

THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY

Review Meeting

Corruption and Human Rights

Geneva, 28-29 July 2007

THE POLITICISATION OF ANTI-CORRUPTION CAMPAIGNS

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I. CONCEPTUAL FRAMEWORK

1. This report addresses the potential conflict that exists between anti-corruption measures and policies, and the defense of human rights, particularly regarding the questions posed in Sub Project I and for Report No. 8, outlined below:

Sub Project I: “Strong legal connections between corruption and human rights”

- i. Which acts of corruption directly violate human rights and which acts lead to human rights violations?
- ii. When can non-protection of human rights increase corruption indices?
- iii. In which cases can the use of human rights methods and principles improve the prevention, detection and punishment of corrupt practices?

Report No. 8: “Politicizing of anti-corruption campaigns”

- i. Description of cases in which anti-corruption campaigns involve risks for people’s human rights, particularly when these campaigns are politicized and used by secretive or authoritarian governments to repress the opposition or eliminate their political rivals.
- ii. Cases in which governments have tried to manipulate anti-corruption policies to obtain electoral advantages.
- iii. Situations in which activists or journalists who expose corruption cases suffer repression and find their civil, economic, social and cultural rights threatened.

II. CORRUPTION AND HUMAN RIGHTS

1. Corruption

2. For the purposes of this paper, the definition of corruption proposed by the United Nations Convention against Corruption will be used; it describes the phenomenon as follows:

“The bribery of national or foreign public officials, bribery in the private sector, misappropriation of property by a public official, influence trading, abuse of functions and illicit enrichment.”

3. As this definition indicates, corruption can occur both in the public sector (defined as the abuse of a public function to obtain personal benefit), and in the private sector (for example, in the context of business competition, bribes are paid to a competitor’s employee so that he or she will disclose confidential information).
4. From a quantitative perspective, corruption can be classified, according to its dimensions and the amount of money involved, into small-scale or petty corruption, and large-scale corruption.
5. One category of analysis that is especially relevant for this paper is that which establishes a distinction between systemic corruption¹ (which involves the abuse of power from within the government in order to obtain prodigious illegal benefits and therefore has obvious political consequences) and administrative-institutional corruption (even if it is widespread or massive).
6. According to Klitgaard,² corruption thrives under the protective mantle of monopolies, the discretionary authority of public officials, and the lack of responsibility of these officials for their actions. The formula proposed by this author, which works with all categories of corruption, takes on greater relevance when applied to corruption that has political dimensions. In fact, authoritarian regimes and dictatorships, which are no more than a monopoly on the exercise of power, typically concentrate power around the ruler, his or her circle of insiders, or the official party. This monopolistic exercise of power can reach extreme levels after a coup d’état or when the person holding power dissolves or takes over all the branches of government, but it can also be disguised under more subtle appearances, whereby the outward show of a democratic regime is maintained, but the ruler wields *de facto* absolute control over the judicial and legislative branches of power.³
7. The absence of checks and balances that results from the monopolistic exercise of power quickly leads to a broadening of the discretionary authority of public officials who are regime insiders.

¹ According to the National Anti-Corruption Initiative (INA, in its initials in Spanish), a politically diverse commission set up by the Peruvian transition government after the fall of Fujimori’s corrupt regime for the purpose of making a diagnosis of corruption in Peru, “...corruption eventually penetrated the very core of State power, to be used as an instrument of government. To this end, a network of corruption was organized involving a large part of the State apparatus and enjoying the complicity of important sectors of the ruling class. It can be asserted that the center of corruption shifted from the administrative-institutional sphere to the core of political power itself. The State was not overwhelmed by outside networks of corruption; the corrupting initiative came from its very heart, through the Executive Branch and the intelligence services.” Working Papers, A Peru without Corruption, Ministry of Justice, Lima, July 2001.

² Klitgaard, Robert 1998. Controlling Corruption. Berkeley and Los Angeles: University of California Press. (Ed. Sudamericana)

³ The case of Bordaberry in Uruguay was paradigmatic. Bordaberry, a civilian president, cloaked a military dictatorship under a democratic guise, with such success that the term “bordaberrization” was coined to refer to dictatorships in civilian clothing. In Peru, Fujimori’s government, elected democratically in 1990, inflicted a coup d’état on itself two years later, took over the Judicial Branch and dissolved Congress, and installed an authoritarian regime that lasted 8 years, until November 3, 2000.

These officials thus find that their decision-making power has been broadened considerably. The increase in discretionary authority obviously provides fertile ground for the abuse of that authority.

