

# Human Rights Council

## The Question of Corruption and the Role of Business in Promoting Human Rights



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## Introduction

The question of corruption is as old as human history itself. It has existed and undergone an evolution alongside humanity, with corruption being omnipresent in today's world under many forms, be it bribery, embezzlement, influence peddling and more. Similarly, human rights have also been a passionate topic and a fight for many over multiple centuries. In today's modern world, the two issues have garnered significant international attention and have been recognized as intertwined; the need to take action against corruption and human rights abuse has been emphasised time and time again. The action that must be taken must come from different social actors, most notably businesses.

Businesses play an important role in promoting human rights. They have the power to drive equality in both the workplace and in the community, supporting the advancement of social and economic rights through offering employment opportunities.

However in this pursuit of economic growth, companies must respect human rights, and avoid infringing on the human rights of others, which is unfortunately not the reality. If abuses occur, victims must have access to effective remedy through both judicial and non-judicial grievance mechanisms.

The United Nations therefore calls for each state to promote integrity and honesty in its legal system by promoting these values amongst government officials. Governments must put systems into place to inspect the private sector for violations, incentivize fighting against corruption, and better protect those who speak out against corrupt practices.

## Definition of Key Terms

### Human Rights

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.

### Corruption

Dishonest, illegal or fraudulent conduct, typically involving bribery and usually carried out by those in position of power.

## Democracy

Government by the people, exercised either directly or through elected representatives. The United Nations does not advocate for a specific model of government but promotes democratic governance as a set of values and principles that should be followed for greater participation, equality, security and human development.

## Bribery

The promise, offering or giving to an individual in a position of power, directly or indirectly, of an undue advantage, for the individual or for another person or entity, in order for the individual to act or refrain from acting in the exercise of their duties. The term “bribery” also refers to the solicitation or acceptance of such an advantage by the individual.

## Clientelism

The exchange of personal favours for political support. Clientelism involves three actors, a principal, an agent, and a ‘client’. Typically, a client (say, a politician's supporter and financier) transfers resources over which he has control to the agent (the politician). The agent will then transfer resources he obtains from the principal (the electorate) back to his client. The criterion of allocation is particularistic, rather than universalistic: clients are rewarded with public contracts, appointments and the like not because of merit or qualifications but prior support. Given the nature of this exchange, the relationship between agent and client tends to be long-term.

If clientelistic exchange breaches a legal provision and is done secretly, it turns into corruption, the exchange occurring in an illegal market. If the exchange goes counter to public sentiments, it still qualifies as clientelism although the public frowns upon it.

## Whistleblowing

Whistleblowing is the act of revealing private or classified information about an organisation relating to wrongdoing or misconduct to a wider group, without authorisation. The information being made public is usually evidence of significant wrongdoing by officers of the organisation, amounting to violation of human or other important rights of those served by the organisation. Whistleblowing often causes significant disruption within the organisation as it becomes subject to external inquiries and constraints, which may cause innocent bystanders to suffer. However, whistleblowing is generally considered as justified if other avenues of protest such as the organisation’s internal mechanisms have proved ineffective or dangerous to the whistleblower, if the evidence supporting the accusation

is strong enough to withstand public scrutiny, and if the detrimental behaviour is serious enough for it to outweigh the potential damage which the whistleblowing may cause.

While whistleblowing usually involves information being shared openly on the internet, what counts as whistleblowing depends on the structure of the organisation. For instance, in police organisations with strong horizontal loyalties, revealing certain pieces of information to a supervisor or to internal mechanisms may be considered whistleblowing.

Whistleblowing may also be done anonymously. This opens up a debate about accountability and the moral imperative to act to prevent harm. Indeed, anonymous whistleblowing opens the door to whistleblowing that is motivated by revenge, rivalry, or other unworthy motives, and allows individuals to make frivolous or careless accusations without being held accountable. However, as many whistleblowers suffer retaliation from the organisation they are denouncing, going anonymous would allow them to protect public interests while protecting themselves, which would justify anonymous whistleblowing insofar as their martyrdom cannot be demanded.

Many jurisdictions have enacted whistleblower-protection acts similar to witness-protection programmes. However, these mostly provide inadequate protection as retaliatory behaviour may be disguised as something else, in the same way as justifiable criticism of an employee could be seen as retaliatory.

## Transparency

An environment of openness where the access and disclosure of information is a matter of principle and human rights. Leaders, officials and those in power operate in a visible and predictable manner that promotes trust and participation. Transparency is widely understood as a necessary precondition to prevent corruption and promote good governance and sustainability

## Democratic resilience

In its strictest sense, democratic resilience means preventing democracies from becoming undemocratic. However, it also refers to maintaining high-quality institutions ensuring representative government and participatory engagement, respect for fundamental human rights, checks on government, and the support of an impartial administration. Trust in public institutions is particularly important for democratic resilience.

