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**HARD LAW CONNECTIONS BETWEEN
CORRUPTION AND HUMAN RIGHTS**

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INTRODUCTION

1. In recent years, scholars have begun to examine the connections between corruption and human rights. The increase in attention given to these connections originated mostly as a result of shifting perspectives, with corruption currently being considered a problem that affects the individual. Corruption has long been regarded as a problem of an administrative nature with the focus placed on public officials. Corruption then grew to be also considered an economic problem, as it made commercial transactions more expensive. But more recently, corruption has begun to become regarded as a problem with serious social implications. It is considered to be a problem related to the design and functioning of social institutions and is not seen as exclusively affecting governments, but also trade unions, political parties, and the private sector. In this respect, corruption threatens the social fabric of our society. A social approach to corruption places emphasis on the individuals that suffer its consequences.¹ As a result, it has become evident that corruption has an undeniable connection with individuals and their inherent human rights.
2. Against this background, the *International Council on Human Rights Policy* (“ICHRP”) is conducting a research project to analyse the relationship between human rights and corruption. Indeed, the links between corruption and human rights are varied and intertwined. Most of the existing works on the topic discuss the relationship between corruption and human rights in one of three different ways: (i) the impact of corruption on human rights, (ii) human rights principles and norms as tools to combat corruption, and (iii) the fight against corruption as a threat to human rights. The present paper has been commissioned by the ICHRP as the lead paper of sub-project I: “Hard Law Connections between Corruption and Human Rights.” Consequently, this paper concentrates on one aspect of the relationship: the impact of corruption on human rights, and more specifically, the ways in which corruption can be an immediate cause of human rights violations. The paper is divided into two parts.
3. The first part deals with the definition of corruption in order to determine what is understood by the term. There is a tendency to use the term “corruption” in a loose manner and many different definitions and classifications have been applied. Hence, part one of this work aims to clarifying the understanding of its meaning.
4. The second part of this work examines the effects of corruption on human rights, particularly the ways in which specific corrupt practices may violate specific human rights. Prior to this, a brief description of what constitutes a violation of human rights is given. The impact of corruption on human rights of vulnerable groups is also explored in this second part.
5. Finally, the paper is closed by concluding remarks.

¹ J. López, “Corrupción y derechos humanos,” in *Revista Probidad*, July 2005, available at, www.revistaprobidad.info.

WHAT IS UNDERSTOOD BY “CORRUPTION”?

6. There is no universally accepted definition of corruption. There is a tendency to use the term “corruption” loosely as a catch-all term. There is also considerable disagreement over which specific acts constitute corruption. Most people would agree that the embezzlement of public assets or the acceptance of bribes by a public official entails corruption, but if an employee of a private company is bribed by a supplier of the company, is this also a question of corruption? Most would still regard it as a corrupt act, but there exists a minority which holds that the term “corruption” is limited to acts that take place within the public sector. A more extreme view holds that corruption also encompasses cases such as when office supplies in a company go “missing,”² or when a public employee claims to be sick but goes on vacation.³
7. The term has also been subjected to numerous classifications. A well known classification of corruption distinguishes between grand and petty corruption. “Grand corruption” refers to the corruption of heads of state, Ministers, and top officials and usually involves large amounts of assets; whereas “petty corruption” refers to the corruption of junior officials, customs clerks, and traffic police, and generally involves relatively small amounts of assets.⁴
8. Such varying classifications and differing ideas about what constitutes corrupt practices have resulted in different definitions of corruption.⁵ Today, probably the most accepted definition is the one adopted by the non governmental organization *Transparency International*: “the abuse of entrusted power for private gain.”⁶ Indeed, this is the basic underlying concept behind all corrupt practices.
9. Yet, in this work, a much more specific definition is needed. Only by specifying the wide definition of corruption can one expect to design proper policies to combat it. Hence, in order to carry out the present work and analyse the hard law connections between corruption and human rights, it is necessary to have recourse to a legal context and a legal definition of corruption.
10. In the legal context, the commonly understood definition of corruption as “the abuse of entrusted power for private gain” should be translated into “the *illegal* abuse of entrusted power for private gain.” In other words, the legal definition of corruption adds a further condition, which is the

² World Bank, *Helping Countries Combat Corruption: The Role of the World Bank*, 1997, p. 8-12.

