra* note 16; Jimena Reyes, *State Capture through Corruption: Can Human Rights Help?*, in THE TRANSNATIONALIZATION OF ANTI-CORRUPTION LAW 263, 281 (Régis Bismuth, Jan Dunn-Wasowicz, & Philip M. Nichols eds. 2021).

<sup>37</sup> Ramírez Escobar v. Guatemala, Inter-Am. Ct. H.R. (Ser. C) No. 351, ¶ 242 (Mar. 9, 2018).

<sup>38</sup> Registered Trustees of the Socio-Econ. Rts. & Accountability Project (SERAP) v. Federal Republic of Nigeria & Universal Basic Education Comm'n, Doc. ECW/CCJ/JUD/07/10, Cmty Ct. of Justice of the Econ. Cmty of W. Afr. States, para. 19 (Nov. 30, 2010).

<sup>39</sup> Cf. Articles on Responsibility of States for Internationally Wrongful Acts, G.A. Res. 56/83, art. 1, U.N. Doc. A/RES/56/83 (Dec. 12, 2001) [hereinafter ARSIWA]. These rules apply directly only to inter-state relations and not to breaches of human rights obligations owed to humans. But the underlying principles are similar (*cf. id.* art. 33(2)).

<sup>40</sup> Joint Statement on Corruption, *supra* note 4, para. 7.

with the health sector frequently bearing the brunt. For example, where bribes are necessary to secure a medical appointment, the universal right to the highest attainable standard of healthcare is compromised;<sup>41</sup> similarly, when a teacher demands favors, the right to education is jeopardized.<sup>42</sup> Civil and political rights can also be undermined by corruption: if a prisoner must bribe a guard for better food, this violates the right to humane conditions of detention.<sup>43</sup> When corruption leads police and border guards to “overlook” human trafficking, it impinges on the human right to protection from slavery and servitude.<sup>44</sup>

Corruption in the administration of justice endangers the basic rights to judicial protection, including the right to a fair trial without undue delays.<sup>45</sup> Further, the human right of association and the labor right to organize can be compromised by industry bribes to labor ministry officials.<sup>46</sup> In instances of grand corruption and foreign bribery, the implications for human rights—such as the effect of nepotism on the right to equal access to public service<sup>47</sup>—are less clear.

Depending on the sector and the form of corruption, the human rights obligations to respect, protect (through prevention, investigation, and redress), and fulfill (by facilitating, providing, and promoting) are all compromised by corruption.

First, state officials and judges are required to abstain from soliciting or accepting bribes. Engaging in such behavior means they fail to respect the corresponding human rights, raising issues of the state’s responsibility for these actions (discussed further in Section 4.3).

Second, the obligation to protect mandates states to prevent third parties from interfering with the enjoyment of human rights. A state’s, or its officials’, failure to actively and effectively combat corruption may thus breach the obligation to protect. This duty encompasses preventive measures, investigations, redress for victims, and, in severe cases, the punishment of corruption offenders.<sup>48</sup>

When allegations of corruption arise, the state’s procedural duty to investigate becomes critical.<sup>49</sup> The failure to conduct a serious investigation of potential corruption may render the state internationally responsible for noncompliance with its human rights obligation to protect. Importantly, the duty to investigate is triggered not only in relation to private conduct but also with reference to conduct by corrupt state officials, regardless of the agents who may eventually be charged with committing the violation.<sup>50</sup> The reason is that only an investigation can shed light on the question

<sup>41</sup> International Covenant on Economic, Social, and Cultural Rights, art. 12, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

<sup>42</sup> *Id.* art. 13.

<sup>43</sup> ICCPR, *supra* note 25, art. 10.

<sup>44</sup> *Id.* art. 8.

<sup>45</sup> *Id.* art. 14.

<sup>46</sup> *Id.* art. 22. See also relevant International Labour Organization conventions.

<sup>47</sup> ICCPR, *supra* note 25, art. 25(c).

<sup>48</sup> U.N. High Comm’r for Hum. Rts., Best Practices, *supra* note 9, para. 20; Joint Statement on Corruption, *supra* note 4, para. 14; U.N. Hum. Rts. Council, *The Negative Impact of Corruption*, *supra* note 22, at 2, preamble.

<sup>49</sup> See, e.g., Matter of the Penitentiary Complex of Curado, Provisional Measures, Inter-Am. Ct. H.R., ¶ 20 (Order of Oct. 7, 2015) (order to investigate corruption in the penitentiary complex).

<sup>50</sup> Inter-Am. Comm’n. H.R., *supra* note 15, para. 246.

whether the corrupt state official has exceeded his or her authority or contravened instructions and thus acted “*ultra vires*” (see Section 4.3).

Third, corruption undermines a states’ obligation to fulfill human rights, albeit indirectly. This positive obligation arises for all human rights, but it is especially relevant for social and economic rights. Under the ICESCR, every state party has the basic obligation to progressively realize the Covenant rights “to the maximum of its available resources.”<sup>51</sup> Most forms of corruption lead to a diversion, squandering, and dissipation of public money and thus reduce the maximum resources at the disposal of the State.

Moreover, almost any act of bribery, cronyism, and influence peddling can be viewed as discriminatory,<sup>52</sup> or as a denial of equality before the law,<sup>53</sup> because access to public goods is granted in exchange for money rather than based on rational criteria.<sup>54</sup> Besides such direct discrimination or inequality, corruption often disproportionately affects vulnerable groups, potentially constituting indirect discrimination resulting from factors such as ethnicity, disabilities, or sexual orientation.

### 4.3. Attribution

For corruption to be considered a human rights violation and trigger international state responsibility, it must be attributable to the state. State officials, including judges, are regarded as state organs, and their conduct is considered acts of state.<sup>55</sup>

The critical issue arises whether attribution should cease when officials act purely for personal gain, not in the public interest, or not in their “official capacity” as per article 7 of Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA). From a human rights perspective, the determination of whether actions are *ultra vires* should be considered in light of victims’ perception and interests. This suggests that, generally, conduct should be attributable to the state, especially when state officials leverage their official status to perform or withhold actions that a private individual could not, thereby operating under the guise of public authority.<sup>56</sup>

Alternatively, depending on the specific circumstances, corrupt state officials might also be viewed as actors outside the state apparatus, against whom the state’s duties to protect human rights arise. Finally, the overarching (deficient) anti-corruption policies of a state may also engage the international responsibility of the state as an entity in the international legal system and international legal person, qua omission and independently of any attribution of individual corrupt acts.