## General Overview

Corruption encompasses various forms of unethical behaviour, including bribery, embezzlement, nepotism, and cronyism. From a human rights perspective, corruption exacerbates inequalities, hampers access to justice, and undermines the enjoyment of fundamental rights such as the right to health, education, and a fair trial.

Businesses often encounter corruption in their operations, whether through demands for bribes, facilitation payments, or engaging with corrupt government officials. In some cases, businesses may actively engage in corrupt practices to gain competitive advantages or expedite processes. This behaviour not only violates legal and ethical standards but also contributes to a cycle of corruption that perpetuates human rights abuses.

Businesses have a responsibility to respect human rights, as outlined in international frameworks such as the United Nations Guiding Principles on Business and Human Rights (2011). This responsibility includes avoiding complicity in human rights abuses, addressing the adverse impacts of their operations, and engaging in efforts to promote human rights within their spheres of influence.

## Major Parties Involved

### Businesses

Business entities, including multinational corporations, small and medium-sized enterprises, and local businesses, play a pivotal role in the interplay between corruption and the promotion of human rights. They are directly involved in economic activities and can either contribute to or mitigate corruption through their practices. Businesses have a responsibility to respect human rights and are increasingly expected to integrate human rights considerations into their operations. For example, the Marks and Spencer group is one of the most committed businesses in respecting internationally recognised human rights and the United Nations Guiding Principles on Business and Human Rights as a basis for dialogue and action. They also support the OECD Guidelines for Multinational Enterprises.

### Governments and Regulatory Bodies

Governments and regulatory bodies are responsible for creating and enforcing laws and regulations aimed at combating corruption and protecting human rights. They set the legal framework within which businesses operate and have the authority to investigate and prosecute

corrupt practices. For instance, the European Agency for Safety and Health at Work (EU-OSHA) ensures employees are not subject to unreasonable risk in employment. Additionally, governments play a crucial role in establishing institutions and mechanisms to promote transparency, accountability, and good governance.

### Civil Society Organizations (CSOs) and Non-Governmental Organisations (NGOs):

These organisations play a vital role in holding both businesses and governments accountable for their actions related to corruption and human rights. CSOs often conduct research, raise awareness, and mobilise public support for anti-corruption and human rights initiatives. They also provide support and advocacy for victims of corruption and human rights abuses. The best known of such organisations, at least on the international stage, include Amnesty International, Human Rights Watch, the International Federation for Human Rights, Human Rights First and Interights.

### International Organisations

International organisations, such as the United Nations, the World Bank, and the International Monetary Fund, play a significant part in shaping global norms and standards related to corruption and human rights. These organisations provide guidance, technical assistance, and financial support to countries and businesses seeking to strengthen their anti-corruption and human rights frameworks. They also facilitate dialogue and cooperation among governments, businesses, and civil society actors at an international level.

### Journalists and the Media

Journalists and the media play a crucial role in exposing corruption and human rights abuses by investigating and reporting on cases of wrongdoing. Through investigative journalism, media outlets can uncover corruption scandals, hold perpetrators accountable, and raise public awareness about the detrimental effects of corruption on human rights. Media freedom is essential for ensuring transparency and accountability in both the public and private sectors.

The News and Media Division (NMD) produces news and features about the United Nations and its priorities, including daily print, audio, television, video, photo, digital, and social media content. With a global audience and wide pick-up by the media, NGOs, the private sector and other partners, they generate timely, accurate, impartial and freely available information about the United Nations activities around the world.

## Individuals and Communities

Individuals and communities are directly affected by corruption and human rights abuses and have a role to play in demanding accountability from both businesses and governments. They may engage in activism, advocacy, and civic participation to address corruption and promote human rights within their communities. Empowering individuals and communities to speak out against corruption and assert their rights is essential for fostering a culture of transparency and accountability.

## Timeline of Key Events

- 1800s**                    The rise of industrialization and globalisation led to increased corporate power and influence. Businesses operated in environments where corruption was often prevalent, particularly in newly colonised regions.
  
- 10 December 1948**            The Universal Declaration of Human Rights was adopted by the United Nations, setting forth fundamental human rights principles. However, issues of corruption and human rights abuse persisted, especially in post-colonial and developing countries.
  
- 1977 and 1997**            The U.S. Foreign Corrupt Practices Act (FCPA) of 1977 and the OECD Anti-Bribery Convention (1997) marked significant milestones in efforts to combat bribery and corruption in international business transactions.
  