³ V. Tanzi, “Corruption around the World: Causes, Consequences, Scope, and Cures,” in G. T. Abed, S. Gupta, (Eds.), *Governance, Corruption, and Economic Performance*, Washington, D.C., International Monetary Fund, 2002, p. 25.

⁴ G. Moody-Stuart, *Grand Corruption: How Business Bribes Damage Developing Countries*, Oxford, WorldView Publishing, 1997. Other classifications are: *Political Corruption* involves lawmakers, such as monarchs, dictators, and legislators acting in their role as creators of the rules and standards by which a polity operates. Such officials seek bribes/funds for their political and personal benefit and provide favours to their supporters at the expense of broader public benefits; *Administrative Corruption* includes the use of bribery and favouritism to lower taxes, escape regulations, and win low-level procurement contracts; *Corporate Corruption* occurs in relationships which exist between private businesses and suppliers or private service providers. It also involves illegal behaviour by corporate officials for private monetary gain; *Institutionalised Corruption* relates to the corruption of those who hold institutional positions and can influence institutional processes and actions, such as law enforcement personnel, and members of the judiciary; and *Operational Corruption* is more practical and relates to specific activities and goals.

⁵ In 1931, J.J. Senturia provided the following definition: “Corruption is the misuse of public power for private gain.” J.J. Senturia, *Encyclopaedia of Social Sciences*, Vol. VI (1993). However, this definition is too narrow as it does not take into account practices carried out within the private sector. Another approach has been to provide a definition which is specific to a given field of study. For example, in the economics field Robert Klitgaard has provided the following equation relating to corruption: Corruption = Monopoly Power + Discretion – Accountability. R. Klitgaard, *Controlling Corruption*, Berkeley, University of California Press, 1988. See also, United Nations Development Programme (UNDP), “*Anti-Corruption*,” Practice Note, February 2004 (Where the UNDP also takes into account other factors such as integrity and transparency, which work as a balance to monopoly and discretion. Thus, in this context for the UNDP the definition of corruption is: Corruption = (Monopoly Power + Discretion) – (Accountability + Integrity + Transparency)).

⁶ See www.transparency.org.

unlawful abuse of the entrusted power. This means that the person in a position of power who is accused of corruption must be acting contrary to the law.⁷

11. Although every country in the world criminalises corruption in some form, both at the international and national levels corruption *as such* in legal terms does not exist as a crime. Corruption is generally used as a term to group certain criminal acts which correspond to the general notion of an abuse of entrusted power. The criminal acts are the means to corrupt a person exercising power. Thus, corruption should be seen as a result of criminal activity.
12. International conventions against corruption reflect this, as they do not define and criminalise corruption, but rather enumerate criminal acts which amount to corruption. The best definition of corruption (because it is at the same time broad in scope but detailed in content) is the one provided by the *Southern African Development Community Protocol against Corruption*: “Corruption’ means any act referred to in Article 3 and includes bribery or any other behaviour in relation to persons entrusted with responsibilities in the public and private sectors which violates their duties as public officials, private employees, independent agents or other relationships of that kind and aimed at obtaining undue advantage of any kind for themselves or others.”⁸

Corrupt Acts

13. There is no one single comprehensive list of acts that is universally accepted as constituting corruption. However, on the basis of agreements reached by states while adopting international conventions, one can gain an idea of what has generally been accepted as “corrupt acts.” The following is the list of core corrupt acts. It is important to note, however, that this is not an exhaustive list. Progressive development could enlarge this list to include other acts in the future.

