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**HOW HUMAN RIGHTS PRINCIPLES & APPROACHES CAN HELP IN
FIGHTING CORRUPTION***

Maina Kiai

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How is corruption a violation of human rights?

1. There is increasing consensus that corruption is indeed a human rights issue that should be the subject of work by human rights practitioners. This is especially so after the Vienna Declaration stated that all human rights were “indivisible, interdependent, interrelated and of equal importance for the dignity of all human beings.”
2. The Committee on Economic Social and Cultural Rights (CESCR) has provided a fuller interpretation of Article 2 of the ICESCR—where much of the legal rationale for treating corruption as a human rights issue emanates from--by emphasizing that while “progressive realization” constitutes recognition of the fact that full realization of all economic, social and cultural rights cannot be achieved in a short period of time, there is, nevertheless, a core duty for States to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights incumbent upon every State party¹.
3. We need to see this interpretation in the context of the World Bank’s definition of corruption as “the abuse of office for private gain” through such acts as bribery to circumvent public policies, through patronage and nepotism, through the theft of public resources or through the diversion of state resources.
4. In Africa, corruption is responsible for the non-realization of basic human needs such as health care, education, infrastructure and clean water by converting to private pockets, resources meant for the purchase of public goods. Corruption further hurts the poor disproportionately by diverting funds intended for development, undermining a government’s ability to provide basic services, feeding inequality and injustice, and discouraging domestic and foreign investment and aid.²
5. Linking corruption and human rights, the KNCHR has developed an approach where it “translates” the amounts from corrupt scandals into more understandable concepts so that citizens can see the opportunity costs of corruption.³
6. In addition to eroding ECOSOC rights, corruption also erodes civil and political rights by encouraging discrimination in favor of the few with proximity to power, and increases impunity. Moreover, in order to cover up corruption, freedom of expression and the media is often assaulted, as the corrupt elite adopt hard-line tactics to harass and intimidate critics of corruption.

7. In emerging democracies, corruption fuels the need for huge campaign war chests for election purposes. In Kenya, for instance, there has been a traditional spike in corrupt deals in the year before, and the year of, elections since multipartyism was re-introduced in 1992.⁴ This leads to vote buying, negating the right to vote in a state where more than half the population lives below the poverty line.
8. There is often a link between corruption and use of public resources for conspicuous consumption and luxurious living by the powerful elite, as public funds are seen as available to ensure comfort and ostentation.⁵ We are not too clear which comes first, but when there is obvious ostentation in high public office, there is likely to be widespread corruption as well.
9. Similarly, when public office is a better paying prospect than the private sector, corruption is sure to be lurking by. In Kenya, the Director of the Anti-Corruption Commission earns about \$35,000 a month, Ministers about \$14,000 a month and Members of Parliament about \$10,000 a month, in a country with a per capita income of less than \$500 per year. Clearly this is unsustainable, and leads to corruption in order to get into these positions. Of course, underpaying public officers also aids corruption, but a reasonable balance needs to be found.
10. More than anything else, anti-corruption measures require a political class that is committed more to public interest than personal power and wealth. This commitment from the political class can either be based on a set of values (as in Mandela's South Africa) or more often, driven by public demands for accountability.⁶

Human Rights and Good Governance Approaches for Fighting Corruption

The most important human rights approaches that should be used in the fight against corruption is the "bottom-up, demand driven" approach where the citizenry themselves are the key players in advocating change and reform and holding political elites accountable. This is a tested method across the world, from Amnesty International style letter writing campaigns; to civil rights era mass action and civil disobedience campaigns; to the apartheid era use of funerals and boycotts to raise public anger.

11. For this to be effective, however, Access to Information is critical. And it is a fundamental human right. The fact that only about 70 countries in the world have access to information laws means that corruption and malfeasance continues to thrive in an environment of opaqueness and secrecy, yet, Government does not hold information for the sake of it.

12. Due to lack of an access to information law in Kenya, one of the favored tactics to perpetrate grand corruption has been using promissory notes for corrupt deals that are then transferred to the secret Public Debt Register and paid off over a number of years. This Debt Register should be made open to scrutiny and a system for accumulation of debt that goes beyond the Executive alone created.

