

# *Family Courts in Crisis*

## **Newsletter**

**March 2014**

## **Corruption & Human Rights**

### **Part I**



*Countries... have systematically denied the existence of organized crime. Believing that in this way the danger will disappear, like an ostrich that hides its head under its wing when danger approaches...*

*Know your enemy, because if you do not know what you are up against, you will have a hard time confronting it, a hard time combating it. And, if you [try to fight them] without knowing what you are facing, they will always have the advantage, that is to say, they will always be two steps ahead of you. That is what has happened in the world... and has been this way for a very long time, even today.*

*A World Without Fear, Baltasar Garzón*

*...He was bound to the guerrillas in an almost feudal relationship that was based on dependency, submission, allegiance, interest, and fear.... Those around me had been aware of my moment of hope. They were animals trained to sniff out other people's happiness. I had done the same. I had gotten a whiff of their fear, and I had delighted in it. Now I could smell their satisfaction at my disappointment. I belonged to them. Their sense of victory excited them. They nudged one another, whispering and looking me straight in the eye. I lowered my gaze. I was powerless.*

*Even Silence Has An End by Ingrid Betancourt*

# Judicial Corruption & Discrimination Against Women within the Court

by Quenby Wilcox – January 2014

Campaigns against judicial corruption usually concentrate on bribery and influence peddling, particularly in terms of “grand corruption”, while discounting the importance &/or prevalence of “petty” corruption, and the more subtle social forces at play. For this reason, combating judicial corruption normally focuses on promoting judicial independence as the solution; assuming that if ‘external’ factors are removed, giving actors a ‘free-hand’, everyone will diligently fulfill their respective roles.

Unfortunately, with judicial systems consistently demonstrating 70-90% negligence rates, this is a dangerous & erroneous assumption. And, one which assumes that corruption is only influenced by ‘exterior’ forces of which actors are consciously and cognitively aware, as well as a false assumption of competence & diligence of said actors. The biases and cognitive limitations of people at play here are explained in *Perception & Misperception of Bias in Human Judgment* by Emily Pronina:

*People are not always accurate and objective at perceiving themselves, their circumstances & those around them. People's perceptions can be biased by their beliefs, expectations & context, as well as by their needs, motives & desires. Such biases have important consequences. They can compromise the quality of human judgment & decision making, & they can cause misunderstanding & conflict...*

*Much of human judgment & action is driven by nonconscious processes. People can form impressions of others, pursue goals, adopt attitudes & regulate their emotions – all without awareness, effort or intention. They claim freedom from racial bias & from gender bias, even in circumstances where they have shown these biases– at times even showing these biases more strongly the more objective they claim to be. When making judgments about who is ‘right’ in a conflict, people tend to side with the person who shares their ingroup identity but they again deny that bias.*

And, since ‘cognitive biases’<sup>1</sup> & ‘selective perceptions’<sup>2</sup> produce the stereo-types in our societies (creating the most insidious & dangerous type of corruption & immorality), it is important to understand what role they play in people’s decision-making process. As Robert Kohls states in *Survival for Overseas Living*;

*“Stereotypes are natural; they are one way people everywhere deal with things which are too complex to handle or about which they have inadequate information. [Nancy Adler](#) has said that due to the multiplicity of impulses that our brain is receiving as our sensory receptors are being flooded with stimuli, we have no choice but to ignore most of them in order to pay attention only to those few that we have learned to consider as most vital... another truism about stereotypes is that once formed in people’s minds, they outlive the partial truth that created them in the first place. They are also destructive in personal encounters because they are unfair and because they interfere with getting to know individuals as they really are...*

To further complicate matters (in examining the responsibility of a government to protect victims of domestic violence, and how judicial corruption, might impede the fulfillment of that obligation) is that corruption in family courts is not considered ‘important’ by governments and the human rights community because they fail to appreciate the role that homemakers play in a society and socialization of our young. As stated in *When Legal Worlds Overlap Human Rights, State & Non-State Law* by International Council on Human Rights;

*“family law [is seen] as ‘minor’ ... [creating] a distinction between ‘major’ & ‘minor’ human rights.”*

<sup>1</sup> a pattern of deviation in judgment, whereby inferences about other people & situations may be drawn in an illogical fashion, leading to perceptual distortion, inaccurate judgment, illogical interpretation, or what is broadly called irrationality <sup>2</sup>the process by which individuals perceive what they want while ignoring opposing viewpoints.