Bribery

14. The most representative act of corruption is bribery. It may be defined as the promise, offering or giving, to a public official, or the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his official duties.⁹
15. There are however several different forms of bribery. The act of offering a bribe is commonly referred to as active bribery and the act of accepting the bribe as passive bribery. In addition, there are differences in the definition of bribery whether it involves a national or foreign public official, and whether it happens with the public sector or solely within the private sector. The aforementioned definition refers to bribery of national public officials. The bribery of foreign public officials and officials of public international organisations, also called transnational bribery, adds the condition that the undue advantage given to the official must be in the context of

⁷ Due to this idea the legal definition of corruption has been criticised as being too restrictive. M. Milovanovic, *Endogenous Corruption in Privatized Companies*, (Summary in English), Collegium Budapest, May 2001, p. 2; P. Eigen, *Las redes de la corrupción: La sociedad civil contra los abusos del poder*, Buenos Aires, Planeta, 2004, p. 136.

⁸ Southern African Development Community Protocol against Corruption (hereinafter “SADC Protocol”), Art. 1.

⁹ See, United Nations Convention against Corruption (hereinafter “UNCAC”), Art. 15; African Union Convention on Preventing and Combating Corruption (hereinafter “AUCAC”), Art. 4(1)(a&b); Organisation of American States Inter-American Convention against Corruption (hereinafter “IACAC”), Art. VI(1)(a&b); Council of Europe Civil Law Convention on Corruption (hereinafter “CoE Civil Law Convention”), Art. 2; Council of Europe Criminal Law Convention on Corruption (hereinafter “CoE Criminal Law Convention”), Arts. 2 and 3; Council of the European Union Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, Arts. 2 and 3; Economic Community of West African States Protocol on the Fight against Corruption (hereinafter “ECOWAS Protocol”), Art. 6(1)(a&b); and SADC Protocol, Art. 3(a&b).

international business.¹⁰ If the act of bribery is committed in the course of economic, financial or commercial activities and solely involves persons in the private sector, this is referred to as bribery in the private sector.¹¹

Embezzlement

16. A common corrupt practice is embezzlement of public property. It may be defined as the misappropriation or other diversion by a public official, for purposes unrelated to those for which the assets were intended, for his benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his position.¹² The embezzlement of property can also occur in the private sector in the course of economic, financial or commercial activities.¹³

Trading in Influence

17. The promise, offering or giving to a public official or any other person, or the solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his real or supposed influence with a view to obtaining from an administration or public authority an undue advantage for the original instigator of the act or for any other person, is called trading in influence.¹⁴ For some it is irrelevant whether or not the influence is ultimately exerted and whether or not it leads to the intended result.¹⁵ Trading in influence is also commonly divided into its active form (giving an advantage in exchange for influence) and its passive form (requesting or accepting an advantage in exchange for influence).

Abuse of Functions

18. The abuse of functions or position is referred to as the performance of, or failure to perform an act, in violation of laws, by a public official in the discharge of his functions, for the purpose of obtaining an undue advantage for himself or for another person or entity.¹⁶

Illicit Enrichment

19. The corrupt act of illicit enrichment may be defined as a significant increase in the assets of a public official that he cannot reasonably explain in relation to his lawful income.¹⁷ Illicit enrichment is a particularly controversial act of corruption because according to some opinions, the criminalisation of such an act goes against the principle of presumption of innocence and reverses the burden of

¹⁰ See, UNCAC, Art. 16; Organisation for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (hereinafter “OECD Convention”), Art. 1(1); IACAC, Art. VIII. The CoE Criminal Law Convention expands the notion of foreign public official to include members of foreign public assemblies, members of international parliamentary assemblies, and judges and officials of international courts. See Arts. 5,6,9,10,and 11.

¹¹ See, UNCAC, Art. 21; AUCAC, Art. 4(1)(e); CoE Criminal Law Convention, Arts. 7 and 8; SADC Protocol, Art. 3(e).

¹² See, UNCAC, Art. 17; AUCAC, Art. 4(1)(d); IACAC, Art. XI(1)(d); ECOWAS Protocol, Art. 6(1)(e); SADC Protocol, Art. 3(d).