- 1990s**                    The end of the Cold War saw the spread of democratisation and free-market reforms in many countries. However, this period also witnessed widespread corruption in transitional economies and emerging markets.
  
- 2000**                    The United Nations Global Compact encouraged businesses to adopt sustainable and socially responsible practices, including respect for human rights and anti-corruption measures.
  
- 2011**                    The United Nations Guiding Principles on Business and Human Rights provided a framework for businesses to respect human rights





throughout their operations, including addressing corruption-related risks.

**2016** The Panama Papers leak exposed widespread global corruption and tax evasion, implicating politicians, businessmen, and corporations worldwide. The revelations underscored the need for greater transparency and accountability in financial systems.

**2017** The OECD Due Diligence Guidance for Responsible Business Conduct emphasised the importance of businesses conducting due diligence to identify and mitigate human rights and corruption risks in their supply chains.

**2020** The COVID-19 pandemic highlighted the vulnerabilities of societies to corruption, with reports of corruption in procurement processes, mismanagement of relief funds, and exploitation of vulnerable populations. Businesses faced heightened scrutiny regarding their responses to corruption risks and human rights impacts during the crisis.

## Previous Attempts to Resolve the Issue

Corruption is a complex multi-faceted issue that must be dealt with in a multidisciplinary manner. Multiple bodies of power have acted in their capacity to resolve the issue to the best of their abilities.

In the fight against corruption, legislation is integral in providing a legal framework, promoting accountability and transparency in business transactions.

Many governments have adopted anti-corruption acts in order to provide a legislative framework to better combat corruption and to establish consequences against corrupt practices. A notable example being: the Foreign Corrupt Practices Act (FCPA) enacted in the United States of America in 1977. The FCPA can be divided into two key provisions: the accounting provisions as well as the anti-bribery provision. The provisions emphasise the need to maintain accurate account records as well as condemns the act of bribery (specifically bribing government officials and political figures/parties) and recognizes it as unlawful. The act has revolutionised global business and is a step

in the right direction to combat corruption. Furthermore, it has encouraged other nations to adopt similar legislation to combat internal corruption.

Additionally, governments have put systems in place to better fight corruption in the private sector, a noteworthy example of which being the whistleblowing system. Whistleblowers are integral to the fight against corruption as they are key to exposing corrupt practices in private organisations. A key step taken towards fighting corruption is the enacting of legislation to protect whistleblowers, such as Public Interest Disclosure Act 1998 (PIDA) introduced in the United Kingdom. This Act keeps in mind the interests of whistleblowers whilst providing them financial compensation, legal protection as well as protecting them from being dismissed. Furthermore, private companies also have policies protecting whistleblowers, emphasising the fact that fighting corruption is a joint initiative.

## Possible Solutions

Corruption threatens many members of society, and therefore it is an issue that must be tackled in a comprehensive and multidisciplinary manner. The steps that can be taken to resolve this issue concern multiple members of society: governments, the media, the private sector, civil society and the general public.

### Taskforce to Inspect Private Companies

One solution would be to set up a task force or a government inspection body, that would be tasked with assessing private organisations, ensuring there is an ethical work environment free of human rights abuses and corruption. The challenge in this would be to set up an equitable task force free of political biases and to establish the fine line between privacy and transparency. Furthermore this project is highly ambitious as it requires the cooperation of multiple bodies, most notably the private companies themselves.

### Incentivization

A technique to encourage private enterprises to adopt anti-corruption policies and fight against human rights abuses is to incentivize the prospect. This can be done by providing governmental recognition to enterprises that condemn human rights violations and act to ensure that corruption and human rights violations are absent in their organisations. Furthermore, governments can offer preferential treatment to companies valuing human rights and anti-corruption policies by