This attitude has significant implication in terms of the application of human rights law, showing to what extent the rights of women & children within the family are not recognized by societies & human rights advocates. None of the actors involved in the problems (or potential solutions) are recognizing the vital role of the homemaker in producing healthy, well-functioning, productive societies:

*“...by her life within the home, woman gives to the State a support without which the common good cannot be achieved...women and the family often serve a crucial symbolic role in constructing group solidarity vis-à-vis society at large.” ... Thus, control over family law, and by extension women’s rights, is important to the power of state and non-state actors alike....State recognition of demands for distinct family laws therefore needs to be seen...as a **conscious political strategy that has profound human rights implications.**” [With the family considered as the] **“natural primary and fundamental unit group of Society”** [and] **“a moral institution possessing inalienable and imprescriptible rights...***

So in recognition of the fact that the homemaker & family unit, and thereby family law, has a profound human rights implications for the society in question, it is important for human rights advocates to examine the prejudices & biases of judges, lawyers, & psico-social teams within family courts. The most common of which are the following:

- The belief that women lie and make false accusations of domestic violence in order to gain preferential treatment during divorce (an illogical premise since women who file complaints for abuse (against them or their children) receive reprisals and detrimental treatment during divorce proceedings).
- The belief that women (particularly homemakers) are hysterical, stupid, don’t understand complex concepts ‘litigation/legal principles’ etc. As stated in (Coltrane 1998) *“[they are] weak, lacked strength, their brains [are] too small...”*
- The belief that homemakers “don’t do anything” and live-off the hard-work of their husbands. (This is the main reason that lawyers are failing to adequately reclaim common property assets during divorce, and judges are refusing to award alimony to women commensurate with contribution to home and family. As a consequence homemakers are left destitute by courts and denied access to common property assets during the entire process, effectively hampering their ability to defend themselves within the courts.)

In examining the case-study of Spain (see Nov. ‘13 & Jan. ‘14 [Family Courts in Crisis](#) newsletters) – judges award alimony in 11.4% of divorces with reported sums at €500/month (below poverty level) after an average of 15 years of matrimony with the average age of women, 42 years old. Many of these women who have not developed careers and dedicated themselves to raising children & assisting husbands in developing their careers (and elevated salary levels) are left penniless, and thrown into labor-markets where gender & age discrimination is rampant (with unemployment rates of 26.7%) condemning them to a life of extreme poverty. Basically, the courts are relegating the status of the homemaker to one of servitude with no recognition of her contribution to the family or society, & ‘workers’ rights (“safe conditions,” compensation, or pension, etc.) – in violation of Convention of Civil & Political Rights, & Intl. Covenant on Economic, Social & Cultural Rights)

Other social factors, influencing the attitudes, behavior & decisions of judicial actors are:

- Historically victims of domestic violence have been “silenced” by the community in order to protect the “honor” of the abuser (using tactics such as making victims feel “ashamed” & “responsible”, talking about abuse is not “polite” conversation, social ostracisation, restricting access to assets & funds, etc. Lawyers are (illegally) utilizing these same tactics in silencing victims (their clients); simply because this is how everyone has always handled the situation – common custom & habits. – Habits are hard to break, and nowhere is this more evident than in family courts...
- On average two-thirds of populations suffer from “abusive personality” disorders, with abusers more likely to seek jobs which put them in positions of authority and facilitate their access to victims. It

should be noted that the tactics used by lawyers, judges & court psico-social teams are those found in the [‘Power & Control’ - Duluth Wheel Model](#). **Unfortunately, these tactics have become so consolidated & integrated into court customs & procedures, they are widely accepted as ‘standard operating procedures’.** In order to ‘break the cycle of abuse’ in the courts, these procedures must be draconically challenged & eradicated. But first their existence must be recognized!

- Lawyers, judges & court psico-social professionals are in positions where they can easily & readily abuse their powers over women. – This is the reason that accountability of judicial actors by regulatory agencies is of the utmost importance in assuring transparency & accountability of family courts.
- There exists a false assumption that women lawyers, judges, etc. will automatically defend the rights of victims, when in fact these women are as likely, if not more likely, to discriminate against victims or cover-up abuse. As stated in the UN report *In-depth study on all forms of violence against women*:  
*“Women also commit acts of violence. While women commit a small proportion of intimate partner violence, they are involved to a greater degree in the perpetration of harmful traditional practices”*
- There exists a high level of nepotism, “old-school” networks, and antiquated “code of honor” traditions amongst lawyers (and other judicial actors) which encourage (if not obligate) the covering-up for “indiscretions” (negligence, malpractice, etc.) of colleagues
- Divorce courts are a huge money-making industry, with little incentive for lawyers to develop arguments and jurisprudence advancing the rights of women within the family or marriage. Yet, jurisprudence (supreme/constitutional court decisions) in the past few decades, regarding domestic abuse and family law, has made many inroads in advancing father’s rights and ‘abusers rights’, with little opposition/argumentation from family law lawyers. (This is an area which needs serious examination, and work, from a trans-national pool of legal experts in family law, in conjunction with human, civil and women’s rights lawyers.)
- Women’s rights movements have concentrated almost exclusively on women’s rights within the workforce and reproductive rights in the past decades – but not the home or marriage. This has left a “vacuum,” and women have not gained any rights within the family in the past 100 years, simply because no one is “requesting/demanding/arguing for” those rights in the courts. – Again, a simple matter of ‘customs’ and breaking with ‘customs’ – one of the hardest thing to do in a society  
– Feminists & women’s rights activists have traditionally considered homemaker’s role (house-keeping, child-raising, supporting husband’s career, even marriage itself) as ‘shackles of oppression’, so they have little incentive or desire to promote legal rights of homemaker in the courts or elsewhere
- There is no effective over-sight on family courts, with gag orders common when victims attempt to attract media attention; providing the opportunity for corruption in family courts to develop & thrive – **And, why media attention is so vital to bringing changes!**
- **There is an extremely high correlation between abusers and criminal activity.** Organized crime & white collar criminals develop extensive networks within judicial systems, and utilize these during divorce proceedings & DV cases. Some of the tactics utilized (and typical of the problems seen in family courts) are enumerated [The Global Corruption Report: Corruption in the Judiciary \(2007\)](#), Transparency International, and are as follows:
  - *Judicial civil servants manipulate the dates of hearings in order to favor one party over another*
  - *Judge make inexact summary-decision / distort testimonies of witnesses before handing down a sentence*
  - *Judges refuse the introduction of evidence or testimonies in order to favor one party over another*
  - *Civil servants —lose a document*
  - *Prosecutors block avenue of legal reparation*
  - **[Noting that] corruption is more likely in judicial procedure where journalist do not have free access to all fact or lack of activist groups who push for reform.**