8. To the extent that authoritarian governments control the judicial system, they manage to shield arbitrary exercises of power from ever being duly punished, which is what would happen in any real democracy. This of course only feeds back into the vicious cycle: authoritarian government – arbitrariness – corruption – impunity.
9. Thus the “authoritarian government – corruption” variable is one that speaks of a necessary correlation. As Fabián points out⁴, “*power corrupts, and absolute power corrupts absolutely.*” It can be justifiably stated that there is no such thing as a corruption-free dictatorship or authoritarian government, as was recently corroborated once again by the discovery of the Chilean dictator Augusto Pinochet’s secret accounts in the Riggs Bank of the United States, which effectively demolished the myth of the honest dictator that had been erected around Pinochet’s figure.
10. Corruption clearly occurs within democracies, and very often on a large scale (experience shows that it tends to be greater in fledgling or fragile democracies with a precarious institutional framework), and yet abuse and lack of transparency, elements that are central to any authoritarian government, confer structural or systemic characteristics on corruption in such regimes, where even the anti-corruption apparatus can turn corrupt.⁵ As we will see below, it is this kind of corruption that has the most serious – and direct – impact on human rights.

2. Human Rights

11. To analyze the impact of corruption on human rights, the conceptual framework of human rights that will be used is the one set forth in two of the most important international human rights instruments, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
12. As Carlos Chipoco observes,⁶ the expression “Human Rights” is relatively new, having emerged at the end of the Second World War and with the founding of the United Nations. Underlying the concept, however, is a reality that is inherent to the human person: there are basic rights that derive from the human condition.
13. Today it is quite common to speak in terms of the threefold classification of human rights proposed by René Bassin, whereby human rights are classified into three “generations”. *First-generation* rights are individual rights, also known as civil and political rights; *second-generation* refers to those rights that emerged from early-20th-century social processes, and finally, *third-generation* designates collective rights, such as the right to a healthy environment and to peace.⁷
14. Given their vast scope, we will address only some of the most relevant human rights in this analysis, and we will specifically exclude the third-generation rights, because of their general nature. To better evaluate the impact of corruption, we will group some of these rights into the following five categories:

⁴ Fabián Caparrós, Eduardo “La Corrupción: aspectos jurídicos y económicos“, Ed. Ratio Legis, Salamanca, 2000, p.18.

⁵ Also called *abnormal* by Klitgaard, in “Comprendiendo la Corrupción”, October 14, 2003.

⁶ Chipoco, Carlos “En Defensa de la Vida“, Centro de Estudios y Publicaciones, Lima, 1992, p. 29

⁷ Op. Cit., p. 33.

- i. Right to life and personal integrity; Right not to be the victim of cruel, inhuman and degrading treatment; and Right to freedom and personal security.
 - ii. Right to freedom of expression, opinion and information; and Right to freedom of thought, conscience and religion.
 - iii. Right to access to just and due legal process; and Right to non-discrimination and equality before the law.
 - iv. Right to health, education and other social rights (e.g., food and housing).
 - v. Right of association and Electoral rights.
15. In general, the struggle for the defense of human rights that went on from the 1960's to the 1980's focused on the violation of the so-called first-generation right, i.e., civil and political rights. On the one hand, the defense of U.S. blacks' right to non-discrimination mobilized vast sectors of the U.S. population and gave rise to high-visibility activism,⁸ which highlighted the debate about the civil rights inherent to all human persons. On the other hand, the proliferation of dictatorial and military governments around the world and the rise of revolutionary left-wing movements within the context of the Cold War triggered the development of strategies such as so-called "low-intensity warfare", created and promoted by the United States of America to confront Communist subversion among its allies. By implementing such a strategy, many totalitarian regimes resorted to torture, forced disappearances and extrajudicial executions as ways to combat subversion.⁹ With the fall of the Berlin Wall and the break-up of the Soviet Union, violations of first-generation human rights shifted to cases of ethnic conflict.
16. Starting in the 1980's, however, awareness has grown regarding second and third-generation rights, and many organizations have emerged to defend social, gender, and environmental rights.

3. Direct impact of corruption on human rights

17. There might appear to be little link between the effects of corruption and the violation of first-generation rights. A very broad analysis of the problem would lead to the conclusion that any act of corruption eventually affects human rights, especially second-generation rights, inasmuch as it hinders development and increases poverty.¹⁰ This paper, however, sets out to establish only those cases in which fundamental rights are jeopardized by certain acts of corruption. For this reason, and in order to avoid potentially unlimited casuistry, we will try to define certain *types* of corruption that have a direct impact on certain *categories* of human rights.
18. As we pointed out earlier, corruption can be measured quantitatively in terms of the magnitude of the transactions involved, and thus can be classified as large-scale corruption or petty corruption. From our point of view, large-scale economic corruption in the public sector usually has a direct impact on certain individual and social rights.

⁸ Of which Martin Luther King, assassinated for his leadership against racism, was the most notable practitioner.

⁹ On the American continent, the most notorious cases are Chile, Argentina, Uruguay and Brazil, in the Southern Cone, and Guatemala, Nicaragua and El Salvador in Central America, countries where thousands of people were arrested and executed by the different dictatorships that seized power.

