



European Research Centre for  
Anti-Corruption and State-Building  
Hertie School

Working Paper No. 60

ERCAS WORKING PAPERS COLLECTION

Shifting Anti-Corruption Global  
Legal Policy: The Case for  
International Human Rights Law

Luiza Leite de Queiroz

Berlin, March 2020

[www.againstcorruption.eu](http://www.againstcorruption.eu)

## Abstract

Corruption is known to undermine democracy, erode the rule of law and hinder human development, *inter alia*, through the violation of human rights. Yet, recognition of these links has not managed to permeate the international anti-corruption toolkit. Efforts to curb corruption have culminated with the enactment of a few international treaties, amongst which the United Nations Convention against Corruption (UNCAC) stands out as the only norm with true global reach. Despite its significant membership, UNCAC has often been described as ‘toothless’ for its faulty implementation worldwide. The model it embraces, primarily based on criminal liability, has not been successful in combatting corruption precisely where it is most aggressive and ingrained. This paper sets out to explore whether a shift in global legal policy from a model anchored in criminal law to another based on international human rights law would be desirable for the anti-corruption agenda of highly corrupt countries. Employing a legal external normative approach and a qualitative review of selected reports, our analysis suggests that an anti-corruption framework based on criminal law is ill-suited for the reality of countries where the rule of law is weak or inexistent. It also indicates that international human rights law provides an adequate theoretical basis for the establishment of a direct link between individuals who are most affected by the consequences of corruption and the international legal order. It further sheds light on how a rights-based approach could potentially address the gaps left by the criminal law model. Finally, it engages in an argumentative effort to conceive an individual claims mechanism rooted on the recognition of an emerging (human) right to freedom from corruption in customary international law. Our main contribution to the literature lies in providing a structured argument for how criminal law could never be adequate to satisfactorily address corruption in highly corrupt countries in the first place, and in exploring the feasibility and desirability of a framework underpinned by international human rights law.<sup>1</sup>

**Keywords:** Corruption; legal policy; rule of law; international human rights law; criminal law.

---

<sup>1</sup> Luiza Leite de Queiroz holds a Master of International Affairs from the Hertie School, a Master of Law degree (LL.M) in International and Comparative Law from Trinity College Dublin, and a Bachelor’s degree in Law from the Federal University of Rio de Janeiro, e-mail: dequeirozluiza@gmail.com.

**Table of Contents**

<b>List of abbreviations.</b> . . . . .	<b>4</b>
<b>Introduction</b> . . . . .	<b>5</b>
<b>Theoretical framework and literature review.</b> . . . . .	<b>6</b>
<b>Methodology</b> . . . . .	<b>12</b>
<b>Chapter I: Assumptions and criminal liability as corruption deterrent</b> . . . . .	<b>14</b>
<b>Chapter II: When theory and the hard reality collide</b> . . . . .	<b>18</b>
<b>Chapter III: Can international human rights law address the gaps?</b> . . . . .	<b>23</b>
<b>Conclusion</b> . . . . .	<b>27</b>
<b>Bibliography</b> . . . . .	<b>28</b>
<b>Appendix</b> . . . . .	<b>33</b>

## List of abbreviations

<b>COSP</b>	Conference of State Parties
<b>ICC</b>	International Criminal Court
<b>IHRL</b>	International Human Rights Law
<b>IRM</b>	Implementation Review Mechanism
<b>NGO</b>	Non-Governmental Organisation
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>TI</b>	Transparency International
<b>UNCAC</b>	United Nations Convention Against Corruption
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>WJP</b>	World Justice Project

## Introduction

In the almost twenty-five years that have followed Mauro's (1995) ground-breaking work on the negative impacts that corruption has on economic growth, much has been discussed about the most effective ways to curb it. International treaties covering the subject now abound<sup>1</sup>, and concepts such as "transparency" and "accountability" have been so incessantly used in relevant reports and domestic legislation that, at this point, they arguably suffer from overuse.

While the international community has certainly come a long way in acknowledging that corruption must be fought, the available legal tools within the international anti-corruption toolkit, namely the United Nations Convention against Corruption (hereinafter UNCAC), seem to be falling short of their purpose, especially where corruption is most rampant and harmful to society. Interestingly, their ineffectiveness has been investigated and emphasised by donors in the realm of international aid, but legal scholarship has been relatively scarce in responding to these criticisms and assessing supplementary models to the existing framework.

According to the World Bank (2018), as of 2015, 10% of the world population live in extreme poverty. This equates to a staggering 736 million people living below the international poverty line<sup>2</sup>, of which 42% can be found in low-income countries. Unsurprisingly, out of the 10 countries identified by the World Bank as having the largest population of poor people by the share of the global poor in 2015, nine<sup>3</sup> scored below the 60<sup>th</sup> percentile of Transparency International's (hereinafter TI) Corruption Perceptions Index 2017.

As highlighted by Rose-Ackerman and Palifka, the correlation between corruption and human development has been one of the most robust relationships to have come out of anti-corruption research (2016, p. 29). Essentially, countries with higher levels of corruption have been shown to have lower levels of human development. Going one step further, the relationship between human development and human rights, which has been mainstreamed by the United Nations' 2030 Agenda for Sustainable Development<sup>4</sup>, became empirically apparent in development practice over the years.

Traditionally, development projects focused on the elimination of poverty and socio-economic inequalities, topics which are technically neutral (Marks, 2017, p. 8) and not self-evidently covered by the International Bill of Human Rights<sup>5</sup>. Whereas speaking broadly of eliminating poverty and inequality allowed for a depoliticised view of development (Cornwall & Nyamu-Musembi, 2004, p. 1421; Manji, 1998, p. 17), experience and a closer scrutiny of what tackling those issues entails demonstrated that realising certain rights, such as the right to education, right to health and right

<sup>1</sup> Such as the Organization for Economic Co-Operation and Development Convention on Combating Bribery of Foreign Public Officials, the Inter-American Convention against Corruption (IACAC) and the African Union Convention on Preventing and Combating Corruption (AUCPCC), to name a few.

<sup>2</sup> Which corresponds to US\$1.90 a day.

<sup>3</sup> From the most corrupt to the cleanest, out of 180 countries, as ranked in the CPI 2017: Democratic Republic of Congo (161), Madagascar (155), Mozambique (153), Nigeria (148), Bangladesh (143), Kenya (143), Ethiopia (107), Tanzania (103), Indonesia (96), and India (81). For the complete ranking see: <<https://www.transparency.org/cpi2017>>, accessed 24 January 2019.

<sup>4</sup> For more see: General Assembly resolution 70/1, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (21 October 2015), available from <https://undocs.org/en/A/RES/70/1>.

<sup>5</sup> Consisting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) with its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

to an adequate standard of living, are, to a large extent, preconditions to attaining that goal. In other words, practice revealed that the realisation of human rights is, in fact, conducive to human development.

Bearing in mind that corruption hinders human development, and that the latter has been at the centre of the international agenda for a few decades, a global legal framework aimed at combatting corruption was, and still is, extremely necessary. On the one hand, UNCAC was supposed to provide such a framework. On the other hand, the legal model it sets as a benchmark for the world has proven to be inappropriate for countries where ordinary citizens experience the deleterious consequences of corrupt behaviour the most. Previous studies have statistically shown that not much has changed in highly corrupt countries after the signing and ratification of UNCAC (Mungiu-Pippidi, 2011, p. 84). Resource allocation and the provision of public services continue to be unequal and skewed by corruption, which disproportionately affects the poor (Transparency International, 2013, p. 2) and further impedes human development.

Despite the evident and uncontested link between corruption and human development, and the equally apparent relationship between human development and human rights, the legal framework embodied by UNCAC remained impervious to the language of human rights (aside from a timid reference in the foreword). Adopted in 2003, it seemed adequate, then, for criminal law, with its punitive character, to be the avenue (or policy) of choice of the Convention, to deter malfeasance and consequently engender social change. However, as a legal model, criminal law cannot, alone, achieve that, particularly in countries where institutions are feeble.

There is a fundamental difference between stating that a framework can achieve a particular result once compliance is guaranteed, and affirming that, even on its brightest days, a given legal model will not be able to produce the intended outcome. The latter seems to be the case at hand. Legal scholars have remained somewhat oblivious to this discussion. Worryingly, feedback loops (Moravcsik, 2012; Bardach, 2011) they created something new. Even the personal computer itself was built from available components created by other sectors of the electronics industry: television monitors, printed-circuit boards, memory chips, semiconductors, and the like. The gap between policy implementation and legal policy-making at the international level are extremely weak and scant.

This gap at the intersection of anti-corruption efforts and international law – which is admittedly inherent to other areas of global governance, such as peace and security, or environmental governance – means, in practice, that those most vulnerable to corruption remain exposed and in need of a legal framework that has at least the potential to produce palpable change. Finding a feasible alternative is crucial for human development and, therefore, exploring the possibility of a paradigm shift from criminal law to international human rights law is both timely and relevant. Through the review of the assumptions that must hold true in practice before criminal law's deterrent effect can be enabled, the testing of our normative claims, and the subsequent assessment of if and how international human rights law could aid in presenting a viable legal model to supplement the current one, this paper seeks to answer the question: would a shift in global legal policy from a model anchored in criminal law to another based on international human rights law be desirable for the anti-corruption agenda of highly corrupt countries?

## Theoretical framework and literature review

The anti-corruption literature is extremely rich and ranges from the work carried out by economists (Hellman et al., 2000; Kaufmann, 1997; Mauro, 1995; Tanzi, 1998; Tanzi & Davoodi, 2000) to that of political ethicists (Nosco, 2008; Schluter, 2017; White, 2014). At the intersection between policy and law, a great deal has been written on the global anti-corruption regime (Getz, 2006;

Wolf & Schmidt-Pfister, 2010) but, on average, much of the knowledge produced has been discussed in a rather insular manner within disciplinary boundaries. As a matter of fact, the subject has arguably been approached in waves (Wolf & Schmidt-Pfister, 2010), which more or less coincide with different areas of knowledge.

### ***First wave: Economists take on corruption***

As a rule of thumb, defining key concepts is usually a good starting point for a broader conversation. Fortunately, at this stage, there is little controversy in the literature as to what is corruption and why should we investigate it. Rose-Ackerman and Palifka provide a comprehensive answer to both questions prudently indicating that while it is true that “corruption has many connotations and interpretations, varying by time and place, as well as discipline” (2016, p. 7), an all-encompassing definition used globally is the one provided by TI, which is that corruption is the abuse of entrusted power for private gain<sup>1</sup>. The authors further touch upon the many reasons why one should care about corruption, elucidating some of the mechanisms through which it hampers human development, affects government stability and undermines the rule of law.

The fact that economists were the first ones to look at the causes, consequences and ways to address corruption is hardly surprising. Most of the anti-corruption work carried out from the early 1990s until the mid-2000s was commissioned by institutions such as the International Monetary Fund and the World Bank, as it had become evident, at that point, that more research was needed to explain the successive failures of many development programmes carried out worldwide (Fjeldstad & Isaksen, 2008). The inclusion of corruption in the good governance agenda of the Bretton Woods institutions effectively marked its debut as a truly global topic, which was followed by the enactment of the two main international anti-corruption instruments currently in force, i.e. the OECD Anti-Bribery Convention (Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997) and UNCAC (United Nations Convention Against Corruption, 2004).

For all its worth as the only legally binding universal anti-corruption instrument, UNCAC has often been described as “toothless” (Brunelle-Quraishi, 2011, p. 146), with enforcement notoriously being its Achilles’ heel. In the aftermath of the treaty’s enactment, a second wave of anti-corruption work was inaugurated, with political scientists and development practitioners clearly eager to assess the Convention’s real-world impact (and, more broadly, that of newly envisioned development programmes). Here the first chasm between law-making and policy implementation is already visible.

The fact that it is mostly international development staff (employed either by donor agencies or international non-governmental organisations) and not governments, who have been struggling with the implementation of the Convention, is no coincidence. It is, in fact, symptomatic and exposes the core deficiency of embracing criminal law as a tool for social change in the context of highly corrupt countries. As explained by Hechler et al., “the Convention challenges the vested interests of dominant coalitions by criminalising the corrupt activities that sustain their systems. But a major problem remains, in that it is precisely those dominant elites who are largely in charge of ensuring implementation” (2011, p. viii). And, because the Convention proved to be borderline pointless in practice, an entire parallel system of policy recommendations and best practices has been developed in the realm of international aid.

---

<sup>1</sup> See: <<https://www.transparency.org/what-is-corruption>>, accessed 22 February 2019.