*Examining the Links Between Organized Crime and Corruption* by Center for The Study of Democracy, further exposes the influence white-collar criminals/abusers have at their disposition, recalling that abuse is about power & control;

*“white-collar criminals exert more pressure on the judiciary, as they have easier access to social networks that facilitate corruption... organised crime uses social, professional & political networks to influence the judiciary... Certain type of companies, such as law firms are in high demand by organised crime as middlemen... Attorneys have a significant competitive advantage over all other intermediaries – they can provide services through the whole institutional chain, starting with police & going all the way to prosecutors and even judges... ‘Collusion’ is often a more appropriate way of describing professionals’ corrupt behaviour, including that of lawyers...*

The factors which influence corruption in family courts, their failure to protect victims, and failure to recognize the rights of women and children involve a large range of factors, which must be examined from an intersectional approach by women’s & human rights organizations, as well as regulatory agencies when evaluating the actuation of judicial actors. Additionally, prosecutorial agencies must take a proactive role, and a hard stance, when investigating and evaluating criminal negligence, with severe sanctions & reparations to victims for monetary loss as well as personal suffering.

Unfortunately, regulatory agencies, beginning with Bar & Judge Associations are not proactively investigating cases where victims have been denied protection and/or rights violated, justifying their refusal to investigate under the erroneous contention that it violates the judicial independence of lawyers and judges. **(A full examination of judicial independence vs. accountability/transparency, & their inter-dependence rather than mutual exclusivity, will be covered in upcoming FCC newsletters.)**

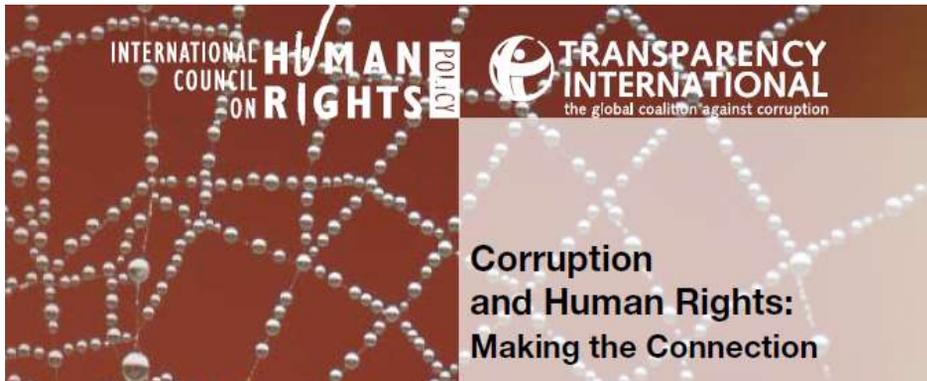
In the case of Bar Associations in the USA, the sanction rate of complaints received is 2 – 2½ % (with legal malpractice & negligence rates in the USA at an est. 70-75%). And, the Bar Association of Madrid has contended, in writing, that it is the **“right of a lawyer to violation their client’s rights under the principle of judicial independence”** (see Preliminar 859/13 <http://worldpulse.com/node/80671>).