¹⁰ As Jim Wolfensohn, President of the World Bank, stated in his historic speech on October 10, 1996, on the occasion of the Bank's annual meetings, "*Corruption shifts resources from the poor to the rich, increases business costs, distorts public spending and discourages foreign investors... It is a major barrier to consistent and equitable development.*"

3.1 Corruption and the Right to life and personal integrity

19. When this type of corruption occurs in poor countries, there can be no doubt that its effects end up putting countless people's right to existence at risk. One of the headings under which the most corruption takes place in general, is public purchases and competitive bidding processes. Such is the magnitude of this type of corruption that, according to Daniel Kaufmann, anti-corruption expert at the World Bank, in the area of public bidding alone, bribes are estimated to reach the astronomical figure of 1 trillion dollars annually.¹¹ For his part, U.S. Senator Richard Lugar, chairman of the Senate Foreign Relations Committee, estimates that the World Bank has lost between 5% and 25% of the money it has lent to countries since 1946 (US\$ 525 million dollars). Likewise, Transparency International estimates that of the annual worldwide expenditure made in 2004 (US\$ 3.9 trillion dollars), 10% has been lost to bribes (US\$ 390 billion dollars).
20. When these acts of corruption involve the appropriation of goods and/or services allocated for alleviating the poverty of the most vulnerable sectors of a society; embezzlement, often in the form of unjustified price hikes; low-quality products; and the payment of bribes to corrupt officials that are passed on as an additional cost of goods and services, they end up putting the life and physical integrity of the intended recipients at risk.
21. Several years ago, the so-called "rapeseed-oil" case in Spain made news around the world. Rapeseed oil is a product that is suitable for human consumption and used as a cooking oil and in food processing. It is obtained by pressing the seed of the rape plant. In early 1981 it was discovered that a significant amount of rapeseed oil imported from France had been adulterated with aniline and then sold on the market. 349 people subsequently died from consuming this product and 19,293 more fell ill. For the product to enter Spain and pass all the relevant sanitary controls, it is believed that a whole string of acts of corruption took place that finally allowed the adulterated oil to be sold to consumers.
22. The case of Nigeria is well known. As in many other Third-World countries, there is a mafia that sells adulterated medicine. After bribing public officials in charge of quality control, the mafia sells the medicine in low-income neighborhoods, causing the death and illness of many people.
23. In a food program for AIDS orphans in the Democratic Republic of the Congo, it has been discovered that corrupt program officials, in league with food providers, have overpriced the food, which means that less can be acquired and the intended beneficiaries will not be as well fed. The children's health will suffer, as well as their life expectancy.
24. In Peru, on the Eve of the 2001 New Year, tons of fireworks exploded in a street market, killing close to 300 people. Initial investigations determined that these products, which were banned from entering the country and being sold, had been smuggled in (which implied acts of corruption in the customs service) and sold openly on the street. As the victims' lawyer has stated over and over, police corruption is responsible for these deaths, because the police withdrew intentionally from the street market during the holidays to allow the sale of banned materials to proceed without interruption, as the merchants had allegedly paid them off.
25. In another kind of case that occurs frequently, donations intended to feed, clothe or cure disaster victims are illegally appropriated by public officials in charge of their distribution. Then, in collusion with third parties, they sell the goods on the market. The lack of this food, clothing or medicine often jeopardizes the health of disaster victims, and can even cause their death. Such is the magnitude of this problem that many countries have had to introduce aggravating criminal

¹¹ Daniel Kaufmann, "Myths and Realities of Governance and Corruption", World Bank, p. 21

factors that augment the sentence for public officials who divert goods earmarked for humanitarian assistance or social support programs.

26. When corruption derives from political structures put in place by authoritarian governments, chances are that it will end up trampling people's right to life and integrity. As we have pointed out, dictatorial and authoritarian governments as a rule are corruption-ridden governments. Since these governments are intolerant of criticism and dissidence, they tend to resort to repression and violence to stifle resistance movements opposed to their policies. In these cases, the binomial "authoritarian government – corruption" becomes a trinomial: "authoritarian government – corruption – repression".
27. World history is replete with cases of authoritarian and corrupt governments that in order to hold onto power and continue plundering their states, impose iron-fisted systems of repression under which arbitrary detentions, torture, forced disappearances and extrajudicial executions have claimed millions of victims.
28. Military dictatorships in Central and South America¹² and corrupt satrapies in Asia and Africa¹³ are clear examples of how corrupt and dictatorial regimes systematically violated these rights as a way to hold on to power and continue ransacking the countries they governed.
29. More recently in Peru, Fujimori's corrupt authoritarian regime created the "Colina" paramilitary group. Manned by personnel from the Army Intelligence Service (SIE, in its initials in Spanish), it was used to repress alleged members of the terrorist groups Shining Path and Túpac Amaru Revolutionary Movement¹⁴. Members of the Colina group have also been accused of carrying out torture, kidnapping and extrajudicial executions. In at least one case they acted as gunmen hired by a private citizen to murder his personal enemies.¹⁵ The group was financed with public funds that had been siphoned off from the budget, and enjoyed complete impunity from the government; in fact, its members received promotions and medals from President Fujimori himself. In the same way, when their crimes were disclosed under pressure from the investigative press and human rights organizations, they received a direct amnesty from the government. This is a typical case in which a corrupt organization ends up directly violating first-generation human rights in order to hold on to power and continue plundering the State.