## ***Second wave: Development practice struggle and social sciences***

Once it had been relatively well established that UNCAC's provisions were hardly accomplishable where anti-corruption efforts were genuinely needed, development scholars focused their attention and resources on evaluating successes and failures at the programme-level. Consequently, the flourishing development literature on anti-corruption is predictably practice oriented. Studies conducted vary in geographical scope and methodology, but one common feature is that, usually, they steer away from formal legal frameworks, including that of UNCAC. Guertzovich, for instance, noted in the context of a broad evaluation of TI's advocacy strategies in Latin-America and the Caribbean that "anticorruption conventions are useful tools to build political and technical capacities, yet TI chapters in the region have rarely taken advantage of them to bring about change" (2012, p. 45).

As the leading anti-corruption organisation, TI has either produced, co-authored, commissioned or taken part in a substantial amount of work on best practice for policy, institutional and behavioural change (Fagan & Weth, 2010; Transparency International, 2013, 2015). One important trait of programme evaluations carried out by organisations such as TI and development agencies is that, in general, they follow the structure laid out in their respective theories of change (Johnson, 2012; Valters, 2014). This is worth emphasising because the standard against which they measure success or failure is not the law, strictly speaking. Naturally, as accountable institutions, their work will ultimately be limited by the outlines of the law, but programme success is, by no means, the same as successful (international) law implementation.

Hanna et al. (2011) sought to answer a number of questions concerning anti-corruption policies' effectiveness through the systematic review of 14 published studies on real cases of policy implementation. Amongst their findings and recommendations, two are of particular interest in the context of this paper. The first concerns the policy prescriptions that foster monitoring and incentives programmes.

As the authors point out, a programme which combines monitoring and incentives "can prevent corruption by increasing the probability of being caught engaging in corrupt activities, and increasing the punishment for being corrupt (or, similarly, increasing the reward for not being corrupt)", but the scheme "must align with all involved parties' incentives and locally specific market structures" (2011, p. 4) in order for it not to become 'toothless'. This finding is relevant because it comes from empirical observation, rather than theoretical assumptions, and indicates that the deterrent effect of punishment is only valid insofar as it is internalised by all involved parties.

The decision to engage in corrupt activity is a rational one (Mungiu-Pippidi, 2011, p. 26) and involves a cost-benefit analysis (Klitgaard, 1988, p. 69). If the probability of getting caught is marginal because the system itself is corrupt and rules can be bent, the deterrent effect of punishment vanishes. What the work of Hanna et al. (2011) highlights is that, at the programme-level, alignment with local structures to increase costs and lower incentives to corruption can, in fact, be successful.

The second key finding relates to the involvement of local NGOs in programme implementation, as "anti-corruption strategies appeared to be more effective when a locally trusted NGO was able to provide training, supervision and support implementation" (Hanna et al., 2011, p. 5). In other words, evidence shows that anti-corruption mechanisms that are in dialogue with non-government actors are practically viable and, indeed, encouraged.

Equally reviewing cases of successes and failures in anti-corruption programmes' implementation, Fjeldstad & Isaksen found evidence that "corruption can best be tackled when political reform and regulatory restructuring are complemented by a systematic effort to inform the citizens about their rights and entitlements and increase their capacity to monitor and challenge abuses of the system" (2008, p. xi). In addition, the authors contributed immensely to the existing litera-



ture by shedding light on a fact that is constantly acknowledged (and dealt with) by practitioners: the fundamental dilemma that development agencies and donors face when allocating aid, i.e. governments where aid is most needed, are also the most corrupt. Quite fittingly, there is a well-established body of work that looks into corruption with (the help of) foreign aid (Alesina & Weder, 2002; Bräutigam & Knack, 2004; Dávid-Barrett et al., 2018; Easterly & Pfutze, 2008).

Somewhat trying to connect practice and theory, Heeks & Mathisen (2012) work with the theoretical construct of “design-reality gaps”, which essentially captures the mismatch between programme design expectations (which draw from the world of the designer, rather than that of the user), and the reality of the context of deployment during programme-implementation. This concept is pivotal for our analysis, as it aptly summarises the main critique that has been raised against UNCAC, i.e. that there is “a gross inadequacy of institutional imports from developed countries which enjoy rule of law to developing contexts” (Mungiu-Pippidi, 2011, p. xiv). Two gaps seem, then, to exist; one between programme design and context of implementation, and another between legal framework and what it seeks to achieve.

Mungiu-Pippidi has looked at both (Mungiu-Pippidi, 2011, 2015; Mungiu-Pippidi & Dadašov, 2017). While some of her previous work was more informed by the needs of project implementation within the international development context described above, her latest studies signal a broader interest in what contextual variables enable higher effectiveness of anti-corruption legislation. Speaking of a “regulatory tsunami”, one of Mungiu-Pippidi’s studies draws attention to two paramount facts. The first one is that the tools prescribed by anti-corruption legislation, such as the establishment of anti-corruption commissions and the figure of an ombudsman, have no normative intrinsic value or *raison d’être* (2017, pp. 389–390). That is to say, the adoption of these tools is not a goal in itself, but rather a means to an end. We combat corruption to improve human development, and if the tools employed are not serving that purpose, there is no point in *insisting* on them. The second is that more legislation is not needed; what is needed is more effective legislation. And, as concluded by the author, “in the absence of the rule of law the legal toolbox of anticorruption is not likely to work” (2017, p. 402).

Against this background, a few considerations about the second wave of anti-corruption work are in order. First, the majority of research carried out in the field of international development is what frames the question this paper seeks to answer. Practice has shown that doing away with corruption through the punitive character of criminal law is not a workable model in highly corrupt countries, and it is time that legal scholarship considers complements to the current model, thereby catching up with the rich literature that has emerged from the work of development scholars and political scientists. Secondly, the literature discussed so far does have its limitations, namely: (i) it debates, for the most part, changes at the programme-level, rather than the possibility of an entirely new international legal framework; (ii) it rarely assesses how to better implement the framework provided by UNCAC or how to trickle its contents down to the grassroots, which further deepens the cleavage between the criminal law model adopted and reality.

### ***Third wave: Lawyers as late bloomers***

The research developed in the third wave of anti-corruption investigation has not quite filled in this knowledge gap yet. Legal analyses of anti-corruption efforts, especially of UNCAC and its impact, are still far and few between, with limited scholarship exploring the benefits and shortcomings of a shift in the normative paradigm established as the international benchmark. As the previous waves of work have elucidated, the anti-corruption framework is (or at least should be) a means to achieve an end – debates on the desirability of legal instrumentalism aside (Smits, 2009, p. 52; Tamanaha, 2006, pt. 1). However, as it currently stands there is no direct link between what it can immediately attain and fostering human development.

With that in mind, the last segment of this literature review will look at the work of legal scholars in the realm of (anti-)corruption. In stark contrast with development scholars' efforts, legal scholarship has historically engaged with the broad topic of corruption from a theoretical point of view. Not only that, but most of what has been produced is either purely analytical or descriptive in nature, which suggests that examining the current legal framework under a more critical light is really overdue.

Analysis of the employment of criminal law to address corrupt behaviour have been previously explored (Rose-Ackerman, 2002), and so has the adequacy of the tools it offers, with notable reference to multiple analyses of national anti-corruption legislation aimed at curbing corruption in business transactions (Ferguson, 2018; Lord, 2013, 2014; Wells, 2012). However, a more detailed study of the intersections between corruption and human development, through the lens of international human rights law, has only begun to be properly advanced (Gathii, 2009, p. 126).

Tenuous links between the two concepts started to be established as early as the first years of the 2000s. Kofele-Kale made the first case for a fundamental right to a corruption-free society based on emerging customary international law, arguing that "the most effective way to combat corruption is by elevating it to the status of a crime of universal interest, i.e., a crime under international law that (a) entails individual responsibility and punishment, and (b) is subject to universal jurisdiction" (2000, p. 152). The author did acknowledge, however, that ensuring enforcement and fighting arguments of state sovereignty were still issues to be tackled.

While Kofele-Kale modestly talked about a "crime of universal concern" (2000, p. 174), Bantekas (2006) went as far as suggesting that, in certain cases, corrupt practices could take the form of a crime against humanity and, therefore, potential violation cases should fall under the jurisdiction of the International Criminal Court (ICC). Boersma (2012) reached a different conclusion and expressed skepticism about the real power of this normative shift towards a crime triable by the ICC, pointing out that prosecutions of corruption as a crime against humanity would most likely be unsuccessful, as the standard of direct intent generally set by Article 7 of the Rome Statute<sup>1</sup> would probably not be met (2012, pp. 332, 337).

Barkhouse, Hoyland and Limon sought to "demonstrate, empirically and objectively, the immediate and serious impacts of corruption on internationally protected human rights" (2018, p. 3). The authors analysed quantitative data in the search for correlations between levels of corruption and that of enjoyment of basic human rights in 175 countries, to concretely identify (and visualise) how corruption violates human rights. Although not a legal work, strictly speaking, the article helps in bridging the gaps between legal commitments enshrined in the International Bill of Human Rights and the anti-corruption discourse.

Pearson was of the similar view that corruption should be given a more "human face", noting that "using the discourse of human rights enables the effects that corruption has on the ordinary person – especially in his/her contact with the state – to be recognised" (2013, p. 46). The author systematically reviewed some of the rights safeguarded by the Human Rights Covenants as a way to illustrate, in theory, how they could be violated by corrupt behaviour. The study further indicated that, aside from the direct causal links analysed, corruption could also give rise to human rights breaches indirectly. Most importantly, Pearson emphasised the fact that "too often, the sufferings of people as a result of corrupt practices are hidden behind vague euphemistic statements

---

<sup>1</sup> UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6.

of development and poverty levels that fail to draw national or international attention and stimulate the necessary action" (ibid.)

Departing from a theoretical review akin to the one mentioned above, Peters (2018) first sought to establish whether it was even possible to conceptualise corruption as a violation of human rights. The author aptly pointed out that "from a legal standpoint, it is crucial whether a situation is qualified as merely 'undermining' human rights – for example, in a general monitoring report – or whether it constitutes a true rights violation that could be declared unlawful in individualized enforcement proceedings" (Peters, 2018). In asserting that "rampant corruption constitutes a permanent structural danger to numerous human rights of persons subject to the power of officials" and, therefore, that a State can be "responsible under international law for its failure to discharge its human rights obligations to prevent and protect" (Peters, 2018), Peters set out to discuss the difficulties of establishing legal causation. In light of those, the author concluded that a new framing of the anti-corruption discourse, which allowed for "mutual mainstreaming" (Peters, 2018) – that would see courts interpreting criminal offences related to corruption considering the human rights of the victims, and the concomitant inclusion of the topic of corruption in Human Rights Treaty Bodies' guidelines, special rapporteurs' and independent experts' mandates, as well as in the work of relevant committees – would be the best practical solution.

Murray and Spalding (2015) also advocated for the re-framing of corruption as a rights violation – i.e. a violation of the right to freedom from corruption –, but advanced different arguments in that regard. The authors essentially argued that conceiving corruption as a rights violation gives international and domestic laws greater normative weight and that acknowledging a universal right to freedom from official corruption counters the argument often made that corruption is a matter of culture (2015, p. 5). Expanding on the relationship between Locke's theory of natural law and corruption, Spalding (2014) had previously emphasised that the natural right to liberty is violated when officials confer benefits in contravention of standing law and the public good (Spalding, 2014). Andersen made a compelling case for human rights scholars and practitioners to put corruption front and centre of the human rights agenda, stressing that "from the perspective of ordinary people, corruption and human rights cannot be separated" (2018, p. 182).

A final important remark concerns the actual framework adopted by UNCAC. Albeit more ubiquitous than before – as illustrated by recent works (Rose, 2015; Rose et al., 2019) –, assessments of UNCAC's effectiveness from a legal perspective are still not abundant in the literature. Brunelle-Quraishi (2011), for instance, undertook the arduous task and, confirming what development scholars had previously highlighted, found that UNCAC faces direct and indirect compliance challenges, which render it relatively weak. Defining compliance as "the degree to which a State behaves in a manner that conforms to its legal obligations" (2011, p. 126), the scholar identified UNCAC's loose wording as a direct compliance challenge, and external factors, such as the lack of good governance in some countries and the inherent nature of the offences covered by the treaty, as indirect compliance challenges.

On the one hand, the article did not go as far as discussing possible alternatives to address the issues raised. Nor did it consider the human rights implications of an ineffective UNCAC. On the other hand, it set out a plausible framework for criticism, namely when it comes to UNCAC's Peer Review Monitoring Mechanism. According to the author, the Mechanism is not as transparent and independent as it could or should be, as it lacks three key features: (i) civil society does not take part in the process; (ii) country review results are not always made available to the public; and (iii) the Conference of State Parties (COSP) does not have investigatory powers (Brunelle-Quraishi, 2011, p. 165).