The failure of government regulatory agencies (arguing that ALL agencies which fulfill a public function or authority are ‘government agencies’) to fulfill their obligation to assure transparency and accountability of those they license, regulate, and sanction **is one of the principle and the root causes of the failure of family courts to protect & defend the rights of victims.**

Sadly, lack of ‘good governance’ of regulatory agencies is not found only in those who supervise court systems, but is rampant in all sectors of societies and industries, and in countries across the globe (as the current global economic crisis is testimony). In the USA for example, we see it in the banking/financial markets and the SEC; the environment and the EPA; health-care systems and the HHS, FDA, AMA & APA, etc.; the list goes on. But, paradoxically political campaigns, promises and rhetoric are never directed at reforming these systems, promoting ‘good governance’, or eradicating rampant abuses of power and corruption within them. – **Until and unless political leaders are willing (and able) to address these issues and problems, the world will continue on its current spiraling descent.**

**A perfection of means and confusion of aims, is the underlying problem. This is the true challenge of the 21<sup>st</sup> century, and will determine if humanity survives the 22<sup>nd</sup> century.**

*There are those who believe destiny rests at the feet of the gods, but the truth is that it confronts the conscious of man with a burning challenge. – Eduardo Hughes Galeano*



## Corruption and Human Rights: Making the Connection

*The fight against corruption is central to the struggle for human rights. Corruption has always greased the wheels of the exploitation and injustice which characterise our world. From violent ethnic cleansing to institutionalized racism, political actors have abused their entrusted powers to focus on gains for the few at great cost for the many. For too long the anti-corruption and human rights movements have been working in parallel rather than tackling these problems together....*

Human rights conventions set out the legal obligations of a government, including ensuring that all people living in a country enjoy equality, a fair justice system, and access to goods and public services, among other rights. A government's ability to respect, protect and fulfil these rights – social, cultural, political, economic and civil – will ultimately be defined by the levels and systemic nature of corruption in those states...

UN Convention against Corruption (UNCAC) is the first global legal agreement to clearly provide a scope for the broad range of corruption-related offences that require preventive and corrective measures. Rather than limiting its focus to bribery, UNCAC holds to account both public and private sector actors for crimes such as embezzlement, trading in influence, abuse of position, illicit enrichment and obstruction of justice.

The criminalisation of such acts, as set out by UNCAC, provides a solid basis for holding states accountable and offers a path towards stopping human rights abuses. Linking anti-corruption and human rights frameworks in practice requires understanding how the cycle of corruption facilitates, perpetuates and institutionalises human rights violations.

When accountability mechanisms are weak or non-existent, it becomes too easy for violations to occur... the ability for civil society to engage in both the human rights and anti-corruption arenas is determined by governments respecting, protecting and fulfilling their obligations...

*Cobus de Swardt, Managing Director  
Transparency International*

## Vulnerability and disadvantage – Women & Children

While corruption violates the rights of all those affected by it, it has a disproportionate impact on people that belong to groups that are exposed to particular risks...It also disproportionately affects women and children.

### Corrupt acts

By reviewing the agreements that states reached while adopting international conventions, it is possible to gain an idea of what they generally agree are “corrupt acts”. The best such source is the UNCAC. - Bribery \* Embezzlement \* Trading in influence \* Abuse of functions or position \* Illicit enrichment...

### Determining when Human Rights are Violated

Human rights obligations apply to all branches of government (executive, legislative and judicial) at all levels (national, regional and local). According to human rights jurisprudence, an act (or omission) is attributable to the state when committed, instigated, incited, encouraged or acquiesced in by any public authority or any other person acting in an official capacity.

### Three Levels of State Obligation

It is now commonly understood that states have three levels of obligation in relation to human rights: the **obligations “to respect”, “to protect” and “to fulfil”**. The obligation to respect requires the state to refrain from any measure that may deprive individuals of the enjoyment of their rights or their ability to satisfy those rights by their efforts.

**The obligation to protect requires the state to prevent violations of human rights by third parties.** The obligation to protect is normally taken to be a central function of states, which have to prevent irreparable harm from being inflicted upon members of society. This requires states: (a) to prevent violations of rights by individuals or other non-state actors; (b) to avoid and eliminate incentives to violate rights by third parties; and (c) **to provide access to legal remedies when violations have occurred, in order to prevent further deprivations.**

Non-compliance with this level of obligation may be a vital determinant of state responsibility in corruption cases. By failing to act, states may infringe rights. If they do not criminalise particular practices or fail to enforce certain criminal provisions, for example, they may not prevent, suppress or punish forms of corruption that cause or lead to violations of rights. **The obligation to protect may also provide the link required to show that corrupt behaviour by a private actor triggers state responsibility.**

**The obligation to fulfil** requires the state to take measures to ensure that people under its jurisdiction can satisfy basic needs (as recognised in human rights instruments) that they cannot secure by their own efforts. Although this is the key state **obligation in relation to economic, social and cultural rights, the duty to fulfil also arises in respect to civil and political rights.** It is clear, for instance, that enforcing the prohibition of torture (which requires states to investigate and prosecute perpetrators, pass laws to punish them and take preventive measures such as police training), or providing the rights to a fair trial (which requires investment in courts and judges), to free and fair elections, and to legal assistance, all require considerable costs and investments.

