

Ramifications of Corruption and Their Impact on Human Rights

By JC Weliamuna

Venerable Sirs, Religious Dignitaries of other faiths, Chairperson, Excellencies, Hon. Judges, Friends, Ladies and Gentlemen

As you know, Kanchana Abhayapala Memorial lecture is held in honour of a distinguished young colleague who was senselessly assassinated during one of the darkest periods of our recent history. Now, at a time when civil liberties are curtailed once again, in the name of patriotism, we are reminded of Kanchana's quiet life, his courage and commitment to protect and realize human rights and dignity, even in the gloomy periods of our history. This evening, we commemorate his courage and commitment to abiding values – even though we realize that the collective conscience of a nation can collapse at any time unless each one of us take on to our shoulders the responsibility to protect values. This reminds me of the famous saying: "*The moral leadership of the world has been entrusted to us; the fate of humanity is in our hands, the world looks to us for survival*".

When I was invited, quite suddenly, to deliver this memorial oration, I had the liberty to select any topic, relevant to human rights.

It is indeed a privilege to be with you today, not merely to deliver a lecture to commemorate a young human rights defender but to address you on a topic that would have, without doubt, been close to the heart of Kanchana. I know for sure, if Kanchana was among the living, he and I would be together in the fight against corruption and gross human rights abuses in Sri Lanka; probably the anti-corruption discourse would be much stronger.

Human rights, governance and corruption are topics that have now been fairly well researched. We no longer have the luxury of artificially separating the human rights from other social discourses; nor can we undervalue the multi-dimensional contributions that shaped the human rights discourse at large. Human rights regime does not operate in a vacuum and one cannot draw an assumption that human rights will find its legitimate space in a society because it is influenced by various other external factors such as corruption. In that context you would no doubt agree with me that the topic I have chosen is a complex one and certainly not a topic that can be fully dealt with in one oration.

With the formation of the Transparency International in 1993, founded by a group of ex World Bank Officials and later expanded to over 90 autonomous Chapters worldwide, anti-corruption discourse took a different shape. To quote the International Council on Human Rights, "Transparency International burst onto the good governance agenda by altering the theory and practice of anti-corruption policies, which until then were dominated by a technocratic and political top down focus on reforms to the state"¹. The progress the anti corruption movement made, is reflected from the fact that there is hardly any national or global agenda without addressing the issue of corruption. Why? I would say there are many reasons; but one obvious reason is the impact corruption has on any society, undermining social values and trust – where even the most corrupt person does not want others to know that he or she is corrupt. Knowledge on this debate, and the global experience

¹ Corruption and Human Rights, integrating human rights into anti corruption agenda, challenges, possibilities and opportunities, International Council on Human Rights

of many active individuals, scholars, academics, professionals and organisations, has undoubtedly contributed to the debate and discourse.

I must caution you once again, however, that in a speech of this nature I may not be able to cover the entire width and depth of human rights or corruption. My speech today is focussed on a few important aspects in this national and global discussion on corruption vs. human rights, viz.

- the co-relationship between corruption and human rights
- how corruption impacts on human rights
- some of the specific thematic areas such as poverty, foreign aid and gender dimension
- whether corruption is a violation of human rights
- instrumental advantage of human rights in combating corruption

Interlink Between Human Rights and Corruption

Corruption Perception Index (CPI) released annually by Transparency International is one of the most often quoted indices on corruption in the world. Following data drawn from the 2009 CPI gives an indication of a definite correlation between corruption and human rights abuses.