### 4.4. Causation

It is submitted here that for state responsibility to be invoked, human rights violations by a state must have been legally caused by corruption. Full-fledged rules on

<sup>51</sup> ICESCR, *supra* note 41, art. 2(1).

<sup>52</sup> *Id.* art. 2(2); ICCPR, *supra* note 25, art. 2(1).

<sup>53</sup> ICCPR, *supra* note 25, art. 26.

<sup>54</sup> See further Peters, *supra* note 35, at 1265–7.

<sup>55</sup> ARSIWA, *supra* note 39, art. 4.

<sup>56</sup> *Cf.* Estate of Jean-Baptiste Caire (France) v. United Mexican States, French–Mexican Claims Comm’n, June 7, 1929, 5 U.N.R.I.A.A. 516, 530.

causation—or causality—do not exist either in international law or in human rights law.<sup>57</sup> However, as international law evolves and begins to pervade more complex relationships, such as between corruption and human rights deficits, a legal mechanism to dissect and manage the interplay of real-life factors and contributions, establishing a threshold for legal responsibility, becomes essential.<sup>58</sup> The legal concept of “attribution” does not address this need, as it pertains specifically to linking behavior to actors.

Tort law in many countries distinguishes between an initial causal link between conduct and the legal breach (“cause in fact”) and a subsequent causal link between the breach and the damage (“scope of responsibility”). Article 31 of ARSIWA and several historical arbitral awards have only dealt with the latter type of causality, concerning the link between breach and damage.

In cases of human rights violations, the principal harm is immaterial, such as pain, anxiety, or feelings of shame, which typically flow directly from the breach. Hence, complex issues of causation are less likely to arise at this point. Instead, the challenge lies in establishing corruption (or other behaviors) as the “cause in fact” of a breach of a legal (human rights) obligation. This initial causal link is particularly difficult to establish in scenarios involving multiple actors and factors, and/or where the problematic behavior includes omissions. Such circumstances are present when individual acts of corruption proliferate within a broader context of a state’s failure to effectively prevent and combat such corruption.

Generally, in legal reasoning prevalent in domestic jurisdictions worldwide, causation—in the sense of a *conditio sine qua non* (the “but-for” test)—is typically augmented by an evaluative element that breaks chains of causation deemed excessively long. The standard requirement, applied by international tribunals for the “scope of responsibility,” is that there must be “proximity.” Proximity is determined on the basis of the objective criterion of “natural and normal consequence”<sup>59</sup> and the subjective criterion of “foreseeability.”<sup>60</sup>

I contend that these criteria should be applied to the relationship between corrupt conduct and/or governmental failures at the one end and human rights violations at the other end. These principles suggest that corrupt acts (or omissions) legally cause human rights violations only if the violations—such as of the right to food, housing,

<sup>57</sup> Cf. León Castellanos-Jankiewicz, *Causation and International State Responsibility* (Amsterdam L. Sch. Rsch. Paper No. 2012-56, Apr. 13, 2012), <https://ssrn.com/abstract=2039268>; Ilias Plakokefalos, *Causation in the Law of State Responsibility and the Problem of Overdetermination: In Search of Clarity*, 26 EUR. J. INT’L L. 471 (2015); ALEXANDER ORAKELASHVILI, CAUSATION IN INTERNATIONAL LAW (2022).

<sup>58</sup> The issue of causality has become prominent in climate litigation where issues that are even more complex than for corruption arise. Despite the “tenuous and indirect” link between state conduct and harm from climate change, the ECtHR stated that a strict *conditio sine qua non* requirement is not adequate, has affirmed a causal link, and has found the Swiss deficient climate change measures to violate the right to private life. *Verein Klimaseniorinnen & Ors. v. Switzerland*, Appl. No. 53600/20, ¶¶ 438–9 (Apr. 9, 2024), <https://hudoc.echr.coe.int/?i=001-233206>.

<sup>59</sup> See *Provident Mutual Life Insurance Company & Ors. (United States) v. Germany*, Arbitral Trib. (Sept. 18, 1924), 7 U.N.R.I.A.A. 91, 113 (on the scope of responsibility).

<sup>60</sup> See Decision No. 7: Guidance Regarding Jus ad Bellum Liability, Eritrea–Ethiopia Claims Comm’n, para. 13 (July 27, 2007) (on the scope of responsibility).

or education—are foreseeable and closely linked to the corrupt actions of public officials or to the otherwise passive state apparatus.

In certain situations, these conditions are likely met. For instance, an arrangement where a court official receives a small sum to summon a witness is causally linked to the violation of the right to a fair trial. Similarly, if an employee of an environmental supervisory authority accepts bribes to ignore the creation of an illegal toxic waste dump, this conduct can be seen, under these principles, as causative of subsequent health issues for local residents. In such cases, toleration of the toxic waste dump and the resultant health damages were foreseeable to the public officials and followed naturally from their actions. Therefore, legally, the corrupt tolerance of the toxic waste dump is considered a cause of human rights violations regarding the private life and physical integrity of the local residents.<sup>61</sup>

Conversely, a legal causal link should not be affirmed in scenarios where subsequent human rights violations are not in a usual or foreseeable consequence. For example, if election bribery leads to riots quelled by excessive police force, the rights to freedom of assembly and bodily integrity violated during the suppression are not, in legal terms, caused by the electoral corruption.

In addition to the frequent occurrence of a significant “distance” between the cause and the human rights violation, special problems of causation arise. Typically, issues arise when the dysfunction of a governmental sector (e.g., health or education), which involves human rights violations, has multiple causes, with corruption being just one. This complexity has scarcely been addressed in international law. The ARSIWA do not comment on multiple causes by a single state, but only deal with the scenario of a plurality of states in two of their articles.<sup>62</sup> The Amsterdam Guiding Principles on Shared Responsibility in International Law deal only with “shared responsibility,” i.e., the “commission by multiple international persons of one or more internationally wrongful acts that contribute to an indivisible injury.”<sup>63</sup> The two sets of principles thus offer only marginal guidance for the solution of causality problems with regard to corruption. Here, problems only partly stem from multiple actors (such as states and transnational corporations), but mostly from the multiplicity of factors and contributions that occur within the sphere of a single state. When corruption is involved, it is often impossible to determine whether the factors were cumulative (both factors needed to produce the injury) or concurrent (“dual,” “competing,” or “alternative” causes).<sup>64</sup> In the case of concurrent factors, some of them might “override” the acts of corruption, or vice versa—a concept known in tort law as “overtaking” or “preemptive” causation.

