U4 ANTI-CORRUPTION RESOURCE CENTRE

U4 ISSUE 2025:8

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The right to be free of corruption: A new frontier in anti-corruption approaches through national courts

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Courts in several jurisdictions have recognised corruption as a direct human rights violation, enabling broader legal standing, integrating international law and focusing on victims. Case studies, predominantly from Latin America, illustrate different legal theories used to hold officials accountable and expand access to justice in anti-corruption proceedings. Consequently, the formulation of a stand-alone right has merit despite limitations.

Main points

- Courts have most often viewed the connection between corruption and human rights such that corruption provides the context for rights violations and leads to violations of a wide range of established rights, or conversely, rights violations facilitate corruption (eg violations against whistleblowers). But some courts are starting to use a stand-alone right to be free of corruption.
- Academics and anti-corruption activists disagree as to whether framing anti-corruption measures as a separate right is a good idea. Proponents argue that it is in line with other expansions of rights, provides evidentiary and constitutional advantages, and focuses attention on victims of corruption. Sceptics point to the lack of support in human rights law, complex nature of corruption and judicial limitations in crafting remedies, and dangers of overburdening an under-resourced human rights system.
- National courts are using a 'right to be free of corruption' for different purposes, including finding a jurisprudential hook to consider corruption-related issues or introduce international law on either human rights or anti-corruption; assimilating anti-corruption to other collective rights – like the constitutional right to a 'healthy environment'; or highlighting state obligations like transparency and accountability to create or imply a corresponding right.
- The cases do not arise directly out of anti-corruption law (criminal, civil or administrative) but more broadly out of standing, victim participation, collective rights or public trust. Focusing only on criminal sanctions in anti-corruption law may miss opportunities for advancing an anti-corruption agenda, which a right to be free of corruption may capture. Thus, the cases focus on the relationship between international law, including the UN Convention against Corruption (UNCAC), human rights law and domestic constitutional law.

Contents

Is there a right to be free of corruption? Some courts think so. These courts, especially in Latin America, are starting to recognise a distinct right to live free of corruption. While the idea is controversial, it offers new legal avenues for anti-corruption actors and potential pathways for reform that go beyond traditional criminal law.

There is wide agreement that corruption, especially grand corruption, violates several existing human rights. Nonetheless, decisions of national and regional courts, for the most part, have viewed the connection between corruption and human rights such that corruption provides the context for rights violations or leads to violations of several rights. Less often, courts have considered how rights violations facilitate corruption (eg violations against whistleblowers). But the operational parts of judgments – the part defendants must fulfil – have not been based on the corrupt acts themselves or on anti-corruption norms.[1] However, an interesting countertrend in some domestic courts is that some corrupt practices violate a distinguishable right to be free of corruption. The declaration of such a right is not necessarily a goal for the litigants but has served as an ingenious way of advancing other goals like access for victims or civil society organisations or facilitating the use of UNCAC as a question of domestic law. While the right to be free of corruption constitutes an innovative way of advancing the human rights and corruption agenda in some contexts, it also has some serious limitations and will not necessarily work well in others.

This U4 Issue explores how national courts, in both civil- and common-law systems, have dealt with freedom from corruption as a human right. It explores why they have sought such a right and what background conditions have made it possible. In cases where they have found such a right, how have they justified it and why? Where they have not done so, what is the rationale or alternative approach? What does this suggest for arguments in favour of or against establishing such a right and for government, donor and litigation strategies?

The U4 Issue begins with a brief examination of different ways that academics and activists have framed the relationship between corruption and human rights. In particular, it summarises whether positing a stand-alone 'right to be free of corruption' is a good idea. This U4 Issue concludes that the evidentiary and constitutional advantages and focus on victims of corruption outweigh the risks of imprecision and potential overload of human rights systems. It then turns to six case studies from common and civil law systems. After analysing the origins, purposes, outcomes and doctrinal contributions of cases from Argentina, El Salvador, Costa

1. See, eg Reyes, 2019.

Rica, Mexico, South Africa and Sri Lanka through legal research and interviews, it draws some general conclusions. It notes that declaring a right to be free of corruption serves instrumental purposes in securing victim access to court, establishing collective harm, applying international law domestically or expanding the definition of 'environment' or 'public trust'. It also raises important questions about the limitations of this approach.

Courts' interpretations of the interface between human rights and anti-corruption obligations can provide useful lessons for governments trying to fulfil both obligations, for donors interested in effective, sustainable and human rights-infused development and rule of law, and for civil society groups engaged in and seeking creative strategies to advance human rights and anti-corruption efforts. This U4 Issue therefore concludes with some recommendations for governments, donors and civil society groups.

Methodological approach

The U4 Issue uses legal case research, analysis and context, treaty text, and history of both human rights and anti-corruption treaties, as well as secondary sources on national laws, to conduct six case studies – four from Latin America, one from Africa and one from Asia. The cases were selected because they mentioned both 'corruption' or 'UNCAC' and 'human rights', in searches of national law case databases including the South African Legal Information Institute (saflii.org), vLex El Salvador (vlex.com), and the Mexican Semanario Judicial de la Federación (sjf2.scjn.gob.mx). Many websites consulted, of civil society organisations involved in anti-corruption or human rights litigation, have links to the cited jurisprudence, including Transparency International Sri Lanka; Poder Ciudadano in Argentina; and TOJIL, Mexicanos Contra La Corrupción y la Impunidad, and Derechos Humanos y Litigio Estratégico Mexicano in Mexico. After consulting secondary academic and policy literature in English and Spanish on the links between corruption and human rights, consultations were held in person and online during the last half of 2024 and beginning of 2025 with experts in litigation on the relevant cases in Argentina, El Salvador, Mexico and Sri Lanka.

