

UN Conference on Anti-Corruption Measures Good Governance and Human Rights

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Integrity and Ethics

by

Param Cumaraswamy

In his introductory remarks at the earlier joint OHCHR-UNDP seminar in Seoul in Sept. 2004 on Good Governance Practices for the Promotion and Protection of Human Rights the Foreign Minister of South Korea, H.E. Mr. Ban Ki Moon, who will be the next Secretary General of the UN, was reported to have said, inter alia, that although progress had been made towards achieving a universal culture of human rights and fundamental freedoms, today's world had not witnessed the ideal Society and human rights violations still occurred. Good governance should be seen as a prerequisite for the protection and promotion of human rights.

The Seminar Chairman's Statement while emphasizing on mutually reinforcing relationship between good governance and human rights acknowledged that though there was no exhaustive definition of the notion of good governance – yet participation, accountability, transparency, (State) responsibility and accessibility in particular to marginalized groups were identified as common elements.¹

Central to good governance are ETHICS and INTEGRITY.

In April 2004, the Malaysian Government launched a five year National Integrity Plan and set up an Integrity Institute to implement the Plan. Ethics and Integrity are the two key concepts which run through the entire Plan.²

The Plan defines ethics and integrity. Ethics as a set of moral values and principles which form the standards guiding the code of conduct of individuals, organizations and professions.

Individual ethics consists of a set of values that guide the conduct and behaviour of individuals enabling them to differentiate between what should and can be done and what should not and cannot be done. These values should be taught from cradle through schools and universities. The various religious scriptures articulate these values most succinctly.

Ethics in organizations serve as guidelines in the conduct of duties. These include adherence to the principles of honesty, competency, trustworthiness, truthfulness, transparency, accountability and justice. When interacting with the public organizational ethics also demands staff of organization to uphold the Client's Charter.

Professional ethics is a code that provides guidelines for practices in various professions. Lawyers including judges, doctors, accountants, teachers and even journalists are often subjected to code of conduct or ethics.

In simple terms integrity is a quality of excellence that manifests in a holistic and integral manner in individuals and organizations including governments.

Integrity of individuals is the harmony between what an individual says and does. His or her actions are in accordance with moral and ethical principles as well as laws and regulations and do not go against public interest.

Integrity of an organization is reflected in the formulation and implementation of its code of ethics, clients' charter and system or work procedures as well as compliance with best practices. The organizations' code of ethics is constantly reiterated, internalized and upheld by members of the organization until it became second nature and ultimately transforms into the culture for the organization as a whole. Organisations here include corporations.

Integrity of public officials means carrying out the trust and responsibilities assigned to them in the public interest. They are not permitted to misuse their power for their self interest or for the interest of their families or relatives. In a conflict of interest situation public interest should override personal interest. Public administration must be transparent and its officials must remain accountable.

In 1996 the UN General Assembly noted and expressed its concern at the seriousness of problems posed by corruption, domestically and internationally, its links with other forms of organized crimes including

money laundering and sought international cooperation to prevent and control. It adopted a set of standards for public officials known as the International Code of Conduct for Public Officials and recommended to member States as a tool to guide their efforts against corruption.

A code of ethics particularly for public officials without an enforcement mechanism will remain just a set of pious platitudes.

These are the ideals. But as Mr. Ban Ki Moon said we have yet to witness the ideal society. The want of ethics and integrity in public administrations, corporations and professions are evidenced by the extent of corruption and human rights violations we are confronted with today.

Today corruption is seen as a serious problem throughout the world community. It takes place in every economy, in every type of political system and in every part of the world. Even the most advanced and developed countries with well developed institutions are not spared of this evil. The Enron, Worldcom and the Italian giant Parmalat scandals hit the world headlines in recent years. As said by the former Chairman of Transparency International, Peter Eigen, it is a major cause of poverty as well as a barrier to overcoming it. “The two scourges feed off each other, locking their populations in a cycle of misery. Corruption must be vigorously addressed if aid is to make a real difference in freeing people from poverty.”³

The United Nations itself was not spared resulting in the establishment of an Ethics Office at its Secretariat in New York at the

beginning of this year as part of the UN reforms. It will administer the new financial disclosure and whistleblower policies and attend to training programmes. This is a step in the right direction and should be seen as giving “leadership by example” to member States.