UNCAC's Secretariat has arguably embellished its own monitoring mechanism (UNCAC Secretariat, 2015), but has also echoed, to some extent, Brunelle-Quraishi's concerns about compliance and overall feasibility of enforcement in some jurisdictions (UNODC, 2017, p. viii). Most notably,

the Secretariat has recently demonstrated its awareness of the need “to ensure that victims of corruption are identified and compensated in accordance with the Convention” (Open-ended Intergovernmental Working Group on Asset Recovery, 2016, p. 16). However, the definition of a “victim of corruption” is yet to be determined, and the discussion taking place within UNCAC’s sphere – contrary to a plea from the UN Office of the High Commissioner for Human Rights (2013) – is not quite accommodating of the language of human rights.

## Methodology

From the outset, an important observation must be made: this paper does not aim to reframe and present in a legal packaging what has been voiced by economists, development scholars and political scientists. Rather, it seeks to complement the extensive body of literature that has previously highlighted that relying on criminal law to engender social change in countries where corruption is the norm (and not the exception) has proven to be unrealistic. More importantly, our goal is to investigate one possible supplement to the existing international anti-corruption paradigm, that offered by a hypothetical model grounded on international human rights law.

In other words, our main contribution does not lie so much in exposing criminal law’s inadequacy to satisfactorily address corruption in highly corrupt countries, but in providing a structured argument for how it could *never* be adequate in the first place and in exploring the *feasibility* and *desirability* of a framework underpinned by international human rights law. In order to do so, this paper will employ, essentially, two research methods: a legal external normative approach (Smits, 2009, p. 50) and a qualitative review of selected reports, namely Executive Summaries produced by UNCAC’s Implementation Review Mechanism and the World Justice Project (hereinafter WJP) Rule of Law Index 2019.

A few considerations are in order concerning the legal external normative approach. First, moving away from the so-called ‘doctrinal’ legal approach, “in which legal rules, principles and cases are studied from an internal perspective and in which the law is looked at as operating in a ‘social, economic and political vacuum’” (Smits, 2009, p. 46), this paper will focus its attention on the *contextual* (or *external*) coherence of the existing framework based on criminal liability.

The premise here is quite simple: in light of criminal law’s failure, as a policy, to bring about social change in highly corrupt countries, it is not unreasonable to assume that, when devising a new international anti-corruption benchmark, policy-makers should take stock of the theoretical *assumptions* that surrounded criminal law’s adoption which simply did not hold true in practice. That is not to say, however, that the current framework’s internal coherence as a legal norm – or that of a new framework, for that matter – is irrelevant. On the contrary, it is so relevant that internal legal analyses have already been carried out, as we have also seen in the first portion of this study (Brunelle-Quraishi, 2011; Rose, 2015).

Secondly, it should not go unnoticed that investigating what a new framework *ought* to look like involves, primarily, a *dialectical argumentative* effort (Prakken & Sartor, 1996), but such an effort is only made stronger by grounding normative claims on empirical evidence (which will be provided by the aforementioned qualitative review). Theorising on how empirical facts are essential to normative reasoning, Chang and Wang aptly pointed out that “the doctrinal study of law contains an empirical dimension as knowing and describing valid law often requires knowledge beyond law in the books. Empirical legal studies can aid in this respect, and thus should be counted as legal scholarship.” (2016, p. 3). Moreover, because the authors see legal systems “as systems of procedures that consist of enacting, applying, interpreting, and enforcing norms” (2016, p. 19), they understand – and we subscribe to their understanding – that “empirical research is important if it could guide legal reform, describe important legal phenomena, and contribute to the

development of theories” (2016, p. 1).

Thirdly, as exploring a shift from criminal law to international human rights law in the realm of anti-corruption is bound to be met with some suspicion by some, it seems appropriate to adopt a multiapproach methodology that combines normative arguments and teleological reasoning with factual evidence as a means to pre-empt accusations of “wishful thinking and sloppy legal analysis” (Coomans et al., 2010, p. 180). Still, ultimately, this paper will be underpinned by a dialectical style of reasoning following the academic-legal method that acknowledges that the law is about ideas and arguments and that “arguments in favour of, or against, certain rules or outcomes” (Smits, 2009, p. 51) should be compared and weighed.

As a study that broadly seeks to contribute to bridging the gap between legal policy-making and implementation, it is important to note that our chosen methods reflect the desire to conceive a new international legal framework on anti-corruption that is informed by lessons learned in practice. In that sense, it is neither a purely legal piece of work, nor a fully-fledged political science study. Instead, it converses and attempts to engage with both. The obvious shortcoming of such an attempt is that the analyses provided might not be as in-depth as they could be, should the focus exclusively lie in just one of these areas.

The counterargument to that is that, whatever may be lost in terms of theoretical depth is offset by the ability to sketch out the minimum features that a new legal framework must display to have a shot at being effective in practice. Furthermore, the ‘silo mentality’ that has dominated anti-corruption research has proven to be largely inefficient, as the self-referential character of traditional legal thinking (Smits, 2009, p. 47) seems to be quite impervious to facts and real people’s needs, and development scholars and social scientists are regrettably not always granted great prominence amongst the pool of legal drafters.

Given this justification of the legal external normative approach, the structure of the present work will be tripartite. In the first chapter, we will provide a critical and systematic assessment of the main assumptions surrounding the adoption of criminal law as an instrument for corruption deterrence. For that, we will rely on the definition of the rule of law provided by the WJP Rule of Law Index, as it “combines assessments from country experts with perceptions of ordinary citizens, based on nationally representative surveys” (Versteeg & Ginsburg, 2017, p. 101). While other theoretical definitions could be equally adopted, such as the more legalistic ones provided by Waldron (2008) and Tamanaha (2006), seeing that our qualitative review will depart from cases drawn from the WJP Rule of Law Index 2019, employing the Index’s definition ensures harmony and cohesion in the interpretation of findings.

The second chapter will briefly look at UNCAC’s structure, highlighting articles of the Convention and sections of the Executive Summaries produced by the Implementation Review Mechanism (hereinafter IRM) that offer good proxies for comparison of the relationship between a frail rule of law and challenges with the Convention’s implementation. We will focus our attention on the bottom 10 countries ranked<sup>1</sup> on the WJP Rule of Law Index 2019 to investigate whether our criticism of the criminal law model holds in practice, i.e. whether countries that have signed and ratified UNCAC – but have, nonetheless, been singled out as the worst performers in terms of rule of law’s quality – are facing implementation issues that directly related to the assumptions identified in our first chapter.

We will then seek to clarify if the Convention’s ineffectiveness in practice derives from an inherent flaw with domestication of international provisions – which would weaken the case for an anti-corruption model grounded in *any* international law – or if its ‘toothless-ness’ stems from a

---

<sup>1</sup> We have intentionally excluded from our analysis Venezuela and the Republic Democratic of Congo, respectively ranked 126 and 124 in the WJP Rule of Law Index 2019, out of 126 countries. This decision was informed by the current situation in both countries, which is, in many ways, akin to that of civil war. The complete lack of institutions in parts of each country makes them unfit for the type of analysis conducted.

lack of enforcement of the (already) conforming legislation, which would point towards the inadequacy of criminal law to deal with the matter of corruption in countries where the rule of law is frail.

State parties to UNCAC have undergone two cycles of review under the IRM. Whereas the first cycle covered the chapters on *Criminalization and Law Enforcement*, and *International Cooperation*, the second cycle looks at the chapters on *Preventive Measures* and *Asset Recovery*. While investigating country reports produced for both cycles would certainly provide a fuller picture of reality, only 20 Executive Summaries for the second cycle have been made public so far<sup>1</sup>, none of which correspond to our selected countries. For that reason, our analysis will be confined to the reports produced in the first cycle of review. In any case, as we seek to investigate how successful an anti-corruption framework based on criminal law can be in the context of highly corrupt countries, the chapter on *Criminalization and Law Enforcement* should already contain most, if not all, the information we need.

The reports themselves were chosen as they flag concerns about UNCAC implementation, which should, to some extent, provide valuable insights into concerns about enforceability of criminal law at large. Also, to the best of our knowledge, no academic reviews of the country reports/Executive Summaries have been conducted yet. Admittedly, the qualitative review should be carried out for more than only 10 countries, as the limited number of cases could potentially skew our findings. However, given the narrow scope of this paper, the review should be seen as an initial research work that could be expanded in the future.

The third chapter of this paper will finally engage in an argumentative effort to conceive: (i) if and how international human rights law could aid in addressing the concerns raised in the first chapters (feasibility); and (ii) what features should a new model display to have a chance at being effective in practice. Our conclusion will recap what has been discussed throughout the paper and consider to what extent a paradigm shift would be desirable for the anti-corruption agenda of highly corrupt countries.

## Chapter I: Assumptions and criminal liability as corruption deterrent

Analyses of criminal law's deterrent effect have mostly been carried out by economists. They are by no means new (Becker, 1968; Kramer, 1990; Kumar Katyal, 1997), and definitely not oblivious to corruption (Garoupa & Klerman, 2010; Jiangnan, 2012). On average, they largely depart from the premise that the criminal justice system enforcing the law is, to a minimum degree, a functioning one. But what if that is not the case? What if it the criminal justice system fraught with maladies that not only hinder, but mean that criminal law cannot be effectively applied in the first place?

Substantially drawing on what has been emphasised in the many works covered by the literature review section of this paper, we have identified three key assumptions that involve the criminal justice system, which must be true in practice *and* predate any anti-corruption efforts based on criminal liability if they are to have any deterrent effect at all: (i) the justice system *lato sensu* (here included judges, prosecutors, members of the police force and administrative personnel accessory to the courts) must be impartial; (ii) there must exist, at least to some degree, a proper separation of powers; and (iii) there must be enough resources to enable prosecution.

<sup>1</sup> See: <<https://www.unodc.org/unodc/en/corruption/implementation-review-mechanism.html>>, accessed 3 March 2019.

### ***The elusive concept of the rule of law***

Without much further investigation, it is rather easy to spot one commonality between the first three assumptions: they all relate to a minimum standard of fairness and equality before the law. Impartiality in the justice system conveys the idea that judicial proceedings must abide by a pre-identified set of rules – both content and procedure-wise – that are not susceptible to *ad hoc* derogations. Similarly, a certain degree of separation of powers ensures mutual oversight which, in turn, generates reasonable expectations from the public; any undue encroachment on each power’s respective competences disrupts the checks and balances’ equilibrium. For its part, the need for minimum resources for prosecution is seen as the vessel without which equality and fairness cannot be realised.

Not by chance, these assumptions are all captured under one pivotal concept for our analysis: that of the rule of law. The WJP defines the rule of law as a function of four universal principles: *accountability, just laws, open government* and *accessible and impartial dispute resolution*. The rule of law is then characterised as a system where:

“The government as well as private actors are accountable under the law. The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons, contract and property rights, and certain core human rights. *The processes by which the laws are enacted, administered, and enforced* are accessible, fair, and efficient. *Justice* is delivered timely by competent ethical, and *independent* representatives and neutrals who are accessible, have adequate *resources*, and reflect the makeup of the communities they serve.” (World Justice Project, 2019) [emphasis added]

The statistical relationship between corruption and the rule of law has been previously established (Mungiu-Pippidi & Dadašov, 2017) and the existing correlation between corruption perception indexes and rule of law indexes has been thoroughly scrutinised (Versteeg & Ginsburg, 2017). What remains relatively foggy in the literature is the concrete connection between the assumptions described and the reality of implementation of a criminal law framework in countries where the rule of law is frail or inexistent (highly corrupt countries). Putting it differently, we know that UNCAC has not had a significant impact in decreasing levels of corruption worldwide (Mungiu-Pippidi, 2011), especially in highly corrupt countries, and we also know that the toolkit it provides for is unlikely to be successful where the rule of law is absent. But does this absence of the rule of law manifest itself within the Convention’s framework? If so, how? Have countries engaged in any efforts to internalise the Convention or have they just settled for window dressing ratification?

To answer these questions, the heavily dense concept of ‘the rule of law’ must be qualitatively unpacked country by country. This will hopefully allow us to move past statistical evidence towards a deeper understanding of the different mechanisms at play. Our effort – which admittedly only begins to scratch the surface of the matter – starts with a closer review of the assumptions and of some examples of what has been empirically proven in relation to each one of them.