3.2 *Judicial Corruption and Access to Justice, the Right to Due Legal Process, to the Presumption of Innocence, to Personal Freedom and Security*

30. According to Transparency International's 2007 Global Corruption Report, entitled "Corruption in the Judicial Systems"¹⁶, "judicial corruption includes any inappropriate influence on the impartiality of the judicial process by any actor within the court system."¹⁷ As the Director of Transparency International, Huguette Labelle, pointed out in the preface to this report, "judicial corruption undermines citizens' morale, violates their human rights, harms their job prospects and national development, and depletes the quality of governance."¹⁸

¹² Videla in Argentina, Pinochet in Chile, Stroessner in Paraguay, Duvalier in Haiti, Somoza in Nicaragua, among others.

¹³ Ferdinand Marcos in the Philippines, Suharto in Indonesia, Abacha in Nigeria, Mobutu in Zaire, etc.

¹⁴ Among other killings, this group has been accused of carrying the so-called Barrios Altos massacre, where they killed 16 people at a neighborhood breakfast (including a 10-year-old boy), and the disappearance of 9 students and a professor from La Cantuta University, all suspected of links to terrorism, according to the SIE.

¹⁵ On the activities of the Colina group, cf. Ricardo Uceda, "Muerte en el Pentagonito".

¹⁶ Cambridge, 2007, p. xxi.

¹⁷ Free translation by author.

¹⁸ Op. Cit., p. xvi.

31. Judicial corruption has effects that go way beyond the limits of the trial itself in which it occurs. To the extent that courts have been set up to resolve conflicts between people, and between people and the State, any result that comes out of a judicial process will have repercussions on social life.
32. According to art. 14 of the International Covenant on Civil and Political Rights, all persons are equal before the tribunals and courts of justice and are entitled to a fair hearing by an impartial tribunal.
33. Judicial corruption can occur essentially for two kinds of reasons: political or economic.
34. Given the importance that certain judicial decisions assume, many of which can have significant effects on a nation's political life, it is not uncommon for political authorities or parties to try to exert undue influence on the administration of justice in order to obtain rulings that favor their interests. Political interference can be expressed in many ways, ranging from outright intervention by another power of the State to veiled pressures through budgetary control or the system for appointing judges. This manipulation of justice often takes the form of promotions, jobs for relatives or friends, etc. The political control of justice has also involved using the courts to prosecute dissidents or opponents. In order to curry favor with the regime in power, some judicial officials, under no explicit instructions from political authorities, look for ways to benefit the regime with their rulings, thus distorting the action of justice. From this perspective, politically-motivated judicial corruption should be considered to include any kind of inappropriate influence on the administration of justice – either elicited or self-imposed – that serves political interests.
35. Economic corruption, however, is more widespread. Bribes for judges, prosecutors, and employees or officials of the system, for the purpose of tipping the scales of justice in favor of one of the parties, are the most common form corruption takes. A survey taken by Transparency International in 2006,¹⁹ showed that worldwide over one person in ten who had had contact with justice, had paid bribes. The figure goes up to one in five in the case of Latin America, and in countries like Bolivia, Cameroon, Gabon, India, Mexico and Morocco, it goes up to one in three.
36. As we have pointed out, conflict-resolution in the courts requires an impartial stance on the part of the Judge, which explains why one of the fundamental principles of judicial administration is the independence of judges and respect for the right to a natural judge, i.e., to the judge that the law predetermines. This helps to avoid the kind of manipulation that seeks to upset the balance that is crucial to reaching a fair solution.
37. The right to access to justice is taken to mean that all people must be able to take their suit before a court under equal conditions. When the bodies of justice become corrupted, and the supposedly impartial arbiter bends his or her function in favor of one of the parties, then equal access to justice is compromised. It is clear that if one of the parties succeeds in drawing the interest of the judicial authority to rule in his or her favor for reasons other than justice (economic, political or otherwise), it follows that the other party does not have equal access to justice, which effectively constitutes an obstacle and violates this fundamental right.
38. International human rights instruments recognize the right to due legal process, consisting of a set of judicial guarantees within the legal process. In this way, the right to due legal process comprises, among others, the right to be judged by an independent tribunal, to right to defense, to the presumption of innocence, to appeal and to a natural judge.

