
RESOLUTION 1/18

CORRUPTION AND HUMAN RIGHTS

Considering that corruption is a complex phenomenon that affects human rights in their entirety – civil, political, economic, social, cultural and environmental –, as well as the right to development; weakens governance and democratic institutions, promotes impunity, undermines the rule of law and exacerbates inequality.

Having held two consultation meetings with justice operators, experts and civil society, who highlighted that corruption is characterized by the abuse or misuse of power, which may be public or private, that displaces the public interest for a private benefit (personal or for a third party) and that weakens both administrative and judicial oversight institutions.

Dismayed because corruption prevails, the actors involved establish structures that capture state entities, through different criminal schemes, for example, a) when adopting government decisions in an irregular manner, such as contracts or public works, appointments or promotions, laws or tax exemptions, affecting the principles of equality, transparency, due process and impartiality; b) when valuing contracts or public works in a deviant manner, favoring private interests over public ones, affecting the resources available to the State; c) when public officials require undue benefits in exchange for public services; d) by improperly influencing electoral processes through the illicit financing of electoral campaigns and candidacies.

Highlighting that corruption has a serious and differentiated impact on the enjoyment and exercise of human rights by historically discriminated against groups, such as people in situations of poverty, women, indigenous peoples, Afro-Descendants, migrants and people deprived of liberty, and especially affects those who are subject to trafficking and smuggling such as migrants, girls, boys and women.

Concerned that, as documented by the Inter-American Commission on Human Rights (IACHR) through its country reports, its system of petitions and cases, precautionary measures and resolutions, public officials, justice operators, journalists, human rights defenders, social leaders, young people and leaders of indigenous peoples and Afro-Descendant communities are frequently the victims of attacks against their life, integrity, liberty and personal security, as a result of investigating, reporting and denouncing acts of corruption.

Emphasizing that corruption has multiple causes and consequences and that numerous actors, both state and private entities and companies, participate in its development, and therefore, the establishment of effective mechanisms to eradicate it in order to guarantee human rights is required.

Aware that the lack of transparency in public management facilitates corruption and impedes citizen oversight and scrutiny of the press on critical issues such as public procurement and budget management, in particular about expenses in infrastructure and

social programs; lobbying activities; conflict of interests and public employment systems, as well as the financing of political parties and political campaigns.

That under the inter-American legal framework, States have the duty to adopt legislative, administrative and other measures to guarantee the exercise of human rights against the violations and restrictions caused by the phenomenon of corruption.

Recalling that in 2017, the Inter-American Commission published Resolution 1/17, “Human Rights and the Fight against Impunity and Corruption,” in which it said: “The fight against corruption is inextricably linked to the exercise and enjoyment of human rights. Impunity fosters and perpetuates acts of corruption. Therefore, the establishment of effective mechanisms to eradicate corruption is an urgent obligation in order to achieve effective access to an independent and impartial justice and to guarantee human rights.”

Considering that the Inter-American Democratic Charter reaffirms that essential elements of representative democracy include, *inter alia*, respect for human rights and access to and the exercise of power in accordance with the rule of law and that it establishes transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press as essential principles of the exercise of democracy.

Emphasizing that it is essential to create an environment free from intimidation for the exercise of freedom of expression by those who investigate, report and denounce acts of corruption, and that the safety of individuals involved in denouncing corruption, such as public officials, justice operators, journalists, human rights defenders, social leaders, young people, leaders of indigenous peoples and Afro-Descendant communities, is essential for ensuring the eradication of corruption.

Highlighting that the strengthening of the independence, impartiality and capacity of justice systems in the fight against corruption is a crucial element to address this phenomenon and that the work of National Human Rights Institutions in the monitoring and implementation of a human rights-based approach in the face of corruption must be reinforced.

Mindful that, in the fight against corruption, it is indispensable that States ensure the human rights of potential defendants, in such a way as to guarantee that such proceedings are aimed at accomplishing the goal of combating corruption and avoiding their use for other purposes.

