

Corruption And Human Rights, Exploring The Relationships: Analytical Study

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Abstract: Corruption is a global phenomenon which every society faces though its degree of severity varies from country to country. Despite its long history, there is no single universally agreed upon definition of corruption. Moreover, its causes, forms and impacts are diverse and multi-faceted. Understanding corruption by itself is a complex undertaking. However, it is agreed that corruption is inimical to public administration, undermines democracy, degrades the moral fabrics of the society and violates human rights. The pain of corruption touches all the human family but it disproportionately affects the vulnerable sections of the society. It reinforces discrimination, exclusion and arbitrariness. 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.

Keywords: Corruption, Human rights, Human Dignity, Vulnerable Sections of the Society, Human Rights Activists, Anti-Corruption Activists

I. INTRODUCTION

Power tends to corrupt, and absolute power corrupts absolutely. There is no worse heresy than that the office sanctifies the holder of it.

Corruption has existed ever since antiquity as one of the worst and, at the same time, most widespread forms of behavior, which is inimical to the administration of public affairs. 2 Notwithstanding the long history and the apparent spread of the phenomenon of corruption in today's society, it seemed difficult to arrive at a common definition. However, it is a situation where money, arbitrariness and discrimination talks. People are judged not by what they are but what they have and from whom they belong. It is one of the greatest challenges of the contemporary world 'which undermines good government, fundamentally distorts public policy, leads to misallocation of resources, harms the private sector and private sector development, and particularly hurts the poor'. 3

It forces the private sector to engage in rent-seeking activities rather than competitive activities. 4 Above all, corruption hurts more the most vulnerable sections of the society, such as women, children, minorities, indigenous peoples, migrant workers, persons with disabilities, those with HIV/AIDS, refugees, prisoners and those who are poor. 5 This article first lays down the concept of corruption by discussing its definition, causes, forms and consequences. It then discusses the notion of human rights such as its definition, foundation (if any), nature and categories with a view to make a connection with corruption. The third section explores the relationship between corruption and human rights. Finally, the fourth section Corruption is incompatible with the ideals of equality and justice. It diminishes human dignity and thereby prevents the realization of human rights and fundamental freedoms. Corruption is hampering the global movement for the realization of human rights.

II. CIVIL AND POLITICAL RIGHTS

In this section, corruption as a violation of human rights can be analyzed through the right to equality and non-discrimination, the right to fair trial, the right to effective remedy and the right to political participation. The principle of equality and non-discrimination are fundamental principles in human rights. The principle that every individual is equal before the law and has the right to be protected by law on an equal basis is affirmed in all the main human rights treaties. 105 Every individual is entitled to be treated equally by public officials; and if a person bribes a public official, that person acquires a privileged status in relation to other similarly placed individuals who have not partaken in bribery. 106 Similarly, when a person is asked for a bribe in order to obtain a service to which that person is entitled without payment, that person suffers discrimination in relation to other individuals in the same situation. 107 There is a violation of the right in both examples because similar cases are treated in a different manner and the difference in treatment results from corruption which is not an objective or reasonable justification for discrimination. 108 In general, 22 corrupt practices commonly produce unequal and discriminatory outcomes with regard to human rights. The right to fair trial is found in many human rights treaties. 109 It is composed of a broad range of standards that provide for the fair, effective and efficient administration of justice. 110 In the context of the judicial system, corruption may be defined as acts or omissions that constitute the use of public authority for the private benefit of court personnel, and result in the improper and unfair delivery of judicial decisions. Such acts and omissions include bribery, extortion, intimidation, influence and the abuse of court procedures for personal gain. 111 The right to an effective remedy is guaranteed by most international human rights instruments. This covers a wide range of acts carried out by actors at different points in the judicial system (the judiciary, the police and prosecutors). For example a judge may be paid a bribe to exclude evidence that would otherwise lead to the conviction of a criminal. A court official may be paid a bribe to allocate a case to a sympathetic judge, to lose a case file, or to speed up the hearing of a case. Police can be bribed to tamper with criminal evidence. Prosecutors can be paid to avoid bringing a case forward or to assess the evidence in an unfair manner. All these acts violate the right to fair trial and the administration of justice. 112 It asserts that, when a human rights violation occurs, a State has a duty to provide victims with an effective remedy. Failure to do so can create a climate of impunity, particularly when States intentionally or regularly deny remedies. 113 States are under an obligation to provide accessible, effective and enforceable remedies to uphold civil and political rights. 114 A person claiming a remedy is entitled to have his or her claim determined and enforced by a competent domestic authority, and States must ensure that this can occur. If there is corruption in the justice system, it is probable that some of these standards will not be respected. This may create the situation of impunity in addition to the violation of the right to an effective remedy. The right to participation affirms that all citizens should be entitled to engage in decision-making processes that affect them. The major political expressions of the right to participation are the

freedom to vote and stand for elections, the right to equal access to public services, and the freedoms of association and assembly. These rights are enshrined in several human rights treaties.

III. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

115 It is a plain fact that bribing voters to persuade them to vote or refrain from voting interferes with the integrity of an election and therefore violates the right to vote. In other cases, people may engage in acts, such as bribery, that are recognized to be corrupt, to obtain public service employment. This violates the right to equal access to public services which is one of the expressions of the right to participation. Above all, the right to participation presupposes the equality of participants; but corruption undermines equality and employs exclusion. All these are violations of the right of political participation by the incidents of corruption. Under the International Covenant on Economic, Social and Cultural Rights (ICESCR) States are obligated to: take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. 116 States are under obligation to allocate the ever increasing resource to the progressive realization of rights recognized under the covenant, prohibited from taking deliberately retrogressive measures and provide public service such as food, education, health, water and house by taking into account the principles of availability, accessibility, acceptability and adoptability. 117 Corruption implies that the State is not taking steps in the right direction. When funds are stolen by corrupt officials, or when access to healthcare, education and housing is dependent on bribes, a state's resources are clearly not being used maximally to realize economic, social and cultural rights. 118 The right to food also referred to as the right of every one to be free from hunger, is a component part of the more general right to an adequate standard of living. In the paragraphs below, corruption as a violation of the right to food, housing and health will be discussed with a view to analyzing the impacts of corruption on the enjoyment of socio-economic and cultural rights. 119 The core contents of the right to food are explained by the Committee on Economic, Social and Cultural Rights in its General Comment No.12. 120 Corruption can compromise the realization of this right. Corruption is identified as one of the seven major economic obstacles that hinder the realization of the right. 121 In 1996, the Declaration of the World Food Summit expressly mentioned corruption as the causes of food insecurity as it diverts resources allocated for food to private uses. 122 The right to adequate housing like that of the right to food is one of the component elements of the right to an adequate standard of living. Hence, when resources allocated for food are diverted to private uses, the right to food will be violated by the acts of corruption. 123 It focuses on the obligation to ensure that every one has housing that is safe, healthy and adequate. 124 In addition, the right forbids discrimination in the field of housing, as well as forced

or arbitrary evictions or acts of unjust dispossession. 125 Corruption may violate this right by restricting one or more of its elements. Besides, as discrimination is inherent in acts of corruption, it will violate the right to adequate housing. 25 Article 12 of the ICESCR is allotted for the right to the highest attainable physical and mental health. It is explained as the right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health. 126 Corruption affects the enjoyment of this right. Corruption in the health sector occurs in three main forms: 127 3.1.3 Environmental and Developmental Rights in management of financial resources (budget allocation); in the distribution of medical supplies (purchasing and marketing); and in the relationships of health workers with patients. In all its faces, corruption will violate the right to the highest attainable physical and mental health as it diverts the budget to individual accounts and discriminates between individuals. All peoples have the right of self-determination, the right to freely dispose of their natural wealth and resources and thereby freely pursue their economic, social and cultural development. 128 At the same time they have a right to live in a clean environment. 129 A government that tolerates or actively engages in the corrupt transfer of ownership of national wealth to the benefit of some nationals, who occupy positions of power or influence in the society operates to deny the people, individually and collectively, their right to freely use, exploit and dispose of their natural wealth in a manner that advances their development. The facts and the decision in the Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria 130 case are illustrative of how corruption by the Nigerian military government negatively impacted on the rights of the people of Ogoni land to inter alia, freely dispose of their wealth and natural resources, and to live in a satisfactory environment favorable to their development. 131 26 3.2 Human Rights as a Preventive Tool for Corruption As argued above, all forms of corruption tend either directly, indirectly or remotely to violate human rights. Conversely, wherever human rights are not protected, corruption is likely to flourish. In the absence of human rights like freedom of expression and assembly – or where access to information and education is restricted – it is extremely difficult to hold government officials to account, which allows corruption more room to spread freely. 132 3.2.1 Guarantying Human Rights Besides, where corruption is prevalent, it is hard to promote human rights. The discussion is based on the assumption that protection and promotion of human rights will enhance the effectiveness of anticorruption measures. Implementation of human rights can contribute for the prevention of corruption because human rights address abuses of power, and corruption is essentially an abuse of power. 133 A human rights analysis throws light on the power relations in a society because it pays particular attention to discrimination, equity and the removal of economic, legal and political obstacles that prevent marginalized groups from enjoying their rights. 134 As a result, a human rights analysis can contribute directly to the design and implementation of anti-corruption policies. If basic human rights are guaranteed, especially the rights to the basic necessities of life, then the incidence of corruption and related offences would be reduced. 135 As the

problem of corruption is multi-faceted, there is no one size fit all principle to deal with it. There are preventive and curative approaches for combating corruption as stated by OforiAmaah, Soopramanien and Uprety; From a domestic point of view, there are two separate, but complementary, aspects of the fight against corruption. The first consists of upstream rules and norms of good behavior 27 (codes of conduct, manifestos, and declarations) conducive to a corruption free society (preventive approach). The second aspect consists of anti-corruption laws proper (general or specific legislative enactments), whose purpose is to provide appropriate remedies, including criminal sanctions and penalties, procedural rules, and institutional mechanisms as needed, to combat acts of corruption that have already occurred (curative approach). The first aspect deals with corruption ex ante while the second aspect deals with corruption ex post. 136 Ensuring the effective enforcement of human rights as norms of good behavior will have a preventive role in fighting corruption. For example, the right to freedom of expression, assembly and association are vital to fight corruption.