### ***Quis custodiet ipsos custodes? Rampant corruption and impartiality***

In legal systems where criminal prosecution is monopolised by state actors (i.e. public prosecutors), the initiative to prosecute will – unsurprisingly – always lie with the state. As much as this seems to be an obvious and simple statement, it must be registered and internalised by international policy-makers, seeing that, as we stand today, the majority of jurisdictions worldwide does subscribe to a monopolistic system of law enforcement (Edmonds & Jugnarain, 2016). Albeit not unheard of, the concept of ‘private prosecution’ is mostly rooted in common law’s history and

tradition (Garoupa & Klerman, 2010; Grove, 2011), which already indicates that only a handful of jurisdictions around the world is likely to have anything remotely similar available in their legal systems.

A direct consequence of an exclusively public criminal prosecution system is that public institutions must be impartial and, therefore, not corrupt in order to prosecute corruption (Voigt & Gutmann, 2015, p. 6). Again, quite a straightforward statement. However, in countries where the rule of law barely (if at all) exists, public institutions, including those within the criminal justice system, are very frequently corrupt. In this scenario, those seeking to enforce anti-corruption laws should not rely on the expectation that public authorities will act in compliance with those laws. An anti-corruption system solely reliant on law enforcement is unlikely to work in systems where the law is systemically ignored.

Voigt and Gutmann (2015) have empirically tested a few hypotheses concerning the need for an impartial judiciary (here they include magistrates, prosecutors and members of the police force) if corruption is to be successfully combatted. Their findings indicate that “the most significant and robust predictors of judicial corruption seem to be the income of the relevant actors and of the population in general, the existence of extensive publication requirements (as one instance of transparency) and the absence of a monopoly in the competence to prosecute criminal acts.” (2015, p. 16). Moreover, the authors point out that accountability of magistrates interacts with independence, and that “independence alone can even have detrimental consequences” (ibid.) on judicial impartiality.

Where the rule of law has crumbled, no institutional safeguards against self-serving individuals exist. Criminal law’s deterrent effect is, therefore, not likely to materialise where the justice system has been contaminated by partiality.

### ***Prosecutorial discretion, undue interference and separation of powers***

The second assumption that must hold true before criminal law’s deterrent effect on corruption can even begin to be considered concerns the separation of powers. The normative argument here is, again, simple and no more than a variation of the argument presented before. Most of the criminal justice system generally falls under the judiciary (where the tripartite division executive-judiciary-legislature applies). If criminal law is to represent a threat at all, in terms of diminishing incentives to be corrupt, individuals involved in interpreting and enforcing it, i.e. judges, prosecutors and members of the police force, must be left free to act within the given legal framework. That is to say, if court decisions can be *overturned* by the legislature/executive, if *permission/consent* to prosecute must be given by anyone outside of the judiciary, or if ongoing proceedings (before the courts or the police) can be *halted* at external request, the judiciary will not be entirely free to interpret and enforce criminal law, making the latter’s existence in the statutes effectively redundant.

The relationship at hand, i.e. that between corruption and proper checks and balances put in place, has also been, to some extent, empirically confirmed. Focusing exclusively on the U.S., Alt and Lassen (2008) set out to test three hypotheses: (i) economic rents should be lower under a divided government than under a unified government within a presidential political system; (ii) a judiciary accountable to voters should be more concerned about curbing corruption; and (iii) the effect of an accountable judiciary on corruption will be larger under a unified government. Their findings confirm all hypotheses put forward essentially indicating that governments bound by the separation of powers, and in which judges (in the study’s case, judges of the state supreme court) are elected, rather than appointed, are associated with lower corruption levels.



In highly corrupt countries, public officials are extremely susceptible to engaging in activities that result in murky divisions of power, be it through political appointments or outspoken clientelism (Kurer, 1993, p. 261; Szeftel, 2000, p. 435; Trantidis & Tsagkroni, 2017). As long as there is no real separation of powers, enforcement of criminal law will remain a challenge.

### ***Costs of corruption prosecution***

The third assumption we listed concerns the availability of minimum resources to enable prosecution, which is probably the most evident of the assumptions. Yet, it remains largely overlooked by an anti-corruption framework based on criminal liability. As noted by Ferguson, “although significant, the costs involved in fighting corruption are not at the forefront of the global discussion. Anti-corruption enforcement takes financial and human resources, intelligence and technology, as well as perseverance in the face of political risk.” (2018, p. 537). Given that – as pioneeringly demonstrated by Gupta et al. (2002) – corruption and poverty are robustly correlated, it is unlikely that highly corrupt countries will have the necessary resources to invest in the criminal justice system.

In fact, when it comes to government budgeting, the criminal justice system is typically not regarded as a particularly relevant recipient of funds even in highly developed countries, where governments are less prone to corruption. Not only that but, even *within* the criminal justice system, allocation of resources is unequal, with one cross-national study pointing out that “it is estimated that the world spent \$360 billion on criminal justice in 1997. Of this total, 62% (\$222.5 billion) was spent on public policing, 3% (\$11.2 billion) on prosecutions, 18% (\$63.5 billion) on courts, and 17% (\$62.5 billion) on prisons” (Farrell & Clark, 2004, p. 11) courts, prosecution and prisons. The relationship is explored using six regression models, and criminal justice expenditure in other countries is estimated using the best models. Global criminal justice expenditure in 1997 is estimated at \$360 billion (the equivalent of \$424 billion in 2004 prices. Albeit outdated, the study provides an interesting insight into the average costs of criminal justice worldwide and illustrates how states invest more than half of their criminal justice systems’ budgets in public policing, but less than 5% on prosecutions.

Lack of adequate resources also constrains the possibility of personnel qualification as the necessary trainings are costly, and invariably leads to the creation of a system of prioritisation. Prioritisation is the process whereby cases are dealt with according to different tiers of priority and provides fertile ground for corrupt practices. For instance, if criminal cases to be prosecuted outnumber available prosecutors, some form of ranking of cases is likely to be adopted, and crimes other than those connected to corruption might be perceived as more important or urgent. Alternatively, high profile corruption cases can be intentionally ‘forgotten’ on the ever-growing pile of pending cases. The possibilities are numerous, but the bottom line is that opaque prioritisation as a direct consequence of lack of resources, if anything, opens more avenues for corrupt behaviour.

The unavailability of resources to prosecute, be it due to their complete absence or to their misallocation, ultimately leads to the inability to prosecute. And, in practice, the inability to prosecute indicates that criminal law’s deterrent effect will not be activated.

## Chapter II: When theory and the hard reality collide

### *Operationalisation*

The previous chapter focused on unpacking, to some extent, the assumptions that must hold true in practice if criminal law's deterrent effect is to be enabled. Before we can consider the possibilities for a supplementary anti-corruption model based on international human rights law it is important to establish what practical limitations the current model has encountered. This is because any new model that does not acknowledge and adapt to real life constraints is equally bound to fail. While it is true that statistical analyses of UNCAC's ineffectiveness cast some light on *why* the Convention is failing in highly corrupt countries, i.e. due to the frailty of the rule of law, they do not tell us *how* it is failing. Our claim is that criminal law will not have a chance at succeeding in curbing corruption, unless the three assumptions concerning the rule of law are true, and this chapter's aim is to determine whether our normative claim has any substance.

In order to analyse our claim, we have chosen to look at the reality of UNCAC's implementation in the bottom 10 countries on WJP's Rule of Law Index 2019. The choice of countries was informed by two considerations. First, as a deliberate attempt to flip the traditional approach by departing from the premise that the commonality between most (if not all) highly corrupt countries is a weak rule of law. Instead, we saw the potential to investigate whether countries with a weak rule of law share any traits in complying (or not) with UNCAC's provisions. Second, although the Index already tells us that these countries have a poor record of the rule of law, the fact remains that they have all signed and ratified UNCAC<sup>1</sup>. This, in turn, should help us in understanding how this trait of weak rule of law manifests itself within the Convention's framework. As explained in the methodology section of this paper, the assessment of UNCAC's implementation 'on the ground' will be done through the analysis of the country reports (Executive Summaries) produced by UNCAC's IRM during the first cycle of review.

Because the degree of strength (or weakness) of the rule of law in a given country is a highly politicised topic and monitoring of compliance is done by peer reviewers (i.e. other State Parties to the Convention), we would not expect to find explicit mentions of the expression itself in the reports. Nor would we be likely to find overt remarks about other controversial issues (Carraro & Jongen, 2018, p. 624; Joutsen & Graycar, 2012, p. 432), such as impartiality of the justice system and separation of powers. To get around that and still test our normative claim, we looked for elements *within* the Convention that could act as proxies for the three assumptions concerning the rule of law. Anything that 'contextualises' UNCAC's implementation might be intentionally left aside by peer reviewers to avoid political retaliation, but the contents of the Convention's articles themselves could not be ignored.

UNCAC can be said to embody a criminal law model because provisions on criminalisation of certain practices and conducts are predominant in its text (Hechler et al., 2011, p. 11). Articles on prevention, for instance, pale in comparison<sup>2</sup>. The Convention is divided in eight chapters, but the first cycle of review only looked at matters concerning the implementation of Chapters III (*Criminalization and Law Enforcement*) and IV (*International Cooperation*). Executive Summaries for all

<sup>1</sup> See: <<https://www.unodc.org/unodc/en/corruption/ratification-status.html>>, accessed 9 April 2019.

<sup>2</sup> Out of a total of 71 Articles, 28 are under Chapter III and 10 have been listed under Chapter II on *Preventive Measures*.

countries share the same format, starting with an introduction that is followed by four sections replicated for each of the two chapters: (i) observations on the implementation of the articles under review; (ii) successes and good practices; (iii) challenges in implementation; and (iv) technical assistance needs identified to improve implementation of the Convention.

Employing the strategy of looking for proxies for the rule of law *within* the Convention, we operationalised our first two assumptions (justice system impartiality and separation of powers) using the provisions laid out in Article 30 (2) and (3), respectively, and the Executive Summaries' section on 'challenges in implementation' under Chapter III. For the third assumption concerning availability of resources, we inspected the section on 'technical assistance needs identified to improve implementation of the Convention' again under Chapter III. Reviewing the reports, we essentially searched for challenges in implementation identified by peer reviewers that concerned: (i) immunities or jurisdictional privileges accorded to public officials as a proxy for lack of impartiality; (ii) the existence of excessive discretionary legal powers relating to prosecution that enabled intrusive behaviour from other branches of power as a proxy for lack of separation of powers; and (iii) the request of technical assistance for capacity-building or training measures as a proxy for insufficient resources.

Additionally, to ascertain whether challenges in the Convention's implementation stem from some resistance to the internalisation of international norms (non-compliance) or if UNCAC's 'toothless-ness' relates to its basis in criminal law, we selected seven articles out of Chapter III that we deemed to be 'core articles' – i.e. provisions that embody the main goal of the Convention as they specifically require State Parties to criminalise certain conducts involving the exercise of public office – as proxies of States' willingness to comply with the norm. Because core articles should reflect UNCAC's very *ethos*, we excluded provisions that dealt with the criminalisation of conduct in the private sector (Articles 21 and 22) and those Articles that encompass enabling crimes, such as concealment and obstruction of justice (Articles 24 and 25, respectively). A summary of the operationalisation process can be seen in Table 1.

Table 1: Operationalisation process

Assumption	Operationalisation	Articles' Text (emphasis added)
Impartiality of the justice system	Challenges in implementation of Article 30(2) as identified by peer reviewers	Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an <b>appropriate balance between any immunities or jurisdictional privileges accorded to its public officials</b> for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.
Separation of powers	Challenges in implementation of Article 30(3) as identified by peer reviewers	Each State Party shall endeavour to ensure that any <b>discretionary legal powers under its domestic law relating to the prosecution of persons</b> for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.
Availability of resources	Mentions of capacity-building and/or training needs	
Non-compliance vs. criminal law nature	Internalisation of Articles 15, 16, 17, 18, 19, 20 and 23	See Appendix

## Findings

This exercise provides a solid framework within which we can test our normative claim. If problems with the three assumptions concerning the rule of law have been identified by peer reviewers as challenges to the Convention's implementation, we will have a compelling argument for our claim. Should that be the case, we will also have the first part of the equation in determining whether challenges in implementation derive from the very fact that criminal law does not provide a viable anti-corruption model for highly corrupt countries or whether it stems from non-compliance with international law.