A violation of a human right therefore occurs when a state's acts, or failure to act, do not conform with that state's obligation to respect, protect or fulfil recognised human rights of persons under its jurisdiction....

It is crucial to keep in mind that other obligations must be considered as well, at all three levels, such as the duty to establish norms, procedures and institutional machinery essential to the realisation of rights; and the duty to comply with human rights principles such as non-discrimination, transparency, participation and accountability.

## The Causal Link

### ***Direct violations***

Corruption may be linked directly to a violation when a corrupt act is deliberately used as a means to violate a right. For example, a bribe offered to a judge directly affects the independence and impartiality of that judge and hence violates the right to a fair trial. When an official has not deliberately caused the harm in question, due diligence becomes the test. If a violation of human right was foreseeable, did officials exercise reasonable diligence (all the means at their disposal) to prevent it?...

### ***Indirect violations (corruption as a necessary condition)***

In other situations, corruption will be an essential factor contributing to a chain of events that eventually leads to violation of a right. In this case the right is violated by an act that derives from a corrupt act and the act of corruption is a necessary condition for the violation...Even without a direct connection, therefore, corruption may be an essential contributing factor in a chain of events that leads to a violation, and so may violate human rights indirectly.

**Corruption often causes violations of women and children's rights in this way....** Corruption may also be an indirect cause where **corrupt authorities seek to prevent the exposure of corruption. When a whistleblower (someone investigating or reporting a corruption case) is silenced** by harassment, threats or imprisonment, or killed, the rights to liberty, freedom of expression, life, and freedom from torture or cruel, inhuman or degrading treatment may all be violated. In such a case, in addition to the original act of corruption that the whistleblower was trying to denounce, it is highly probable that the acts that subsequently infringed his or her rights would also have corruption as a cause (for example, corruption at the level of law enforcement). Again, acts of corruption will then be essential factors in the violation.

## Linking Acts of Corruption with Specific Human Rights

### **When corruption may violate the principles of equality and non-discrimination**

The principles of equality and non-discrimination are fundamental principles of 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. The UN Human Rights Committee has defined discrimination as "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms".

Four features of this definition are relevant with respect to corruption.

- 1) Acts of discrimination are defined widely (“any distinction, exclusion, restriction or preference”), and corrupt acts intrinsically distinguish, exclude or prefer.
- 2) The definition lists a number of “grounds” for discrimination (race, religion, colour, sex, etc.) but those grounds are not exclusive; inclusion of the term “or other status” shows this. As a result, discrimination on *any* ground is prohibited.
- 3) The definition of discrimination prohibits acts that have discriminatory “purpose or effect”. By definition, **corruption has both a discriminatory purpose & a discriminatory effect.**
- 4) Discrimination must bring about the specific result of nullifying or impairing the equal recognition, enjoyment or exercise of a human right, such as the right to life, right to education or right to health. Many corruption cases have such effects; they create distinctions, or exclude, restrict or prefer, in ways that impede individuals from exercising one or more rights.

### **When Acts of Corruption may Violate the Rights to a Fair Trial and to an Effective Remedy**

The right to a fair trial is established in several human rights treaties as well as domestic legislation (e.g. ICCPR, Article 14; ECHR, Articles 6 and 7; ACHR, Articles 8 and 9; and ACHPR, Article 7). It is composed of a broad range of standards that provide for **the fair, effective and efficient administration of justice.**

These standards address the administration of justice including the rights of the parties involved, the efficiency of procedure and effectiveness. We address each below. Again, it should be noted that, when referring to the scope and content of **the right to due process, we are applying standards that human rights supervisory bodies have developed on the basis of treaties that are binding on states that have ratified them.**

### **Standards Relating to the Administration of Justice**

These standards require compliance with several principles, including the independence, competence and impartiality of tribunals. Corruption may jeopardise judicial independence in several ways.

The principle of impartiality is of great importance: there must be impartiality in objective terms and there should be no appearance of partiality.

In this context, it should be noted that corruption in the process of appointment of judges and judicial officials may have the effect of lowering their quality. Appointments should be based on personal qualifications, moral authority and competence; if they are influenced by corrupt interests, the judiciary is likely to become less able as well as less independent, and the rights of those who apply to the justice system will not be fully protected.

In addition, corruption affects the administration of justice and the right to a fair trial when corrupt acts take place before a case reaches court, often at the investigation level. The police may manipulate evidence in favour of one of the parties, for example, or a prosecutor may alter the facts of a case. **This is not a minor issue. The value of prosecuting and punishing acts of corruption can evaporate if evidence is mishandled.**

## Standards related to the rights of the parties involved

Other standards protect the rights of parties to a trial. Individual rights and principles related to the right to a fair trial include: the right to a public hearing and pronouncement of judgement; equality of arms; presumption of innocence; freedom from compulsory self-incrimination; the right to know the accusation; adequate time and facilities to prepare a defence; the right to legal assistance; the right to examine witnesses; the right to an interpreter; the right to appeal; ...and the right to compensation for miscarriage of justice.