¹⁹ TI Global Corruption Barometer

39. When justice is corrupted, the right to due process is directly affected, because the judges and other officials violate judicial guarantees in order to confer undue favoritism on one of the parties.
40. What happened in Peru with the criminal organization directed by the ex-President Alberto Fujimori and his personal assistant Vladimiro Montesinos, offers a manifest example of the extent to which political intervention in the Judicial Branch can affect due legal process. It was a case of an outright power grab: no area of the public sector escaped control by the organization, which also extended its tentacles into key areas of the private sector.
41. In April 1992, Fujimori, who had reached the presidency two years earlier by way of democratic elections, alleged judicial corruption²⁰ and what he considered obstructionism by the Congress of the Republic, in order to bring off a self-inflicted presidential coup d'état by dissolving Congress and dismissing almost all the country's judges, who were replaced by hundred of provisional magistrates appointed directly by the regime. This ushered in a period of authoritarian rule that lasted until November 2000. What made the political control of the Judicial Branch possible was a so-called reform, by which the "Executive Commission of the Judicial Branch" was appointed. Chaired by an ex-Navy officer chosen by the government, in practice it was the instrument for interfering in the justice process.
42. After a video appeared showing presidential assistant Montesinos bribing a congressman to vote in Parliament in the government's favor, the government fell. Montesinos fled to Panama and Fujimori to Japan; a transitional government took over the reins of the country and opened an investigation into the alleged acts of corruption committed by Montesinos. To virtually everyone's surprise, the investigations determined that it had not been acts of corruption committed by a few public officials, but an actual criminal organization in power, made up of hundreds of people and headed by the President of the Republic himself.²¹
43. The organization had a pyramidal structure, the top point being occupied by Alberto Fujimori Fujimori, President of the Republic, Vladimiro Montesinos Torres, chief advisor for intelligence, drug trafficking and national security and *de facto* head of the National Intelligence Service, and Nicolás Hermosa Ríos, General Commander of the Armed Forces. Under this direction, a vertical structure ran parallel to the organization of the State, in which leading members of the criminal organization in turn held key positions in the public sector.
44. The institutions making up the justice system played a key role in the criminal organization's strategy inasmuch as they fulfilled a threefold function. First, they assured impunity for all the members of the organization; second, they served as a source of funding through the extortion of people involved in complex litigation; and finally, they were used as an instrument for prosecuting the opposition (there were several cases in which legal charges were brought against dissidents; many were forced to leave the country, including a judge of the Constitutional Tribunal and the owner of an opposition television channel, both of whom were implicated in criminal proceedings with no evidence whatsoever).
45. To this end, Montesinos exerted direct control over the Attorney General of the Nation, who on more than one occasion stepped in personally and publicly to dismiss charges against Montesinos or other regime insiders. He likewise controlled the President of the Supreme Court

²⁰ In a public speech shortly before the coup, he called the judges "jackals" and referred to the Supreme Court building as the "Palace of Injustice".

²¹ At present there are over 1,500 people being investigated in close to 200 legal criminal cases.

and the person who wielded *de facto* power in the Supreme Court, both of whom made sure in turn that the lower courts followed their instructions.²²

46. In the judicial sphere, Montesinos would apply a system of exchanging favors: when he heard of a lawsuit involving valuable property, he intervened directly or through lawyers beholden to him, to demand huge sums of money in exchange for a favorable ruling. The money was for his exclusive benefit. In other cases that did not arouse his interest, he let the judges who were loyal to the regime do as they would.
47. The judicial corruption implemented by Fujimori and Montesino's criminal organization was both economic and political in nature. In some cases, a system of illegal payments in cash or in kind (such as airline tickets) was set up by means of a parallel structure. This parallel system had a serious and direct effect on many citizens' right to due process inasmuch as they were subjected to the judicial arbitrariness of an authoritarian regime.
48. On a different front – the fight against terrorism – the Fujimori government restricted a series of judicial rights by instituting summary trials carried out by military courts or “faceless” civil judges completely controlled by the government, at which the defense team's work was totally limited²³. The number of unfair convictions was so high that years later the government had to create a Commutation Commission to look at an estimated 800 convictions based on judicial error. Confronted with these flagrant violations of the right to due process in these anti-terrorism proceedings, the Inter-American Court of Human Rights and the Constitutional Tribunal invalidated the proceedings and ordered a new trial in several of these cases.
49. A consequence of the violation of the right to due process is that the rights to personal freedom and security are also often directly affected. When judicial arbitrariness is the norm, arbitrary detentions are also commonplace, and even torture, forced disappearances and extrajudicial executions – as in the case of Peru during its 15 years of internal warfare.
50. Moreover, the impunity that corrupt regimes guarantee their members, for both corruption and human rights violations, constitutes in itself an additional violation of the victims' right to justice.