<sup>61</sup> SEPÚLVEDA CARMONA, CORRUPTION AND HUMAN RIGHTS, *supra* note 12, at 27 (referring to this constellation as an “indirect link” between corruption and human rights violations).

<sup>62</sup> ARSIWA, *supra* note 39, arts. 16, 47.

<sup>63</sup> See André Nollkaemper et al., *Guiding Principles on Shared Responsibility in International Law*, 31 EUR. J. INT’L L. 15, 16, principle 1(1) (2020) [hereinafter *Guiding Principles on Shared Responsibility*].

<sup>64</sup> See *id.* at 25–7 (commentary on principle 2(2) dealing with concurrent and cumulative contributions to one indivisible injury). The Guiding Principles prefer the concept of “contribution” in the absence of acknowledged principles of causality in international law.

In conclusion, while causation is a legal requirement, in addition to breach and attribution, for establishing a human rights violation that triggers state responsibility, it often cuts off state liability in many cases of corruption.

#### 4.5. Violations by omission

The state's obligations to prevent, protect, and fulfill human rights necessitate proactive measures and can be violated through state inactivity. In the eyes of the law, such a failure becomes significant when three criteria, as outlined by the IACtHR, are met: (i) state organs must be aware of a real and imminent danger to human rights (foreseeable risk); (ii) the danger must specifically threaten identifiable individuals or groups (victims); and (iii) the state must reasonably be able to prevent and mitigate the danger (capability).<sup>65</sup> Similarly, evolving human rights case law on state inaction regarding climate change is developing legal standards that could, by analogy, apply to state inaction on corruption.<sup>66</sup>

Furthermore, the states' positive, human rights-based obligation to actively combat corruption is considered an obligation of conduct. States are not required to achieve a specific outcome, such as a "corruption-free" society, but must act with due diligence and adopt "all appropriate means,"<sup>67</sup> with "reasonableness."<sup>68</sup> These legal terms set the minimal standard for positive state action (referred to in German constitutional rights doctrine as *Untermäßverbot*). This means state actions must not fall below a certain threshold to be deemed "appropriate" or "reasonable." In contexts where corruption is empirically evident, the human rights-based prohibitions against inadequate action compel states not only to ratify international anti-corruption instruments but to actively and effectively combat corruption. Particularly under the ICESCR, the duty to maximize the use of state resources to realize economic, social, and cultural rights mandates this proactive approach, i.e., taking steps to prevent, suppress, and provide redress for corruption-related abuses.<sup>69</sup>

The concepts of "appropriateness" and "reasonableness" thus play a dual role: they define both the maximum and minimum expected measures.<sup>70</sup> States are required to take "appropriate" measures—no more but certainly no less.

<sup>65</sup> Cf. *Gonzales v. Mexico* ("Cotton Fields"), Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (Ser. C) No. 20/05, ¶ 280 (Nov. 16, 2006) (on the state's failure to combat rampant femicides).

<sup>66</sup> *Torres Strait Islanders v. Australia*, Comm. on Civil & Polit. Rts. U.N. Doc. CCPR/C/135/D/3624/2019, paras. 8.3, 8.6, 8.12, 8.14 (Sept. 22, 2022) (denying a violation of the right to life but affirming violation of the right to private and family life by the state's failure to protect the islanders from the consequences of climate change); Comm. on Econ., Soc., & Cultural Rts., Statement, *Climate Change and the International Covenant on Economic, Social, and Cultural Rights*, U.N. Doc. E/C.12/2018/1, para. 5 (Oct. 31, 2018); *Verein Klimaseniorinnen & Ors. v. Switzerland*, Appl. No. 53600/20, ¶ 550 (Apr. 9, 2024), <https://hudoc.echr.coe.int/?i=001-233206>.

<sup>67</sup> ICESCR, *supra* note 41, art. 2(1).

<sup>68</sup> Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, art. 8(4), Dec. 10, 2008, 48 I.L.M. 2 [hereinafter OP ICESCR].

<sup>69</sup> U.N. High Comm'r for Hum. Rts., Best Practices, *supra* note 9, para. 71; BOERSMA, *supra* note 13, at 233.

<sup>70</sup> Cf. U.N. Hum. Rts. Council, *The Use of the "Reasonableness" Test in Assessing Compliance with International Human Rights Obligations*, U.N. Doc. A/HRC/8/WG.4/CRP.1 (Feb. 1, 2008).

The question is at what point a state fails to meet that minimum standard and which institution has the authority to make this judgment. Under the ICECSR, states parties enjoy a considerable “margin of appreciation” in this regard.<sup>71</sup> The Optional Protocol expressly provides that a state party “may adopt a range of possible measures for the implementation of the rights set forth in the Covenant.”<sup>72</sup> In the final instance, however, the Social Rights Committee reserves the right to assess the “appropriateness” of these measures and thus the allocation of the financial resources, although it lacks the enforcement capabilities.<sup>73</sup>

Considering these challenges, some academics have proposed a formal anti-corruption protocol to one or more human rights covenants that would explicitly classify corruption as a violation of the protected rights.<sup>74</sup> However, such a protocol would not in itself resolve the thorny questions of causation and thresholds, and might therefore be unnecessary.

#### 4.6. Interim conclusions on human rights violations

The legal requirements for proving that an instance of corruption itself constitutes a violation of a specific human right of a particular individual are quite stringent. It is therefore unsurprising that there has yet to be a judgment that confirms such a finding.

Particularly in the context of social rights—which are frequently compromised by corruption—the concept and boundaries of “violation” remain poorly defined. Corruption is only one of several factors that adversely affect economic, social, and cultural (ESC) rights. This introduces the broader and largely unresolved issue of how to precisely determine when a specific ESC right of a specific person has been violated. This challenge is often attributed to a lack of justiciability, but it extends beyond procedural matters to the substantive nature of ESC rights. The legal work of defining *violations*, as opposed to making vague assertions of noncompliance, is still in its early stages. Given that social rights violations often stem from systemic governance deficiencies, influenced by political and budgetary decisions, affect broad populations, and involve threshold issues, the question of “translating” systemic shortcomings into findings of individual rights violations is significant.<sup>75</sup> A deeper legal analysis of the

<sup>71</sup> U.N. ECOSOC, Comm. on Econ., Soc. & Cultural Rts., Statement, An Evaluation of the Obligation to Take Steps to the “Maximum of Available Resources” under an Optional Protocol to the Covenant, U.N. Doc. E/C.12/2007/1, paras. 11–12 (Sept. 21, 2007).