Country	Rank	Score	Country	Rank	score
New Zealand	1	9.4	Congo Democratic Rep.	162	1.9
Denmark	2	9.3	Guinea Bissau	162	1.9
Singapore	3	9.2	Kyrgyzstan	162	1.9
Sweden	3	9.2	Venezuela	162	1.9
Switzerland	5	9.0	Burundi	168	1.8
Finland	6	8.9	Haiti	168	1.8
Netherlands	6	8.9	Guinea	168	1.8
Australia	8	8.7	Iran	168	1.8
Canada	8	8.7	Uzbekistan	174	1.7
Iceland	8	8.7	Chad	175	1.6
Norway	11	8.6	Iraq	176	1.5
Hong Kong	12	8.2	Sudan	176	1.5
Luxemburg	12	8.2	Myanmar	178	1.4
Germany	14	8.0	Afghanistan	179	1.3
Ireland	14	8.0	Somalia	180	1.1

Source: Corruption perception Index (2009) – Extracts best 15 and worst 15

Another quick way of identifying a link between corruption and human rights is to consider dictatorial or despotic corrupt regimes, known for major violations of human rights. Ferdinand Marcos, who ruled Philippines from 1965-86 is estimated to have amassed wealth amounting to US\$ 335 million. Joseph Mobutu who ruled the Democratic Republic of Congo for 32 years has stolen US\$ 4 Billion - mostly from western aid given to the country. The Somoza dynasty which ruled Nicaragua from 1930 to the late 1970 became owners of 342 prime properties – then worth over US \$500 million through corrupt practices². Two of the common factors in all those regimes are, firstly, the existence of gross human rights abuses – particularly, civil liberties, and secondly, uncompromising impunity the “royal families” and their cronies enjoyed. Be it in Asia, Africa or Latin America, or in our own country, where the legitimate state is captured by a powerful few or family oligarchs, such

² Impact of corruption on human rights based approach to development, UNDP, September 2004

regimes can turn a prosperous country into a failed state in no time, leaving the future generations to keep dreaming of injuries and scars that a civilized nation cannot tolerate.

The strong linkage between human rights and corruption is also reflected in several provisions of the United Nations Convention against Corruption (UNCAC) vis-a-vis human rights conventions. Article 15 of UNCAC prohibits promising, offering or giving bribes to national public officials and this is an obligation on the part of each State party. There is ample evidence that foreign officials are bribed directly or indirectly to engage in corrupt practices. Bribing of foreign officials is specifically prohibited under Article 16 of UNCAC. Embezzlement, misappropriation or other diversion of property by a national or foreign official are prohibited under Article 17 of UNCAC. Trading in influence, abuse of functions, illicit enrichment are among the corrupt practices that have been similarly criminalized and prohibited under the UNCAC.

The following examples demonstrate the linkage between these provisions and possible human rights violations.

- (a) Officials bribed to allow toxic waste to be dumped illegally in a residential area is contrary to Art. 15 UNCAC as well as Art. 6 (right to life) of the ICCPR, Art 11 (right to adequate housing) of the ICESER and Art. 12 ICESER
- (b) Illegal payments to a Judge or orphanage to speed up an illegal adoption of a child. This is contrary to Art 15 UNCAC as well Art 3 CRC (right to best interests) Art 8 CRC (right of the child to preserve identity) and Art 21 CRC (right to best interests of the child in adoption)
- (c) Payment of bribe to obtain official travel documents, passports or visa. This is contrary to Art 15 UNCAC and Art 2(1) and 26 ICCPR, and Art 2(2) ICESER (right to equality and non-discrimination) This is also against the right to liberty of movement (Art 12 ICCPR)

At this stage, I wish to emphasize a few elementary principles for you to understand the scope of corruption. The term "corruption" is not limited to bribery. It embraces bribery, fraud, misappropriation, embezzlement, conflict of interest, insider dealings and nepotism. The most often used definition of corruption is "abuse of entrusted power/authority for personal gain". Corruption is not limited to State sector or one economic or political system. It is generally carried out by groups or individuals with power.

I propose to establish the link between the human rights and corruption with a few more common examples. Let me call them "hypothetical" examples.