3.3 *Corruption and the right to freedom of expression and thought*

51. In today's world, the rights to freedom of expression and thought are deemed fundamental rights, among those that make up the “hard core” of Human Rights. Freedom of thought implies the right to develop ideas and have one's own criteria, inasmuch as no one may be forced to think or not think in a certain way. And the right to freedom of expression comprises both the right to freedom of opinion (transmission of ideas) and the right to freedom of information (transmission of data) in its two modes: informing and being informed. The right to freedom of thought and expression is important because the transmission of ideas and facts helps to create diverse public opinion, which in turn is the basis that upholds a Democratic State Ruled by Law.

²² The Attorney General is currently serving a 10-year prison sentence, and a number of Supreme Court justices as well as judges and prosecutors of different hierarchies are also under arrest.

²³ Among other measures, it allowed for convictions *in absentia*, lawyers were forbidden from defending more than one terrorism case at a time, and the burden of proof was inverted *de facto*, violating the right to presumption of innocence.

52. As we pointed out above, there is a directly proportional relationship between authoritarian governments and corrupt regimes. Thus, in this type of administration, corruption habitually leads to direct violations of the rights to freedom of thought and expression.
53. One characteristic of authoritarian regimes is intolerance in the face of criticism and the circulation of ideas that challenge the official line. Therefore, this type of government frequently represses both the dissemination of opinions and ideas and the free transmission of information by applying a variety of measures, ranging from aggression against journalists and the closing of media institutions, to the enacting of contempt and libel laws in order to bring charges against dissidents.²⁴ There have been many cases around the world in which dictatorships or authoritarian governments file legal charges against their opponents and then, exploiting the control they have over the courts due to systematic judicial corruption, manage to repress them with guilty sentences or subject them to prosecution in an attempt to silence them.
54. In the case of Peru, during the ten years the country was ruled by the corrupt Fujimori-Montesinos organization, the rights to freedom of thought and expression were constantly violated.
55. In Peru there used to be 7 over-the-air television channels and two cable channels. Using a system of illegal payments made with funds stolen from the public treasury, the government literally “bought” the editorial line of 6 of the 7 over-the-air channels²⁵ and one cable channel. There are videos showing Montesinos negotiating and handing over millions of dollars in cash – stolen from the State budget – to the owners of these media organizations, in order to silence the opposition and publicize the government’s initiatives in a favorable light. In this way the government used corrupt pay-offs to directly and blatantly violate freedom of expression by controlling the 7 channels open to the general public.
56. Another shrewd attack on the right to freedom of expression consisted of misinformation and verbal aggression campaigns against highly visible opponents to the government. Using cheap newspapers (known as the “chicha” or popular press, and generally characterized by attention-getting colors, everyday language and photos of naked women on the 6 or 8 pages making up the newspaper), the Fujimori-Montesinos criminal organization would attack and insult opponents²⁶ and openly disseminate propaganda in favor of the regime. To keep this up, every week the organization would send cash (between three and five thousand dollars a week) to the directors of these media, and every day the Montesinos-controlled National Intelligence Service would fax them the belligerent headlines to be published the next day.

3.4 *Corruption and Social Rights*

57. Social rights like education, health and the right to adequate housing are constantly violated as a result of public corruption. When corrupt public officials misappropriate funds that belong to the State, or when they receive bribes to give preference to certain suppliers, accept overpricing or deliver substandard goods and/or services, they generate a direct impact on the social rights of the underprivileged of that country. In poor countries, every act of embezzlement from the

²⁴ The most recent example is Hugo Chavez’s Venezuela, where the one-man authoritarian government has cancelled the license of the opposition television channel RCTV and seized its equipment under the argument that they have misused a State concession by questioning the government. Many other examples can be cited from around the world, such as Cuba and China, where the free circulation of information and opinions is forbidden.

²⁵ The government did not need to buy the seventh channel, because it was State-run and thus already under its control at no extra cost.

²⁶ There were several notorious defamation cases. Gustavo Mohme, the director of an opposition newspaper, was labeled a homosexual; Angel Paez, investigative reporter at the same newspaper, was accused of treason; and the opposition mayors Alberto Andrade and Luis Castañeda were also slandered.

national budget, or every cost run-up attributable to corruption, automatically brings with it a reduction in investment in social policies, i.e., lower-quality education due to lack of infrastructure, poorly-qualified teachers due to their meager salaries, the lack of school supplies, etc.; or inadequate public-health services due to scarce supplies of medicine and curtailed construction of health-care centers or hospitals; or a slow-down in the construction of low-cost housing; or less capital investment in food programs for the most vulnerable sectors of the population.