¹³ UNCAC, Art. 22.

¹⁴ See, UNCAC, Art. 18. The IACAC provides a rather different definition than the UNCAC. Art. XI(1)(c) refers to trading in influence to obtain solely a decision from a public authority, while all other conventions refer to trading in influence to obtain a decision or action from a public authority.

¹⁵ See, AUCAC, Art. 4(1)(f); ECOWAS Protocol, Art. 6(1)(c&d); SADC Protocol; Art. 3(f).

¹⁶ See, UNCAC, Art. 19; AUCAC, Art. 4(1)(c); IACAC, Art. VI(1)(c); SADC Protocol, Art. 3(c).

¹⁷ UNCAC, Art. 20; IACAC, Art. IX; ECOWAS Protocol, Art. 6(3)(a). The AUCAC lists illicit enrichment as a corrupt act under Article 4(1)(g) and Article 8 but does not provide a definition.

proof.¹⁸ For this reason, when anti-corruption conventions ask states to criminalise such an act it is always stipulated under the clause “subject to the State’s constitution and the fundamental principles of its legal system.”¹⁹

20. Hence, corruption in this work refers to acts of bribery, embezzlement of property, trading in influence, abuse of functions, and illicit enrichment.

Corruption in the Private Sector

21. A contemporary view on corruption takes into account corrupt practices that involve both the public and private sector. Some hold that the private sector should be excluded in an analysis of corruption and human rights because both notions, by definition, refer to the public sector and not to the private one. However, such an approach is a conservative one, both in regards to the definition of corruption and in regards to human rights. As to corruption, it is now widely accepted that corrupt practices within the private sector do in fact have a place within the spectrum of corruption. Most organisations currently working to fight corruption deal with corrupt practices in the private sector, mainly with the understanding that in order to effectively combat corruption and design appropriate policies, it is necessary to include private entities.
22. With respect to human rights, a more contemporary view would argue that there is a place for the private sector in the human rights field. It is widely accepted that states have a duty to protect individuals not just against violations of their human rights by state agents, but also against acts committed by private persons or entities. Indeed, in certain cases states have to take positive measures to ensure that private persons or entities do not impinge on human rights of individuals. States could breach their human rights obligations where they fail “to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”²⁰ This indirect responsibility of corporations is now part of international customary law.²¹
23. Most importantly, there is a significant connection between corruption, human rights, and the private sector. The *Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises* has mentioned corruption as part of the abuses on human rights committed by transnational corporations.²² Undoubtedly, corruption is relevant to the relationship between transnational corporations and human rights.²³ In this context, the notion of “Corporate Social Responsibility” (“CSR”) is increasingly taking into account the problem of corruption. For example, the CSR initiative of the United Nations, the Global Compact, contains

¹⁸ L. Low, A. Kjørlund, and K. Atkinson, "The Inter-American Convention Against Corruption: A Comparison with the United States Foreign Corrupt Practices Act," *Virginia Journal of International Law*, Vol. 38, 1998, p. 281-284.

¹⁹ For the different interpretations of this clause, see A. Posadas, "Combating Corruption Under International Law," *Duke Journal of Comparative & International Law*, Vol. 10, No. 2, Spring/Summer 2000, p. 384-386.

²⁰ See, United Nations Human Rights Committee (hereinafter “HRC”), *General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 8.

²¹ This work does not cover the still controversial issue of direct corporate legal responsibility for human rights violations.

²² United Nations Commission on Human Rights, *Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, U.N. Doc. E/CN.4/2006/97, 22 February 2006, para. 25-27.