<sup>72</sup> OP ICESCR, *supra* note 68, art. 8(4).

<sup>73</sup> See Comm. on Econ., Soc. & Cultural Rts., General Comment No. 3, para. 4 (Dec. 14, 1990); Comm. on Econ., Soc. & Cultural Rts., *supra* note 71, paras. 8, 12.

<sup>74</sup> Kolawole Olaniyan, *The Implications of Corruption for Social Rights*, in RESEARCH HANDBOOK ON INTERNATIONAL LAW AND SOCIAL RIGHTS 355, 373 (Christina Binder, Jane A. Hofbauer, Flávia Piovesan, & Amaya Úbeda de Torres eds., 2020).

<sup>75</sup> Anne Peters, *The Risk and Opportunity of the Humanisation of International Anti-Corruption Law: A Rejoinder to Kevin E. Davis and Franco Peirone*, EJIL: TALK! (Feb. 18, 2019), [www.ejiltalk.org/the-risk-and-opportunity-of-the-humanisation-of-international-anti-corruption-law-a-rejoinder-to-kevin-e-davis-and-franco-peirone/](http://www.ejiltalk.org/the-risk-and-opportunity-of-the-humanisation-of-international-anti-corruption-law-a-rejoinder-to-kevin-e-davis-and-franco-peirone/). See contra Ranieri L. Resende, *Corrupção e violação de direitos humanos: Uma correlação necessária? Apontamentos críticos ao debate Peters–Davis [Corruption and Human Rights Violation: A Necessary Correlation? Critical Notes on the Peters-Davis Debate]*, 175 REVISTA BRASILEIRA DE CIÊNCIAS CRIMINAIS 69 (2021).

negative impact of corruption on the enjoyment of social rights may also help refine the definition of what constitutes a violation.

Identifying a violation triggers state responsibility and necessitates the adoption of reparative measures as outlined in relevant human rights treaties.<sup>76</sup> Thus, analyzing corruption as an actual rights violation moves beyond merely diagnosing its negative impact to delivering a clear verdict of illegality, which is crucial for identifying and repairing the injustices of corruption.

## 5. Risks and opportunities of the convergence of agendas

The intersection of human rights and corruption issues has prompted human rights practitioners and bodies to assert that corruption and human rights violations “should not be separated in policy or analysis in global and national efforts to improve the lives of the poor who suffer the most from systems plagued by widespread corruption and violence. For human rights research and practice, it is important to make corruption a central issue.”<sup>77</sup> It is assumed that both strategies tied together have the potential “to more effectively address the phenomenon of corruption . . . and guarantee the enjoyment and exercise of human rights. Effectively, while the fight against corruption can have a positive effect on the enjoyment and exercise of human rights, the promotion of human rights reduces the chances of corruption.”<sup>78</sup> “Anti-corruption efforts and efforts to promote and protect human rights complement each other. They should be pursued in a mutually reinforcing manner that leverages their comparative strengths and minimizes their respective limitations.”<sup>79</sup> With this reasoning, human rights institutions have actively sought a “convergence” of both agendas.<sup>80</sup> This section explores the potential risks and opportunities of such convergence.

### 5.1. Risks

Incorporating human rights into anti-corruption efforts entails risks. Notably, Hurst Hannum has cautioned against the “danger of conflating corruption with human rights.”<sup>81</sup> The “conflation” of these agendas faces institutional, conceptual, and policy objections.

<sup>76</sup> American Convention on Human Rights, art. 63(1), Nov. 22, 1969, 1144 U.N.T.S. 123 [hereinafter ACHR]; Convention for the Protection of Human Rights and Fundamental Freedoms, art. 41, Nov. 4, 1950, 213 U.N.T.S. 222 [hereinafter ECHR]; Protocol on the Establishment of an African Court on Human and Peoples’ Rights, art. 27(1), June 9, 1998, OAU Doc. OAU/LEG/AFCHPR/Prot. (I). *See also* GA Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Dec. 16, 2005).

<sup>77</sup> Morten Koch Andersen, *Why Corruption Matters in Human Rights*, 10 J. HUM. RTS. PRACTICE 179 (2018) (abstract).

<sup>78</sup> Inter-Am. Comm’n H.R., *supra* note 15, para. 86; *see similarly* G.A. Res. S-32/1, at 3 (June 7, 2021).

<sup>79</sup> U.N. High Comm’r for Hum. Rts., Best Practices, *supra* note 9, para. 75. *See, e.g.*, OFFICE OF UN HIGH COMM’R ON HUM. RTS., *supra* note 5, at 44.

<sup>80</sup> Inter-Am. Comm’n H.R., *supra* note 15, ch. 1 and *passim*.

<sup>81</sup> HANNUM, *supra* note 14, at 51–2.

### a) Institutional challenges

Human rights actors may be overwhelmed by addressing corruption, potentially overstepping their expertise and formal competencies.<sup>82</sup> Regional and national human rights courts primarily aim to deliver justice to specifically harmed individuals, not to solve structural societal issues like corruption. The typical admissibility conditions, such as the individualizable “victimhood” and causality requirements, foreground the “individualistic” function of courts to deliver justice in the concrete case before it. Additionally, the scope of human rights instruments is confined to state parties’ control over a person or a territory, meaning that states are not held accountable for human rights violations outside their jurisdiction. This jurisdictional link requirement effectively hinders the human rights actors from tackling transnational corruption.

### b) Conceptual challenges

The human rights-based approach to corruption remains fuzzy. Not all forms of corruption affect, let alone violate human rights, and many human rights issues exist independently of corruption. This lack of congruence can make the application of human rights to corruption seem forced and even misguided. The rigorous legal analysis required to categorize corruption as a human rights violation presents several doctrinal hurdles (as discussed in Section 4). Moreover, even if “hard” state responsibility for human rights violations were established, the legal outcomes might be unwelcome. Some observers find that extensive obligations to compensate victims could place undue burdens on innocent taxpayers.<sup>83</sup> The underlying sentiment that this is unfair seems to prove that it is better to keep apart the delivery of individual justice from systemic political decisions.