The U4 Issue focuses on cases from several Latin American countries because national courts there have long played a pioneering role in expanding views of human rights obligations; there has been considerable discussion and litigation around human rights accountability and a broad view of the role of international law in the domestic legal order. These are civil law countries, where victims often can (and do) play an active role in criminal proceedings. Human rights, including their interpretation by regional human rights bodies, are in many Latin American states, treated as part of constitutional law, so the decision to make corruption a rights violation has broad reach and depth. In the past, trends originating in the region have spread elsewhere.[2] The U4 Issue includes two cases from outside the region because they come from (predominantly) common-law countries that demonstrate ways to raise these arguments under a variety of legal systems, other possible doctrinal approaches, and where systemic corruption, especially state capture, has played a major role in the countries' recent evolution.[3]

2. Engstrom 2024
3. On South Africa, see Haffajee and Chipkin, 2022; on Sri Lanka, see Alecci, 2022.

Approaches to the relationship of corruption to human rights

Declaring a right to be free of corruption is one possible approach to link human rights and anti-corruption, but until now it has not been dominant. The prevalent view sees corruption as context: a means or an enabling factor for violations of a wide range of human rights. A second approach focuses on imbuing anti-corruption law with a human rights-based approach, and a third approach contends that corruption, in and of itself, is a violation of human rights.

Corruption as context, cause or consequence

The existing human rights legal framework includes a state obligation not only to respect human rights, that is, to refrain from committing violations through its own agents, whether the acts were authorised or not, but also to ensure or protect and fulfil rights.[4] This implies that the state must take positive action to establish regulatory and other means to ensure that not only state officials but also private actors (like companies) uphold rights.[5] The actionable violation under human rights law is a long-standing right like the right to life, freedom of expression, education, health or housing.

Moreover, if the state cannot prevent a violation, it must nonetheless use due diligence to investigate and, if warranted, prosecute and remedy it. While a perfect result is not required, the state must take the obligation seriously, not as a formality, and make reasonable efforts.[6] The obligation dovetails with the state's responsibility to provide an adequate remedy, enshrined in all basic human rights treaties. This due diligence doctrine arose, in part, from cases of enforced disappearance, where (as in corruption cases) it was difficult to find enough evidence of crimes.[7] Thus, even if complainants cannot initially prove the underlying offence, the state must look into it. This is especially true where there is a pattern and practice of similar violations and applies to the state's obligation to investigate, prosecute and remedy

4. U4 2025 and Peters 2019
5. Inter-American Commission on Human Rights 2019
6. See, eg Velasquez-Rodriguez v. Honduras, 29 July 1988.
7. Ibid. See also Opuz v. Turkey, European Court of Human Rights, 9 June 2009.

violations of private actors or quasi-private groups like paramilitaries or organised crime as well as state officials.[8]

Procedural norms – a human rights-based approach

A second way of linking corruption and human rights employs a human rights-based approach (HRBA) to focus on the similarities between human rights and anti-corruption law, including state obligations regarding prevention and accountability and procedural similarities like participation, transparency and protection of whistleblowers.[9] In recent years, human rights law has paid increasing attention to economic, social and cultural (ESC) rights,[10] which easily connect to other economic and development concerns, like corruption, highlighting the links between human rights and corruption. An HRBA is well known in development practice. It focuses on procedural norms like participation and empowerment of those affected; transparency; and accountability, anti-discrimination and protection of vulnerable groups.[11] It presents a methodology and governing values but does not create a separate right.

Stand-alone right – pros and cons

Under a third approach, some human rights scholars have argued that corruption is itself a violation of human rights and should be recognised as such. There are benefits, but also costs, to such an approach. Proponents argue that the right to be free of corruption is a composite of existing rights, like other now-established rights including the right to water, housing or a healthy environment, even if it isn't explicitly mentioned in a treaty.[12] Where human rights are implemented domestically as part of constitutional law, connecting anti-corruption to those rights opens new avenues for both prevention and enforcement. It allows the focus to be on the course of corruption as well as the consequential harms, without requiring proof of a causal connection between a specific corrupt act and a specific harm. Such proof is often impossible to obtain where those involved can manipulate legal systems in their favour, hide actions and resources behind layers of shells and intermediaries,

8. See, eg Gonzalez et.al v. Mexico ("Cotton Fields"), 6 November 2009.
9. See, for instance, UN Declaration of basic principles on rights of victims of crime and abuse of power, 1985; UN Guiding principles on business and human rights, 2011; UN Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, 1998.
10. Richardson 2015
11. See, eg European Network of National Human Rights Institutions, 2025.
12. On water, see UN General Assembly Res. A/RES/77/334, September 2023, on the right to safe and clean drinking water and sanitation; on housing, see SERAC v. Nigeria, African Commission on Human and Peoples' Rights, 2001; and on the environment, see UN General Assembly ResolutionA/RES/76/300 on the right to a clean, healthy and sustainable environment, July 2022.

and threaten or buy off whistleblowers or investigators. For these reasons, and despite the objections listed below, this U4 Issue finds this third approach useful.