²³ In this sense, Peter Eigen, founder of Transparency International has said: “Just as businesses have become increasingly responsive to communities, both at home and abroad, in terms of labour rights and the natural environment, so they have to share responsibilities for the damaging impact on the local economy whenever they engage in bribery.” P. Eigen, "Corruption: Fertile Soil for Terrorism and Obstacle to Human Rights," in P. G. Kirchschläger, T. Kirchschläger, A. Belliger, D. J. Krieger, (Eds.), *Menschenrechte Und Terrorismus*, Bern, Stämpfli Verlag AG Bern, 2004, p. 202-203.

an Anti-Corruption Principle: “Business should work against corruption in all its forms, including extortion and bribery.”²⁴

24. Privatisation is another issue related to the private sector that has important implications on corruption and human rights. Through privatisation, public functions such as health, transport, or telecommunications are put in private hands with the necessary transfer of budgetary allocations and regulatory powers.²⁵ Experience has shown that privatisations are prone to corruption, thus any definition of corruption should include the private sector.
25. In sum, this work will understand corruption as the abuse of entrusted power for private gain in the form of bribery, embezzlement, trading in influence, abuse of functions, and illicit enrichment taking place in both the public and private sector.

THE IMPACT OF CORRUPTION ON HUMAN RIGHTS

26. The impact of corruption on human rights can be separated into three different groups: (i) corruption as protecting human rights, (ii) corruption as leading to human rights violations, and (iii) corruption itself as a violation of human rights. In regard to corruption as protecting human rights, it has been stated that in some cases corruption might be necessary to pragmatically safeguard fundamental human rights of underpaid public officials, although this tends to be a minority view. In this sense, corruption can “oil the wheels” of “rusty” human rights.²⁶ A well-known study on corruption in Africa, the Warioba Report, acknowledged that in many cases those who ask for bribes do so as a result of their meagre incomes and low standards of living.²⁷ For example, corrupt practices are sometimes perpetrated by teachers who are underpaid or whose salaries have not been paid for months.²⁸ For these individuals, the small bribes they receive serve to help make ends meet.²⁹

²⁴ This principle was not part of the initial Global Compact launched in 2000. However, it was realised that unless corruption was tackled, the Global Compact would not be effective; and as a result the tenth “Anti-corruption Principle” was added in 2004. This initiative focuses on providing anti-corruption background information, as well as providing guidance and other tools to participating businesses and organisations around the world. Companies that participate in this initiative must make anti-corruption part of their strategy, culture, and day-to-day operations. For more information on the Global Compact, see <http://www.globalcompact.org/AboutTheGC/index.html> (last visited on 30 June 2007).

²⁵ On the relation between privatisation and human rights, see, K. De Feyter, F. Gómez Isa, (Eds.), *Privatisation and Human Rights in the Age of Globalisation*, Antwerp-Oxford, Intersentia, 2005.

²⁶ M. Buckley, “Anti Corruption Initiatives and Human Rights: The Potentials,” in H.O. Sano, G. Alfredsson, (Eds.), *Human Rights and Good Governance*, The Hague, Kluwer Law International, 2002, p. 180.

²⁷ In 1996, the former Tanzanian President Benjamin Mkapa formed the “Presidential Commission of Inquiry against Corruption (PCAC).” The Commission was chaired by former Prime Minister, Joseph Warioba and was entrusted to carry out diagnostic studies on corruption in the country. The findings of the Warioba Commission were published in the “*Report of the Commission against Corruption Chaired by Hon. J. Warioba, State of Corruption in the Country*,” Dar es Salaam, December 1996, commonly known as “The Warioba Report.”

²⁸ D. Chapman, *Corruption and the Education Sector*, Sectoral Perspectives on Corruption (November 2002).

²⁹ Warioba Report, Executive Summary. Under this level we could also include the now widely rejected theory that corruption is necessary for the process of modernisation and development. Authors who sustained that corruption could sometimes be beneficial for society provided a variety of different reasons, such as that some forms of corruption may be a source of capital formation, that bribes are necessary tools to “grease the wheels” of commerce by cutting down red tape and improving efficiency, or that corruption can contribute to political development by allowing the integration of various groups who otherwise would not be able to participate in the political process. For more information on this line of thought, see S.P. Huntington, “Modernisation and Corruption,” in A. Heidenheimer, et al., (eds.), *Political Corruption: A Handbook*, New Brunswick, Transaction Publishers, 1989, p. 377-388; J. S. Nye, “Corruption and Political Development: A Cost-Benefit Analysis,” *American Political Science Review*, Vol. 61, 1967, p. 417-429; N. Leff, “Economic Development through Bureaucratic Corruption,” *American Behavioral Scientist*, Vol. 8, No. 3, November 1964, p.8-14; G. Ben-Dor, “Corruption, Institutionalization, and Political Development: The Revisionist Theses Revisited,” *Comparative Political Studies*, Vol. 7, No. 1, April 1974, p.63-83.