Corruption is the cancer of society. If not excised promptly and effectively it will erode and destroy the very fabric of society. Such societies then become breeding grounds for gross human rights violations. This is the stark reality today. What happened in the Asian region and more particularly the South East Asia is a good case study in the linkage between corruption and human rights violations.

After the end of the Korean war the seventies and eighties were the worst decades for human rights in Asia particularly South East Asia. The Vietnam war had just ended in 1975. The reign of terror of the Khmer Rouge in Cambodia devastated its ancient culture and caused the deaths of over two million Cambodians. Philippines was under marshal law, at least until 1986. Indonesia was under another dictatorship. Thailand was subjected to frequent states of emergency and military coups. In Fiji military strongman Rambuka took power through a coup. In 1987 in Singapore 24 social activists including lawyers were detained without trial under the infamous Internal Security Act. That was followed in the same year when 106 people including opposition leaders and other social activists were similarly detained without trial under the internal security legislation in Malaysia. That was followed in 1988 when the independent Malaysian judiciary was assaulted. In 1990 the military government in Myanmar failed to honour the results of the relatively fair election. Instead the government

attacked the coalition of winning parties and their leaders through intimidation, detention and house arrest. Democracy suffered a severe blow. In 1989 we all remember what happened in Tiananmen Square in Beijing. Sri Lanka saw the worst of its ongoing ethnic war which still continues.

Some of the leaders of these governments who were largely responsible for these violations often were heard justifying those actions on the ground that political and civil rights had to be restricted in order to promote economic growth. Thus trade took precedence over rights. To a large extent some of these governments succeeded. There was seen a great Asian economic boom. Large scale investments from the West to Asia and Japan and South Korea to South East Asia were recorded. Stock markets sky rocketed. It was the era described as the “Asian miracle”. The evils of sudden economic growth emerged. Corruption, nepotism and cronyism flourished with impunity and began to erode public institutions. Privatisation schemes of State corporations including its essential services were seen as the domain of a few selected cronies of political leaders in power. Unscrupulous foreign investors were seen in collusion with local public officials. Insider trading activities and influence peddling eroded the integrity of public corporations particularly financial institutions. Transparency and accountability in public institutions and the private sectors were non-existent. Good governance was unheard. Accumulation of wealth and materialism became the preoccupation of many among the elite. The poor remained marginalized. When reforms were called for by concerned groups they were shunned. The judiciaries in the region, at least some of them, were seen as an appendage of the executive arm of the government

and were perceived as corrupt. The rule of law was in jeopardy in some of these countries.

It was during this period there emerged the debate on whether human rights as enshrined in the Universal Declaration on Human Rights was consistent with the concept of 'Asian values'. This debate spilled over even after the Vienna Conference on Human Rights in 1993 and the adoption of its Programme of Action. In essence Asian values was nothing more than "respect your elders and don't question them". The days of father-knows-best decision making is over.

What happened in the region since? Public uprising, now commonly described as "people's power", overthrew a dictator in the Philippines in 1986; similar uprising in Thailand on the streets of Bangkok in 1992 restrained the power of the military and sent them back to the barracks and returned democracy; (the latest coup is said to be different. It appears to be supported by the benevolent King and generally by the people as a necessary evil to mete out another evil. But the suspension of the constitution has called into question the state of democracy and fundamental rights in that country. Freedom of expression is the main casualty). This was followed in 1998 when another similar uprising overthrew another long serving dictator in Indonesia. Two presidents were charged and convicted for corruption in South Korea. What then happened to the so called economic boom? The Asian economic meltdown in 1997. Lessons learnt from these events slowly but surely began to transform the political and economic scenario in the region.