Reaffirming that victims of corruption should be kept at the heart of the fight against this phenomenon and form part of the analysis, diagnostic assessment, design and implementation of mechanisms, practices, policies and strategies to prevent, punish and eradicate corruption, bearing in mind the principles of non-discrimination and equality, accountability, access to justice, transparency and participation.

Recalling that the objective of any public policy to combat corruption should be focused on and implemented in light of the following principles: the central role of the victim; universality and inalienability; indivisibility; interdependence and interaction of human rights; non-discrimination and equality; gender perspective and intersectionality; participation and inclusion; accountability; respect for the rule of law; and strengthening of

cooperation between States. Consequently, the human rights-based approach must be applied transversally in all anti-corruption strategies and entities in the region.

Underscoring that this Resolution marks the first comprehensive approach by the IACHR on the subject and that, although many of the aspects it addresses have already been developed by the Commission, on this occasion, the IACHR will highlight some core elements and will formulate recommendations to address the phenomenon from a human rights-based approach. In view of the fact that the Summit of the Americas, to be held in April 2018, will have as a central theme corruption in the Americas and that it coincides with the twentieth anniversary of the adoption of the Inter-American Convention against Corruption as well as of the creation of the Office of the Special Rapporteur for Freedom of Expression.

By virtue of the foregoing and in application of Article 41.b of the American Convention on Human Rights, and Article 18 of its Statute, the Inter-American Commission on Human Rights resolves the following:

1. Independence, impartiality, autonomy and capacity of judicial systems

a. An independent and impartial justice system is indispensable for effectively combating corruption. In some countries of the region, corruption and impunity have allowed criminal organizations to grow, establish parallel power structures and co-opt the judiciary, including its very highest courts.

b. The fight against corruption must be waged with full respect for human rights, especially, fair-trial and due process guarantees.

c. In Resolution 1/17, the Commission underlined the important oversight role that human rights defenders, whistleblowers, journalists and the media play in investigating and reporting corruption.

d. Based on the foregoing, and in order to address this core element, the IACHR issues the following recommendations to States:

i. Protect justice operators when their lives and personal integrity are at risk, adopting an effective and comprehensive prevention strategy, in order to avoid pressure, attacks and harassment against them. This requires granting appropriate funds and support to institutions and protection programs for justice operators.

ii. Conduct thorough and independent investigations into attacks on justice operators that work on cases related to corruption and effectively punish the material and intellectual perpetrators of such attacks. The Commission considers it advisable that States establish specialized units with the necessary resources and training, as well as specific investigation protocols, so that they may act in a coordinated manner and respond with the requisite due diligence to ensure a real capacity to respond to allegations of corruption.

iii. Adopt measures to strengthen the independence, impartiality and autonomy of justice systems, through the enactment of rules governing selection and appointment processes for justice operators with objective selection and designation criteria; predictable requirements and procedures for anyone who wishes to participate; and transparency

mechanisms in the selection and appointment processes for justice operators, including those of the high courts.

iv. Promote channels of effective cooperation between prosecutors, judges, public defenders and the police, as well as other institutions that may have in their possession information that is relevant to cases related to acts of corruption.

v. Guarantee the exercise of freedom of expression and association of justice operators by ensuring that disciplinary regimes do not illegitimately sanction such rights.

vi. Strengthen both judicial and administrative oversight institutions to ensure accountability within management.

vii. Generate more efficient and transparent oversight in institutions where corruption most frequently occurs, such as prison guards, police officers, immigration officers, entities that provide public services and those that supervise infrastructure projects.

