



United Nations
Office of the High Commissioner for Human Rights
Terms of Reference

Theme: The role of good governance in the promotion and protection of human rights: Anti-corruption, good governance and human rights

Responsible Unit: Right to Development Section / DESIB / RRDD

Proposed Contract Period: 19 July – 30 November 2010

I. Background

1. There is an increasing awareness within the international community on the detrimental impact of corruption on human rights both through weakening institutions and eroding public trust in government. Corruption impairs the ability of governments to fulfil their obligations and ensure accountability in the implementation of human rights. Hence, the importance of good governance in the promotion and protection of human rights, which was addressed at two UN conferences. The first was a seminar on good governance practices for the promotion and protection of human rights. It was organized jointly by OHCHR and UNDP, in cooperation with the Government of the Republic of Korea, in Seoul in September 2004. As a follow-up, the Commission on Human Rights, in its resolution 2005/68, requested OHCHR to publish a selection of good practices presented at the Seoul seminar. Accordingly, OHCHR published in 2007 “Good Governance Practices for the Protection of Human Rights”, which attempts to show how human rights principles can be meaningfully brought into governance reforms and translated into policies and initiatives.
2. The second UN Conference was organized by OHCHR, in cooperation with the Government of Poland, on anti-corruption measures, good governance and human rights in Warsaw in November 2006. The Conference was held as a follow-up to the Seoul seminar and in response to Commission on Human Rights resolution 2005/68, with the main objective to identify concrete ways in which Governments’ efforts to fight corruption are assisted by and contribute to human rights protection.
3. The Human Rights Council in its resolution 7/11 requested OHCHR to prepare a publication on anti-corruption, good governance and human rights, drawing on the results of the Warsaw Conference. Consequently, these terms of reference are presented for a consultancy to produce the publication requested above.

II. Objectives

4. The objectives of this publication are as follows:
 - To provide guidance for Governments, national human rights institutions, anti-corruption institutions and civil society in their efforts to fight corruption in a way that incorporates human rights and good governance principles.
 - To demonstrate the value-added of human rights approach and principles to the fight against corruption, through case studies and best practices.
 - To provide means of protecting the human rights of individuals involved in the fight against corruption, as well as of those unfairly subjected to allegations of corruption.

III. Issues to be addressed in the publication

5. The publication will draw on the results of the Warsaw Conference where the following four themes were discussed:
 - a. The impact of corruption on human rights;
 - b. Human rights and good governance in the fight against corruption,
 - c. The role of civil society, the private sector and the media;
 - d. Fighting corruption while safeguarding human rights.
6. **The impact of corruption on human rights:** The vital concern in many countries is that basic human rights, such the rights to health care, education and clean water, cannot be realized because of corruption that results in the diversion of development funds into private pockets, which impedes access to basic services by all, as well as the delivery of services of standard quality. Hence inequality, injustice and unfairness in the society worsen. Corruption also leads to violation of civil and political rights by causing discrimination in favour of the powerful and against the poor and the marginalized, thereby leading to impunity. Freedom of expression is threatened when corruption causes intimidation and harassment of its critics. In emerging democracies, vote buying through corrupt deals prior to elections is another serious problem and hampers people's right to vote. Furthermore, corruption includes the use of public resources for conspicuous consumption by public offices, which has implications for the progressive realization of economic, social and cultural rights since such acts divert funds from meeting population's needs.
7. The publication should provide an analysis of the impact of corruption on women including case studies and relevant data to see whether women are disproportionately affected. On the basis of such analysis, recommendations shall be formulated in the publication on how to mainstream gender in the implementation of good governance and anti-corruption policies and measures. Some studies have found a statistically significant correlation between increased participation of women in governance and reduced corruption. In this regard, the Seoul Seminar recognized that there was not adequate attention paid to gender equality and cultural diversity with respect to the relationship between good governance and human rights.

8. **Human rights and good governance in the fight against corruption:** Good governance and human rights are mutually reinforcing and share some common principles, such as participation, accountability, transparency and responsibility. The realization of human rights require a conducive and enabling environment, particularly appropriate legislation, institutions and procedures guiding and regulating the actions of the State. While human rights empower people and provide standards against which Governments and other actors can be held accountable, they cannot be respected and protected in a sustainable manner without good governance. Both democracy and good governance require the rule of law and there is need to integrate the values of fairness, equality, including gender equality, non-discrimination, equal delivery of and access to public services for all, and respect for and indivisibility of all human rights. In this regard, good governance practices should focus on the most vulnerable and the marginalized for the promotion of human rights.