The equation shall be complemented by the analysis of the core articles. If core articles have been duly internalised, we would be able to assert that non-compliance does not seem to pose a threat to the Convention's implementation. Rather, a criminal law model would seem to be ill-suited to combat corruption in highly corrupt countries. These results would cumulatively strengthen the case for an international anti-corruption framework grounded on some alternative model. This possibility will be discussed in more detail in the subsequent chapter. Table 2 summarises our findings and a full version of the table can be found in the Appendix section.

Table 2: Summary of findings

	Country	Challenges in implementation of Article 30 (2) and (3)?	Internalisation of core articles (total of 7):			Challenges with resources?
			Fully	Partially		
125	Cambodia	Not mentioned	6	1	0	Yes
123	Afghanistan	Jurisdictional privileges	1	3	3	Yes
122	Mauritania	Immunities and privileges	7	0	0	Yes
121	Egypt	Introduce <i>aut dedere aut judicare</i> principle	6	0	1	Not mentioned
120	Cameroon	Immunities and discretionary powers to prosecute	3	3	1	Yes
119	Bolivia	Not mentioned	5	1	1	Yes
118	Ethiopia	Immunities and discretionary powers to prosecute	6	1	0	Yes
117	Pakistan	Immunities	6	1	0	Yes
116	Zimbabwe	Not mentioned	2	3	2	Yes
115	Honduras	Not mentioned	4	3	0	Yes

The first interesting finding that emerged from our analysis is that *half* of the countries reviewed (Afghanistan, Mauritania, Cameroon, Ethiopia and Pakistan) had concerns about immunities and jurisdictional privileges *explicitly* raised by their peers under the ‘challenges in implementation’ section of the Executive Summaries. Cambodia, which was not red-flagged in this particular instance, grants immunity to the members of the National Assembly and the Senate that may only be lifted by the same bodies or in case of *flagrante delicto*. Yet, none of this was mentioned under the appropriate section of challenges in implementation. Interestingly, witnessing a very similar structure of privileges, peer reviewers for Mauritania, Cameroon and Ethiopia were more ‘out-spoken’ in red-flagging concerns.

Although complete immunity from prosecution is said to be incompatible with the principles that underpin criminal law in Afghanistan, its peer reviewers felt the need to include one recommendation concerning Article 30(2) under the ‘challenges in implementation’ section. Conversely, while Bolivia’s peer reviewers found out that special prosecutorial proceedings applied to the president and vice-president (subject to authorisation by the Legislative Assembly), as well as to senior officials of the judiciary and of the prosecution service, they did not see it fit to include a specific recommendation under the appropriate section. Pakistan grants immunities to Federal and Provincial Governments, as well as to any member of the National Accountability Bureau (an anti-corruption federal agency). Whereas the president and governors of provinces enjoy total immunity during their term in office, Ministers are granted immunity only in relation to the performance of their functions. The National Accountability Bureau, however, has the power to lift such immunities, but any order in that sense is still subject to the approval of the president.

At the time of review, Zimbabwe guaranteed immunities to the sitting president and members of parliament. The latter, however, have waived their privilege (according to the report). Peer reviewers noted that Zimbabwe’s president is empowered to grant pardon or amnesty to *any* person, which is done regularly. Even so, no specific recommendations were made concerning Article 30(2) (or (3), for that matter) under the ‘challenges in implementation’ section. In Honduras,

high-ranking officials are no longer covered by immunities, but judges and senior officials are still granted procedural privileges.

For its part, Egypt does not accord any special immunity to members of the government and the state administration. However, certain categories of public officials are granted procedural immunity and its peer reviewers encouraged the country to adopt a provision explicitly enshrining the principle of *aut dedere aut judicare*. According to the principle, States have an obligation, under international law, to extradite or prosecute persons who have committed crimes, in particular offences of international concern, such as war crimes and crimes against humanity (International Law Commission, 2014). This recommendation is especially relevant in the context of this paper as it draws on a principle of international law to call upon a State Party to perform its duties and fight impunity.

The second relevant finding concerns the assumption on separation of powers. We found very few mentions of challenges concerning prosecutorial discretion, with Afghanistan, Egypt and Honduras following the principle of mandatory prosecution. Peer reviewers for Cambodia and Mauritania had nothing to say about prosecutorial discretion, and for Bolivia no specific concerns were raised under the ‘challenges in implementation’ section. Ethiopia, Pakistan and Zimbabwe were the only countries whose prosecutorial systems were red flagged (in the body of the report) by peers for excessive discretion. However, out of the three, only Ethiopia was prescribed recommendations specifically tailored to Article 30(3) under the appropriate section.

Our third finding relates to the availability of resources and it is rather unsurprising: except for Egypt, *all* countries specifically indicated their need of technical assistance in terms of capacity-building and training measures. This is particularly interesting because deficiencies identified under the section ‘technical assistance needs identified to improve implementation of the Convention’ are reported by the country under review, not by peer reviewers. Finally, in terms of our seven ‘core articles’, Afghanistan, Cameroon and Zimbabwe were the outliers, having fully implemented less than half of the provisions. All other *seven* countries *fully* implemented more than half of the ‘core articles’, with Bolivia and Egypt lagging behind when it comes to the complete lack of implementation of only one provision.

In light of what has been discussed, our findings seem to lend support to our normative claim that criminal law’s deterrent effect can only be enabled when the three assumptions concerning the rule of law hold true in practice. While it could be argued that the evidence available was slightly inconclusive for the second assumption (separation of powers), it did confirm that challenges concerning the other two assumptions were extensively identified by peer reviewers. This could either mean that criminal law could still be efficient in contexts of poor separation of powers, or that the concept is not really contained in the wording of Article 30(3), which would suggest that our proxy could not capture sufficient information. Alternatively, prosecutorial discretion could be regarded as a particularly sensitive topic, which would result in its intentional exclusion from the reports by peer reviewers.

Concerning the internalisation of core articles, our analysis clearly shows that compliance with UNCAC as an international norm is not hindering the Convention’s implementation, given that the majority of countries in our sample fully internalised more than half of the provisions. More importantly, our analysis suggests that even in countries where the rule of law is extremely weak, processes to domesticate international law still happened, which indicates that self-serving governments are no less concerned about their international standing and image than rule-of-law-abiding governments.

### Chapter III: Can international human rights law address the gaps?

In this section we will engage in an argumentative effort to finally conceive what features should a new model grounded on international human rights law display to address the concerns raised in the first two chapters. Subsequently, we will conclude with a few observations on whether a framework shift would be desirable for the anti-corruption agenda of highly corrupt countries. But, before having a look at the arguments in more detail, a few considerations should be crystal clear at this point.

First, the causal pathways envisioned by UNCAC's drafters were not clear-cut and the assumptions surrounding the adoption of a global legal framework anchored in criminal liability were not remarkably sound. In development jargon it could probably be argued that the underlying theory of change (Johnson, 2012; Scharbatke-Church & Chigas, 2016) was inherently flawed. Secondly, an anti-corruption model that relies on criminal law to engender social change expects *action* from *governments* (public institutions), but not *agency* from *individuals*. Thirdly, the current model is not responsive to the plight of those most affected by the misallocation of public resources, as it focuses almost exclusively on the criminalisation of corrupt conduct. Fourth, there is a flagrant asymmetry between current global discourse on why corruption should be combatted (i.e. to foster human development in its different dimensions) and the tools available within UNCAC's – the sole anti-corruption framework with actual global reach – toolkit.

These are paramount considerations, as the arguments to be weighed in relation to a supplementary model based on international human rights law all hinge on their assimilation. That said, we will systematically present our arguments for *why* such a model would be interesting, *how* could it potentially succeed where its predecessor failed, and *what* it could look like in practice.

#### ***Why international human rights law?***

The main takeaway lesson from our analysis so far is that, where corruption has completely eroded the rule of law, relying on state institutions to promote change is unrealistic (Makinwa, 2013, p. 463). The premise that logically follows is that highly corrupt countries must lean on something other than public institutions to provoke change. But, is that even possible? A more granular approach, focused on the individual rather than the government would, in theory, be able to bypass the dubious interests of self-serving public agents that resist reform and oppose change (as they are not, in any event, the ones interested in a new *status quo*). In addressing the gaps left uncovered by the current anti-corruption model, the new approach would, if successful, provide better alternatives for enforcement and enable individual redress.

It is important, then, to emphasise that our goal is not to summarily discard the current model and completely replace it with a new one. Rather, our considerations seek to demonstrate that an *additional* framework could be implemented in highly corrupt countries. The novelty that it would introduce would be a *rights-based approach* (Mubangizi & Sewpersadh, 2017, p. 86; Peters, 2018), as opposed to the current framework, which focuses on individual punishment and collective reparation. A rights-based approach puts the rights-holder (individual) front and centre of strategies adopted and measures taken vis-à-vis the duty-bearer, i.e. the state. In practice, that would mean empowering individuals to actively participate in the fight against corruption through an *individual claims' mechanism*. The first step towards recognising their high stakes in the matter invariably coincides with the provision of an adequate legal framework that supports such a mechanism.

On the one hand, this could be done through ordinary instruments of private (civil) law, as argued by Makinwa (2013). While admittedly better than solely relying on criminal law, a model grounded on civil law would, in all likelihood, encounter similar difficulties in terms of the three

assumptions we covered in chapter one. After all, success here is determined by the possibility of acting *in spite of* the state, not with its support. On the other hand, a model anchored in international human rights law (hereinafter IHRL) could be designed to operate with the *consent* of the state, but ultimately *outside* of the formal court system. In fact, the greatest advantage of a rights-based approach anchored in IHRL resides in its *malleability*, as opposed to the stiffer nature of criminal law, which necessarily depends on the mobilisation of a few pre-defined actors (policemen, judges, prosecutors, etc.)

Not only that, but a framework based on IHRL would have the potential to ensure that the deterrent effect of criminal law is, in fact, *enhanced*, due to what has been referred to by scholarship as the self-reinforcing property of corruption. The rationale is that the more widespread corruption is in a given society, the stronger the incentives of an individual to engage in corrupt activities (Collier, 2006). If credibility (measured in terms of public perception) of criminal law is low, public trust is low. This, in turn, increases incentives for corruption and decreases individuals' willingness to engage in peer oversight. In that sense, "justice should not only be done, but should manifestly and undoubtedly be seen to be done" (Lord Hewart CJ, *The King v. Sussex Justices*, as cited in Peters, 2018, p. 1262).

Prosecution, and criminal law at large, do not speak to the average citizen. Successfully prosecuting a corrupt politician is unlikely to change every day behaviour that amounts to petty corruption. But, more importantly, imprisoning corrupt agents does not have a direct effect on the average citizen's life. If a poor individual, with little to no formal education and no access to public services or goods, does not witness change in their daily reality, or feel that their leaders are taking appropriate measures to fight corruption, their attitude towards malfeasance is likely to be unaltered. Some degree of education (and even of abstraction) is, then, needed for the understanding of what the 'public interest' is, so that the average citizen can comprehend the benefits of collective reparation obtained through the prosecution of culprits and asset recovery.

If a mechanism is created whereby those who are most vulnerable to the deleterious consequences of corruption can bring complaints forward, public perception should organically evolve to acknowledge action and, potentially, witness change. A model that allows for individual agency speaks directly to public perception and to the self-fulfilling quality of corruption. It also diminishes the need for political will through discernible leadership as the shift from passive to active role (from the individual's perspective) implies a *diffusion* of the power to effect change.

### ***How could it succeed? International legal personality of the individual and the direct effect***

The question would then be whether IHRL could deliver such an ambitious approach. As much as it can be said that IHRL exceptionally focuses on the individual, being a part of the larger international law *corpus juris* has meant that it has traditionally relied on states to be the intermediaries between the international legal order and individuals. Despite dissenting voices like that of Professor Cançado Trindade (2011), international law is known to be state-centric and many legal scholars would probably have a hard time conceiving IHRL implementation without sound national public institutions (Corstens, 2014). In fact, the very first thought that may cross one's mind when thinking of IHRL as a viable alternative to countries with a poor track record of the rule of law is that it too needs somewhat functioning public institutions to be able to irradiate its effects. However, this paradigm of state-centrism already encounters exceptions in practice – namely in international humanitarian law and within regional human rights systems – and is largely beginning to change.

The more we are confronted with transnational and global governance issues that demand concerted action from mankind rather than states – such as the ones posed by climate change



and terrorism – the more likely it seems that individuals will be granted more prominence on the international stage (Gemkow & Zürn, 2012, p. 80). This could be the case with the topic of corruption too, we argue. Not just because of its transnational component (as illicit transactions cross boundaries to maximise gains), but mostly because corruption violates human rights (Barkhouse et al., 2018; Pearson, 2013; Peters, 2018) while simultaneously denying remedies where the rule of law is frail or inexistent. Within a corrupt system, in lieu of being citizens, individuals become *hostages*. To the extent that “corruption voids the social contract, destroys government, and returns society to a state of nature” (Spalding, 2014), it is only fair to conceive a model that allows for individual agency.