Example 1 (detention and corruption under emergency rule):

X has been arrested by the police implicating him with terrorist activities. The police ask for a bribe to release him. He refuses. Then a detention order under the Emergency Regulations is issued on X but finally, after 12 months of detention, the law enforcement authorities realize that there is no material to detain him as he was, in fact, not involved with any terrorist activities. Then X through a

Lawyer moves the Attorney General's Department for a discharge of the person. Papers are almost ready to discharge X but a powerful official telephones the Attorney General's Department instructs the staff not to discharge X but to prosecute him. In the absence of any material to prosecute X, the official is advised to serve another Detention Order to detain him afresh. Many instances such as this, where innocent civilians are kept in detention due to corruption and unprofessional or unethical behavior of law enforcement officials have deprived the detainee of freedoms guaranteed under the national laws or international human rights treaties.

Example 2 (torture and manipulation of law enforcement)

Y is arrested by the Army in a cordon and search operation and handed over to the police. In questioning, the police use extreme forms of torture resulting in the death of Y. Police secretly dispose of the dead body and fabricate the Police Information Book containing the records of suspects stating that the suspect Y had escaped police custody. In the meantime, another para-military group demands and receives a ransom from Y's family for the release of Y. The ransom is obtained and later shared between the army and the para-military leader. This example demonstrates the corrupt networks operating in the law enforcement sector with impunity under the cover of national security.

These two examples amply demonstrate the ramification of corruption and its impact on human rights. The correlation is not limited to one type of human rights – it is applicable to all human rights – whether they are civil or political rights or economic and social rights or child rights. Let me now move on to vulnerable groups and disadvantaged people:

Example 3 (children)

Under CRC Article 32, children have the right to be protected from economic exploitation and from performing any work that is harmful to their health and development. In many countries the enforcement of laws against child labour is ineffective because enforcement officials are bribed by employers. In many countries policy makers and law enforcement officials themselves are beneficiaries of child labour and therefore, turn a blind eye to enforce the law on child labour due to their conflict of interest. Does not this example sufficiently explain why child labour cannot be effectively addressed in some countries?

Importance of Understanding the Correlation

How important is it to understand the correlation between human rights and corruption? There are different answers, and perhaps from different perspectives. To start with, from the activists' perspective, by linking corruption to human rights abuses, a whole gamut of new actions, individual and collective, is created. These strongly influence public attitudes because people are generally aware of the damage corruption does to a society. Further, there may be new actions, beyond traditional human rights advocacy, to challenge human rights abuses at all levels. This also exposes the anti-corruption activists to many human rights tools that could be effectively used to fight corruption. From the perspective of the academics, this will open up extremely valuable research and knowledge. There may also be an entirely new set of judicial approaches to tackle abuses of human rights as well as corruption. In short, all arms of a State- Executive, Legislature and Judiciary -

will have many opportunities to improve the human rights situation and good governance in a country.

Human Rights treaties are intended to hold States and individuals accountable for human rights abuses. These violations are invariably linked to abuse of authority of the relevant States. By linking corruption to human rights abuses, many opportunities would be created to understand how best human rights violations could be minimized or prevented, through national, regional or international institutions using human rights instruments.

It is often observed that State responsibilities under human rights treaties and conventions are undermined by corruption, which cannot be understood properly without analyzing it from a governance perspective. International conventions and treaties bring about state responsibility. Thus accountability under international law is also undermined by corruption. Take the example of systemic torture in a country. In most corrupt countries, reporting on torture is suppressed. Evidence is manipulated. Data is distorted. Victims are exposed to more violations. All these are done by corrupt means and mostly by a set of ruthless rulers and administrators who have no respect for international obligations. They prevent the State from discharging its international obligations under the international conventions while preventing the international human rights bodies from examining the abuses, which they are expected to do under the very same conventions.

I shall now proceed to examine a few thematic areas demonstrating the ramification of corruption and its impact on human rights.

Foreign Aid, Corruption and Human Rights Abuses

Over the past 50 years, the rich nations have given over a trillion dollars in aid to poor ones. This stupendous sum has failed to improve the lot of its intended beneficiaries. Aid should have boosted the growth in recipient countries and thereby help millions to escape from poverty. Yet countless studies have failed to find a link between aid and fast economic growth. Poor countries that receive a lot of aid do no better, on average, than those receiving very little. Evidence also suggests that aid money is not fungible - that is, the money goes into the pot of public funds and is spent on whatever the recipients want to spend it on. To quote the economist. "If the government is crooked, the donor funds may be spent on shopping trips to London for the President's wife or to buy fighter planes to strafe unpopular minorities! The important factor is not the donor's instructions but the recipients' priorities³."