27. However, it is the other two groups of impacts of corruption on human rights that are most relevant for this work - corruption as leading to, or constituting a violation of human rights. Most of the studies on corruption and human rights have concentrated on this matter. Corruption is said to undermine the enjoyment of human rights in all areas, be they economic, social, cultural, civil, or political. Most works on the subject state that corruption violates human rights, but they fail to show in a detailed manner the ways in which the rights are infringed on by different corrupt practices. Most works make assertions that are overtly general and seem to hold that every corrupt situation affects a human need and thus violates human rights. While all corrupt practices may, in the short or the long run, affect a human need, this is not synonymous with a violation of human rights. Human needs and human rights should not be confused and the term “violation” should not be applied liberally.³⁰ Some situations may not be ideal vis-à-vis state obligations but nevertheless it may not be a violation *per se*. Many cases of corruption, particularly within the private sector, have no impact on human rights. For instance, when an employee of a private company awards a contract to a less competitive, more expensive contractor as a result of bribery, there seems to be no consequences on human rights. Characterising all displeasing situations as violations of human rights, even when the state concerned has acted in good faith and sought to rectify problematic dilemmas relating to social and economic policy, would only serve to erode the seriousness of the term.³¹
28. In order to not fall into the trap of calling all corrupt practices a violation of human rights, it is essential to first clearly specify what a violation of human rights is, and secondly, to study if and when each of the rights contained in the *International Covenant on Civil and Political Rights* (“ICCPR”) and the *International Covenant on Economic, Social and Cultural Rights* (“ICESCR”) are violated by corrupt practices.

What Is a “Violation of Human Rights”?

29. Human rights give rise to obligations, more specifically, obligations of states. For people to enjoy their human rights, states need to carry out these obligations. There is a violation of a human right when an act of a state is not in conformity with what is required of it by its human rights obligations.³² In other words, the conduct required of the state arising from its human rights obligations and the conduct actually adopted by the state must coincide. To this end, it is necessary to use standard technique of legal development, where (a) rights are identified, (b) duties are required from states to ensure that rights are implemented, (c) and a determination is made concerning those acts and omissions that are deemed inconsistent with either the rights or duties concerned.³³
30. However, to make such an assessment, it is key to determine what conduct is required of the state. This will depend on the precise terms of the state’s human rights obligations, as well as their interpretation and application, which should take into account the object and purpose of such obligations and the facts of each particular case.
31. Thus, the failure by a state to comply with its obligation to respect, protect, and fulfil the human rights of persons under its jurisdiction in such a way that affects the rights of an identifiable person or group of persons, results in a violation of human rights.

³⁰ This is the so called “fallacy of exaggeration”. This fallacy calls every situation of deprivation (i.e., every situation where a basic human need is not satisfied) a violation of economic rights. R. Künnemann, “A Coherent Approach to Human Rights,” *Human Rights Quarterly*, Vol. 17, 1995, p. 334.

³¹ S. Leckie, “Another Step towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights,” *Human Rights Quarterly* 20 (1998), p. 96.

³² This is a well established principle of international law. See, Article 12 of the International Law Commission’s Draft Articles on Responsibility of States for Internationally Wrongful Acts. J. Crawford, *The International Law Commission’s Articles on State Responsibility*, Cambridge, Cambridge University Press, 2002, p. 125-130.

³³ S. Leckie, *supra* note 31, footnote 50.