IHRL’s appeal as a supplementary model derives, thus, from the fact that it provides the theoretical basis for the establishment of a *direct link* between the individual and the international legal order. One legal concept is crucial here: that of the international legal personality of the individual. Peters defines it as the “international legal *capacity* in the sense of the entitlement to be a holder of international rights and duties” (2016, p. 58). This definition entails that the international legal personality precedes any ‘procedural’ rights or powers, such as the power to create international law and the right of actionability. Endorsing it implies refuting the traditionalist view of “states as overlords” (Peters, 2016) of the international legal system and placing the individual as the ‘natural’ person under international law. Against this background, an *international individual right* – following Peters’ proposed nomenclature – could be the foundation for a direct link between oppressed individuals in highly corrupt countries and the international legal order. As the scholar compellingly puts:

“Acknowledging this concept [of an international individual right] presupposes that the welfare of the human being is a universal concern and a task of the entire international community. That starting-point is well anchored in international law. (...) where interests of the State and individual human interests and needs diverge, international law should have a set of instruments at its disposal to at least leave the possibility for finding a legal solution which benefits the individual. This set of instruments must be placed in the individual’s own hands or must allow for his or her participation.” (Peters, 2016)

Once the direct link is established, the relationship state-individual becomes susceptible to scrutiny. Individuals invoking a right against the state would have, in fact, a political trump (Dworkin, 1978), so to speak. That is the case, for instance, within regional human rights systems, such as the European and the Inter-American Systems, in which individuals already have legal standing and the right to individual petition guaranteed. Similarly, international humanitarian law encapsulates a system that puts the safety and integrity of individuals before states’ interests, as the laws of armed conflict stand precisely between individuals and states’ excesses. Establishing a similar link in the realm of anti-corruption would not, in that sense, be particularly far-fetched or avant-garde.

### ***What could a new framework look like? Legal creativity, customary international law and the right to freedom from corruption***

Two final questions remain to be answered. What is this international individual right that individuals hold in the realm of anti-corruption and where does it derive from? If we are to consider what an individual complaints’ mechanism ought to look like, we need to have a firm understanding of its foundation. While Peters herself, for instance, does not see the need for a new stand-alone human right to freedom from corruption (Peters, 2018), some others fully endorse the idea (Kofele-Kale, 2000; Murray & Spalding, 2015; Spalding, 2014). We are more inclined to join the latter group, but with a couple of caveats.

First, although we agree with Kofele-Kale in that “there is sufficient state practice to support a claim for an emerging customary international law prohibiting corruption in all societies” (2000, p. 152), we are of the opinion that establishing an international offence and a corresponding universal criminal jurisdiction would still miss the point as it would, yet again, depend on states for implementation – as would a system akin to that of regional human rights courts – and prevent ordinary citizens from witnessing and effecting change. That would also be our argument against the setting up of an International Anti-Corruption Court, in the format suggested by US judge Mark L. Wolf (2018). Secondly, a mere reframing of the current framework, as suggested by both Peters (Peters, 2018) and Spalding (Spalding, 2014), unaccompanied of an enforceable/actionable mechanism would still not be sufficient to change the reality of highly corrupt countries.

A new approach grounded on IHRL would have to be resourceful and creative. Thinking of the local agency model designed and employed by the Gacaca Courts in post-genocide Rwanda (Clark, 2014; Longman, 2009), for instance, is a good exercise to start exploring innovative solutions to challenging realities. Development studies have highlighted, time and again, that a one-size-fits-all approach to corruption is a recipe for frustration, and so designing a new anti-corruption legal framework should also be an effort of legal creativity. Going through the already established channels of human rights complaints, such as the Complaint Procedure of the Human Rights Council, might cause more confusion than shed a light on the matter, as several adjustments would have to be made (which would further be compounded by the fact that a new treaty establishing this new human right would probably have to be brokered beforehand).

Customary international law (Wood, 2015), with its own two-element malleability, offers a viable option. Indeed, a better way to promote a legal paradigm shift would be through the recognition of the fact that a human right to freedom from corruption has already emerged in customary international law but still is very much in its infancy. For their part, national courts have been acknowledging who the true victims of endemic corruption are in cases of foreign bribery. Two notorious cases unfolded before British Courts: the BAE Systems case and the Mabey Johnson case. In both instances, the losses of the people of Tanzania and Ghana and Jamaica, respectively, were acknowledged either by the sentencing judge or through the repatriation of part of the criminal fines paid by offenders (Spalding, 2014). The Indian and South African Constitutional Courts too have already explicitly made the point that corruption violates human rights which makes it incompatible with the rule of law (Peters, 2018). These are but a few examples that denote the existence of state practice in this regard.

In addition, the necessary subjective element of *opinio juris* can be found in different sources, especially in international fora. The very wording of UNCAC’s Foreword suggests that, particularly when stating that “if fully enforced, this new instrument can make a real difference to the quality of life of millions of people around the world. And by removing one of the biggest obstacles to development it can help us achieve the Millennium Development Goals” (United Nations Convention Against Corruption, 2004). More recently, the Inter-American Commission on Human Rights approved Resolution 1/18 on Corruption and Human Rights (Inter-American Commission on Human Rights, 2018), which also unequivocally spells out the negative impact that corruption has on the enjoyment of human rights and, more broadly, on the right to development.

In light of these considerations, we would like to use the very last words of this paper to start the following debate: what could our proposed individual claims’ mechanism look like? As we have ruled out the idea of an international anti-corruption court (criminal or otherwise), as well as the need for the enactment of a new treaty, we propose that this human right to freedom from corruption be acknowledged within the underused UNCAC framework.

Traditionally, the level of political sensitivity of brokering and ratifying additional protocols to international treaties is not particularly high (if compared to the usual commotion that surrounds treaty negotiations). In that sense, an additional protocol to UNCAC could be a good option to

establish our proposed mechanism. Moreover, in line with our argument that state involvement in implementation should be kept to a minimum (i.e. consenting and some degree of participation), the individual claims' mechanism should be led by a national commission predominantly composed of members of civil society organisations, and empowered to receive complaints, conduct *in loco* visits and enforce recommendations. An international commission should be created for oversight and to add a certain degree of peer-pressure.

The key aspect of said mechanism – which would effectively set it apart from traditional human rights systems –, is that it should focus exclusively on individual redress where corruption prevented *access to a public service or good that encapsulates a human right*. In other words, the rationale that should permeate the mechanism is that of *rectification of a situation of human rights denial* caused by corruption, rather than that of attribution of criminal/state responsibility. As a complementary rights-based model, the individual claims' mechanism should provide an avenue for ordinary citizens to voice their predicaments and obtain access to the public service or good that had been previously impeded due to corrupt behaviour. Establishing a causal link between corruption and the factual impediment to access would pose a few challenges, but in this design-thinking phase we would argue that a *presumption of truth* should apply in favour of the claimant. It could also be helpful to define that an impediment to access happens when a public official refuses to perform her duties unless given some economically advantageous compensation that is not prescribed in law.

If successfully implemented, such a mechanism would effectively bypass the formal court system, establish a collaborative relationship between the international and the national commissions, enable individual agency, foster a culture of collective oversight and secure states buy-in as a model that does not aim to make the state responsible for acts of corruption under international law.

## Conclusion

This paper set out to investigate whether a shift in global legal policy from a criminal law model to one based on IHRL would be desirable for the anti-corruption agenda of highly corrupt countries. After exploring the assumptions that surround the adoption of criminal law as the main policy to engender social change, and subsequently testing our normative claim against UNCAC's real-world framework, we reached the point where we could assess if and how could a model anchored in IHRL succeed where its predecessor failed. Adding to an extensive body of literature, our analysis exposed the current model's deficiencies in practice where the rule of law is weak or absent, namely in terms of its inability to leverage change and its lack of entry-points for those most affected by corruption. It also emphasised the evident dissonance between global discourse on why we combat corruption and UNCAC's normative framework.

In discussing the possibility of recognising a human right to freedom from corruption, based on emerging customary international law, we hope to join the voices that advocate for a more whole-some and human-rights compatible anti-corruption framework. Finding a feasible model, capable of effecting palpable change is not only necessary, but extremely urgent, as the lives of millions will continue to be negatively impacted by corruption until we do so.

Can we say that a shift is, then, desirable for the anti-corruption agenda of highly corrupt countries? Most definitely yes, for even if the suggestion of a new framework amounts currently to a compilation of ideas, complex problems call for sophisticated solutions, which are almost always refined with time. Admittedly, the propositions made here only begin to scratch the surface of the matter. Better exploring the emergence of a human right to freedom from corruption in customary international law and devising finer traits of an individual claims' mechanism are certainly

topics for future research. If a cacophony is what is truly needed to kickstart the design-thinking process, we are happy to join the choir.

## Bibliography

- Alesina, A., & Weder, B. (2002). Do corrupt governments receive less foreign aid? *American Economic Review*, 92(4), 1126–1137. <https://doi.org/10.1257/00028280260344669>
- Alt, J. E., & Lassen, D. D. (2008). Political and judicial checks on corruption: Evidence from American state governments. *Economics and Politics*, 20(1), 33–61. <https://doi.org/10.1111/j.1468-0343.2007.00319.x>
- Andersen, M. K. (2018). Why corruption matters in human rights. *Journal of Human Rights Practice*, 10(1), 179–190. <https://doi.org/10.1093/jhuman/huy004>
- Andrew Moravcsik. (2012). Liberal Theories of International Law. In J. L. Dunoff & M. A. Pollack (Eds.), *International Law and International Relations: The State of the Art* (pp. 1–67). <https://doi.org/10.1186/1477-3155-11-32>
- Bantekas, I. (2006). Corruption as an international crime and crime against humanity: an outline of supplementary criminal justice policies. *Journal of International Criminal Justice*, 4(3), 466–484. <https://doi.org/10.1093/jicj/mql025>
- Bardach, E. (2011). Policy Dynamics. In R. E. Goodin (Ed.), *The Oxford Handbook of Political Science*. Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780199604456.013.0045>
- Barkhouse, A., Hoyland, H., & Limon, M. (2018). *Corruption: a human rights impact assessment* (Issue May).
- Becker, G. S. (1968). Crime and Punishment: An Economic Approach. *Journal of Political Economy*, 76, 169.
- Boersma, M. (2012). Corruption: A Violation of Human Rights and a Crime Under International Law? In *Netherlands International Law Review VO - 61* (Issue 3, p. 455). Springer.
- Bräutigam, D. A., & Knack, S. (2004). Foreign Aid, Institutions, and Governance in Sub-Saharan Africa. *Economic Development and Cultural Change*, 52(2), 255–285.
- Brunelle-Quraishi, O. (2011). Assessing the Relevancy and Efficacy of the United Nations Convention Against Corruption: A Comparative Analysis. *Notre Dame Journal of International & Comparative Law*, 2(1), 101–166.
- Carraro, V., & Jongen, H. (2018). Leaving the Doors Open or Keeping Them Closed? The Impact of Transparency on the Authority of Peer Reviews in International Organizations. *Global Governance*, 24, 615–635.
- Chang, Y., & Wang, P.-H. (2016). The Empirical Foundation of Normative Arguments in Legal Reasoning. In *University of Chicago Public Law and Legal Theory Paper Series* (No. 561). <https://doi.org/10.2139/ssrn.2733781>
- Clark, P. (2014). Bringing the peasants back in, again: state power and local agency in Rwanda's gacaca courts. *Journal of Eastern African Studies*, 8(2), 193–213.
- Collier, P. (2006). African Growth: Why a “Big Push”? *Journal of African Economies*, 00, 188–211. <https://doi.org/10.1093/jae/ejl031>
- Coomans, F., Grünfeld, F., & Kamminga, M. T. (2010). Methods of Human Rights Research: A Primer. *Human Rights Quarterly*, 32(1), 179–186.
- Cornwall, A., & Nyamu-Musembi, C. (2004). Putting the “Rights-Based Approach” to Development into Perspective. *Third World Quarterly*, 25(8), 1415–1437.
- Corstens, G. (2014). *Human Rights and the Rule of Law* (CJC DL 2014/03; EUI Distinguished Lectures).
- Dávid-Barrett, E., Fazekas, M., Hellmann, O., Márk, L., & McCorley, C. (2018). Controlling Corruption