13. Equality under the Law⁷: This internationally accepted standard means that the law should apply equally to both the mighty and the meek hence the need to go beyond criminal law as the only way to fight corruption. In this context, asset recovery through equal application of the law should be a critical tool to deter corruption by requiring those unjustly enriching themselves from public funds to surrender these assets to the public since the level of evidence necessary to prove a charge of unexplained assets is less onerous than in criminal cases. This should go hand in hand with public declarations of wealth by public officers, as well as “name and shame” campaigns, which have been effective in traditional human rights work.

14. The judiciary is a critical pillar in anti-corruption work, and it needs to be well resourced, independent and efficient. If the judiciary is slow, overwhelmed in ordinary cases, then the likelihood of it being open to compromise is much easier.

15. Similarly, an effective and accountable police force is necessary as police forces are most often the most corrupt institution in most countries. Lacking a sense of public purpose and discipline, regime police forces tend to function poorly and corruptly. Corruption remains rife because that is the culture set at the top⁸. Effective and independent investigative, prosecution and judicial agencies must be created that see public confidence as their major constituency rather than political support. And their functions need to be separated clearly to avoid using anti-corruption as a political weapon against critical voices.

16. Independent and Effective Electoral administration with powers to punish bribery and also to question where funds for campaigns come from is important in dealing with campaign-driven corruption.

17. The role of Civil Society: NGOs and other civil society actors have a major role to play in fighting corruption and bring about change by throwing their weight behind the citizenry in order to counterbalance the power of the state thus ensuring accountability between the people and their governments, in much the same way they facilitated the pro-democracy movement in Africa. The increased democratic space available in many countries in Africa creates new opportunities for civil society and NHRIs to use the space to counter corruption, in as creative ways as possible. This not only address some of the

causes of lack of political and economic development, but also increases democratic and human rights space.⁹

18. Effective and Cooperating Oversight/Ombudsman offices are key as they are normally mandated to receive and investigate public complaints of abuse of office and other violations and occasionally come upon evidence which the Anti-Corruption bodies may not have or which reinforces investigations already being undertaken. Ideally, Human Rights Institutions and anti-corruption bodies should cooperate.
19. Freedom of Expression: A free and pluralistic media (not only in diversity but also in terms of competition) constitutes a critical plank of fighting corruption and imposing accountability. Transparency requires free and open flows of information and corruption can be controlled by a press that is free from intimidation and restraint, a press that has resources to investigate evidence of corruption and a press that has the maturity, restraint and professionalism to avoid sensation.

A Comprehensive system of Accountability is mandatory in order to combat Corruption

20. The principle of separation of powers: In any system, parliament constitutes a general check upon executive power. It is therefore important that parliamentary oversight committees are granted teeth to go with their bark and one of the most effective tools in this is the use of lustration against public officials found to have been involved in corruption¹⁰.
21. Dealing with impunity¹¹ for past human rights violations including corruption should be done immediately after a transition to more democratic government. This sends a message that the practices of the past will not be tolerated and a new chapter has been opened. One cannot, for example, underestimate the value to South Africa of its Truth Commission in laying the basis of a new value system for the post-apartheid South Africa.
22. As corruption does not occur in a vacuum, it is critical that focus be on the complete circle of corruption and not just one part of it. One of the creative human rights approaches has been the one that includes as a target for accountability, the supplier of weapons used to commit genocide and not just the genocidaire alone. For corruption, it is important to also focus on the lawyers, the accountants, the bankers, the real estate agents and other professionals without whom it would be impossible to hide corruption or its proceeds. And tighter professional standards, international in nature, should be put together to guide these professionals in much the same way that Corporate Social Responsibility has become a norm in human rights.

23. There is also need to explore and expose the international linkages that fuel corruption either by actively participating in the grand schemes to loot state coffers or by keeping the proceeds of corruption in banks and investments internationally, in much the same way that human rights practitioners have focused on not only the violating state, but also the role its international supporters play in sustaining or protecting the violations. Again, clearer norms and standards must be created so that the sweat of poor farmers in Africa does not end up being invested in Europe and America.