2. Transparency, access to information, and freedom of expression

a. The inter-American Human Rights system has recognized the close and fundamental relationship that exists between the right to freedom of expression and democracy, recognized as a “cornerstone” of any democratic society. Article 13 of the American Convention accords special protection to the right to seek and impart information about corruption because of its importance for the consolidation, proper functioning and preservation of democratic systems.

b. The right to access to public information and the principle of transparency of state management, protected by Article 13 of the Convention, have been recognized as one of the main tools in the fight against corruption. In the region, as established by the Special Rapporteur for Freedom of Expression in its annual reports, 23 countries in the Americas already have in place regulatory frameworks and institutions that ensure access to public information. Most countries in the region are part of the Open Government Partnership and have adhered to the Sustainable Development Goals (SDGs), which promote the openness of government, transparency at all levels of the State and public policies, and citizen participation. Notwithstanding the progress made, challenges remain for the effective implementation of active and passive obligations in the area of transparency that governments are required to observe, which could have an impact in the fight against corruption.

c. Based on the foregoing, and in order to address this core element, the IACHR issues the following recommendations to States:

i. Strengthen their capacities to proactively guarantee access to public information, essential to the fight against corruption, and strengthen their active transparency and accountability mechanisms in relation to expenditures and investments in infrastructure, financing of election campaigns and transparency in the operations of political parties.

ii. Continue enacting laws that allow effective access to public information, especially for those persons or groups of people in vulnerable situations or at great risk, consistent with international standards, and encourage their effective and efficient implementation. Strengthen oversight bodies with guarantees of autonomy and independence; provide training to public officials and educate the public in order to eradicate the culture of secrecy and with the purpose of providing individuals with the tools to effectively monitor State operations, public management and the fight against corruption.

iii. Establish active transparency obligations in relation to information necessary for effective accountability and the fight against corruption, in particular with regards to: (a) systems for public sector vacancy announcements, hiring, employment and salaries; (b) conflict of interest prevention mechanisms; (c) government contracting, budget management and infrastructure investments; (d) lobbying; (e) identity of corporations and individuals involved in private sector corporate governance and corporate ownership; and (f) the financing of election campaigns and the operations of political parties.

iv. Compile, produce, analyze and periodically disseminate statistics and information on reports of corruption received by different oversight and regulatory agencies, the judiciary and other state mechanisms for the prevention and investigation of corruption, as well as their results.

v. Foster a climate of guarantees for the freedom to report acts of corruption, the development of the practice of investigative journalism and the exercise of the right to seek, receive and impart information related to corruption. This includes guaranteeing the safety of journalists, human rights defenders and activists who investigate and report corruption; repealing so-called “contempt” and criminal defamation laws while ensuring the proportionality of penalties in civil proceedings; ensuring protection for the confidentiality of journalistic sources; and establishing protection systems for corruption whistleblowers.

vi. Guarantee the independence of public and private media outlets and enact laws that promote media diversity and pluralism in line with inter-American standards.

3. Economic, social, cultural and environmental rights

a. In its Resolution 1/17 on corruption, the IACHR “reaffirms the importance of the fight against corruption in ensuring the effective enjoyment of human rights, in particular, economic, social, cultural and environmental rights, the effectiveness of which depends on public policies and budgets.” In that resolution, particularly in reference to Guatemala, the IACHR also stated:

“Following up on the human rights situation in the country, the Commission noted the consequences of corruption, which affects not only both the legitimacy of the governors and the rights of the persons governed, but also profoundly affected the national treasury, which is insufficient to meet the needs of citizens with regard to food, health, work, education, a dignified life, and justice. It likewise noted that corruption, impunity, organized crime, intolerance, political violence, and social exclusion of various sectors, present a serious danger of regression in the effectiveness of the rule of law and restrict the full enjoyment of the human rights that the American

Convention recognizes for everyone. The consequences are particularly grave for the persons, groups and collectives historically excluded, in particular those who live in [poverty and] extreme poverty in the country.”

b. Corruption in the management of public resources jeopardizes the capacity of governments to comply with their social rights obligations, including health, education, water, transportation or sanitation, which are essential for the realization of economic, social, cultural and environmental rights and in particular, of the most vulnerable populations and groups. Among these groups, women, social leaders, land rights defenders, Afro-Descendant peoples and indigenous peoples are the most affected. In addition, corruption has a very serious impact when it comes to ensuring the rights of persons deprived of liberty, migrants and LGBTI persons.