Some scholars find such a right in Article 1 of the human rights Covenants, which hold that people may not be deprived of their means of subsistence.[13] Murray and Spalding argue that designating corruption as a violation of human rights has several advantages, including dispelling arguments that corruption is culturally specific (because human rights are, by definition, universal), elevating the perceived importance of enforcing rights and promoting a preventative approach in an era of globalisation, where combatting corruption is a precondition to fulfilling goals like good governance and rights observance. They trace the proposed right to liberal political theory (especially John Locke), cross-cultural universals about good governance and social utility.[14] Relatedly, Anne Peters concludes that

> the framing of corruption not only as a human rights issue but even as a potential human rights violation can contribute to closing the implementation gap of the international anti-corruption instruments and can usefully complement the predominant criminal law-based approach.[15]

This approach also changes the discourse around the harms created by corruption to focus on harms to actors beyond the state, challenge the notion that corruption is a victimless crime and amplify victims' voices.

Not all scholars agree with this approach. Cecily Rose, for instance, argues that human rights law is a poor fit with anti-corruption efforts. For such an approach, she finds that there is no textual support in human rights treaties or existing practice, a human rights approach is too state focused for harms that span the public and private sectors, and it ignores the economic complexities of the relationship between corruption and human welfare.[16]

Additionally, it's not clear what the contours of such a right would be. After all, no society is completely free of corruption, which leaves open whether there is a minimum threshold or a way to distinguish episodic or petty corruption from systemic kleptocracy or large-scale looting. Moreover, only some corrupt behaviour is criminal: Would civil harm or ethical abuses be covered? A limitation to a right to be free of grand corruption or systematicity might prove useful.

13. Olaniyan 2024
14. Murray and Spalding 2015
15. Peters 2019
16. Rose 2016

Vigilance is required in creating new rights without the capacity to adequately monitor their implementation. Philip Alston long ago warned against expanding the number of rights, based on both doctrinal and practical considerations.[17] Many so-called third generation collective rights have not been taken up by courts, legislatures or social movements – although the right to a healthy environment provides a counterexample. Adequate implementation of a right to be free of corruption may require resources (for new rapporteurs or monitoring) that an increasingly stressed human rights system does not have.

Over the last decade or so, courts have taken up the idea of a 'right to be free of corruption' or its converse, a government duty to combat corruption. The cases complement and add to both academic arguments. This U4 Issue turns to a discussion of those cases, followed by a comparative analysis.

17. Alston 1984

Civil law cases: Argentina, El Salvador, Costa Rica and Mexico

The right to be free of corruption is not only the focus for academic debates. Some national courts have declared that there is such a right. Two examples are described below, from Argentina and El Salvador, which emerged from the need to find a legal way for the courts to apply international law to corruption-related issues – a hook they find in human rights law. A different approach comes from Costa Rica, where courts used environmental law, in particular the constitutional right to a healthy environment, to find that such a right includes freedom from corruption. Mexican cases have focused on a right to transparency, honour, and accountability with respect to public resources, generally in the context of allowing citizens or citizen groups to intervene in cases.

Country/ date	Legal approach	Outcome	Relevance
Argentina 2018	Standing of civil society group to represent collective interests under constitutional provision	Standing granted to NGO under provision on grave human rights violations	NGO ability to participate in criminal case; assimilating corruption to other grave rights violations because it both violates rights and is itself a rights violation
El Salvador 2018	UNCAC applied domestically but only because it's a human rights treaty	Treaty applied and civil forfeiture law held constitutional	Explicit recognition of human rights–corruption link and UNCAC as human rights treaty; corruption as a rights violation
Costa Rica 2013	Constitutional right to a healthy environment includes right to be free of corruption	Court finds constitution requires right to an environment free of corruption and recognises social harm	Use of environmental provisions in constitution to find affirmative right to be free of corruption
Mexico 2016, 2020, 2021	Constitution and victims law require ability to participate in criminal and administrative proceedings for complainants and NGOs	Cases mixed: Participation allowed for individuals and in administrative proceedings but generally not to represent collective interests in criminal cases	Ongoing discussion on access to courts for NGOs and complainants; some courts recognise right along with fundamental rights to transparency, honour and accountability with respect to public resources

Country/ date	Legal approach	Outcome	Relevance
South Africa 2011	Constitution requires domestic application of UNCAC due to human rights provisions of constitution	Majority finds that treaty requires more independence of prosecutor from the executive based on UNCAC provisions	Court recognises that human rights provisions create duty of state to create efficient anti-corruption mechanisms; implied right to be free of corruption
Sri Lanka 2008, 2022	Public trust doctrine requires state officials to use resources for public and not private gain; failure to do so violates equal protection	Former state leaders liable for violations of public trust doctrine and equal protection in cases involving land sale and ruinous economic policy	Use of public trust doctrine in corruption context; standing for organisations to represent collective rights; equal protection in corruption cases

Argentina: Framing corruption as a rights violation to enable court access

In 2018, an anonymous whistleblower represented by the NGO Citizen Power (Poder Ciudadano) denounced fraud in a services contract between the Ministry of Social Development and the La Plata Regional Faculty of the National Technological University to monitor an employment programme. The embezzlement consisted of over 250 'ghost' hires of personnel who never appeared and whose identities were apparently stolen to cash cheques. The university dean was, according to local press, close to the minister of Social Development in the former government and got a no-bid contract.[18]

Argentine law does not generally allow civil society groups to intervene on behalf of victims. However, Argentina's criminal procedure code, in Article 82 bis, allows duly registered civil society groups to represent victims in cases of crimes against humanity or grave human rights violations if their organisational purpose is directly linked to the alleged injured rights. They may represent victims whether or not they are complainants in the case. The provision was created for cases arising out of the 1970s–80s period of dictatorship and state terrorism because many individual victims were afraid to openly denounce powerful military officers.