A conference of 120 politicians, journalists and academics from 12 Asian States in 1998 met in Bangkok to address the political responses to the problems raised in the Asian financial crisis. The conference concluded, among others, that democracy is sine qua non for good governance. Good governance needs to separate political and business interests. And corruption needs to be combated on all levels. It identified six political reforms needed at the national level in the following areas:

- 1) electoral systems;
- 2) a separation of powers and independence of the judiciary;
- 3) protection of civil and human rights;
- 4) support of an effective civil society;
- 5) free media;
- 6) civil-military relations.

The United Nations' calls to member States to establish national human rights institutions to address human rights issues domestically are now being responded to positively. At the end of 1993 there were only five national human rights institutions in the Asia Pacific region. Today there are eighteen. Whether all these institutions conform with the Paris principles is another matter.

There are still a number of member States which have not ratified or acceded to the several UN human rights instruments particularly the three major ones: the Covenant on Civil and Political Rights, the Covenant on Economic Social and Cultural Rights and the Convention Against Torture.

It is encouraging to note that as at October 17, 2006 70 States have ratified the Convention Against Corruption though not many from the Asian region.

There is however greater awareness of human rights in the region today than before. There is greater respect for human rights by governments today than before. The current situation in Burma is a concern. Some ASEAN member States have expressed that Burma is becoming an embarrassment to ASEAN.

The current crackdown in China where some 300 investigators are reportedly examining property deals and procurement practices affecting top party leaders is an interesting development to follow.⁴ The integrity of the exercise will depend on whether the investigations are impartial and not selective and targeting opponents of the power base. The current double digit growth rate makes China vulnerable to boom and bust economic cycles as what happened to some of the South East Asian countries in the 1997/98 financial crisis. The high incidence of corruption and human rights violations must be minimized to avoid such a catastrophe.

From lessons learnt there is realization that corruption impacts human rights violations. Structures and procedures to enhance good governance in both public and private institutions are being experimented. In particular regulatory legislation to compel corporations to annually disclose the extent of good governance measures undertaken are enacted. After the Asian financial crisis financial institutions are carefully monitored.

The 1993 Vienna Declaration and Programme for Action on Human Rights reiterated inter alia, *“the need to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist”*. Asian governments, largely on grounds of diversity, have kept away the pressures for a regional mechanism for human rights. Today Asia is the only region which has not such a regional mechanism.

Last December in Kuala Lumpur the ASEAN Heads of Governments at their annual Summit appointed a group of 10 eminent persons (EPG) in the region to submit recommendations for an ASEAN Charter to institutionalize ASEAN. The Charter is expected to include, amongst others, directions for good governance and human rights protection. The EPG is scheduled to submit its recommendations next month at the next Summit in the Philippines. Civil society groups in the region are in dialogue with the governments for a human rights mechanism for the region. Very recently at an ASEAN human rights workshop in Kuala Lumpur the Malaysian Foreign Minister publicly supported the call for the setting up of an ASEAN Regional Mechanism on Human Rights.

The process of transformation, however, is seen by civil society groups as slow. With their vigilance the process may be accelerated.

Reforms for good governance must be strategised and addressed at several levels. At the top the government must be participatory and responsive to the people's needs. It must be accountable. Checks and balances are at the heart of accountability. Checks and balances must be in

place throughout society to counterweigh society's powerful institutions. There must be in place legislation compelling public officials to periodically declare their assets to an independent body without provision for selected officials to seek exemption as what happened recently in Trinidad and Tobago. A free press is essential. Civil society groups must be given their rightful space to monitor the government and its agencies and educate the people. This cannot be done if there is no right to access to information and whistleblower protection legislation. In essence using the vocabulary of anti-corruption activists a "national integrity system" must be evolved and set in place. Jeremy Pope's TI Source Book 2000 on Confronting Corruption: The Elements of a National Integrity System sets out the structures for such a system.