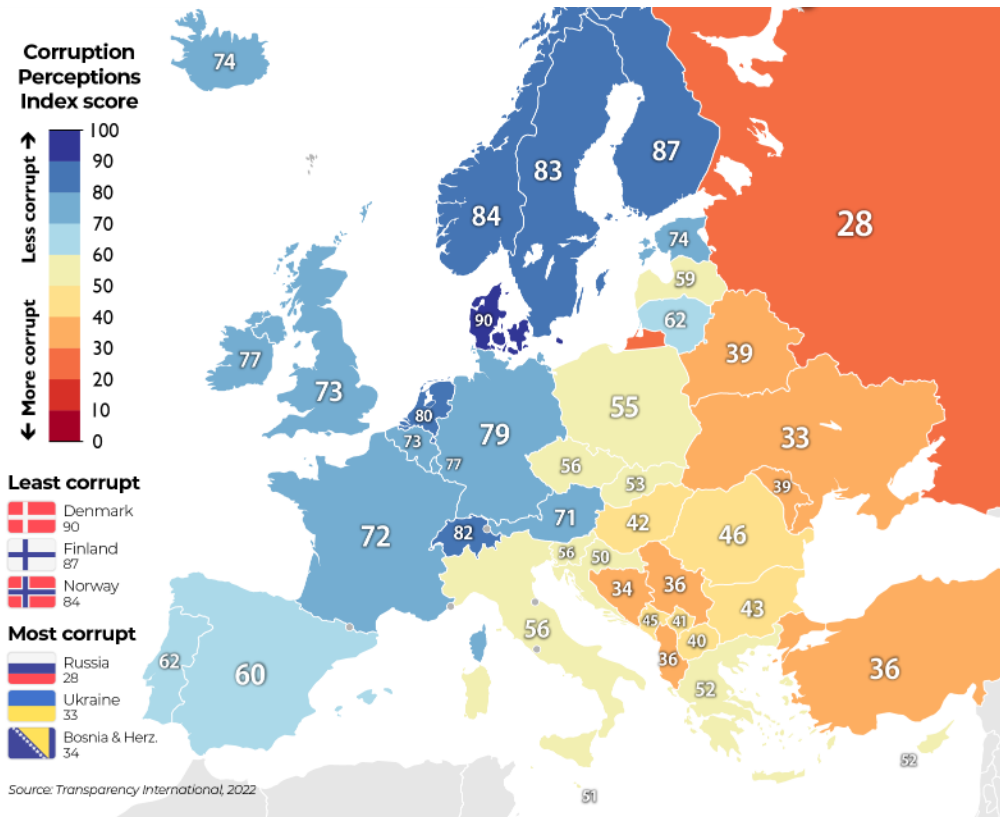
providing government subsidies or by giving these organisations priority for government procurements. However, in order for this program to work, there would need to be strong monitoring to ensure that there is no tokenism on the part of the companies and that any actions taken are effective in the fight against corruption and not merely performative. Additionally, this system may not be successful in certain economies as it may not be cost-effective: certain economies would benefit more from having the money diverted to other sectors.

## Protection

An increasing number of witnesses are coming forth, via programs such as the Whistleblower programme, with information to unveil the corrupt practices found in their organisations. An essential part of combating corruption and tackling human rights violations are to make use of these sources from the companies themselves, and it is therefore important to protect these sources, financially, legally and from character assassination.

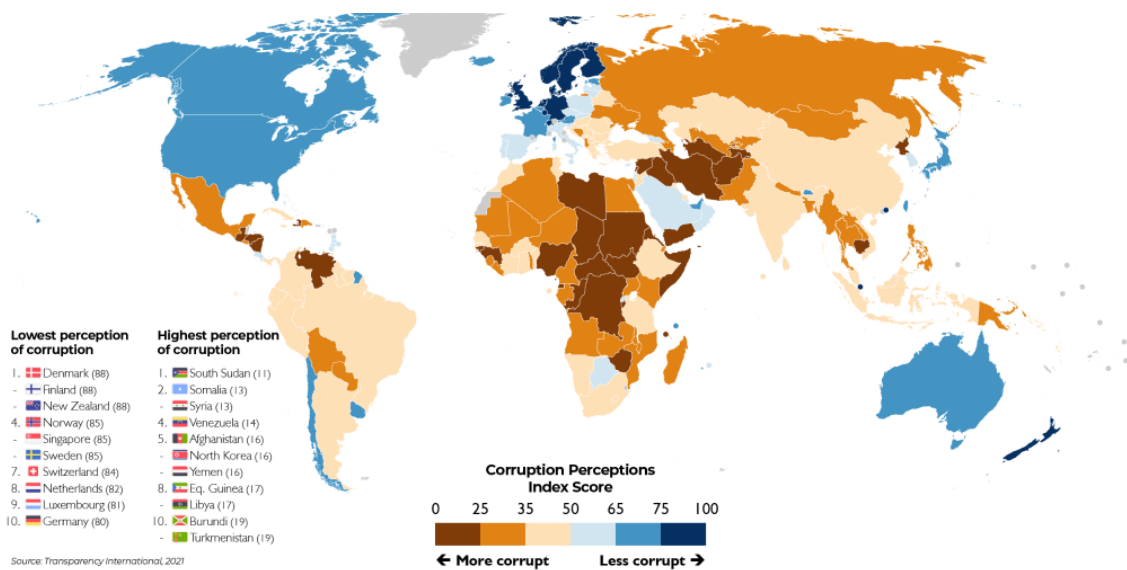
# Appendices

## Appendix A



Corruption Perception in the European Union in 2022

## Appendix B



Corruption Perception in the world in 2022

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