- in Development Aid: New Evidence from Contract-Level Data. In *Ssrn* (No. 1; Issue December). <https://doi.org/10.2139/ssrn.3103395>
- Dworkin, R. (1978). *Taking Rights Seriously*. Harvard University Press.
- Easterly, W., & Pfutze, T. (2008). Where Does the Money Go? Best and Worst Practices in Foreign Aid. *Journal of Economic Perspectives*, 22(2), 29–52. <https://doi.org/10.2139/ssrn.1156890>
- Edmonds, T., & Jugnarain, D. (2016). *Private Prosecutions: A Potential Anticorruption Tool in English Law* (Legal Remedies for Grand Corruption).
- Fagan, C., & Weth, F. (2010). *Good practice in donors' anti-corruption strategies* (Issue October).
- Farrell, G., & Clark, K. (2004). What does the world spend on criminal justice? In *HEUNI Paper 20*. <https://doi.org/10.1177/002071520104200103>
- Ferguson, G. (2018). *Global Corruption: Law, Theory & Practice* (Third Edit). University of Victoria.
- Fjeldstad, O.-H., & Isaksen, J. (2008). *Anti-Corruption Reforms: Challenges, Effects and Limits of World Bank Support* (No. 7; Independent Evaluation Group Working Paper).
- Garoupa, N., & Klerman, D. M. (2010). Corruption and Private Law Enforcement: Theory and History. *Review of Law and Economics*, 6(1). <https://doi.org/10.2202/1555-5879.1394>
- Gathii, J. T. (2009). Defining the Relationship Between Human Rights and Corruption. *University of Pennsylvania Journal of International Law*, 33(125), 125–202.
- Gemkow, T., & Zürn, M. (2012). Constraining International Authority through the Rule of Law: Legitimatory Potential and Political Dynamics. In R. P. Peerenboom, A. Nollkaemper, & M. Zürn (Eds.), *Rule of Law Dynamics in an Era of International and Transnational Governance*. Cambridge University Press.
- Getz, K. A. (2006). The Effectiveness of Global Prohibition Regimes: Corruption and the Antibribery Convention. *Business & Society*, 45(3), 254–281.
- Grove, T. (2011). Are All Prosecutorial Activities “Inherently Governmental”? Applying State Safeguards for Victim-Retained Private Prosecutions to Outsourced Prosecutions. *Public Contract Law Journal*, 40(4), 991–1018.
- Guerzovich, F. (2012). Effectiveness of International Anticorruption Conventions on Domestic Policy Changes in Latin America. In *Latin America Program International Anticorruption Conventions in Latin America*.
- Gupta, S., Davoodi, H., & Alonso-Terme, R. (2002). Does corruption affect income inequality and poverty? *Economics of Governance*, 3(1), 23–45.
- Hanna, R., Bishop, S., Nadel, S., Scheffler, G., & Durlacher, K. (2011). *The effectiveness of anti-corruption policy: What has worked, what hasn't and what we don't know*.
- Hechler, H., Zinkernagel, G. F., Koechlin, L., & Morris, D. (2011). *Can UNCAC Address Grand Corruption? A Political Economy Analysis of the UN Convention Against Corruption and Its Implementation in Three Countries* (Issue October).
- Heeks, R., & Mathisen, H. (2012). Understanding success and failure of anti-corruption initiatives. *Crime, Law and Social Change*, 58(5), 533–549. <https://doi.org/10.1007/s10611-011-9361-y>
- Hellman, J. S., Jones, G., & Kaufmann, D. (2000). “Seize the State, Seize the Day”: State Capture, Corruption and Influence in Transition. In *Policy Research Working Paper* (No. 2444).
- Inter-American Commission on Human Rights. (2018). *Resolution 1/18: Corruption and Human Rights*.
- International Law Commission. (2014). *The obligation to extradite or prosecute (aut dedere aut judicare): Final Report of the International Law Commission*.
- Jiangnan, Z. (2012). Do Severe Penalties Deter Corruption? A Game-Theoretic Analysis of the Chinese Case. *The China Review*, 12(2), 1–32.
- Johnson, J. (2012). *Theories of change in anti-corruption work: A tool for programme design and evaluation* (U4 Issue, Issue 6).
- Joutsen, M., & Graycar, A. (2012). *When Experts and Diplomats Agree: Negotiating Peer Review of the UN Convention Against Corruption*. 18, 425–439.

- Kaufmann, D. (1997). Corruption: The Facts. *Foreign Policy*, 107, 114. <https://doi.org/10.2307/1149337>
- Klitgaard, R. (1988). *Controlling Corruption*. University of California Press.
- Kofele-Kale, N. (2000). The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime under International Law. *The International Lawyer*, 34(1), 149–178.
- Kramer, S. (1990). An Economic Analysis of Criminal Attempt: Marginal Deterrence and the Optimal Structure of Sanctions. *The Journal of Criminal Law and Criminology*, 81(2), 398. <https://doi.org/10.2307/1143911>
- Kumar Katyal, N. (1997). Deterrence's Difficulty. *Michigan Law Review*, 95(8), 2385–2476.
- Kurer, O. (1993). Clientelism, corruption, and the allocation of resources. *Public Choice*, 77(2), 259–273.
- Longman, T. (2009). An Assessment of Rwanda's Gacaca Courts. *Peace Review*, 21(3), 304–312. <https://doi.org/10.1080/10402650903099369>
- Lord, N. J. (2013). Regulating transnational corporate bribery: Anti-bribery and corruption in the UK and Germany. *Crime, Law and Social Change*, 60(2), 127–145. <https://doi.org/10.1007/s10611-013-9445-y>
- Lord, N. J. (2014). Responding to transnational corporate bribery using international frameworks for enforcement: Anti-bribery and corruption in the UK and Germany. *Criminology and Criminal Justice*, 14(1), 100–120. <https://doi.org/10.1177/1748895812474662>
- Makinwa, A. (2013). *Private Remedies for Corruption : Towards an International Framework*. Eleven International Publishing.
- Manji, F. (1998). The depoliticisation of poverty. In D. Eade (Ed.), *Development and Rights*. Oxfam.
- Marks, S. P. (2017). Poverty and Human Rights. In D. Moeckli, S. Shah, S. Sivakumaran, & D. Harris (Eds.), *Textbook on International Human Rights Law*. Oxford University Press.
- Mauro, P. (1995). Corruption and Growth. *The Quarterly Journal of Economics*, 110(3), 681–712. <https://doi.org/10.1007/s12117-997-1097-9>
- Mubangizi, J. C., & Sewpersadh, P. (2017). A Human Rights-based Approach to Combating Public Procurement Corruption in Africa. *African Journal of Legal Studies*, 10(1), 66–90. <https://doi.org/10.1163/17087384-12340015>
- Mungiu-Pippidi, A. (2011). Contextual Choices in Fighting Corruption: Lessons Learned. In *Norwegian Agency for Development Cooperation* (Issue 4). <https://doi.org/10.1103/PhysRevD.41.717>
- Mungiu-Pippidi, A. (2015). *The Quest for Good Governance: How Societies Develop Control of Corruption*. Cambridge University Press.
- Mungiu-Pippidi, A., & Dadašov, R. (2017). When do anticorruption laws matter? The evidence on public integrity enabling contexts. *Crime, Law and Social Change*, 68(4), 387–402. <https://doi.org/10.1007/s10611-017-9693-3>
- Murray, M., & Spalding, A. (2015). Freedom from Official Corruption as a Human Right. In *Governance Studies at Brookings* (Issue January).
- Nosco, P. (2008). Confucian Perspectives on Civil Society and Government. In D. A. Bell (Ed.), *Confucian Political Ethics* (pp. 20–45). Princeton University Press.
- Office of the United Nations High Commissioner for Human. (2013). *The Human Rights Case Against Corruption*.
- Open-ended Intergovernmental Working Group on Asset Recovery, C. of the S. P. to the U. N. C. against C. (2016). *Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation - Note prepared by the Secretariat* (Vol. 04993, Issue August).
- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, (1997).
- Pearson, Z. (2013). An international human rights approach to corruption. In P. Larmour & N.

- Wolanin (Eds.), *Corruption and Anti-Corruption* (pp. 30–61). ANU Press. <https://doi.org/978-1-922144-77-5>
- Peters, A. (2016). *Beyond human rights: The legal status of the individual in international law*. Cambridge University Press.
- Peters, A. (2018). Corruption as a Violation of International Human Rights. *The European Journal of International Law*, 29(4), 1251–1287. <https://doi.org/10.1093/ejil/chy070>
- Prakken, H., & Sartor, G. (1996). A dialectical model of assessing conflicting arguments in legal reasoning. *Artificial Intelligence and Law*, 4(3–4), 331–368. <https://doi.org/10.1007/BF00118496>
- Rose-Ackerman, S. (2002). Corruption and the criminal law. *Forum on Crime and Society*, 2(1), 3–21.
- Rose-Ackerman, S., & Palifka J., B. (2016). *Corruption and Government: Causes, Consequences and Reform* (Second). Cambridge University Press.
- Rose, C. (2015). *International anti-corruption norms: Their creation and influence on domestic legal systems* (1st ed.). Oxford University Press.
- Rose, C., Kubiciel, M., & Landwehr, O. (Eds.). (2019). *The United Nations Convention Against Corruption: A Commentary*. Oxford University Press.
- Scharbatke-Church, C., & Chigas, D. (2016). *Taking the Blinders Off. Questioning How Development Assistance is Used to Combat Corruption*.
- Schluter, W. E. (2017). *Soft Corruption: How Unethical Conduct Undermines Good Government and What To Do About It*. Rutgers University Press.
- Smits, J. M. (2009). Redefining normative legal science: towards an argumentative discipline. In F. Coomans, F. Grünfeld, & M. T. Kamminga (Eds.), *Methods of Human Rights Research* (pp. 45–58). Intersentia Publishers.
- Spalding, A. B. (2014). Corruption, Corporations, and the New Human Right. *Washington University Law Review*, 91(6), 1365–1428.
- Szeftel, M. (2000). Clientelism, corruption & catastrophe. *Review of African Political Economy*, 85, 427–441. <https://doi.org/10.1080/03056240008704476>
- Tamanaha, B. Z. (2006). *Law as a Means to an End: Threat to the Rule of Law* (First edit). Cambridge University Press.
- Tanzi, V. (1998). *Corruption Around the World: Causes, Consequences, Scope, and Cures* (No. 98; 63).
- Tanzi, V., & Davoodi, H. R. (2000). Corruption, Growth, and Public Finances. In *IMF Working Paper* (No. 182).
- Transparency International. (2013). *2015 and Beyond: the Governance Solution for Development* (No. 01).
- Transparency International. (2015). *Are We on the Road To Impact?*
- Trantidis, A., & Tsagkroni, V. (2017). Clientelism and corruption: Institutional adaptation of state capture strategies in view of resource scarcity in Greece. *The British Journal of Politics and International Relations*, 19(2), 263–281. <https://doi.org/10.1177/1369148117700658>
- Trindade, A. A. C. (2011). *The Access of Individuals to International Justice* (M. Cremona, B. de Witte, & F. Francioni (Eds.)). Oxford University Press.
- UNCAC Secretariat. (2015). *Five Years of UNCAC Reviews - What have we learned? Briefing Note by the Secretariat* (Vol. 06563, Issue September).
- United Nations Convention Against Corruption, (2004).
- UNODC. (2017). *State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation*.
- Valters, C. (2014). *Theories of Change in International Development: Communication, Learning, or Accountability?* (Issue 17).
- Versteeg, M., & Ginsburg, T. (2017). Measuring the Rule of Law: A Comparison of Indicators. *Law & Social Inquiry*, 42(1), 100–137. <https://doi.org/10.1177/1065912909346745>

- Voigt, S., & Gutmann, J. (2015). On the Wrong Side of the Law: Causes and Consequences of a Corrupt Judiciary. *International Review of Law and Economics*, 43. <https://doi.org/10.1016/j.irl.2014.04.005>
- Waldron, J. (2008). No Title. *Georgia Law Review*, 43(1–61).
- Wells, C. (2012). Who's afraid of the Bribery Act 2010? *Journal of Business Law*, 5, 420–430.
- White, J. S. (2014). State Capitalism and Corruption: The Case of China. In I. Peleg & J. Mendilow (Eds.), *Corruption in the Contemporary World: Theory, Practice, and Hotspots* (pp. 223–246). Lexington Books.
- Wolf, S., & Schmidt-Pfister, D. (2010). *International anti-corruption regimes in Europe: between corruption, integration, and culture*. Nomos.
- Wood, M. (2015). International Organizations and Customary International Law. In *Vanderbilt Journal of Transnational Law* (Vol. 48, Issue 3, pp. 609–620). Vanderbilt Journal of Transnational Law.
- World Bank. (2018). *Piecing Together the Poverty Puzzle*.
- World Justice Project. (2019). *Rule of Law Index*. <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019>