These are basic rights to procedural guarantees to which all human beings are entitled. **If acts of corruption impair any of these elements, there would be a violation of the right to a fair trial.** Acts of corruption might take the form of a bribe for a favourable judgement, or a more subtle infringement of the principle of equality during the trial process (such as impeding some parties from being in a procedurally equal position during a trial).

## Standards Related to Efficiency of the Procedure

Standards that refer to efficiency require that hearings take place “within reasonable time”. According to human rights bodies, the determination of the meaning of “undue delay” or “expeditious procedure” depends on the circumstances and complexity of the case as well as the conduct of the parties involved (see textbox 10). The right to be tried without undue delay will be infringed if, for example, a judge is bribed to delay the proceedings as much as possible. Although in this case the right to a fair trial would be infringed by the bribe itself, in cases where there is insufficient evidence to prove that a judge has been bribed, violation of the requirement that hearings should take place in a “reasonable time” may enable a corrupt process to be challenged.

### 10. Uses and Abuses of Due Legal Process

While the principle of due process can be used to fight corruption, it can also be abused. In litigation over crimes of corruption and financial fraud, one of the most common legal defence strategies consists of filing delaying motions that block the development of the judicial investigation, such as motions to disqualify judges, objections to expert evidence, motions to nullify procedural acts, or other manoeuvres to delay proceedings or have charges dropped. In most such cases, the abuse of procedure is less problematic than excessive tolerance of it by judicial authorities, raising issues of judicial independence. From a human rights perspective, the European Court and other major supervisory mechanisms have assessed “reasonable time” on a case-by-case basis. Elements to be considered include: (a) national legislation; (b) what is at stake for the parties concerned; (c) the complexity of the case; (d) the conduct of the accused and other parties to the dispute; and (e) the conduct of the authorities. Trials lasting as long as 10 years have been deemed reasonable, while others lasting less than one year have been found to be unreasonably delayed. Nevertheless, the wealth of case law has generated excellent criteria by which to assess the efficiency of courts and standards of administration of justice (including legislation allowing for efficiently functioning courts).

## Vulnerable groups and the right to a fair trial

Several factors prevent vulnerable and disadvantaged people from gaining access to courts and tribunals: they include economic costs, lack of information, complex and bureaucratic procedures, barriers of language and geographical distance. From a human rights perspective, it is important to consider the effect of judicial corruption on vulnerable and disadvantaged groups...

According to human rights standards, states should adopt appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice. In addition, to prevent corruption at judicial level, states must put in place appropriate procedures that make access possible for groups at particular risk, including provision of information about their legal entitlements, legal aid, facilities that enable them to communicate in a language they understand, and mechanisms for reporting abuses and corruption.

### **The Right to an Effective Remedy**

The right to an effective remedy is guaranteed by most international human rights instruments (e.g. ICCPR, Art. 2(3); CEDAW, Arts. 2 & 3; CERD, Art. 6; ICESCR, Arts. 2 & 3; CRC, Arts. 12, 13 & 37(d)). 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.**

**States are under an obligation to provide accessible, effective and enforceable remedies to uphold civil and political rights. 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.**

Ending an ongoing violation is also an essential element of the right to an effective remedy. **A state that fails to investigate allegations of violations or bring perpetrators to justice is in breach of the ICCPR.** Effective administration of justice is essential to enjoyment of this right. To achieve this, states must ensure **that equality before the courts is established by law and guaranteed in practice.** **Corruption in the administration of justice infringes both the right to a fair trial and the right to an effective remedy...** This implies equal access to courts, fair and public hearings, and competent, impartial and independent judicial officials.

In sum, **from a human rights perspective a good system of fair trial requires compliance with numerous international human rights standards and norms. States are required to organise their judicial system in a manner that respects the requirements of due process.**

## **Protecting the rights of those investigating corruption**

### **Threats to Human Rights that Anti-Corruption Advocates Face**

Those who campaign against corruption and call for transparent government often themselves become victims of human rights violations. Risks and threats take many forms. Journalists and anti-corruption defenders are often harassed, threatened and sometimes killed to prevent them from making corruption cases public. Whistleblowers are silenced by imprisonment, threats or violence. Sometimes those who investigate or report instances of corruption find themselves facing criminal charges that have been fabricated or applied inappropriately

*(On due process, see chapter on Linking Acts of Corruption with Specific Human Rights As we have seen, a state is obliged under human rights law to protect individuals from abuses by state or private actors, even when it is not directly responsible for them. States contravene their human rights obligations when they fail “to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities”)*

## **Human Rights Mechanisms that Protect Anti-Corruption Advocates and Prevent Abuses**

Human rights and anti-corruption organisations therefore have good reason to collaborate to protect the rights of anti-corruption advocates and reduce the risk that anti-corruption campaigns can be exploited politically. Those who campaign against corruption or call for transparent government do not necessarily think of themselves as human rights advocates and may not use the term “human rights” when describing their work. When they expose corruption cases they are nevertheless seeking to make institutions accountable, end impunity and improve the quality of government, and these activities are also human rights objectives. Journalists too, may be acting as human rights defenders when they investigate and report on corruption cases. All such people need and deserve protection because of the work they do....