Poder Ciudadano successfully applied to participate as a party in the criminal proceeding, arguing that their bylaws included pursuing justice in corruption cases,

18. Clarín 2019

international treaties (including the UNCAC) encouraged their participation and corruption constituted a grave human rights violation.[19] Due to the human rights–related provisions of the criminal procedure code and the lack of other provisions allowing for organisations to participate in criminal cases, it was important for Poder Ciudadano to frame their participation as responding to human rights violations to participate in the case.

The defendants objected to the participation of Poder Ciudadano in the proceedings, arguing the corruption offences were not covered by Article 82 bis and the inclusion of a third party would create delays. Judge Kreplak of the Third Criminal and Correctional Court in La Plata disagreed. The judge found that the human rights orientation established in Argentina's 1994 constitution required a broad view of whether a court could hear the case. Therefore,

> the idea of limiting participation only to the holder of the legal right protected by criminal law has been weakened by updated ideas about access to justice, the role of the victim in the [penal] process and the growing influence of international treaties and conventions in internal law…[20]

Allowing access to qualified organisations representing collective interests was especially important when dealing with crimes against public administration.

The defendants appealed, and in November 2018, the Second Chamber of the La Plata appeals court affirmed the previous decision.[21] The court focused on statutory interpretation of the language of Article 82 bis, noting that it is framed in the alternative: Either crimes against humanity or grave human rights violations must be at issue. While crimes against humanity were irrelevant,

> it's clear that crimes against public administration, by affecting budgets, indirectly limit human rights like health, education, access to justice, dignified housing, etc. And Poder Ciudadano aims to support the full exercise of the rule of law, which has been definitively weakened…[22]

19. Poder Judicial de la Nación, JUZGADO CRIM. Y CORR. FEDERAL DE LA PLATA 3, CFP 6089/2016/4, Incidente de Falta de Acción, 10 May 2018
20. Ibid
21. Poder Judicial de la Nación, CAMARA FEDERAL DE LA PLATA - SALA II, CFP 6089/2016/4/CA1, 1 November 2018
22. Ibid, p. 4

To come within the statute, the court characterised the corrupt behaviour as a 'grave human rights violation', although it also referred to the links between corruption and other established human rights. Therefore, the court concluded that grave human rights violations were at issue, and the organisation could intervene.[23]

El Salvador: UNCAC as a human rights treaty

El Salvador passed a non-conviction based (civil) forfeiture law (extinción de dominio) in 2013.[24] After those potentially affected raised complaints, the Salvadoran legislature amended the law to shorten statutes of limitation and disallow the forfeiture of assets of equivalent value when the illegally obtained assets were unavailable.[25] The attorney general and several private parties challenged the amended law. The 2018 decision of El Salvador's Constitutional Chamber[26] to uphold almost the entire law dealt with a wide array of due process, legal certainty and other constitutional challenges.

The court had to decide if it could use international treaties – specifically, the UNCAC, UN Convention Against Transnational Organized Crime (UNTOC) and narcotics treaties – to help decide if the forfeiture law was constitutional. The Salvadoran constitution gives primacy to international treaties over contrary domestic laws, but a 2004 decision of the same court had earlier held that it was only international human rights law, and not all international law, that was relevant for the interpretation of constitutional rights given the overlapping subject matter.[27] Therefore, the court could use the requirements of international law to decide the case only if the UNCAC and other anti-corruption treaties constituted 'human rights treaties', not other kinds of treaties, under Salvadoran law.

The court found that 'drugs, organised crime and corruption are objectionable conduct that produce direct and indirect violations of fundamental rights'.[28] This is fairly non-controversial. It then listed, for each treaty, what the rights entailed. The anti-narcotics Convention was aimed at protecting the right to health. The UNTOC was relevant because organised crime affected rights including the right to life, security and physical integrity; property (through extortion); free movement; education; and a wide range of other rights. Finally, the UNCAC overlapped with the constitution regarding equality: 'Corruption implies an unjustified and unreasonable differentiated treatment and intends to favour certain persons or groups, guarantee

23. Ibid, p. 7
24. Ley Especial De Extinción De Dominio Y De La Administración De Los Bienes De Origen O Destinación Ilícita, D.O. 223, 28 November 2013
25. Decree Law No. 355, 28 de abril de 2016; D. L. No. 734, 18 de julio de 2017
26. Sala de lo Constitucional de la Corte Suprema, San Salvador, Sentencia Nº 146-2014AC de la Sala de lo Constitucional, 28 May 2018
27. Sala de lo Constitucional de la Corte Suprema de Justicia, San Salvador, Sentencia 52-2003/56-2003/57-2003, 1 May 2004
28. San Salvador 2018

their impunity and generate privileges'.[29] Corruption, moreover, implied the rights to access to information, free expression, democracy and the proper use of state resources.[30]

The court then held that

> acts of corruption are themselves direct or indirect violations of fundamental rights. Direct violations occur when a corrupt act entails lack of compliance with the obligations to respect, protect, and fulfil fundamental rights … Indirect violations are consequences of the series of events generated by the corruption that, in the end, lead to the lack of compliance with [those] obligations.[31]

Therefore, because the UNCAC was considered a human rights treaty given the effects of corruption on human rights, it could be used to set the parameters of El Salvador's domestic obligations, including for asset forfeiture and recovery. That determination led to the further observation that, in addition to its effects, corruption was itself a human rights violation. In the end, the court invalidated several of the modifications to the original law as contravening the treaties and upheld the rest, leaving a strong forfeiture statute in place.