32. The term “violation” should only be utilised when a legal basis and an identifiable corresponding legal obligation exist.³⁴ And as the *Committee on Economic, Social and Cultural Rights* has repeatedly stated, in determining which actions or omissions amount to a violation it is important to distinguish the inability from the unwillingness of the state to comply with its obligations.³⁵
33. It is necessary to bear this in mind when analysing whether different corrupt practices violate specific human rights.

The Hard Law Connections between Corruption and Human Rights

34. While in theory many corrupt practices can violate different aspects of each human right, the present work concentrates only on the real and present threats that corruption poses to human rights. In order to avoid speculation and anecdotal evidence, research was conducted to identify which particular corrupt practices and acts do, in practice, violate specific human rights.
35. In the next section, each human right enshrined in the ICCPR and the ICESCR and the obligations arising from them are briefly described so as to facilitate the analysis. One particular obligation arising from the ICESCR merits a brief description here because it relates to all economic, social and cultural rights.
36. When states become parties to the ICESCR, they accept a general legal obligation which relates to all rights in that Covenant. States must take steps to the maximum of their available resources with a view to progressively achieve the full realisation of the economic, social, and cultural rights recognised in the ICESCR.³⁶ In other words, states accept two obligations: to take steps to progressively ensure economic, social and cultural rights to everyone under their jurisdiction, and to devote the maximum of available resources towards this aim. States must take deliberate, concrete, and targeted steps towards the goal of full realisation of the relevant rights.³⁷ The obligation to take steps and to devote the maximum of available resources is an immediate one.³⁸ To this end, states must adopt a range of different measures, such as enacting relevant legislation, providing judicial remedies,³⁹ and taking administrative, financial, educational or social measures.⁴⁰ States have to move as quickly and effectively as possible towards the full realisation of economic, social, and cultural rights. Any deliberate retrogressive measures in regards to the realisation of these rights would need to be justified in the context of the use of maximum available resources.⁴¹ The existence of corruption actually means that the state is not taking steps in the right direction. However, in order to determine this, it has to be proven that a determined corrupt practice acts against the progressive realisation of a specific economic, social or cultural right. Thus, albeit this obligation is concerned with all economic, social and cultural rights in order to determine if a state fails to comply with it, the obligation must be interpreted in reference to a specific right.

³⁴ *Ibid.*, p. 96.

³⁵ See for example, United Nations Committee on Economic, Social and Cultural Rights (hereinafter “CESCR”), *General Comment No. 12: The Right to Adequate Food, Article 11*, U.N. Doc. E/C.12/1999/5, 12 May 1999, para. 17.

³⁶ ICESCR, Art. 2(1).

³⁷ CESCR, *General Comment No. 3: The Nature of States Parties Obligations (Art. 2, par.1)*, U.N. Doc. E/1991/23, 14 December 1990, para.2.

³⁸ CESCR, *General Comment No. 3*, para. 2.; CESCR, *General Comment No. 13: The Right to Education (Article 13 of the Covenant)*, U.N. Doc. E/C.12/1999/10, 8 December 1999, para 43; CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2000/4, 11 August 2000, para. 30. See also, *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, U.N. Doc. E/CN.4/1987/17, Annex, 8 January 1987, para. 16.

³⁹ CESCR, *General Comment No. 3*, *supra* note 37, para.5.

⁴⁰ *Ibid.*, para.7.

⁴¹ *Ibid.*, para. 9.

