



Roundtable on “International Law and Agenda 2030: Poverty, Justice, and Anti-Corruption”

PKU 24 October 2016

Corruption as a Violation of International Human Rights

Anne Peters

I. Introduction

Agenda 2030 Goal 16: to “substantially reduce corruption and bribery in all their forms”, and to return all stolen assets.

II. Doctrinal re-construction: Corruption as a human rights violation?

1. Attribution

2. Omission and obligation to protect

3. Procedural and result-independent obligations

4. Causation

- Cause in fact and scope of responsibility.
- “Proximity” and “foreseeability”.
- a) Cumulative causation
- b) Concurrent (or competing) causation
- c) Overriding causation (over time)
- d) Statistical correlation sufficient?

III. Normative Assessment: Pros and Cons of this Re-conceptualisation

1) Pros

(1) Empowerment

In contrast to the purely criminal law approach which sees corruption as a “victim-less crime”.

(2) Systemic responsibility of the State

(3) From repression to prevention

(4) Burden of proof

The absence of any steps taken or blatantly inadequate measures to investigate or tackle alleged acts of corruption might constitute a prima facie case of a human rights violation.

2) Cons: Cultural imposition?

IV. Practical recommendation of mutual mainstreaming

- (1) In the work of the human rights treaty bodies,
 - guidelines for all **country reports**
 - **country-specific concluding observations** of the committees
 - mandates of the human rights special rapporteurs
- (2) Human Rights Council UPR:
 - specialized **anti-corruption NGOs**
- (3) “General Comment on Corruption and Human Rights” that would apply to all treaties.
- (4) an anti-corruption mandate could be included in the international standards for the national human rights institutions.

V. Conclusion

Mutual mainstreaming.

Legal bases

- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997, in force since 15 February 1999 (41 parties as of February 2016).
- United Nations Convention against Corruption of 31 October 2003 (UNCAC), in force since 14 December 2005, UNTS vol. 2349, p. 41 (UN Doc. A/58/422), 178 States parties (as of February 2016).
- Final Report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights (UN Doc. A/HRC/28/73) of 5 January 2015.
- Goals 16.5. and 16.4. of UN GA Res. 70/1: “Transforming our World: the 2030 Agenda for Sustainable Development” of 25 September 2015.

Case law

- European Committee of Social Rights, *International Commission of Jurists v. Portugal*, Complaint No. 1/1998, decision of 9 September 1999.
- The High Court of Tanzania, *Legal and Human Rights Centre and Others v. Attorney General*, (Miscellaneous Civil Case No. 77 of 2005) [2006] TZHC 1 (24 April 2006).
- ICSID, *World Duty Free Company Limited v. The Republic Of Kenya*, ICSID Case No. ARB/00/7, 4 October 2006.
- ECOWAS Community Court, *The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria and Universal Basic Education Commission*, Judgment of 30 November 2010 (ECW/CCJ/JUD/07/10).

Literature

Anne Peters, Corruption as a Violation of International Human Rights, Max Planck Institute for Comparative Public Law and International Law (MPIL) Research Paper Series 2016-18 (www.mpil.de)