Peter Bauer⁴, a well-known critic on international aid, argues that having regard to the conditions of the aid receiving governments, international aid does not promote sustainable development, but rather turns into a subsidy given by rich countries to rich people in poor countries. Instead of

³ The Economist, June 23 1999 (pg. 23) reproduced in Steiner and Aston, International Human Rights in Context

⁴ Reality and Rhetoric: Studies in the Economic Development

improving the lives of the neediest, international aid is used to favour the interests of the most powerful.

Sri Lanka cannot escape from similar criticism in relation to utilization of foreign aid. Similar experiences are found in many countries in South Asia and among South African and Latin American countries. One easy conclusion, therefore, is that secrecy in negotiating and formulating international aid, lack of accountability in implementing programs based on foreign aid and poor governance in financial control have all led to deprivation of the poor, if not the entire country, of the benefits of foreign aid which is undoubtedly capable of meeting progressive realization of all economic and social rights, such as adequate standard of living, physical and mental health and right to education. It is pertinent to note that in many countries the international aid is abused to purchase Pajeros or other luxury items for the officials who run foreign funded projects. Is this not corruption? How much have such actions contributed to the abuse of human rights of needy poor in those countries?

Under Article 2 of the International Covenant on Economic, Social and Cultural Rights, the State parties are required to take steps individually and through international assistance and corporations to a maximum of its available resources with a view to achieving progressively the full realization of the Convention by all appropriate means. Doesn't this suggest that State parties are expected to manage available resources fairly without extravagance? Should the foreign aid for development be abused for the purpose of buying luxury vehicles for politicians and administrators? Amidst corruption, can the State achieve the realization of any of these rights by using its own resources, not to mention foreign aid? In my view, abuses of foreign aid intended for development is a clear violation of socio- economic rights.

Hunger, Poverty and Corruption

Artificial balance between food and population is insufficient to understand mechanisms to eliminate hunger in today's context. As the Nobel laureate Amathya Sen⁵ points out, "what is crucial in analyzing hunger is the substantive freedom of the individual and the family to establish ownership over an adequate amount of food, which could be done either by growing food (as the peasants do) or by buying it in the market (as the non-growers of food do). A person may be forced into starvation even when there is plenty of food around, if he loses his ability to buy food in the market, through a loss of income. On the other hand, even when food supply falls sharply in a country, everyone can be saved from starvation by a better sharing of the available food. This can be supplemented and made more effective by getting food from abroad, but many threatening famines have been prevented even without that - simply through a more equal sharing of the reduced domestic supply of food. The focus has to be on the economic power and substantive freedom of individuals and families to buy enough food, and not just on the quantum of food in the country in question."

⁵ Development as Freedom

Taking this argument to a logical conclusion, civil rights guaranteeing open discussions and generating informed choices play a vital role in achieving a society free of starvation and famine. Sen⁶ states:

"... no substantive famine has ever occurred in any independent country with a democratic form of government and a relatively free press. Famine has occurred in ancient kingdoms and contemporary authoritarian societies, in primitive tribal communities and in modern technocratic dictatorships, in colonial economies run by imperialists in the north and in newly independent countries in the south run by despotic national leaders or by intolerant single parties. But they have never materialized in any country that is independent, that goes to elections regularly, that has opposition parties to voice criticism and that permits newspapers to report freely and question the wisdom of government policies without extensive censorship".