9. **The role of civil society, the private sector and the media:** NGOs and civil society actors, including national human rights institutions, have a major role to play in fighting corruption mainly by supporting citizens in counterbalancing the power of the State and government officials, and promoting civic education as well as empowerment strategies in dealing with corruption. Such efforts might strengthen the accountability of governments towards their people. NGOs and civil society organizations can work in collaboration with national human rights institutions to enhance their mutual strengths and capacities and share their knowledge and experiences. Some of the issues to be addressed in the publication include:
 - a. The role of civil society in dealing with corruption using human rights principles, as well as in cultivating a culture of transparency.
 - b. The role of private sector in fighting corruption. Corporate social responsibility and corporate compliance are two methods in efforts to prevent corruption.
 - c. In the context of the involvement of transnational corporations (TNCs) in corrupt practices in their host countries, the role of good governance practices by States and the importance of implementation of national regulations by TNCs.
 - d. The role of the media in exposing both human rights violations and corruption cases despite risks involved.
 - e. The importance of cooperation between anti-corruption agencies and national human rights institutions in anti-corruption efforts on the one hand and protection of human rights on the other; and institutional and legal frameworks to enable effective cooperation between the two, for example in dealing with complaints or conducting investigations.

10. **Fighting corruption while safeguarding human rights:** Anti-corruption campaigns can be used politically to suppress political opponents, journalists or human rights advocates, thereby violating their rights. Alternatively, anti-corruption advocates may face human rights violations in their fight against corruption. They may be threatened, harassed and even killed to prevent public exposure of corruption cases. Such practices violate human rights, including the right to life, liberty and security, the right to freedom of opinion and

expression, the right to privacy and the right to seek and receive information without interference. The publication should particularly address the following issues:

- a. How can the human rights of anti-corruption advocates be affected and what can be done to protect their human rights?
 - b. The challenges that may be faced in the fight against corruption and the implementation of good governance measures while safeguarding human rights.
 - c. Measures that can be taken to prevent derogations from human rights principles in the fight against corruption.
 - d. The role of OHCHR and UNODC in promoting good governance practices while protecting human rights of anti-corruption advocates, and potential collaboration between the two UN agencies.
11. The publication shall present the challenges and make recommendations on each of the above four themes, bearing in mind the recommendations of the Warsaw Conference.

IV. Responsibilities of the consultant

12. The consultant is responsible for the preparation and timely delivery of the draft publication in conformity with the present terms of reference.
13. Specifically, the consultant shall undertake the following activities:
- a. Conduct necessary research; analyse the four main themes discussed at the Warsaw Conference and identify case studies and illustrations of best practices from different countries, both developed and developing, in various regions of the world, where human rights principles were used in good governance practices or governance reforms that led to the promotion and protection of human rights.
 - b. Undertake a mission to the United Nations Office on Drugs and Crime (UNODC) in Vienna, accompanied by a Secretariat staff as may be required, to collect information on the role of UNODC in the fight against corruption and find out whether its work contributes to or has the potential to contribute to the promotion and protection of human rights. The findings of this mission shall be reflected in relevant sections of the publication.
 - c. Undertake a trip to the Office of the High Commissioner for Human Rights (OHCHR) in Geneva with regard to the publication, if necessary.

V. Profile of the consultant

14. The consultant should be fluent in English and should possess an advanced university degree (Masters or equivalent) in law, political science, international relations or international economics or other disciplines related to human rights, as well as at least 10 years of work experience, preferably, in relation to anti-corruption, good governance and human rights.

VI. Output and time frame

15. The output will be a final draft in English of about 38,000 words (approximately 75 single spaced A4 size pages), and will include an executive summary not exceeding two pages.
16. A maximum of 3 months will be allocated for the entirety of this consultancy. The consultant should complete and submit the first draft to OHCHR at the end of ten weeks following the first day of the contract. OHCHR will submit its comments to the consultant within two weeks from the date of receipt of the first draft of the publication. The consultant shall incorporate OHCHR's comments and submit the second draft within one to two weeks depending on the volume of the comments. The second draft of the publication will be submitted to the OHCHR Publications Committee upon receipt from the consultant. In case, the Committee makes comments that require further revision, the second draft will then be sent back to the consultant to be finalized. The consultant shall have one week to prepare the final draft of the publication. The first and second drafts, as well as the final version shall all be delivered to OHCHR via e-mail in due time and in electronic form (MS Word or fully compatible application).

VII. Method of work

17. The consultant shall review all the relevant UN documents and the existing literature on the subject (see Section IX), in addition to other relevant materials obtained during his/her research. Moreover, it is expected that the consultant will seek the views of key experts, UN officials and other relevant persons or organizations that have undertaken substantive work in this area and therefore can bring valuable insights into the publication.
18. The consultant will report through a responsible officer to the Chief of the Right to Development Section and the Chief of Branch, DESIB.

VIII. Remuneration

19. The preparation and delivery of the publication will be remunerated by a lump sum payment of USD. 15,000.- only after approval of the publication by the OHCHR Publications Committee. The cost of travel and DSA incurred during the missions undertaken to Vienna and Geneva shall be covered by OHCHR, in accordance with relevant UN rules and regulations.