IV. ENSURING NON-DISCRIMINATION AND PARTICIPATION

137 Where governments permit information to flow freely, it should become easier to identify and denounce cases of corruption. Persons will not commit corruption at least with impunity due to fear of public scrutiny. Giving due effect to the enforcement of human rights in general no doubt will reduce the problem of corruption. But there are also some norms and principles of human rights which the anti-corruption campaign shares. 138 The principle of non-discrimination is fundamental to human rights. Both the international human rights instruments and general comments of the treaty bodies affirmed that the principle of non-discrimination is the basic principle of human rights and thereby States parties are required to implement it without any condition. Guarantying these norms and principles will prevent the incidence of corruption. These norms and principles are non-discrimination and participation. 139 Corruption is associated with discrimination for two simple reasons. 140 Firstly, this is because corruption distorts the allocation of public resources, which causes the administration of public services to become discriminatory and 28 arbitrary. Individuals or groups of people are left without access to a service, for example, because they cannot or refuse to pay a bribe or do not belong to a given client network. Second, corruption is often associated with discrimination based on race, color, sex, language, religion, political opinion, national or social origin or sexual orientation. In Europe, for example, it appears that Roma people are disproportionately asked to pay bribes when they seek access to health and education services. 141 Participation is also at the heart of human rights discourse. It is constructed out of several key rights. Corruption has a disproportionate impact on people who are victims of discrimination. Under a human rights framework, the principle of non-discrimination requires States to take affirmative action to ensure that disempowered groups and

those suffering from structural discrimination such as indigenous peoples, migrant workers, persons with disabilities, persons with HIV/AIDS, refugees, prisoners, the poor, women and children have fair access to services and resources. However, corruption reinforces exclusion and discrimination and tends to magnify and exacerbate pre-existing human rights problems. 142 To participate effectively, people need to organize themselves freely (freedom of association), to communicate their opinions frankly (freedom of expression) and to inform themselves (right to access to information). Citizen's participation contributes in an essential way to political decision-making and the implementation of public policies. Where strong control mechanisms are lacking, the oversight that citizens and civil society organizations can exercise becomes particularly important to prevent abuse of power and to detect and denounce corruption. 143 Citizen participation additionally empowers vulnerable groups to demand and exercise their rights. Corruption reproduces itself when elites are able to perpetuate their privileges while disadvantaged groups have no means to defend their interests. 144 Citizen 29 participation breaks that circle and in the long run can help to redistribute power and resources while reducing opportunities for corruption.

V. SOCIAL EMPOWERMENT

Whenever human rights are guaranteed, the society will be empowered. This is because the ever increasing resources and alternatives are open to ordinary citizens. 145 In its classic postulation, social empowerment entails strengthening civil society in order to enhance its political and economic vitality, providing more orderly paths of access and rules of interaction between State and society, and balancing economic and political opportunities. 146 Where it is successful, social empowerment will not totally eradicate corruption. It can, however, provide necessary support for institutional reforms, weaken the combinations of monopoly, discretion, and lack of accountability that make for systemic corruption, and help institutionalize reform for the long term by linking it to lasting interests contending in active political and social processes.

VI. CONCLUSION

Corruption is a universal problem offending a universal value -human rights. Corruption per se is a violation of human

rights. Preventing corruption plays a great role for the realization of human rights. At the same time, guarantying human rights in general and ensuring non-discrimination and participation in particular will reduce the incidents of corruption. Whenever these are done, there will be social empowerment which creates social accountability. The anti-corruption campaign and the human rights movement have something to share in common. Both are struggling for the orderly and decent life of humans rooted in dignity and equality. Thus, it is important to note that an integrated approach is required if it is said the interests of the society are respected. This is made by acknowledging that human rights can play a preventive role for 30 corruption; and reducing the incidents of corruption will be a great lip forward for the enforcement of human rights. Such understanding opens the door to the existing human rights mechanisms on which to base further action against corruption, since corruption is a violation of human rights. Human rights monitoring mechanisms such as international and regional human rights commissions and courts, UN complaint mechanisms or national human rights systems will be useful to remedy corrupt practices. This brings the anti-corruption and human rights activists together for the fight against corruption and violations of human rights.

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