c. The administration of assets seized from acts of corruption must incorporate an economic, social and cultural rights-based approach, in such a way that reparations for the rights of persons affected by these crimes must be contemplated.

e. Based on the foregoing, and in order to address this core element, the IACHR issues the following recommendations to States:

i. Adopt strong public policies and effective mechanisms to eradicate corruption, which must include a comprehensive and crosscutting human rights-based approach at every stage, including in their design, planning, implementation and assessment.

ii. Regarding social policies and programs, strengthen and generate active transparency mechanisms and access to timely and adequate information.

iii. Generate legal and public policy mechanisms that make it possible to clearly determine the impact of different forms of corruption on the effective enjoyment of economic, social, cultural and environmental rights by individuals and communities, especially those that live in poverty or extreme poverty, such as those historically discriminated against.

iv. Strengthen mechanisms to monitor and evaluate social programs, with a particular emphasis on those areas where acts of corruption are most frequent, such as social programs and those that define the allocation and monitoring of large-scale infrastructure projects and of extractive industries and projects.

v. Adopt the necessary measures to implement or strengthen oversight and inspection systems for extraction, exploitation and development activities in a manner that is consistent with human rights obligations and that seeks to avoid infringing the rights of the community in the area of influence where such activities are carried out. Such evaluation and oversight mechanisms must be transparent and independent of corporate oversight structures and free from any type of influence. It is indispensable that these measures include mechanisms for effective participation in decision-making processes for all individuals, groups and communities that are potentially affected by an extractive or development project or activity.

vi. Adopt measures to prevent, investigate and punish, as appropriate, attacks and harassment against leaders and other individuals involved in the defense of the rights of communities, the public, or indigenous and tribal peoples affected by extraction, exploitation or development activities, as well as against those who report acts of corruption in development and infrastructure projects and social programs.

4. International Cooperation

a. Both the Inter-American Convention against Corruption and the United Nations Convention against Corruption highlight that a broad and multidisciplinary approach is needed to effectively prevent and combat corruption, and they reaffirm the importance of cooperation among States to ensure that their measures are effective, including technical assistance so that States are better able to prevent and combat corruption effectively.

b. The IACHR recognizes the work carried out by the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC).

c. The IACHR recalls experiences of technical cooperation provided to States in the fight against corruption, such as the International Commission against Impunity in Guatemala (CICIG), which alongside the Attorney General's Office, has played a key role in the fight against corruption and impunity in the country; the agreement between the OAS and the State of Honduras to create the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH), which works to assist the country in combating corruption and impunity with a holistic vision that centers on reforming and strengthening institutions in the country.

d. Furthermore, cooperation between regional and United Nations human rights bodies, such as the Joint Action Mechanism to Contribute to the Protection of Human Rights Defenders in the Americas between the IACHR and the Office of the United Nations High Commissioner for Human Rights, which strengthens the monitoring, promotion and supervision of compliance with human rights standards; as well as the protection of people who report acts of corruption and justice operators who are in charge of investigating such reports.

e. The IACHR underscores the importance of cooperation among the judicial systems of States with a view to confronting a transnational phenomenon, including the exchange of information, the creation of multilateral investigation units that could foster the establishment of an evidence unit and a coordinated policy for the identification of flows of assets used in corruption, as well as for asset recovery.

f. For the IACHR, it is also important to be able to rely on the support, participation and cooperation of individuals and groups of civil society, such as non-governmental organizations and community-based organizations, so that the anticorruption efforts of States and the IACHR are effective, as established in the aforementioned international instruments.

g. Based on the foregoing, and in order to address this core element, the IACHR issues the following recommendations to States:

i. Adopt measures towards effective transnational cooperation, including the creation of multilateral investigation units that could foster a coordinated policy for identification of flows of assets used in corruption, as well as for asset recovery.

ii. Promote the adoption of regional mechanisms to provide reparations to victims of corruption, such as evaluating the creation of a fund that would permit such reparation.

iii. Promote a regional response to corruption with a human rights-based approach.

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