Costa Rica: Social harm and the right to a healthy environment

Costa Rica has been a leader in defining social harm. Social harm to collective and diffuse interests affects everyone, and the state attorney's office (known as the procurator or Procuraduría General de la República [PGR]) represents the collective interest in redressing social harm. Starting with the 2004 Caja-Fischel case, the courts have found that corruption-related offences create social harm by weakening the economy and public confidence in institutions, undermining those institutions and unjustly redistributing wealth and power, thus leading to a culture of corruption.[32] The social harm is worse when the offender is the president or a high-level official than when they are a low-level bureaucrat.[33] That social harm, a

29. Ibid, pp. 9–12
30. Ibid
31. Ibid
32. Tribunal Penal del Segundo Circuito Judicial de San José, sentencia 341-2004, 29 June 2004
33. Tribunal Penal de Hacienda, sentencia n.° 167-2011, extract at pgr.go.cr, note 16

subsequent court found, violates the 'right to live in a corruption-free environment'.[34]

Other courts have grounded that right, and the resulting social harm created by its violation, in the constitutional right to a healthy and ecologically balanced environment established in Article 50 of the Costa Rican constitution. Article 50 is broader than only environmental protection: The first part of the article commands the state to procure the maximum well-being for all the country's inhabitants, organising and stimulating production and the most appropriate distribution of wealth. The supreme court (and subsequently other courts) has interpreted the 'healthy environment' language to be far broader than nature conservation, extending it to any sphere of human development.[35] The courts have then used this broad view to find that Article 50 recognises a right to live in an environment free of corruption.[36] They find that the right protects collective and diffuse interests, and creates a right to reparation for economic and moral harms, including those due to corruption.

Nearly 150 countries have some version of a right to a healthy environment in their constitutions, and a good number of those include social factors within the definition. The Costa Rican approach might prove useful to these countries in establishing the breadth of harm created by corruption.

Mexico: A mixed bag enabling victim court access

Two Mexican states recognise the human right to live free of corruption in their state constitutions: Baja California[37] and Tabasco.[38] The federal constitution does not explicitly contain this right, nonetheless, the courts have referred to such a right in the context of several converging trends in the law. Trends include recent changes in anti-corruption law that bolstered existing constitutional, criminaland administrative law prohibiting public corruption and illicit enrichment;[39] Mexico's ratification of the UNCAC and the Inter-American Convention Against Corruption (IACAC); the 2013 General Victims' Law which gave new rights to victims in criminal trials and new guarantees of reparation;[40] and the 2011 constitutional reforms on

34. Procuraduría de la Ética Pública 2024
35. Supreme Court of Costa Rica, Constitutional Chamber, decisión 2000-00041, 4 January 2000
36. Eg Case N°71-2013, Tribunal Penal del II Circuito Judicial de San José, Goicoechea, 19 February 2013
37. REFORMADO [N. DE E. REPUBLICADO], P.O. 17 DE SEPTIEMBRE DE 2021, Toda persona tiene el derecho humano a vivir libre de corrupción
38. The Constitution, in Article 2(40), states that 'The State will promote, through laws and public policies, that the social practices and actions of public servants conform with codes of conduct and ethical values that combat corruption; in addition to the issuance of laws that severely punish corruption, with the objective that everyone can aspire to a life free from corruption'.
39. For a discussion of the 2015–16 reforms, see García and León, 2016.
40. United Mexican States, General Law on Victims, 9 January 2013, Art. 4

human rights and subsequent supreme court decisions that stress the progressive, expansive and forward-looking nature of Mexico's human rights obligations and the existence of collective and social, not just individual, rights.[41] As a result of these changes, the Mexican supreme court found that victims can challenge a prosecutor's failure to indict through *amparo* (a procedure to protect constitutional rights against government action) due to their right to reparations if there is a guilty verdict.[42] And at least one lower court, on 31 May 2019, agreed on the broad scope of who constitutes a victim.[43]

Against this backdrop, in the cases described below, courts have referred to the right to be free of corruption generally in disputes over the ability of individuals and civil society groups to represent the collective or social interest in investigating and redressing financial wrongdoing. One case involves bribes awarded in highway construction and concession contracts.[44] Senator Emilio Alvarez and Ana Riojas, a member of the federal assembly, denounced the bribes to the prosecutor's office. When nothing happened, they requested copies of the case files as victims or offended persons (*víctimas u ofendidos*) and therefore parties with the ability to bring the case. The prosecutor refused, and they then brought a writ of *amparo* against the authorities based on a violation of their constitutional rights, including access to justice and the collective right to live in a corruption-free environment. They cited the evolution of domestic and international law (including UNCAC) to facilitate greater access for victims in criminal proceedings. They pointed in particular to Article 20 of the constitution, which sets out the rights of victims, Article 108 of the Criminal Procedure Code and Article 4 of the General Victims' Law of 2013, which reads:

> Direct victims are physical persons who have suffered economic, physical, emotional or general harm or detriment that endangers or harms their legal entitlements or rights as a result of the commission of a crime or a human rights violation recognised in the constitution or in ratified treaties.[45]

Collective victims, including groups, social organisations and communities, are also covered. Here, the relevant rights violation was the right to be free from corruption.