3.5 Corruption and the rights of association and to the freedom to vote

58. Like the right to freedom of expression, it is very common for the rights of association and the right to the freedom to vote to be significantly restricted by corrupt and authoritarian regimes.
59. Since authoritarian governments do not tolerate dissidence, and they tend to provoke resistance that is expressed in public protests, most of the time they eventually stifle the right to peaceful assembly and to association, arguing that they foment conspiracies against the stability of the government.
60. At the same time, corrupt regimes typically seek to prolong their hold on power, and thus tend to manipulate electoral processes to guarantee their reelection. Or else they resort to electoral fraud or simply suspend elections, thereby obstructing the exercise of citizens' right to elect their authorities periodically.
61. Once again, the Peruvian case is a good example of how corruption ends up directly undermining the right to vote freely. There are a number of videos showing Montesinos offering to add US\$ 10,000 dollars a month to the salary of the President of the Electoral Board, and bribing another electoral magistrate with airline tickets, to get them to guarantee Fujimori's fraudulent reelection.
62. In the same way, corrupt officials at different levels and in different sectors of the State apparatus siphoned off public funds to make electoral propaganda in the government's favor, thus trampling on the impartiality that the civil service should maintain in these cases and creating unequal opportunities with regard to the other candidates.

4. Indirect impact of corruption on human rights violations

63. We can state with certainty that in a poor country, any act of corruption has a negative impact on human rights. Many acts of corruption violate these rights directly, but far more numerous are the cases in which political and economic corruption has an indirect impact on all manner of human rights.
64. Any misappropriation of economic resources in Third World countries necessarily implies diverting money that, if well spent, would meet some of the multiple basic needs of the underprivileged. Therefore, in those cases where corruption is not directly responsible for deaths, injuries, restricted personal freedom, lack of essential services, diminished quality of education and health care, etc., it clearly has an indirect influence.
65. The misappropriation of public funds without a doubt diminishes the State's capacity to meet the demands of vast sectors of the population that have not covered their basic needs for a nutritious diet; essential utilities such as water, sewers and electricity; complete education; adequate housing; public transportation; among other social rights. As a point in fact, the lack of

legal security resulting from judicial corruption discourages investment, and therefore has a negative impact on the right to work that all citizens have. It also affects the right to rest, to enjoy free time and other labor rights. In addition, ordinary citizens might find their freedom, honor or property endangered by corrupt judicial decisions.

66. As for third-generation human rights, the indirect negative impact of corruption is even greater. Inasmuch as corruption implies an obstacle for development and deepens poverty, it generates fertile conditions for violent reactions; this has occurred in many countries where corruption has led to citizens' being deprived of the right to peace.
67. Even though corruption often ends up directly affecting the right to a healthy environment (e.g., when corrupt officials approve activities that are incompatible with the environment in exchange for a bribe), there are many cases in which the impact is indirect, because poverty encourages activities that damage the environment, such as the illegal cutting of trees, drug trafficking, informal mining, etc.
68. Finally, there are also circumstances in which political corruption, resulting from authoritarian policies, eventually undermines social rights such as the right to participate in public affairs, in cultural life, in the benefits of scientific advancement, among others.

5. Human rights protection and corruption indices

69. Setting up mechanisms to protect human rights helps to bring down corruption indices for a number of reasons.
70. We have already mentioned that the lack of transparency, together with the concentration of power, is a condition that foments corruption. One effective mechanism to protect human rights is to defend transparency and the unrestricted right to freedom of expression, especially in terms of the right to information. A society with robust instruments of access to information and free circulation of information is a society where there will be fewer opportunities for corruption to flourish, because corruption needs darkness and secrecy to grow.
71. It has furthermore been demonstrated time and again throughout history that unless those who have committed acts of corruption are investigated and punished, corruption spreads and takes root as a direct consequence of impunity. The fight against impunity is one of the causes that human rights organizations have taken up with the greatest insistence.
72. Many institutions that defend first and second-generation human rights undertake monitoring initiatives that serve to dissuade corruption. These initiatives often turn out to be the point of departure for investigations that lead to the disclosure and criminal prosecution of such irregularities.
73. In a similar vein, many human rights organizations carry out educational and training programs. As different sectors of the population become aware of their rights and the obligations of the State and its authorities, a powerful mechanism is created to prevent corruption through an organized, aware and alert citizenry.

III. POLITICIZING ANTI-CORRUPTION CAMPAIGNS

74. One characteristic of anti-corruption campaigns, especially when they target a corrupt regime, is that they arouse great public interest, widespread coverage in the press and indignation among

the population. Moreover, politicians can advance their fortunes with anti-corruption speeches, especially when they are seeking legitimacy in the eyes of the population.