Let us unfold another side of the famine of Sudan – why famine in Darfur and what is the truth behind the famine. Sudan is one of the largest debt loads in the world amounting to nearly US\$15 Billion but Sudan has produced more millionaires than any other Sub-Saharan African country with probably the exception of oil-rich Nigeria. The major human rights abuses in that country almost perpetuated with corrupt regimes and intentional elimination of the then accountable civil service, corrupt deals and "hidden economy" (unrecorded and often illegally acquired savings and foreign-exchange surpluses). Former President Nimeiry's deal with his good friend, the Saudi Arabian arms dealer and financier Adnan Khashoggi, is a case in point. Their December 1984 agreement established the National Oil Company for Sudan (NOCS) with equal shares to the Sudanese Government and Khashoggi's Sigma International. NOCS was given rights over all oil and gas reserves in Sudan. Khashoggi undertook to raise a loan of \$400 million for the company; in return he was given a virtual monopoly on marketing Sudan's cotton. Responsibility for servicing the loan rested entirely with the Government. The result – a 50-per-cent mortgage on the nation's oil reserves in addition to 'rent' on its future cotton exports.⁷ Many more corrupt deals and kick backs dominated the political and economic sphere in that country.

The Sudanese famine and human rights violations cannot be fully understood without knowing this reality. There are similarities with other despotic dictatorial and corrupt regimes. They have often, without exception, not permitted a free press or right to dissent. Secrecy is the order of the day and those who knew their corrupt deals and secrets were either their cronies or those who are labeled by the ruler as "unpatriotic elements working against the interests of the country". They never believed that people have a political right to change the government. Economic imbalance is well ensured with only the cronies and the elite enjoying the economic power. The power was abused to the maximum for personal gain or for the benefit of their cronies, at the expense of the public at large. It is, therefore, not difficult to see the ramification of corruption and its impact on human rights, exposing a nation to hunger and poverty.

Right to Genuine Periodic Elections vs. Corruption

⁶ ibid

⁷ Richard Brown

Integrity of the electoral process is a prerequisite for a democratic political process of the state. Among the civil and political rights recognized by the ICCPR, citizens' right to vote and to be elected at genuine periodic elections occupy a major place. Article 25(b) of the ICCPR states

"To vote and to be elected at genuine periodic elections which shall be universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of will of the electors."

Sri Lankan Supreme Court recognizes the right to vote as an integral part of freedom of expression guaranteed under Article 14(1)(a) of the Constitution⁸ and not as a stand-alone right.

These provisions guarantee not merely periodic elections but genuine elections which can reflect the will of the people freely without distortion. The concept of free and fair elections is often marred by corrupt practices, fraud and abuse of State resources – costing a colossal sum of money to the State – probably the single most corrupt activity in Sri Lanka during an election. Let us try to throw light on some of the corrupt practices at an election and briefly examine the legal framework to address them.

- (a) Individual corrupt practices by candidates and voters are election offences. (e.g. impersonation, treating, undue influence and selling of ballot papers). They are generally grounds for election petitions as well. It is, however, impossible to unseat a winner under the Sri Lankan law as the Supreme Court has placed an almost unattainable burden on the unsuccessful candidate⁹.
- (b) Organized large scale rigging, chasing away of polling agents, preventing voters reaching polling stations are generally observed at every major election, which can obviously affect the final outcome of the election. Election petitions may not effectively address these abuses.
- (c) Abuse of State resources by the political party in power. Which includes abuses of public finance, public officials, vehicles, public media and abuse of all types of facilities.

Let us take an example to identify the seriousness of abuses of State resources. While being a candidate at the election, the President invites thousands of people for political meetings at the official residence of the President and offers, among others, meals, at public expense. In Sri Lanka, even a poorest of the poor pays at least 40% of his/her individual expenses to the State as indirect taxes – in various forms. Ultimately the President and his campaign team use this tax money, belonging to the public, for personal political propaganda work of a candidate. Who are the beneficiaries of these treats? Mostly they are affluent people, such as lawyers, medical practitioners, media professionals, clergy, public officials, who can certainly find a meal for themselves - persons who do not deserve a free meal. There is little doubt that the total impact of these abuses of State resources is the distortion of the final outcome of the election, completely negating the free will, as contemplated under human rights conventions. This colossal sum of