41. eg Caballero 2019
42. Ibid
43. 31 de mayo de 2019 por el juez Sexto de Distrito de Amparo en Materia Penal en la Ciudad de México dentro del juicio de amparo 22/2019 (Sixth district judge of injunctions in criminal matters issued a ruling in constitutional injunction trial)
44. Ibid
45. United Mexican States, General Law on Victims, 9 January 2013, Art. 4

The prosecutors' office argued that to seek case participation, the complainants had to show that their rights, or their individual or collective interests, had been affected. The generic interest of society was not enough; there had to be specific individual or group interests at stake.[46] Simply having denounced the illegal conduct to prosecuting authorities was not enough to convert the complainants into victims. The law required them to show that they had personally suffered physical harm, financial loss or negative impact on a fundamental right as a result of the defendants' alleged crimes – not just that the entire society was affected.[47] The complaining legislators filed a request for constitutional relief, but the trial court denied it on the grounds that if they were not victims and therefore had no right to reparations, then they also had no standing to bring a constitutional challenge.

An appeals panel disagreed.[48] They acknowledged that the Mexican constitution needed to be interpreted progressively when it came to human rights. They found that the definition of victim changed in Mexican law, and the post-2000 constitutional scheme contemplates a progressive definition of victim providing a status equal to offenders for participating in criminal proceedings. The court found that a broad reading of the rights of victims was necessary given expansive inter-American jurisprudence and the growing importance of collective or supra-individual claims. In particular, the law now recognised that collective victims could intervene to protect collective legal interests. Once the court recognised collective claims, it was a small step to name defence from corruption as such a claim that any affected member of society could raise. The legislators, the court found, had not only filed a complaint; they had a specific interest in the use of public monies. The court imposed two limits: The complainant must be part of the affected community, and the complainant must actively file a complaint about the alleged wrongdoing.[49]

Other cases involving the standing of civic organisations have supported this view. In a 2016 administrative law case, the district court said:

the Constitution recognizes the fundamental rights to transparency, honour, and accountability with respect to public resources, … which translates to a fundamental right of individuals to live in an environment free of corruption in which all public officials carry out their jobs with enough honesty, transparency and openness to be able to have confidence in their work and their decisions.[50]

46. Ibid
47. Ibid
48. Amparo in Review 104/2020, First Chamber, Eighth Collegiate Court in Criminal Matters of the First Circuit, Supreme Court of Justice of the Nation (Mexico), 13 January 2021 https://bj.scjn.gob.mx/documento/sentencias_pub/207458
49. Ibid
50. Juicio de amparo indirecto 1311/2016, 8th administrative law district judge, p. 99, 2 de octubre de 2017. See also Medina and Greaves 2020.

The same court later found that Mexico's National Anti-Corruption System had been created as a procedural and institutional guarantee to allow society to live in a corruption-free environment.[51]

Subsequently, while denying an association representing victims from intervening in a criminal case involving corruption, a Mexico City criminal appeals court found that doing so did not constitute a violation of the human right to live in a corruption-free environment, implying that under other circumstances there is such a right.[52] The court did not, however, explain what those circumstances might be or expand on the content of the right.

Some cases have gone the other way, albeit focusing on the standing of victims rather than the content of the right to be free of corruption. In a case widely known as the 'master fraud' (*estafa maestra*), brought by a Mexican anti-corruption NGO, TOJIL, the courts denied the organisation party status in the criminal proceedings. The arguments were similar: The complainants argued there was a negative impact on a fundamental right as required by the General Victims' Law, in this case, the right to be free from corruption, and that made them victims with the ability to intervene. The trial judge found that this was not a collective right, there was no physical harm and the economic losses were the state's, not the complainants'. An appeals court confirmed.[53] In general, Mexico's supreme court has found that complainants need not be recognised as victims in criminal cases but has also ruled that citizens could participate in administrative proceedings against public officials – in both cases without focusing on a right to be free of corruption.[54]

A split appeals court panel denied victim status to TOJIL in another case involving an apparent sweetheart deal between prosecutors and former Veracruz governor Javier Duarte, who was sentenced to nine years in prison after a plea agreement for stealing at least US$21 million.[55] With respect to the human right to be free of corruption, the majority held that neither the constitution nor international treaties explicitly contained such a right, and therefore it did not exist. The dissenting judge focused on the rights of victims and the need to broadly interpret rights.

51. p. 56 de la sentencia dictada en el Juicio de Amparo 589/2018 el 31 de julio de 2018
52. Medina and Greaves 2020
53. Erick Zavala Gallardo, El derecho humano a vivir en un ambiente libre de corrupción, in Comisión de Derechos Humanos del Estado de México, Dignitas, No. 44, Sept–Dec 2022, pp. 165–170 https://dignitas.codhem.org.mx/index.php/dignitas/issue/view/dignitas44_dhprohibiciondelacorrupcion/dignitas44_dhprohibiciondelacorrupcion
54. Greaves, Medina and Martínez 2025
55. Amparo en revisión 159/2019, 20 January 2020

Cases from (predominantly) common-law systems

Common-law legal systems generally allow less victim participation in criminal proceedings and vary widely in how they incorporate international law into domestic legal analysis. Nonetheless, aggrieved individuals and public interest groups have found ways to counter corruption, leading to decisions that, while less explicitly endorsing a right to be free from corruption, use human rights and constitutional doctrines to imply such a right.