	Articles 15-20 have been internalised?						Article 30: Issues raised in the body of the report			Issues raised under the "Challenges in Implementation" section			Challenges concerning resources
	Article 15	Article 16	Article 17	Article 18	Article 19	Article 20	Article 23	Article 30(2): impartiality (excessive immunities)?	Article 30(3): Separation of powers (permission to prosecute)?	Implementation of Articles 15-20?	Implementation of Articles 30(2) and (3)?	Challenges concerning resources	
	Yes	Yes	Yes	Yes	Yes	Partly	Yes	Immunity to the members of the National Assembly and the Senate, which may only be lifted by the same bodies, as well as in the case of flagrante delicto.	The judicial power is independent from the Government. The Constitution mandates that the King should guarantee the independence of the judiciary, together with the support of the Supreme Council of Magistracy.	Amendment of legislation, especially in relation to third-party beneficiaries.	Not mentioned	Capacity-building needs?	
125	Cambodia	Yes	Yes	Yes	Yes	Partly	Yes	Immunity to the members of the National Assembly and the Senate, which may only be lifted by the same bodies, as well as in the case of flagrante delicto.	The judicial power is independent from the Government. The Constitution mandates that the King should guarantee the independence of the judiciary, together with the support of the Supreme Council of Magistracy.	Amendment of legislation, especially in relation to third-party beneficiaries.	Not mentioned	Yes	
123	Afghanistan	Partly	No	Partly	No	Partly	No	Jurisdictional privileges are applicable to parliamentarians, high ranking officials and judges. Complete immunity from prosecution is not possible under the fundamental principles of the criminal law of Afghanistan.	Prosecutors have limited discretion in their decision whether or not to prosecute per articles 71, 169 and 171 of the Criminal Procedure Code (CPC).	Adopt a comprehensive definition of "public official" in line with article 2 of the Convention and criminalize conducts in line with the Convention.	Continue to ensure an appropriate balance between jurisdictional privileges afforded to Afghan public officials and the possibility of effectively investigating, prosecuting and adjudicating corruption offences (art. 30(2)).	Yes	
122	Mauritania	Yes	Yes	Yes	Yes	Yes	Yes	Members of Parliament enjoy professional immunity (art. 50 of the Constitution). During parliamentary session, immunity from arrest and prosecution may be rescinded only with the authorization of the assembly to which the member in question belongs and in cases of in flagrante delicto. Outside parliamentary session, members may be arrested only when caught in flagrante delicto, or where authorization to prosecute the member has been granted, or where a final conviction has been handed down. In accordance with article 18 of decree No. 2007-012 on judicial organization, it is prohibited to bring criminal charges against the head of the Supreme Court except in cases of in flagrante delicto and where prior permission has been granted by the Supreme Council of the Judiciary. In accordance with Act No. 93-20 on the Statute of the Court of Auditors, prior approval must be granted by the Supreme Council of the Judiciary before a member of the Court of Auditors may be prosecuted.	The Public Prosecutor has the authority to initiate public proceedings.	Expand the definition of "foreign public official" to include all groups specified in the Convention (arts. 2 and 16).	Ensure that the provisions on immunities and privileges do not constitute an obstacle to judicial prosecution (art. 30(2)).	Yes	
121	Egypt	Yes	No	Yes	Yes	Yes	Yes	Certain categories of public officials are granted procedural immunity by Egyptian law, but members of the government and the state administration do not hold any special immunity.	Egypt has adopted the principle of mandatory prosecution.	Criminalize bribery of foreign public officials in line with the Convention.	Egypt is encouraged to consider including in its legislation a provision in which the principle of aut dedere aut iudicare is explicitly enshrined.	No section on technical assistance	

	Articles 15-20 have been internalised?					Article 30: issues raised in the body of the report		Issues raised under the "Challenges in Implementation" section		Challenges concerning resources			
	Article 15	Article 16	Article 17	Article 18	Article 19	Article 20	Article 23	Article 30(2): impartiality (excessive immunities)?	Article 30(3): Separation of powers (permission to prosecute)?		Implementation of Articles 15-20?	Implementation of Articles 30 (2) and (3)?	
120	Partly	Yes	Partly	Yes	Partly	No	Yes	<p>The scope of legal immunities and jurisdictional privileges does not appear to pose an undue impediment to the effective investigation and prosecution of cases. Article 14 (6) of the Constitution provides for the immunity of members of the National Assembly, which must be lifted before they can be prosecuted. Lifting of immunities is not required for investigative measures to be taken against parliamentarians. The procedure for lifting immunities is not regulated, except by parliamentary procedure when the National Assembly is in session. Article 14 of the Constitution as well as sections 629-634 Code of Criminal Procedure (CPC) provide jurisdictional privileges for senior government officials and certain members of the judiciary.</p> <p>With regard to jurisdictional privileges, the law provides for special proceedings in the case of the President and the Vice-President of the State, subject to authorization by the Plurinational Legislative Assembly, and a special procedure applies to senior officials of the judiciary and Public Prosecution Service (arts. 112, 180 and 184 of the Constitution).</p>	<p>Cameroon follows the principle of discretionary prosecution.</p> <p>The grounds on which the Attorney-General's Office may request the judge not to prosecute are limited and not usually relevant in corruption cases.</p>	<p>Specify the legislation to ensure that all persons listed in article 2 of the Convention are covered by the definition of public official, including members of parliament, and elected and other unpaid officials not employed by the State. Criminalize acts of indirect bribery and fully criminalize benefits accruing to third parties for all bribery offences (art. 15). Expand legislation to be more closely aligned with Articles 17 to 20 of the Convention.</p>	<p>Consider regulating in a more comprehensive manner the procedures for lifting immunities in appropriate cases (art. 30 (2)). Adopt measures to ensure that discretionary legal powers relating to the prosecution of corruption offences are exercised to maximize the effectiveness of law enforcement and with due regard to the need for deterrence (art. 30 (3)).</p>	<p>Capacity-building needs?</p>	
119	Yes	Yes	Yes	No	Partly	Yes	Yes	<p>The President and Prime Minister, as members of Parliament, have immunity from prosecution. Ministers who are members of Parliament also enjoy criminal immunity. Procedures for lifting immunity are in place, requiring the consideration of requests by a parliamentary committee (e.g., art. 56 Evidence Proclamation).</p>	<p>Article 42 (1)(d) and (3) CPC places a certain amount of discretion in the hands of a Minister (the FEACC Commissioner in respect of corruption cases) not to institute proceedings in the public interest. Moreover, the FEACC Proclamation provides for the power of the FEACC Commissioner to withdraw, in accordance with law, corruption investigations and charges, as well as corruption cases pending in court (art. 2(9)(14)). While this has not been exercised, the Commissioner's decision not to prosecute is not subject to independent review or legal redress.</p>	<p>Expand legislation concerning active and passive bribery, as well as embezzlement and appropriation to include third-party beneficiaries. Consider the possibility of criminalizing trading in influence and, specifically, abuse of functions (arts. 18 and 19). Analyse future case law relating to the offence of illicit enrichment and illicit enrichment of private individuals to the detriment of the State, in order to ensure its continued consistency with the principle of legality (art. 20).</p>	<p>Not mentioned</p>	<p>Yes, training</p>	
118	Yes	Partly	Yes	Yes	Yes	Yes	Yes	<p>The professional immunities extended to the Federal and Provincial Governments, any member of NAB (including the Chairman) are safeguarded in NAO section 36. The President and the governor of a province enjoy total immunity during their term in office (Constitution art. 248). Ministers enjoy immunity in relation to the exercise of powers and performance of functions. However, the NAB Chairman, subject to the approval of the President, can lift such immunities if deemed as giving difficulty to the application of the Ordinance (NAO sect. 37).</p>	<p>The Chairman of the National Accountability Bureau (NAB) has the power to accept plea bargains, subject to approval of the Court, but with the exception of prison sentences (NAO sect. 15). The NAB Chairman can also grant a full or conditional pardon in exchange for information and cooperation (NAO sect. 26) as well as return of the assets or gains acquired in return for a full discharge of criminal liability (NAO sect. 25 (a)). As a result, financial crime is rarely sanctioned with imprisonment.</p>	<p>Consider the inclusion of a catch-all clause to supplement the list of public officials (art. 15 (a)). Ensure that Pakistan's legislation includes the element "to promise" in relation to bribery offences (arts. 15 (a) and 18 (a)). Pakistan is urged to significantly strengthen its specialized investigative, prosecutorial and enforcement capacities for corruption cases (art. 15 (b)). Consider clarifying the scope of the notion of "any other person" in order to ensure that it is beyond doubt that it does include foreign public officials and officials of international organizations (art. 16, paras. 1 and 2).</p>	<p>Review and consider revising the scope of immunities of public officials, in particular ministers and members of parliament, as well as the applicable procedures for lifting such immunities (art. 30(2)). Revisit existing procedures and adopt measures to ensure that prosecutorial discretion is subject to adequate safeguards and exercised to maximize the effectiveness of law enforcement measures, pending the adoption of a relevant regulation in accordance with the FEACC Proclamation (art. 30(3)).</p>	<p>Yes</p>	<p>Yes, training</p>
117	Yes	Partly	Yes	Yes	Yes	Yes	Yes	<p>The professional immunities extended to the Federal and Provincial Governments, any member of NAB (including the Chairman) are safeguarded in NAO section 36. The President and the governor of a province enjoy total immunity during their term in office (Constitution art. 248). Ministers enjoy immunity in relation to the exercise of powers and performance of functions. However, the NAB Chairman, subject to the approval of the President, can lift such immunities if deemed as giving difficulty to the application of the Ordinance (NAO sect. 37).</p>	<p>The Chairman of the National Accountability Bureau (NAB) has the power to accept plea bargains, subject to approval of the Court, but with the exception of prison sentences (NAO sect. 15). The NAB Chairman can also grant a full or conditional pardon in exchange for information and cooperation (NAO sect. 26) as well as return of the assets or gains acquired in return for a full discharge of criminal liability (NAO sect. 25 (a)). As a result, financial crime is rarely sanctioned with imprisonment.</p>	<p>Consider the inclusion of a catch-all clause to supplement the list of public officials (art. 15 (a)). Ensure that Pakistan's legislation includes the element "to promise" in relation to bribery offences (arts. 15 (a) and 18 (a)). Pakistan is urged to significantly strengthen its specialized investigative, prosecutorial and enforcement capacities for corruption cases (art. 15 (b)). Consider clarifying the scope of the notion of "any other person" in order to ensure that it is beyond doubt that it does include foreign public officials and officials of international organizations (art. 16, paras. 1 and 2).</p>	<p>Review the professional immunities it extends in view of establishing the balance sought by the Convention (art. 30, para. 2). Establish clear guidelines for the handling of seized and confiscated assets and consider establishing a centralized asset management office in order to ensure that the assets retain their value (art. 31, para. 3).</p>	<p>Yes, training</p>	

Challenges concerning resources	Articles 15-20 have been internalised?										Issues raised under the "Challenges in Implementation" section			
	Article 30: Issues raised in the body of the report										Implementation of Articles 15-20?			
	Article 15	Article 16	Article 17	Article 18	Article 19	Article 20	Article 23	Article 30(2): Impartiality (excessive immunities)?	Article 30(3): Separation of powers (permission to prosecute)?	Implementation of Articles 15-20?	Implementation of Articles 30 (2) and (3)?	Capacity-building needs?		
								Presidential immunity, Article 30 of Zimbabwe's Constitution, only applies to sitting Presidents. While the privileges of members of Parliament are protected in Section 49 of the Constitution, such privileges have been waived. In Zimbabwe, the President has powers to grant amnesty or pardon to any person, normally where a prisoner has ill-health, and may also commute sentences. The President does so regularly in accordance with the Criminal Procedure and Evidence Act.	The Attorney General has a wide range of discretionary powers in accordance with UNCAC article 30, paragraph 3.			Adopting legislation on bribery (active and passive) of foreign public officials and officials of public international organizations and trading in influence to ensure greater legal certainty in future cases in line with the Convention.	Not mentioned	Yes
116	Zimbabwe	Partly	No	Partly	Partly	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	
115	Honduras	Yes	Partly	Yes	Partly	Partly	Yes	Partly	Yes	Yes	Yes	Yes	Yes	

Source: Author's own table developed with extracts of the Executive Summaries produced by UNCAC's IRM