From a critical perspective, infusing anti-corruption efforts with human rights rhetoric might be seen as merely a cosmetic enhancement aimed at legitimizing the anti-corruption crusade. Such criticism, rooted in distrust towards the rule-of-law-based (neo)liberal state and the institution of rights, argues that this approach masks the broader capitalist objectives underlying anti-corruption efforts.<sup>84</sup>

### c) Policy challenges

Another objection is that the individualistic nature of human rights law makes it ill-suited for addressing collective action problems.<sup>85</sup> This is not only a practical but also a conceptual concern that pertains to the presumed rationales of outlawing

<sup>82</sup> Cecily Rose, *The Limitations of a Human Rights Approach to Corruption*, 65 INT’L & COMP. L. Q. 405 (2016); see also Kevin E. Davis, *Corruption as a Violation of International Human Rights: A Reply to Anne Peters*, 29 EUR. J. INT’L L. 1289, 1294 (2018).

<sup>83</sup> Davis, *supra* note 82, at 1293.

<sup>84</sup> David Kennedy, *The International Anti-Corruption Campaign*, 13 CONN. J. INT’L L. 455 (1999).

<sup>85</sup> On climate change, see Marie-Catherine Petersmann, *Is Climate Change a Human Rights Violation? No*, in CONTEMPORARY CLIMATE CHANGE DEBATES: A STUDENT PRIMER 160, 165 (Mike Hulme ed., 2019); Lea Raible, *Expanding Human Rights Obligations to Facilitate Climate Justice? A Note on Shortcomings and Risks*, EJIL: TALK! (NOV. 15, 2021), [www.ejiltalk.org/expanding-human-rights-obligations-to-facilitate-climate-justice-a-note-on-shortcomings-and-risks/](http://www.ejiltalk.org/expanding-human-rights-obligations-to-facilitate-climate-justice-a-note-on-shortcomings-and-risks/).

corruption. Critics like Franco Peirone suggest that focusing too narrowly on individual rights (the “trees”) risks missing the broader systemic issues (the “forest”), such as the rule of law. When one focuses too much on the trees, one risks not seeing the forest. And a burning forest, to stay in the picture, cannot be rescued by watering individual trees one by one.<sup>86</sup> The issue might be better addressed through administrative law, given its capacity to balance public and third-party expectations, interests, and rights.<sup>87</sup>

Relatedly, critics claim that human rights law typically frames issues in terms of a binary, bilateral relationship between the state, as the sole duty bearer, and the victim, as the rights holder. This framework struggles to incorporate other potentially responsible parties, such as private corporations or individuals involved in corruption transactions.<sup>88</sup> It has been assumed that human rights law “is not designed as a form of collective power or as a vehicle of popular governance, but only creates individual shields against the exercise of abusive power.”<sup>89</sup> Based on this assumption, critics might doubt that human rights law offers much to combat corruption, because it benefits only the person who invoked his/her human rights.

Merging human rights and anti-corruption discourses might also encourage states to engage in superficial discussions that obscure the real issues and mask inadequate efforts, thus diluting the focus and effectiveness of both fields.<sup>90</sup>

Given these challenges, the next section will explore the potential benefits of integrating human rights into international and transnational anti-corruption law.

## 5.2. Conceptual opportunities

The human rights-based approach to corruption offers significant conceptual benefits, alongside the practical advantages that will be discussed in Section 6.2. This approach emphasizes the systemic responsibility of the state. It means “getting to the bottom” of corrupt structures that made the violations possible in the first place, rather than merely penalizing corrupt individuals.<sup>91</sup>

Even without direct findings of human rights violation, recognizing a legally relevant link between corruption and human rights allows us to draw a range of doctrinal consequences. The application of human rights law introduces more nuanced parameters and criteria for resolving various legal issues, notably regarding the initiation and scope of the duty to prevent.<sup>92</sup>

First, the general obligation set out in all human rights treaties—to “ensure,” “secure,” “give effect,” or “realize” the rights laid out in these instruments<sup>93</sup>—generates

<sup>86</sup> Franco Peirone, *Corruption as a Violation of International Human Rights: A Reply to Anne Peters*, 29 EUR. J. INT'L L. 1297, 1298, 1302 (2018).

<sup>87</sup> *Id.* at 1300.

<sup>88</sup> *Id.* at 1299; Davis, *supra* note 82, at 1293. *See also* Petersmann, *supra* note 85, at 165 (on climate change).

<sup>89</sup> Cf. Petersmann, *supra* note 85, at 167 (on climate change).

<sup>90</sup> HANNUM, *supra* note 14, at 52.

<sup>91</sup> INTER-AM. COMM'N. H.R., *supra* note 15, para. 266.

<sup>92</sup> *Id.* para. 143.

<sup>93</sup> *See* ACHR, *supra* note 76, art. 1; ECHR, *supra* note 76, art. 1; African Charter on Human and Peoples' Rights, art. 1, June 27, 1981, 1520 U.N.T.S. 217; ICCPR, *supra* note 25, art. 2(1); ICESCR, *supra* note 41, art. 2(1).

a concrete obligation to effectively combat corruption.<sup>94</sup> Section 4.2 has broken down the general obligation into all its components (obligations to respect, protect, and fulfill). These human rights-based obligations reinforce and specify the broader and more general state duties outlined in anti-corruption treaties, resulting in an “enhanced obligation” or “special obligation” to combat corruption in all areas that affect the enjoyment of human rights.<sup>95</sup>

Second, the content and scope of applicable human rights norms must be defined in the light of the anti-corruption standards, and vice versa.<sup>96</sup> This interpretative technique of systemic integration<sup>97</sup> then leads to a mutual reinforcement of the relevant state obligations. Particularly, duties to prevent corruption,<sup>98</sup> to conduct a risk assessment, and to exercise due diligence, which derive from both bodies of international law, are strengthened and enhanced when viewed as emanating from a dual source.<sup>99</sup> Moreover, the general obligation of UNCAC that “each State Party member shall take the necessary measures” to implement the Convention<sup>100</sup> should, in the context of international and domestic human rights, be interpreted as setting a minimum effectiveness threshold for measures aimed at protecting human rights.