24. Use of “smart” or “targeted” sanctions, as learnt from the human rights arena. We must not underestimate the psychological impact of denying visas to the West for African elites and their children where it is not clear how they have become rich. Indeed, many of the corrupt come for medical treatment in the West where they also educate their children.¹²

25. Stringent Corporate Social Responsibility¹³ is needed to weed out the “wheeler dealers” most often involved in grand corruption. This partly includes more transparent and open business registration processes so that ownership of companies is known and clear without resorting to holding companies, or trustee held companies. This would eliminates the conflict of interest type corruption where public officials award contracts to their own or related companies, yet it is impossible to establish such facts without extensive investigations.

Conclusions

Clearly, a multi-sectoral, multi-faceted approach to dealing with corruption is what is needed. And this must be both domestic and international. There are many lessons to learn from the various struggles for human rights and democracy, but the central one must be that it is the people themselves who are the first and last bastions in the war against corruption. Thus empowerment strategies—not just civic education strategies—must be implemented so that public umbrage and scorn attends those elites engaging in corruption.

Notes

¹ CESCR General Comment 3, Fifth Session, 1990

² As a result of corruption, for instance, bridges and buildings collapse because corrupt officials do not enforce construction codes; terrorists enter into countries as immigration officials take bribes to issue passports or allow them in at border points; citizens are insecure and paralyzed by fear because the Police fail to enforce the law; and many more. See Kenya National Commission on Human Rights publication "*Nguzo za Haki*" Issue 3, February 2005 available at <http://www.knchr.org>.

³ For instance, the cost of the "Anglo Leasing-type" scandals from 1997 to 2004 cost Kenyan taxpayers about \$240 million. This "translates" into tarmacking about 1000kms of Kenyan roads plus water projects for every village in Kenya in the dry zones.

⁴ The infamous Goldenberg scandal involving fictitious "exports" of gold and diamonds that Kenya does not produce in order to obtain export compensation claims from the government as a way to encourage exports, reached its peak in 1992 just prior to the first multiparty elections with a loss to Kenya in total of about \$1 billion. Also 11 of the 18 Anglo Leasing-type contracts mostly with non-existing entities to supply various "security" equipments were signed in 1997 and in 2001-2002 just before the elections.

⁵ For instance, a joint report by Transparency International-Kenya Chapter and the Kenya National Commission on Human Rights has documented how the purchase of expensive luxurious vehicles for the personal use by Government Ministers and other senior officials negatively impacts on the lives of ordinary folk. See "LIVING LARGE: Counting the Cost of Official Waste in Kenya"

⁶ When a government itself is transparent and disciplined in its commitment to the public welfare, it breeds a political culture of responsible citizens willing to sacrifice immediate advantages for the longer-term common good.

⁷ Article 7 Universal Declaration of Human Rights provides "All are equal before the law and are entitled without any discrimination to equal protection of the law". Article 26 ICCPR states that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

⁸ Transparency International has consistently rated the police as the most corrupt institution in Kenya.

⁹ The KNCHR, for instance, collaborates with NGOs in almost all its work, seeking to create mutual exchanges and learning, and taking advantage of mutual strengths and capacities.

¹⁰ In many democracies, parliamentary committees investigate suspicions of waste, fraud and abuse within the executive agencies under their jurisdiction. Oversight by parliamentary committees is particularly important in monitoring and legislating on particular areas of government policy such as health, public works or defense. For a more comprehensive reading, see Prof Larry Diamond "Building a system of Comprehensive Accountability to Control Corruption" published by the Center on Democracy, Development and the Rule of Law, Stanford University August 2005.

¹¹ There are few problems as endemic as impunity in many parts of Africa. Yet, this creates frustration with the political system, conflicts and general insecurity and decay in society, violating many rights under international law.

¹² It has been averred that had President Mobutu of Zaire been allowed access into Europe, perhaps he would have caught the prostrate cancer that eventually killed him.

¹³ CSR is closely linked with the principles of sustainable development in proposing that enterprises should be obliged to make decisions based not only on the financial/economic factors but also on the social and environmental consequences of their activities. The idea that a company ought to be

sensitive to the needs of all of the stakeholders in its business operations is now widely accepted by human rights practitioners. Such a holistic approach to business regards organizations as being full partners in their communities, rather than seeing them more narrowly as being primarily in business to make profits and serve the needs of their shareholders.