⁸ Justice Mark Fernando in *Karunathilaka v. Dissanayaka* (1999) 1 SLR 157 at page 173-4

⁹ In *Bandaranayaka vs. Premadasa* (1992) 2SLR 1, Supreme Court held that proof of widespread violence preventing electors from voting is not enough. It should prove that the general intimidation affected the majority of voters and they were prevented from electing the candidates whom they prefer.

money, if properly used for the intended purposes, could save lives of thousands of cancer patients in the country, improve the standard of living of thousands of Samurdhi beneficiaries and improve malnourishment of tens of thousands of poor school children who drop out of the schools due to poverty. This multidimensional example demonstrates not only the abuse of liberty to vote at a free election but also how abuses of this nature can affect socio-economic rights of the people of the country, which the candidates at elections promise to improve.

Gender Dimension of Corruption

Now I propose to look at gender dimension from different points of view. Quite a vast scholarly work has been done on this theme. The non controversial view in this debate is that corruption impacts men and women differently. Due to lack of (or insufficient) access to political and economic power, corruption affects women differently than men. In many societies, women are seen as "home managers" and, therefore, women are confronted with different types of corruption. Extorting sexual favors from women as against financial bribery is often observed.

There is also an aspect of harshness of corruption on women, particularly when women face even more hardships and discrimination in a more corrupt environment. For example, rape is quite common in an extremely corrupt and unaccountable law enforcement environment. "Consider the position of women in society: since women often face social, cultural, political and institutional discrimination it is likely that women will face even more repression in a corruption-ridden society. In other words, if access to such institutions is restricted by gender considerations, corruption compounds this by making it even more difficult for women to access public goods including services"¹⁰. It is, therefore, suggested that improving women's participation in decision making, advancement of women's rights and giving women more access to control over resources would help women to overcome specific corruption risks in a society.

There have been many attempts to ascertain whether the level of corruption is less in countries where there are women leaders. In fact, early research suggested certain positive findings in favor. However, Anne Marie Goetz, a leading researcher on the subject, challenges the notion that more women in government will result in lower levels of corruption. Comments of Goetz¹¹ are worth mentioning:

- (a) The earlier findings (that there is a correlation between women and less corruption) fail to acknowledge the very real ways in which gender relations may limit the opportunities for corruption, particularly when corruption functions through all-male networks and in forums from which women are socially excluded.
- (b) As workplaces become more feminized and women take the top leadership jobs it cannot be assumed that women will choose less corrupt behavior.
- (c) Opportunities for corruption can be shaped by gender. For example, in places where interactions with non-kin men are forbidden, women may participate in corrupt practices via mediators who are male relatives.

¹⁰ Gender and corruption- www.U4.com

¹¹ Anne Marie Goetz, "Political Cleaners: How Women are the New Anti-Corruption Force. Does the Evidence Wash?" (2003). Also extensively dealt with in *ibid.* fn 10

- (d) Promoting women in politics as a bulwark against corruption serves to view "women as instruments to achieve a broader development goal" rather than welcoming them to public office as a matter of their democratic and social rights.
- (e) Furthermore, "women" does not denote a single social group. The evidence is mixed concerning the effect of women in politics. "Most of the evidence on women's corruption or lack of it in politics or public services is anecdotal, or else can be derived parenthetically from case studies of public sector reform that happen to examine bureaucracies staffed by women.

Is Corruption a violation of Human Rights?

My answer is yes. I shall now proceed to justify my answer based on few legal provisions – both under the international human rights conventions and under Sri Lankan constitutional provisions.

In all major UN conventions on human rights, the following paragraph is found in the preamble:

"Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent **dignity** and of the equal and inalienable rights of all members of the human family is the foundation of freedom of justice and peace in the world."

One of the underlying principles of UN human rights conventions is to recognize human dignity. There are many ways human dignity can be suppressed. There can always be an argument on first principles that corruption undermines human dignity in its literal true sense.