Given that international human rights are in most states domesticated by the incorporation of human rights treaties into national law or by references to relevant human rights treaties in domestic constitutions or statutes, a human rights-oriented interpretation of UNCAC provisions fits well to the reference made to UNCAC parties’ domestic laws in article 65(1) of UNCAC. It also harmonizes with the Convention’s provision allowing state parties to adopt more stringent anti-corruption measures than those prescribed in special provisions of the Convention.<sup>101</sup>

Furthermore, the human rights perspective influences the standard of proof. Unlike individual criminal suspects, states do not benefit from a presumption of innocence. Although victims of corruption-induced human rights violations must prove their case, the evidentiary threshold is lower than that required for criminal conviction of an individual.<sup>102</sup> Often, a prima facie showing is sufficient in some human rights constellations, after which burden shifts to the state to exonerate itself.

It has also been claimed that the human rights framework facilitates the recognition of extraterritorial obligations. Under human rights law, states are required to regulate and oversee transnational and global business entities of their nationality to prevent involvement in corrupt practices like bribery, even if such acts occur abroad.<sup>103</sup> That

<sup>94</sup> Cf. Reyes, *supra* note 36, at 282 (on the ACHR).

<sup>95</sup> Olaniyan, *supra* note 74, at 371; Reyes, *supra* note 36, at 282.

<sup>96</sup> Inter-Am. Ct. Comm’n H.R., *supra* note 15, para. 86; Reyes, *supra* note 36, at 284.

<sup>97</sup> Vienna Convention on the Law of Treaties, art. 31(3)(c), May 23, 1969, 1155 U.N.T.S. 331; 8 I.L.M. 679 (1969) [hereinafter VCLT].

<sup>98</sup> For example, under UNCAC, *supra* note 2, art. 5.

<sup>99</sup> On the human rights sources, see Section 4.2.

<sup>100</sup> UNCAC, *supra* note 2, art. 65.

<sup>101</sup> *Id.* art. 65(2).

<sup>102</sup> Cf. Reyes, *supra* note 36, at 284.

<sup>103</sup> Khulekani Moyo, *Corruption, Human Rights and Extraterritorial Obligations*, in THE ROUTLEDGE HANDBOOK ON EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS 312 (Mark Gibney, Gamze Erdem Türkelli, Markus Krajewski, & Wouter Vandenhoe eds., 2022).

said, the jurisdictional limitation of human rights law at the same time places limits on such oversight obligations.<sup>104</sup>

In summary, applying a human rights analysis to anti-corruption law equips us with a much more sophisticated legal toolkit, enabling more consistent and robust legal responses to corruption.

## 6. Practical implications of the human rights-based approach to corruption

A human rights approach to anti-corruption carries both procedural and institutional implications. Significantly, human rights not only reinforce anti-corruption measures (Section 6.2) but also set boundaries against excessive anti-corruption campaigns (Section 6.1).

### 6.1. Human rights limiting anti-corruption

A human rights-based approach to corruption demands that special attention be paid to avoiding violating human rights in the fight against corruption.<sup>105</sup> At least three sets of rights are at stake here: the rights of individuals fighting against corruption; the rights of potential perpetrators; and the rights of victim populations concerning the repatriation of stolen assets.

First, journalists and whistleblowers who investigate, report, and denounce corruption are exercising their human right to acquire and disseminate information along with their media freedoms. States have a duty to specially protect these individuals and judges investigating corruption cases from intimidation and attacks on their physical integrity.<sup>106</sup>

When state officials critique deficiencies of anti-corruption legislation, the significant public interest in these matters calls for robust protection of their freedom of expression. Any interference should be subject to strict scrutiny, with a narrow margin of appreciation afforded to the authorities of the respondent state. Fair trial guarantees must be rigorously upheld to shield such critics against irregular removal from their positions.<sup>107</sup> Recognizing that the rights to information and public participation in public financial management are crucial anti-corruption safeguards, the enhanced human rights protection of all anti-corruption activists indirectly contributes to combatting corruption. This recognition has motivated, and should continue to motivate, the strengthening of rights-based transparency mechanisms as an effective anti-corruption tool.<sup>108</sup>

<sup>104</sup> See Section 5.1(a).

<sup>105</sup> G.A. Res. S-32/1, at 2 (June 7, 2021).

<sup>106</sup> Cf. Inter-Am. Ct. H.R., Res. 45/2016, Precautionary Measure Nos. 351-16, 366-16, Miguel Angel Galvez and Family Regarding Guatemala (Aug. 21, 2016); Inter-Am. Ct. H.R., Res. 34/2017, Precautionary Measure No. 431/17, Gloria Patricia Porras Escobar and Family Regarding Guatemala (Aug. 29, 2017).

<sup>107</sup> *Kövesi v. Romania*, App. No. 3594/19, Eur. Ct. H.R., ¶¶ 204–7 (May 5, 2020).

<sup>108</sup> Cf. Joint Statement on Corruption, *supra* note 4, para. 16; U.N. Hum. Rts. Council Res., The Negative Impact of Corruption on the Enjoyment of Human Rights, U.N. Doc. A/HRC/RES/41/9, at 2 (preamble) (July 11, 2019).

Second, combining (criminal law-based) repression with (human rights-based) prevention makes it harder to misuse anti-corruption measures as pretexts for targeting political opponents. Where human rights are disregarded, anti-corruption campaigns can become veiled strategies for political purges, as seen in the Chinese anti-corruption “campaign” since 2012, which served as a platform for current leader Xi Jinping to consolidate power. Minimizing such abuses requires strict adherence to due process and fair trial rights, including access to evidence for those accused of corruption.<sup>109</sup>

Asset freezing and confiscation must respect the property rights of the accused. Defining illegal enrichment<sup>110</sup> as a criminal offense jeopardizes the presumption of innocence. The rights to privacy and private life, including reputation, must be respected in surveillance and disclosure activities. Severe sentences, including the death penalty, present further human rights concerns. Although UNCAC does not ban the death penalty, UN policy aims to restrict, and ultimately eradicate, this form of punishment.

Third, states involved in asset recovery must consider the human rights of populations impacted by misappropriation and international transfer of funds by corrupt officials.<sup>111</sup> States requested to repatriate illicit funds should balance the risk of funds dissipating in the country of origin against overly stringent conditions that hinder the return of the funds. The requesting states must ensure that repatriated funds are used to realize economic, social, and cultural rights transparently and inclusively, and must create safeguards to prevent new human rights violations.<sup>112</sup>

In summary, incorporating human rights considerations into the international and transnational fight against corruption acts as an important moderating influence, curbing excesses and abuses in anti-corruption campaigns.