75. An example we can point to is the case of Azerbaijan, cited by the Crisis Group Europe Briefing N° 40, 21 November 2005²⁷. The report states that President Ilham Aliyev, 17 days before the 2005 elections, dismissed and arrested two of the government's most prominent officials, accusing them of plotting a coup d'état against his government and of misappropriating public funds. Everything would seem to indicate that the president was in very weak position against such influential politicians. According to the report, "the arrests appear to have been politically motivated, and based on questionable evidence," all the more so because they took place immediately before the elections, which "suggests that they were politically motivated with an eye to eliminating potential rivals."
76. The pressure exerted by media campaigns and public opinion can often make authorities feel obliged to severely punish people alleged to be responsible for acts of corruption, even when there is not enough evidence to convict them. In fact, judges, prosecutors and other authorities in charge of prosecuting corruption cases sometimes have to deal with the fear of being called soft on corruption, or even complicit, if they do not mete out conspicuous punishment on the suspects. This can incline them to violate the guarantees of due legal process.
77. To keep this from happening, it is vital to have independent judges who zealously control anti-corruption investigations and assure full compliance with due-process guarantees. The fact that the accused are on trial for alleged acts of corruption – or violations of human rights – cannot justify the infringement of their own human rights and judicial guarantees. The publicity and transparency of the trials serve as an example to organized civil society, which can then act to dissuade such excesses.
78. No one accused of corruption has ever failed to claim to be the victim of a political vendetta. Precisely to avoid raising suspicions concerning the legitimacy of anti-corruption trials and fueling these suspicions, and to keep sentences from being subsequently overturned because the rights of the accused were not respected, trials must be conducted scrupulously, and great care must be taken to comply with the guarantees constituting due process. A scrupulous attitude, however, does not mean falling prey to manipulations or inordinate trial delays on the part of the defense; the judges must take equal care to keep the trial from becoming bogged down.
79. Paradoxically, because of the political points to be scored with anti-corruption trials, it is not uncommon for cases to be used as a pretext for persecuting the political enemies of corrupt rulers or authoritarian regimes: in order to confuse public opinion, discredit their opponents or simply get them out of the way, these regimes trump up corruption charges to justify repression.
80. This seems to be the case of the president of Nigeria, Olusegun Obasanjo, who submitted to the Senate a report written by the anti-corruption body that he controls. The report accuses Vice President Atiku Abubakar, who had been the president's ally in the government until he opposed the constitutional reform that would have cleared the way for President Obasanjo's re-election. Abubakar is the opposition candidate for the presidency, postulated by the "Action Congress", a coalition of parties opposed to the government.
81. If the Senate lifts his immunity, Abubakar would be disqualified from running in the April elections. Abubakar has emphatically denied the accusations made against him and insists that the charges are politically motivated. For their part, as International Herald Tribune has

²⁷ Azerbaijan's 2005 Elections: Lost Opportunity, pp. 9 - 11

reported, “Obasanjo’s opponents claim that he has used the fight against corruption as a way to persecute his political enemies.”²⁸

82. Under Fujimori’s government in Peru, the criminal organization that he headed manipulated corruption charges in order to persecute certain opponents of the regime. Notable cases included that of the magistrate of the Constitutional Tribunal Delia Revoredo, who opposed Fujimori’s re-election, after which her husband was accused of smuggling a used car into the country from Miami; criminal charges were brought against him, with a threat of arrest, for which reason the couple sought political asylum in Costa Rica. Criminal charges were likewise brought against Baruch Ivcher, the owner of a television channel, for allegedly having manipulated the company’s stockholders’ ledger in order to cheat his partners; he was also forced to flee the country. In both cases, the regime, which had taken over the Judicial Branch, was able to count on the compliance of magistrates who were completely under the regime’s thumb.

IV. CONCLUSIONS

- i. There is a necessary relation between corruption and human rights whereby sometimes the latter are directly and severely compromised by acts of corruption. Other times, corruption does not have a direct impact on respect for human rights, but it does affect them indirectly.
- ii. There is a correlation between corrupt and authoritarian governments and the violation of human rights. The concentration of power and lack of transparency that characterize these regimes do not just encourage corruption, they also determine repressive policies that seek to repress dissidents and hold on to power, which ends up having a negative effect – either directly or indirectly – on first and second-generation human rights.
- iii. Anti-corruption campaigns can be manipulated by corrupt regimes for the purpose of gaining political points, or discrediting or persecuting their political enemies. Another risk is a tendency to violate the due-process guarantees of those accused of corruption, under the pressure of public opinion or the media.
- iv. Effective mechanisms for protecting human rights and active human rights organizations definitely help to reduce and prevent corruption. Campaigns in favor of transparency and access to information, against impunity, in favor of freedom of expression, among others, contribute to the denunciation of acts of corruption and constitute a disincentive. In the same way, human rights training projects help to raise awareness about the need to do away with corruption.

²⁸ Published February 7, 2007.