Introduction

- Maltese Prime Minister resigned in Jan 2020. Investigative journalist Daphne Anne Caruana Galizia had been murdered in 2017.
- Agenda 2030, Goal 16.4. is to “substantially reduce corruption and bribery in all their forms”.
- Special Rapporteur (Manfred Nowak) on torture, report of 16 January 2019: “patterns of interaction”.

Research Questions:
States perceived to be highly corrupt are at the same time those with a poor human rights record. There seems to be a negative feedback loop between both harms. Are human rights the proper normative framework to denounce and combat corruption? What is the legal quality of the assumed ‘link’ between corruption and human rights violations?
1. Positive analysis: Whether and under what conditions can corrupt acts or omissions technically be qualified as an actual violation of international human rights?
2. Normative analysis: Should corruption be conceptualised as a human rights violation?

I. Positive Analysis: Corruption as a human rights violation?
- Corruption as umbrella term: Abuse of entrusted power for undue advantage.
- Real human rights “violation”? or only negative impact/environment conducive to abuses?
- Three state human rights obligations: respect, protect, fulfill (facilitate, provide, promote).
- Procedural and result-independent obligations
- Violation of Art. 2(1) ICESCR: take steps; achieving progressively; maximum of available resources.
- Corruption as discrimination: Art. 2(2) ICESCR and Art. 2(1) ICCPR.
- Causation: “Proximity” and “foreseeability”.
- Attribution: Art. 7 ILC Articles on state responsibility (ultra vires action): Under cover of public authority.
  But against rationale?
- Margin of appreciation: “all appropriate means” (Art. 2(1) ICESCR); “reasonableness” (Art. 8(4) OP ICESCR).

III. Normative Analysis: Added value of complementary human rights based approach?

Opportunities
(1) Empowerment of victims.
(2) Systemic responsibility of the state
(3) From repression to prevention; thus less political abuse for elimination opponents.
(4) Burden of proof/exoneration on state.

Risks
(1) Distrust towards rule-of-law based (neo-)liberal state and institution of rights.
(2) Does state responsibility unduly burden tax-payers?
IV. Practical recommendation of complementary human rights-based approach

(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:
   - Voice for specialized anti-corruption NGOs
(3) A “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.

→ Mutual mainstreaming (systemic integration of two subfields of public international law).

- Human rights institutions do not overstep their mandate.
- Only complementary approach, not to substitute criminal law approach.
- Could help to close implementation gap.

Key objection: “Human-rightism”? Overstretch of human rights?
- Strategic framing to reach human rights courts.
- Systemic problem artificially “forced” into a human rights mould?
  Disregard of the “engine room” of the polity?

Response: Rights transform victims into citizens. Citizens build institutions that work.

Legal bases

Further documents
- Inter-American Human Rights Commission, Resolution 1/18 of 2 March 2018 “Corrupcion y Derechos Humanos”.

Literature
Lys Kulamadayil, ‘When International Law Distracts: Reconsidering Anti-Corruption Law’, ESIL reflections vol. 7 issue 3 of 7 May 2018