### **Entry points**

Civil society organisations, including NGOs, trade unions, business associations, think tanks, scholars and the media, play a crucial role in efforts both to combat corruption and to promote and protect human rights. Nevertheless, even though much of the work they do is complementary, with some important exceptions human rights and anti-corruption organisations do not regularly collaborate or share their knowledge and experiences.

To an extent this is because anti-corruption organisations are perceived to work with governments and to be more “official”, while human rights organisations are perceived to be more adversarial. Yet where levels of corruption are high, human rights are less likely to be respected: both types of organisations have good reason to promote civil and political rights that hold power to account and enable civil society to organise and work effectively. Nor are the relationships that human rights organisations have with governments always adversarial. Many civil society and government organisations act cooperatively to implement human rights reforms and human rights training. In short, opportunities exist for both human rights and anti-corruption organisations to collaborate in a broad range of activities – from participatory budgeting and tracking of public expenditure to the formation of citizens’ advisory boards and lobbying and advocacy campaigns.

Collaboration may nevertheless not be easy to achieve. One obstacle is that anti-corruption specialists often find the language and concepts of human rights alien and abstract. They generally do not use human rights mechanisms and complain that a “human rights approach” does not provide practical solutions. On the other side, people working on human rights largely ignore the specificity of different acts of corruption and the legal instruments available to combat it. Useful collaboration will require efforts on both sides to overcome differences of language and practice. Human rights organisations will need to find new ways of communicating their legal skills; adoption of rigorous but less abstract and legal forms of expression, for example.

### **Raising Awareness and Empowering People**

Bottom-up, demand-driven approaches offer good opportunities for cooperation. Tested across the world from Amnesty International letter-writing campaigns to civil rights mass action and civil disobedience movements, these place public opinion and civil society at th

centre of change. Though reform proposals are often easier to introduce from the top, sustained change is clearly more likely when it is supported and demanded by the public, because this promotes accountability and transparency.

National human rights institutions can help to strengthen the impact of anticorruption organisations. Several successful examples of joint collaboration can already be cited. In general, they combine the traditional human rights practice of “naming and shaming” with the technical expertise of anti-corruption organisations.

### **Enforcement of Existing Law and the Creation of New Law and Codes of Conduct**

Human rights and anti-corruption organisations can also work together to develop firmer professional standards and codes of conduct, ideally in cooperation with law enforcement officials and members of the judiciary.

### **Using Human Rights Mechanisms for Protection, Redress and Accountability**

Various institutions and procedures exist that can hold states accountable for their policies and actions. Domestic mechanisms include those provided by NHRIs and parliamentary reporting; international mechanisms include those provided by the UN and regional human rights courts such as the European Court of Human Rights, the Inter-American Court of Human Rights..each of which can help to protect anti-corruption advocates when their rights have been prejudiced.

In addition, where clear links between acts of corruption and human rights obligations can be established, the same mechanisms might sometimes be used to make those who commit acts of corruption more accountable. International mechanisms will not replace but can complement the essential role of criminal prosecution.

In addition, human rights mechanisms may assist advocates to circumvent legal obstacles that prevent domestic prosecution. Some corrupt practices are not necessarily illegal: when these cannot be made subject to standard law enforcement, they can sometimes be addressed using human rights fora. To illustrate, in many judicial systems nepotism and political favouritism are not considered to fall under the concept of corruption in strictly legal terms, and therefore are not prohibited by law..In these cases challenges on human rights grounds, using human rights mechanisms, may provide paths to reform or redress which a strictly legal approach would not offer. In addition, recourse to human rights may increase help to achieve public accountability (even if enforcement remains imperfect).

### **Promoting social accountability – budget and statistical analysis**

One effective way to restrict corruption and protect human rights (and economic, social and cultural rights in particular) is to give the public and civil society better tools and more authority to assess social programmes in which they have an interest. Communities and civil society organisations have developed many ways to hold governments accountable, in addition to litigation and voting at elections. They include lobbying and advocacy, citizen advisory boards and budget analysis. Sharing experiences on how to implement these mechanisms effectively is another entry point for collaboration between human rights and anti-corruption organisations.

For these mechanisms to work, disadvantaged groups in society need to be enabled to participate in their design, implementation and monitoring. Participation must be real, involving access to information and a degree of influence in the decision-making process.