South Africa: Government duty to combat corruption in human rights law

The language of human rights, extensively incorporated into the South African 1994 constitution, holds that the state must not only respect, but positively ensure and protect rights.[56] This allowed the Constitutional Court of South Africa to decide that countering corruption was an obligation of the state due to corruption's negative consequences on a wide range of rights. While not explicitly recognising the countervailing right to be free of corruption, a state obligation could be seen as the flip side of the equation.

The issue arose from a challenge to Parliament's decision to disband the country's priority crimes and anti-corruption investigations unit and move its functions from the National Prosecuting Authority to the police, which would tie the functions more closely to the executive branch.[57] The complainant, an individual businessperson ostensibly representing the public interest, sued. He argued that anti-corruption treaties, as incorporated into South African law, required an anti-corruption unit with greater independence from the executive and the human rights obligations of the state similarly required more structural independence.[58]

The court split. A minority would have upheld the government's decision, finding there were enough safeguards in the reconfiguration of the anti-corruption investigations unit to give it sufficient independence, while the majority pointed to several failings making it insufficiently independent. Both sides dealt with international law issues. For the majority, the requirements of UNCAC were directly applicable through the constitutional provision that when interpreting the Bill of

56. Constitution of the Republic of South Africa 1994;), Chapter 2, Section 7–39; see Slye 2001
57. (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC) (17 March 2011)
58. Ibid

Rights a court 'must consider international law'.[59] The minority found that South Africa's constitution does not require the incorporation of UNCAC and other relevant treaties directly, but merely to use them as a guide. There was no reason the national anti-corruption unit should mirror international suggestions on the structure of such units; the issue came down to adequate, but not optimal, independence.[60]

Both sides used Article 7(2) of the constitution. For the majority:

The state's obligation to 'respect, protect, promote and fulfil' the rights in the Bill of Rights thus inevitably, in the modern state, creates a duty to create efficient anti-corruption mechanisms. Our Constitution appropriates the obligation for itself, and draws it deeply into its heart, by requiring the state to fulfil it in the domestic sphere …. [61] We therefore find that to fulfil its duty to ensure that the rights in the Bill of Rights are protected and fulfilled, the state must create an anti-corruption entity with the necessary independence, and that this obligation is constitutionally enforceable. More specifically, the amicus contended, and we agree, that failure on the part of the state to create a sufficiently independent anti-corruption entity infringes a number of rights. These include the rights to equality, human dignity, freedom, security of the person, administrative justice and socio-economic rights, including the rights to education, housing, and health care.[62]

With respect to the right to be free of corruption, the majority finds that there is a state duty arising specifically from human rights law to create efficient and independent anti-corruption mechanisms. Independence is required both by the UNCAC, which under domestic constitutional law must be considered, and human rights law itself. By finding that there is a state duty-bearer who must act to respect, protect and promote rights, the court implies that there is a corresponding rights-holder. It does not indicate who is the rights-holder; presumably, it would be the individual complainant and organisations acting as *amicus curiae* as well as society as a whole. While the court cites specific civil, political, economic and social rights as underlying the state's obligation, it does not rely on these rights but on a more general state duty arising from human rights law. It provides another way for international human rights law to approach anti-corruption obligations, albeit one that depends on strong and explicit constitutional provisions tying international and domestic law together.

59. South African Constitution, Article 39(b), requires courts to consider international law when interpreting the Bill of Rights.
60. Glenister, supra, opinion of CJ Ngcobo, paras. 105–153
61. Ibid, para. 189
62. Ibid, paras. 197–198

Sri Lanka: Equal protection and public trust doctrine

Another case comes from Sri Lanka, a common-law country with a tradition of public interest litigation based on the public trust doctrine and the constitutional guarantee of equal protection under the law. The public trust doctrine was used in a corruption case in 2008, when a public interest organisation challenged the apparently corrupt sale of land that had been taken for public purposes but used for a private golf course.[63] Government agencies and officials, starting with the president and minister of Finance, approved the taking and subsequent developments. The golf course owners argued that petitioners had no standing to sue, but the supreme court found that

petitioner[s] in such public interest litigation has a constitutional right, given by Article 17, read with Articles 12 and 126, to bring forward their claims. Petitioners to such litigation cannot be disqualified on the basis that their rights happen to be ones that extend to the collective citizenry of Sri Lanka. The very notion that the organs of government are expected to act in accordance with the best interests of the People of Sri Lanka, necessitates a determination that any one of the People of Sri Lanka may seek redress in instances where a violation is believed to have occurred.[64]

The court then found that the transactions involved could not be justified under the law and therefore violated the public trust doctrine, which holds that the assets of the country (including land)

must be used in a manner for economic growth and always for the benefit of the entirety of the citizenry of the country and we repeat, not for the benefit of granting gracious favours to a privileged few, their family and/or friends.[65]

Using resources for private gain, in turn, violated Article 12 which calls for equality under the law. Consequently, the transactions were unwound, the land returned where possible and civil compensation ordered.