Article 1 of the ICCPR recognizes that "all people have the right of self-determination" and to "freely pursue their economic, social and cultural development". Nature of corruption is such that it interferes in people's efforts to reach or fulfill their economic self-determination. It adversely affects the pursuit of economic, social and cultural development.

Section 2 of Article 1 of the ICCPR entitles all persons, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation based on the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. In certain cases, some scholars¹² have argued that directing funds to outside corrupt sources for personal gain, instead of deposits into treasury of the State itself violates this principle.

Article 26 of the ICCPR stipulates that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law and the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination,". This is same as Article 12(1) of our Constitution. Corruption in public sector without doubt violates these principles at least in the following manner:

¹² Johanathan A. Rogers, Litigation Report, Corruption in Angola a human rights violation

- (i) Public sector favours bribe-givers over those who do not give bribes and therefore, the bribe-givers receive undue favoured status in society
- (ii) Bribe-takers, on the other hand, receive an unfair economic advantage over others coupled with benefits extremely discriminatory.
- (iii) Corruption has a pervasive and troubling impact on the poor, since it distorts public choices in favor of the wealthy and powerful, and reduces the State's ability to provide a society safety net¹³.
- (iv) In corrupt systems, the governmental decision-making is not based on factors that are fair, just and reasonable and, therefore, State resources and legitimate benefits are distributed discriminately.
- (v) Corruption often gives preferential treatment to those who pay bribes, and persons who have managed to pay bribes or engage in corrupt actions such as nepotism. It also places those who cannot engage in corruption at a disadvantageous position.
- (vi) It is often observed that those who refuse to pay bribes or collaborate with corrupt activities face victimization.

Article 1 of the UN Declaration on the Right to Development¹⁴ recognizes that right to development is an inalienable human right, by virtue of which every human person and all people are entitled to participate in, contribute and enjoy economic, social and cultural and political development in which all human rights and fundamental freedom can be fully realized. There is no doubt that corruption has been one of the major stumbling blocks of development.

ICESCR also recognizes the principle of equality in respect of economic, social and cultural rights. Article 2 of the ICESCR contains an undertaking by state parties to guarantee the rights without discrimination¹⁵. Thus the state parties are required to take steps to ensure discrimination free efforts to guarantee right to food, health, education and other socio-economic rights. Bribery and corruption in the exercise of those rights is, therefore, a violation of the obligations.

Interestingly, Article 2(1) of the ICESCR obliges the State parties to "take steps" for the realization of the rights. This means positive steps as well as removal of impediments in the realization of those rights. Corruption is undoubtedly a major obstacle in the fulfillment of economic and social rights and, therefore, the State parties are required to remove these obstacles.

Justice Mark Fernando argues that the constitutional framework in Sri Lanka recognizes several fundamental rights that entitle people in Sri Lanka to freedom from corruption. I quote some of Justice Fernando's¹⁶ thoughts:

- (a) Article 12(1) – public officials are expected to exercise their powers for the benefit of the public and thus if the power is not in some other way, for instance because he has been bribed – that would not only be a mere misuse or abuse of power but an act of corruption. Article 12(1) prohibits the exercise of powers vested in public officials for a corrupt purpose.
- (b) Articles 3 and 4 of the Constitution confirm that all powers must be exercised bona fide, lawfully and reasonably, free of any form of corruption or malpractice.

¹³ UNDP Bureau for policy and Programme Support – Discussion paper 3, New York, July 1997

¹⁴ Adopted by General Assembly resolution 41/128 on 4th December 1986

¹⁵ General Comment 25

¹⁶ Is Whistle-blowing a Fundamental Right to Freedom from Corruption? Published by Faculty of Taxation, Institute of Chartered Accountants, pg. 79

- (c) Article 14(1)(a) of the Constitution sanctions the exposure of malpractices and corruption but this right is subject to restrictions that may be prescribed under Article 15(7) of the Constitution. None of these provisions authorizes the imposition of restrictions in order to prevent exposure of corruption and malpractices.
- (d) Directive principle 28(d) obliges every person to preserve and protect public property, and to combat misuse and waste of public property.