Budget analysis (a methodology for inquiring into government priorities by breaking down and comparing official expenditures on different items) and analysis of official statistical information are powerful tools for increasing transparency and compliance with human rights obligations. While human rights organisations are increasingly considering these tools, anti-corruption organisations have more experience of using them and can assist the former to develop their skills.

### **Monitoring Public Contracting and International Aid**

Human rights advocates working to end corruption should pay particular attention to public contracting. This implies monitoring contract procedures at every level, from municipal authorities, to provincial and national or federal government. While contracts at federal or national level are likely to be larger, local government contracts also involve considerable public expenditure and have impacts that are more directly obvious for the public. Public contracting, more than any other area, is a natural point of entry for cooperative work between human rights and anti-corruption organisations.

### **Litigation**

This report has argued that, by connecting acts of corruption to violations of human rights, new channels of action can be created, especially if corruption can be challenged through the many national, regional and international mechanisms that exist for monitoring compliance with human rights. The same mechanisms can be used to protect anti-corruption advocates whose rights have been violated. Litigation also provides an opportunity for collaboration between human rights and anti-corruption organisations.

Litigation can raise awareness, and can oblige states to take action against corruption. A successful lawsuit, in addition, may bring compensation for the victims and establish new legal rules that will help others. However, the effectiveness of litigation has limits. It will not always provide a solution. To be successful, cases require evidence of high quality and good cooperation between victims, lawyers and human rights advocates. Success usually requires too the services of a professional legal team, which can be expensive. On the other side of the equation, courts may be corrupt, laws may be poorly drafted, the judicial system may be weak. Success is not guaranteed in the best of circumstances and those who most require protection are usually least able to launch expensive and time-consuming court cases.

Public interest litigation could address some of these challenges. Some human rights organisations have gained considerable experience of public (or strategic) litigation that could be shared and disseminated. When it is appropriate, anti-corruption organisations should consider using public interest litigation, for example to recover assets.

### **Strengthen New Alliances**

Anti-corruption strategies require the creation of national and international alliances

involving actors from across civil society, government and the private sector. Although they have already begun to develop new alliances and forms of cooperation, human rights violations, has enormous educational and advocacy potential. Organisations and NHRIs will need to strengthen their relationships with politicians and journalists, development and business associations, and grassroots and popular movements.

### **Engage the Media**

The media naturally play an important role because it is through international or local media that people generally become aware of human rights violations and corruption. Sensitising the media to corruption, and linking it to human rights.

### **Conclusions**

This report has not asked human rights organisations to become anti-corruption organisations; or anti-corruption organisations to convert to human rights organisations. It argues that human rights organisations will collide with, and will need to address the issue of corruption in the course of their work, because problems of corruption have human rights consequences; and that mainstreaming of human rights by the UN and many other institutions will mean that anti-corruption institutions will need (and want) to know how to apply human rights.

Our aim has been to provide some tools that will enable them to begin to exchange expertise and may help each to deal with the human suffering caused by corruption more effectively. This said, those who work to end corruption have created their own institutions, practices and laws – their own tradition – as human rights organisations have. Efforts to apply human rights will not be effective in practice unless they take account of this context. We deal with this broader issue in a second report.

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*Family Courts in Crisis* Newsletters are prepared by **Quenby Wilcox**, Founder of Global Expats ([www.global-xpats.com](http://www.global-xpats.com)), and [Safe Child International](http://www.safechildinternational.org).

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**Free, downloadable copies of *Family in Crisis* (May–present) Newsletters are posted on <http://worldpulse.com/node/71182> and are as follows:**

- February's newsletter featured the Intl. Human Rights Council's report *The Relationship between Human Rights & Corruption* & the Center for the Study of Democracy's report *Examining the Links between Organised Crime & Corruption*
- January's newsletter featured Amnesty International's report *What Specialized Justice?*
- December's newsletter featured the United Nations Secretary General's report *Advancement of Women: In-depth Study on All Forms of Violence Against Women*
- November's newsletter featured Save the Children report - *The Spanish Justice System Confronted with Sexual Abuse Within the Family*
- October's newsletter featured *The Emperor's New Clothes* – Domestic Violence, International Divorce, and a State's Obligation to Protect under International Law
- September's newsletter [Hague Convention Domestic Violence Project](#)
- August's Newsletter featured important works by Barry Goldstein, Dr. Mo Hannah and Elizabeth Liu
- July's Newsletter featured the documentary *Now Way Out But One* by Garland Waller and Barry Nolan
- June's Newsletter featured [Safe Kids International](#) & [Damon's List](#)
- May's Newsletter covering the *Battered Mother's Custody Conference* (BMCC), *Mothers of Lost Children* (MOLC) White House Demonstration, and *National Safe Child Coalition* (NSCC) lobbying efforts on Capitol Hill.

If you should have any questions about these issues or my on-going lobbying work (all posted on my [World Pulse Journal](#))

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