IX. Selected references

A. UN Documents:

- 1) Human Rights Council resolution A/HRC/RES/7/11 available at: http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_11.pdf
- 2) Human Rights Council resolution E/CN.4/RES/2005/68 available at: http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-68.doc
- 3) UN Millennium Declaration available at: <http://www.un.org/millennium/declaration/ares552e.htm>
- 4) Monterrey Consensus of the International Conference on Financing for Development, available at: <http://www.un.org/esa/ffd/monterrey/MonterreyConsensus.pdf>

- 5) UN Global Compact principles, available at:
http://www.unglobalcompact.org/docs/news_events/8.1/GC_brochure_FINAL.pdf
(In particular, the first and second principle on human rights, and the tenth principle on anti-corruption)
- 6) Good Governance Practices for the Protection of Human Rights, OHCHR, 2007 available at: <http://www.ohchr.org/Documents/Publications/GoodGovernance.pdf>
- 7) Report of the seminar on good governance practices for the promotion and protection of human rights (Seoul, 15 - 16 September 2004) (E/CN.4/2005/97)
- 8) Report of the United Nations Conference on anti-corruption, good governance and human rights (Warsaw, 8 - 9 November 2006) (A/HRC/4/71)

B. Non-exhaustive list of relevant resource material:

- 1) Corruption and Human Rights; Making the Connection, International Council on Human Rights Policy and Transparency International, 2009. Available at: http://www.ichrp.org/files/reports/40/131_web.pdf
- 2) James Thuo Gathii, "Defining the Relationship between Corruption and Human Rights", Albany Law School Working Paper Series, 2009.
- 3) User's Guide to Measuring Corruption, UNDP, 2008
- 4) C. Raj Kumar, "Corruption and Human Rights: Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India", 17 Columbia Journal of Asian Law 31 (2003).
- 5) C. Raj Kumar, "National Human Rights Institutions: Good Governance Perspectives on Institutionalization of Human Rights", American University International Law Review, vol. 19 (2): 259-300 (2003-2004).
- 6) Claes Sandgren, "Combating Corruption: The Misunderstood Role of Law", International Lawyer, vol. 39 (3): 717-732 (2005).
- 7) David Hess and Thomas W. Dunfee, "Fighting Corruption: A Principled Approach." Cornell International Law Journal, vol. 33 (3): 593-626 (2000).
- 8) Kofele-Kale, "The Right to a Corruption-Free Society as an Individual and Collective Human Rights: Elevating Official Corruption to a Crime under International Law", 34 International Lawyer, p.149 (2000)
- 9) Linda C. Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection", 13 Harvard Human Rights Journal 1, 2 (2000).
- 10) Bettina Peters, "The media's role: covering or covering up corruption?", in Global Corruption Report 2003, Transparency International, available at: <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN008437.pdf>
- 11) Mushtaq H. Khan, "The role of civil society and patron-client networks in the analysis of corruption", (1998) available at:

- <http://www.u4.no/document/literature/Khan-1998-the-role-of-civil-society.pdf>
- 12) Hardjono, R. and Teggemann, S. (eds.), *The Poor Speak up - 17 Stories of Corruption, The Partnership for Governance Reform*, 2003, Indonesia. Available at: <http://www.u4.no/pdf/?file=/document/literature/the-poor-speak-up-2003.pdf>
 - 13) Ochse, K. L., *Preventing Corruption in the Education System*, GTZ, 2004. Available at: http://www.u4.no/pdf/?file=/document/literature/education_system.pdf
 - 14) More articles available at: <http://www.u4.no/document/literature.cfm?key=1> (U4 Anti-Corruption Resource Centre)
 - 15) Charles D. Adwan, *Corporate Governance for Countering Bribery: Controlling the Supply Side of Corruption*, The Lebanese Transparency Association, 2003, (Paper prepared for the 11th International Anti-Corruption Conference). Available at: <http://www.u4.no/pdf/?file=/document/literature/Adwan-2003-corporate-governance.pdf>
 - 16) Anne Janet DeAses, “Developing Countries: Increasing Transparency and Other Methods of Eliminating Corruption in the Public Procurement Process”, *Public Contract Law Journal*, vol. 34 (3) (Spring 2005): 553-572.
 - 17) Nelly Calderón Navarro, “Fighting Corruption: The Peruvian Experience”, *Journal of International Criminal Justice*, vol. 4: 488 - 509 (2006)
 - 18) Anne Orford, “Subject of Globalization: Economics, Identity and Human Rights”, *American Society of International Law Proceedings*, vol. 94, pp. 146-148 (2000)
 - 19) Balakrishnan Rajagopal, “Corruption, Legitimacy and Human Rights: The Dialectic of the Relationship”, *Connecticut Journal of International Law*, vol. 14 (2) (Fall 1999): pp. 495-508.
 - 20) “How does corruption impact women?” at <http://www.awid.org/eng/Issues-and-Analysis/Issues-and-Analysis/How-does-corruption-impact-women>
 - 21) Andrés González, *Governance for the 21st century: the fight against corruption in Latin America*, Lit Verlag (GBM), 2008.
 - 22) More articles at: <http://www.osec.doc.gov/ogc/occic/fcpabibo.htm>
 - 23) Article 2, Vol. 09, No. 1, March 2010 - A consultation on corruption & counter-corruption across Asia, available at: <http://www.article2.org/>