Courts in Sri Lanka have thus intervened in many fundamental rights cases where corruption has been the root cause of the violation. Here are a few examples: *Hettiarachchi vs. Mahaweli Authority of Sri Lanka*¹⁷ (The petitioner is victimized for preventing corrupt practices using State resources for elections); *Dr. Abeykoon SC 454/93S SCM 14-6-95* (Medical Officer issuing a false medical report on a torture victim); *Nanayakkara vs. Choksy SCFR 158/07 SCM4-6-2009* (Corrupt privatization of Insurance Corporation); *Mendis vs. Kumaratunga SCFR 352/07 SCM 8-10-2008* (Corruption in land deals).

Instrumental Advantage of Human Rights

In their multi-disciplinary and scholarly work, academics, economists, jurists and political ideologists have, from time to time, found the relevance of various human rights for development, control of corruption, political stability and economic sustainability. As referred to earlier, Amartya Sen found freedom of expression to have a direct impact on famine and saw free press as an instrumental freedom to prevent famine. Later, with the Vienna Declaration (1993) the interdependency of human rights was recognized as one of the key principles of human rights¹⁸ recognizing that even socio economic rights depend on civil and political rights.

From early 2000, the UN High Commissioner for Human Rights as well as various multilateral institutions recognized the conceptual framework, which sees instrumental relevance of the human rights in relation to poverty¹⁹. Rights with instrumental relevance are those which are capable of improving the institutional conditions or to combat the problems undermining those conditions. For example, the right to information and freedom of expression are generally recognized as rights with instrumental relevance, often utilized to fight corruption.

The right to participation is another instrumental freedom which is often recognized as a powerful tool to fight corruption. This "right" is often used to challenge abuses of State power, to enhance transparency, to improve conditions in life of marginalized groups etc. It is also seen that in many countries where the right to participation is controlled by State action, both the human rights situation and governance levels deteriorate.

This principle has been well recognized by the International Convention against Corruption (UNCAC). Its Article 13 obliges State parties to take appropriate measures for the active participation of individuals and groups such as NGOs, CBOs, civil society etc; in the fight against corruption. The same Article specifically requires certain measures to be taken promoting the contribution of the

¹⁷ (2000)3 SLR 234

¹⁸ Others being universality and indivisibility of human rights

¹⁹ www.adb.org/Documents/Papers/Evolving_views_poverty/Osmani

public to decision-making process, access to information, public information, and activities on relevance of corruption in the education sector.

Conclusion

There is little doubt that human rights discourse is closely linked with anti corruption discourse. Interdependency and universality of both discourses is also apparent. On the other hand, I believe, there cannot be a strong and sustainable human rights regime, without controlling corruption. There is also strong evidence that elimination of corruption improves human rights situation in any society. The corollary is also true; human rights tools can improve governance structure and control of corruption in a more effective manner.

In conclusion, I want to emphasize that both gross abuses of human rights and intolerable corruption do not set in at once. It comes slowly when we tolerate it, ignore it and are ignorant of it. Sometimes, it comes early, not when the atrocious and dishonest people do wicked things but when honest and honourable people keep silent.

Justice Douglas, said

“As nightfall does not come at once, neither does, oppression. In both instances, there's twilight where everything remains seemingly unchanged, and it is in such twilight that we must be aware of change in the air, however slight, lest we become unwitting victims of the darkness.”

Fundamental duty?



Kevin Carter's Pulitzer Prize winning photo taken in 1994 during the Sudanese famine. The picture depicts a famine stricken child being stalked by a vulture. The child is crawling towards a United Nations food camp, located a kilometer away.

No one knows what happened to the child, including the photographer who left the scene as soon as the photo was taken. He later confided to friends that he wished he had intervened. Journalists at the time were warned never to touch famine victims for fear of disease

Three months later, and only weeks after being bestowed with the Pulitzer Prize, Kevin Carter committed suicide.