In combating corruption independent anti-corruption mechanisms and the office of an ombudsman can be effective institutions. For addressing human rights promotion and protections national human rights institutions given the resources could be effective.

There is however one institution pivotal to deal with corruption and human rights violations which needs particular attention. The judicial organ of the State. For decades in the seventies and eighties international NGOs (INGOS) were preoccupied and devoted their attention in monitoring attacks on the independence of the judiciary, the judges and lawyers and campaigning for their protection. Accountability of the judiciary and its judges and lawyers was not part of the campaign then. To the extent when the two international instruments namely the Principles on the Independence

of the Judiciary and the Role of Lawyers were adopted by United Nations in 1985 and 1990 accountability was not addressed expressly.

It was in the mid nineties there emerged the phenomena of judicial corruption. In 1997 among the judiciaries of 48 countries examined corruption was pervasive in 30.⁵ Judges are appointed for their proven competence, integrity, probity and independence. At least they are assumed to be appointed for these qualities. They are standard setters in society. They interpret the law upon which society is structured and human relationships are conducted. Their actions and conduct, both within and outside the courts must be at all times be above suspicion and seen to be so if they are to command the respect and confidence of the public. Suspicious conduct of one or two judges is enough to tarnish the image of the entire judiciary. At the core of judicial independence is public confidence in the institution.

What happened to this alter of justice I then asked? Was it symptomatic of the growing degeneration of public institutions in some countries and the judiciary got sucked in? Were the insulations conferred on judges for the protection of their independence abused for personal gains? Was the judicial arm so underresourced, including judicial salaries, that judges were tempted to accept “side incomes”? International funding agencies involved in judicial reform projects were heard expressing frustration over the prevalence of this menace.

Calls for greater judicial accountability were heard whenever judicial independence was asserted. Unscrupulous political leaders fearful of the

independence of judges were seen taking advantage of this weakness to undermine judicial independence. This resulted in some concerned senior judges including Chief Justices from the regions forming a group known as Judicial Group on Strengthening Judicial Integrity with the support of the UN and other institutions to draft a set of ethical standards for judges. Over a period of three years this group of eminent judges drafted the Bangalore Principles of Judicial Conduct. In 2003 these principles were presented to the UN Commission on Human Rights. The Commission unanimously noted the document and by resolution called upon member States to take them into consideration.

The purity of the justice system is essential and must be maintained for effective human rights protection and combat corruption. This includes not just the judges but the prosecutors and lawyers too. If the justice system is perceived as corrupt and wanting in integrity there is no hope whatsoever for combating corruption and protection of human rights. It is learnt that the 2007 Global Corruption Report by Transparency International will focus on judicial corruption.

Let me now conclude. I have attempted to address ethics and integrity in the context of the theme of this conference rather than venturing into a philosophical and academic discourse. Hence the case studies. Lessons learnt from bad practices should be used to formulate good practices. The bad practices should never be repeated. Changing mind sets from bad practices will take time.

There is no doubt in my mind that there is a link between corruption and human rights violations. Combating these evils in societies need concerted efforts in cooperation with like minded groups both State agencies and civil society. In this regard partnerships between national human rights institutions and anti-corruption agencies including national chapters of Transparency International should be encouraged to identify common approaches to address these evils.

Last April at a workshop of the four national human rights institutions in ASEAN in Manila I expressed my concerns on the impact of corruption on human rights violations and called the institutions to be mindful of this and address the issue. My suggestion received a lukewarm reception. Following this conference I recommend that the OHCHR consider placing this on the agenda when the national human rights institutions meet at the sidelines of the sessions of the Human Rights Council.

Endnotes

¹ E/CN.4/2005/97

² Government of Malaysia – National Integrity Plan

³ TI Press release on Corruption Perception Index 2005 – 1.10.05

⁴ See IHT- October 27,2006

⁵ CIJL 9th Annual Report