The public trust doctrine then formed a basis for a decision in June 2022 to hold the country's then-leadership responsible for the economic crisis that gripped Sri Lanka in the previous decade. The supreme court ruled that the Rajapaksa brothers (former president and ministers) and other high-level officials had knowingly created an economic disaster through tax reductions, unsustainable debt and other policies, which resulted in widespread hardship, and they were liable for the violations of the public trust doctrine, Article 12, and freedom of expression and right to

63. Sugathapala Mendis and Another v Chandrika Kumaratunga and Others (Waters' Edge case), SC FR 352/07, May 2008
64. Ibid, para. 355
65. Ibid, para. 375

information.[66] While these decisions did not mention a right to be free of corruption, the public trust doctrine created a duty of government officials to avoid and act against corrupt acts without the high burden of proof needed in criminal cases.

66. Joseph 2023; see also Dhanushka 2023

Commonalities, distinctions and objections

The first common characteristic of these cases is that they aren't focused on specific laws on anti-corruption, whether criminal, civil or administrative. Rather, they use constitutional law, laws on standing or jurisdiction, or laws on challenging government action generally. The second is the creativity of lawyers and judges in finding 'hooks' for discussion of corruption and human rights, each rooted in the relationship between international and domestic law. In the Argentine, Salvadoran, Mexican and South African cases, laws and decisions about the preferential role of international human rights law in defining and interpreting domestic law were paramount, reflecting those countries' histories of dealing with grave rights violations and numerous victims. In the Costa Rican and Sri Lankan cases, doctrines more generally associated with environmental law were harnessed, reflecting the extensive and broad jurisprudence on the human right to environment and the public trust doctrine, respectively. Third, citizens or civil society groups launched a majority of the cases, seeking access to case files or, more generally, a monitoring role in anti-corruption investigations to prevent sweetheart deals or deliberate case stalling. Thus, many of the cases concern victim access to the courts in anti-corruption investigations.

These cases demonstrate real-life examples from what has generally been seen as a purely academic discussion. The cases generally do not focus on the meaning or implications of a right to be free of corruption; the declaration of the right is instrumental to some other purpose. Sometimes, the advantage is about the evidence needed: It allows the case to move forward without proof of a causal link to a specific act of corruption by positing a more general entitlement. Sometimes it is constitutional: Declaring a right to be free of corruption allows the corpus of international human rights and global anti-corruption law to be incorporated into discussions of anti-corruption. It ties the right to other values (including transparency, honourability, ethics, creating a healthy social environment and other human rights), allowing future decisions to fill in any definition gaps. And it allows for a welcome focus on victims of corruption.

Nonetheless, some words of caution are in order. As discussed above, none of these decisions specified the contours of the right. That leaves it to courts, through accretion, trial and error, and borrowing from each other, to use an incremental, case-driven approach to more fully define the right. The right to be free of corruption may become a summary of the state obligations imposed by human rights law regarding corruption and its consequences. As the right is further developed through

cases, it may eventually find a way into international declarations or guidelines, recommendations of global or regional bodies, or national legislation.

Conclusions and recommendations for bilateral donors, national governments and civil society

The cases in this U4 Issue show a trend towards bringing anti-corruption obligations to a central role in public law, including constitutional law and the law of remedies. The trend is worth watching, as is supporting well-chosen and well-constructed strategic litigation.

For governments seeking to advance an anti-corruption agenda, framing freedom from corruption as a legal right raises the possibility of enshrining that right in the constitution or in law, as well as using broader legal reforms to facilitate public law enforcement of anti-corruption standards. This might include explicit access to legal redress for victims of corruption or established anti-corruption organisations, as seen in Argentina. Or it could involve defining the ability of a government body (like the Costa Rican procurator) or of the citizenry to seek redress for social harm or violations of the public trust. In many places, the laws are adequate, but existing law is not well implemented. Encouraging officials to enforce existing laws or create further guidance might help.

Especially at a time when development aid is declining and its legitimacy is under attack, donors can find, in these examples, innovative and inclusive approaches to anti-corruption work. The cases show that criminal law is not the only, or even the most fruitful, way to use the courts to advance an anti-corruption agenda. They also suggest ways that foreign aid and private grant-making might encourage reforms not specifically tied to anti-corruption, like making it easier for courts to hear group or collective claims (eg anti-corruption as well as protection of the environment or consumers) or sufficiently broad definitions of who is a victim. Donors could tie work on legal empowerment to groups' abilities to represent individual or collective victims and ensure structures and work streams decrease silos between human rights and anti-corruption efforts. Such reforms can be combined with others to design new strategies with civil society and local actors.

Following the lead of civil society groups described in the U4 Issue, there are various avenues in national public and constitutional law to explore. These might include training for judges or lawyers, creating legislation or regulation for access of public

interest groups to the courts in corruption cases, working with communities to develop examples of harm from corruption at all levels, developing strategic litigation and lobbying efforts to recognise victims, and working in regional and global human rights and anti-corruption forums where national courts are unresponsive.

An approach connecting anti-corruption and human rights law to advance fundamental rights, potentially including a right to be free of corruption, will strengthen both fields for the benefit of victims of corruption.

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Keywords

access to justice – courts – citizen engagement – legal empowerment – judicial reform – social accountability – strategic litigation – UNCAC – United Nations Convention against Corruption – whistleblower protection – Argentina – Costa Rica – El Salvador – Mexico – South Africa – Sri Lanka – Latin America – Southern Asia – Southern Africa – Sub-Saharan Africa – Africa – Asia

How to cite

Roht-Arriaza, N. 2025. The right to be free of corruption: A new frontier in anti-corruption approaches through national courts. Bergen: U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute (U4 Issue 2025:8)

Publication
First published 12 September 2025

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U4 is part of the Chr. Michelsen Institute (CMI), an independent development research institute in Norway.

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