## 6.2. Human rights reinforcing anti-corruption

This section outlines the practical and strategic benefits of incorporating human rights into transnational anti-corruption efforts, based on existing practices and showing potential for deeper policy integration.

First, the entire gamut of national and international human rights institutions, including regional human rights courts, can be harnessed to tackle corruption. Fighting corruption is added to these institutions’ “repertoire of competencies,” ensuring their actions in this domain are not *ultra vires*.<sup>113</sup> The reframing empowers human rights bodies to address corruption directly and generally, beyond just instances explicitly linked to traditional human rights violations.<sup>114</sup> Importantly, the human rights regime (including commissions, tribunals, special rapporteurs, national human rights

<sup>109</sup> See UNCAC, *supra* note 2, art. 14; *López Mendoza v. Venezuela*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (Ser. C) No. 233, ¶ 25 & n.208 (Sept. 1, 2011); *Andrade Salmón v. Bolivia*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (Ser. C) No. 330, ¶¶ 159, 178 (Dec. 1, 2016).

<sup>110</sup> UNCAC, *supra* note 2, art. 20.

<sup>111</sup> Simeon A. Igbiniedion, *Human Rights as a Basis for Recovering the Proceeds of Grand Corruption*, 26 AFR. J. INT’L COMP. L. 483, 494 (2018).

<sup>112</sup> U.N. Hum. Rts. Council, *supra* note 23, paras. 21–2.

<sup>113</sup> Cf. Inter-Am. Comm’n H.R., *supra* note 15, para. 143.

<sup>114</sup> Stephenson, *supra* note 10, at 20.

agencies, and non-governmental organizations) excels in fact-finding, and the credible information these bodies generate is invaluable in fighting corruption.<sup>115</sup>

The IACommHR has pioneered specific measures to incorporate anti-corruption into its operations, ranging from awareness-raising to follow-up mechanisms. It has developed detailed “public policy standards in the fight against corruption.”<sup>116</sup> Through its monitoring sections and thematic and special rapporteurships, the IACommHR tracks corruption that may impair enjoyment of human rights in the member states. The Commission recognizes corruption as specifically relevant to human rights, which allows it to request governments to supply additional information about corruption-related issues.<sup>117</sup> In its precautionary measures mechanism, the IACommHR prioritizes protection requests for anti-corruption activists at risk. In its individual petitions and cases system, special attention is given to corruption as a context for alleged human rights violations, identifying large-scale corruption as a “serious structural situation” impacting the enjoyment of human rights, which may expedite the evaluation of relevant petitions.<sup>118</sup>

At the universal level, the human rights treaty bodies have issued a “Joint Statement on “Corruption and Human Rights” in 2021, serving as a functional equivalent to a General Comment applicable across all treaties. An empirical study of all concluding observations issued by the UN treaty bodies (TBs) in from 2007 to 2017 revealed inconsistencies in the treaty bodies’ approach to corruption:

[N]one of the TBs approach corruption in a systematic manner. The Committees often raise certain concerns during their reviews of particular countries, but not others, even though the problems mentioned also exist in those state parties. In addition, the wording of recommendations by all TBs is inconsistent. As such, when the same issue is raised in recommendations made to different States, the wording is often completely different.<sup>119</sup>

Often, treaty bodies mention corruption but do not issue a recommendation, and it is not clear why they refrain from recommending anti-corruption measures in those cases.<sup>120</sup>

This trajectory suggests room for strengthening the corruption-sensitive approach within UN TBs and other institutions. For instance, the simplified reporting procedure, now common for most universal human rights treaties, could include corruption as a standard issue prior to reporting. The committees’ focused reports could then consistently address states’ responses on this issue, establishing standard formulas and employing more detailed and concrete language.

Mandates of human rights special rapporteurs could encompass an analysis of the impact of corruption on the human rights issues under examination. The HRC could draw institutional and procedural lessons related to corruption for the Universal

<sup>115</sup> Davis, *supra* note 82, at 1294–5.

<sup>116</sup> Inter-Am. Comm’n H.R., *supra* note 15.

<sup>117</sup> ACHR, *supra* note 76, art. 41(d).

<sup>118</sup> Rules of Procedure of the Inter-American Commission on Human Rights, art. 29(2)(d)(i), Nov. 13, 2009, effective Aug. 1, 2013.

<sup>119</sup> Eeckeloo, *supra* note 24, at 28.

<sup>120</sup> *Id.* at 6 (on the U.N. Hum. Rts. Committee).

Periodic Review and consider involving specialized anti-corruption NGOs in the review process. Additionally, international standards for National Human Rights Institutions could incorporate an anti-corruption mandate.<sup>121</sup>

All policies that require a human rights due diligence, such as those in business and human rights contexts, should include anti-corruption compliance procedures, because such compliance likely improves the realization of human rights.<sup>122</sup> The recognition of the link between corruption and human rights abuse could encourage new civil society alliances, where joint advocacy and litigation might prove more effective than isolated actions.<sup>123</sup>

The synergy between anti-corruption and pro-human rights efforts arises not only from mutual policy instrumentalization but also because they share essential principles of good governance, such as transparency, participation, inclusion, accountability, integrity, and rule of law.<sup>124</sup>

Ultimately, the moral pedigree of human rights enhances the fight against corruption and infuses an ethical dimension that underscores the policies' urgency and importance.<sup>125</sup> The moral assessments inherent in the human rights analysis not only mobilize dedicated and skilled individuals against corruption but also help set plausible priorities in anti-corruption policies, suggesting that some areas, like healthcare or criminal justice, deserve higher priority.<sup>126</sup> It is reasonable to conclude that the benefits of a human-rights-based approach to corruption significantly outweigh its risks, offering a net positive impact.

## 7. Conclusion

Corruption's detrimental impacts extend across legal, economic, social, and political realms, surpassing the boundaries of human rights issues. Similarly, many human rights challenges are not directly linked to corruption. Put differently, human rights represent only one aspect of the broader problem of corruption, and vice versa—both areas overlap but do not fully align. Therefore, employing human rights terminology is not necessary for addressing the harm caused by corruption, which can adequately be discussed in terms of legal integrity, security, fairness, freedom, and welfare without recourse to human rights language.

<sup>121</sup> Cf. U.N. Hum. Rts. Council Res., *The Negative Impact of Corruption on the Enjoyment of Human Rights*, U.N. Doc. A/HRC/RES/41/9, at 3 (preamble) (July 11, 2019).

<sup>122</sup> U.N. High Comm'r for Hum. Rts., *Best Practices*, *supra* note 9, para. 41.

<sup>123</sup> OLANIYAN, *supra* note 74, at 371.

<sup>124</sup> U.N. High Comm'r for Hum. Rts., *Best Practices*, *supra* note 9, paras. 22, 32, 75; U.N. Hum. Rts. Council, *supra* note 23, para. 22. Especially the Inter-American Commission on Human Rights has committed to applying these principles, which it conceives as specific human rights principles, to the states' anti-corruption action; Inter-Am. Comm'n H. R., *supra* note 15, paras. 489–505. More even, the Inter-Am. Comm'n H.R. adds equality and non-discrimination, access to justice, access to information, and priority protection for groups that historically have been discriminated against and refers to: INTER-AM. COMM'N H. R., *PUBLIC POLICY WITH A HUMAN RIGHTS APPROACH*, OEA/Ser.L/V/II. Doc. 191 (Sept. 15, 2018).

<sup>125</sup> Stephenson, *supra* note 10, at 20; Moyo, *supra* note 103, at 320 ("The added value of elevating an issue to the level of human rights is that it establishes a universal norm that becomes more difficult to disregard").

<sup>126</sup> Davis, *supra* note 82, at 1295–6.

The non-identity of the issues translates into a non-identity of remedies: “Ensuring good governance is not the same as ensuring human rights, and the latter will never be sufficient to protect us fully from corrupt or ignorant government officials.”<sup>127</sup>

Given the lack of congruence, the decision to merge the discourse on human rights with anti-corruption initiatives reflects a deliberate policy choice by universal and regional human rights bodies, and more cautiously by some anti-corruption actors. This choice merits critical examination. A certain unease with it stems from the intuition that human rights are not suited to tackling systemic problems such as corruption. The significant spatial and temporal distance between the institutional flaws facilitating corruption and the impact of such structural weaknesses on individual human rights complicates efforts to measure and establish causality between corrupt behavior and specific human rights violations.

Adapting a systemic problem to fit within a human rights framework is inherently reductive, as it focuses primarily on “binary” interactions between individuals and the state, neglecting broader socio-political dynamics. This oversimplification may obscure the bigger picture and divert attention from the root causes of corruption.

Nevertheless, within the current transnational legal order, existing human rights mechanisms are generally more robust than anti-corruption frameworks. Therefore, on a pragmatic level, leveraging human rights in the fight against corruption appears strategically opportune. Recognizing corruption as a factor undermining human rights enables non-adversarial human rights monitoring bodies to address corruption comprehensively without exceeding their mandates. Whether corruption can be independently categorized as a human rights violation actionable through individual complaint procedures remains debatable. Although challenging (both legally and evidentially), it is not unfeasible.

Regional human rights courts and bodies offer potential for legal accountability and responsibility for corruption-related harms, helping to bridge the significant enforcement gap in anti-corruption efforts. Most importantly, domestic courts, through the application of human rights law, can compel legislative and executive actions akin to the judicial decisions in climate litigation, thereby imposing more effective anti-corruption measures.

On a deeper level, reframing corruption as a human rights issue has broadened the objectives of the transnational battle against corruption. From this perspective, the ultimate aim of anti-corruption is to ensure the well-being of individuals whose rights are prioritized. This focus on victims and their rights does not constitute a radical shift but a slight readjustment of the historic policy objectives of transnational anti-corruption efforts, which have always addressed both economy stability and public (social) order. Historically, anti-corruption measures were professedly designed to safeguard market functionality and foster development. Yet these goals were never fully confined to the economic sphere alone; they also encompassed the preservation of the society at large.

<sup>127</sup> HANNUM, *supra* note 14, at 51.

Placing the human as a victim of corruption center stage aligns with the liberal notion that global markets best secure human liberty and welfare. This approach complements human rights-based approaches to development and fits with the broader agenda of good governance. In these frameworks, the alliance between global capitalism and international human rights is maintained. Part of the resistance to a human rights-based approach to anti-corruption stems from a deeper critique of exactly that alliance.

Hence, the novelty in the human rights approach to anti-corruption lies not so much in a turn from *economic* to *social* concerns, but in breaking with the historic perception of corruption as a victimless crime. Traditionally, corruption was seen as an offense against public order (alone), replacing “the proper governance of public affairs and the correct assignment of public goods. . . by favour and arbitrariness. . . at the expense of the *common good*.”<sup>128</sup> In the public order paradigm, individual victims were invisible and voiceless. The significant change is the shift in focus from society at large, or “the” public, to its *individual members*. Corruption, alongside sexual crimes and animal cruelty, is recognized not just as an offense against public order or morality but as a violation of individual dignity.

The “individualization” or “rightsification” of law is part of a broader trend across various legal fields, with anti-corruption being just one example. Such utilization of human rights for greater societal benefits is rooted in the philosophy of human rights. The UDHR preamble states that the recognition “of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

It is posited here that the rights framework can significantly contribute to structural change because it transforms victims into citizens, and citizens build effective institutions. By changing the frame of reference and introducing new mechanisms for monitoring and litigation, the human rights perspective can usefully complement the criminal law approach. While human rights alone may not be “enough,” they have proven indispensable in the fight against corruption.

Thus, it is recommended that efforts in both human rights and anti-corruption be mutually reinforced through all forms of cooperation between actors in both fields, ranging from exchange of information and sharing of best practices to the development of joint plans for action. The current focus on integrating corruption concerns into human rights frameworks should be supplemented by equal attention to human rights within all anti-corruption monitoring schemes. This balanced approach is likely to create a positive feedback loop where anti-corruption efforts enhance human rights conditions, and where a range of human rights act as catalysts for preventing and combatting corruption.

<sup>128</sup> Glencore International and C.I. Prodeco v. Colombia (I), Award, ICSID Case No. ARB/16/6, ¶. 663 (Aug. 27, 2019), under Colom.–Switz. Bilateral Inv. Treaty, Dec. 17, 2006 (emphasis added).