37. As follows, the hard law connections between corruption and human rights are analysed.

Right of Self-Determination

38. The right of self-determination of peoples embodies some of the core values protected by other human rights. It has been stated that the right of self-determination “is of particular importance because its realisation is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.”⁴² Indeed, the importance of this right is reflected by the fact that it appears as common Article 1 to both the ICCPR and ICESCR.
39. There is no agreed definition of what constitutes the “self” or “peoples” who have this right. For some, the term “peoples” is to be understood as all the peoples of a given state. For others, “peoples” is a group of individuals who as a whole have the will to be identified as a people or have the consciousness of being a people and enjoy some or all of the following characteristics: a common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious or ideological affinity, territorial connection, and common economic life.⁴³
40. In order to study the relation between corruption and the right of self-determination, it is best to refer separately to its external and internal aspects in connection to both the political and economic dimensions of this right.
41. In its external form, self-determination means the right of every people to determine their political status and socio-economic development free from external, i.e. foreign, interference. This refers particularly to the right of peoples under colonial domination and alien occupation to achieve statehood and independence. Evidently, corruption has been present in colonial domination and alien occupation. Yet, a more contemporary link between corruption and this form of self-determination would be to consider the corrupt acts of multinational corporations as a form of external interference. When multinationals bribe public officials of developing countries to obtain advantages and be awarded multibillion contracts, it may be argued that the foreign company exercises a modern form of domination which interferes with the political status and socio-economic development of the country in question. However, the most direct effect of corruption on self-determination, which also covers the corrupt behaviour of multinational corporations, is on the internal aspect of the right.
42. Self-determination in its internal form refers to a democratic element in the relation between the people and the state in which they live. All peoples have the right to freely decide and participate in the process of governance. In this sense, the notion of internal self-determination overlaps with other rights, such as the right of political participation. Internal self-determination has been referred to as the manifestation of the totality of rights embodied in the ICCPR.⁴⁴ There are innumerable cases where corrupt methods have been used to prevent people from freely deciding and participating in the governance process. Thus, when in an election widespread corruption takes place in the form of bribery of voters, the political self-determination of the people is being infringed.
43. This right does not only refer to the political status of peoples, but also to their economic, social, and cultural development. This idea refers to the inherent right of peoples to freely enjoy and utilise

⁴² HRC, *General Comment 12: The Right to Self-determination of Peoples*, 13 March 1984, UN Doc. A/39/40 and Corr.1 and 2, para. 1.

⁴³ United Nations Education, Scientific and Cultural Organisation (hereinafter “UNESCO”), *Final Report and Recommendation of an International Meeting of Experts on the Further Study of the Concept of the Right of People for UNESCO*, 22 February 1990, SHS-89/CONF. 302/7, p. 8.

⁴⁴ A. Cassese, *Self-Determination of Peoples*, Cambridge, Cambridge University Press, 1995, p. 53.

their natural wealth and resources, and their right to not be deprived of their own means of subsistence.⁴⁵

44. This is the so-called economic self-determination.⁴⁶ It is at this economic level that corruption has the biggest impact on the right of self-determination. All corrupt activities that take away resources from the state and affect the economic development of the people constitute a violation of the right of economic self-determination. This may happen at a general level when one or more officials directly embezzle public assets. For example, the embezzlement of 35 billion dollars by a government official clearly takes away a substantial proportion of state resources from the people of the state and affects their economic development.⁴⁷ Similarly, when public officials intentionally make detrimental economic decisions in order for them to receive personal gain (for example, by giving a contract to a less competitive, more expensive contractor as a result of bribery) the resources of the state are being wasted, and thus the right of economic self-determination of the people is being infringed upon.
45. Furthermore, it has been stated that certain cases of corruption may constitute a breach of a fiduciary duty.⁴⁸ The doctrine of fiduciary duty claims that the state owes its citizens a duty of care concerning the disposal of public resources that are “common property”⁴⁹ The delegation of constitutional powers from the people to the state official and the expectation that this delegation will be used solely for the public good, create the official’s fiduciary obligation.⁵⁰ Public wealth and resources belong to the population, and public officials manage that property, which is entrusted to them by the population.
46. The right of self-determination has been expressly interpreted to cover the recognition of indigenous land rights,⁵¹ and the non-acceptance of mining projects on land without the approval of those living on it,⁵² and requiring their effective participation in projects that affects them.⁵³ Hence, if a corrupt official leases to a private company a portion of territory in which an indigenous group sharing a common economic lifestyle have always lived and hunted, and the activities of the company affect the free access to natural resources and wealth, depriving them of their means of subsistence, the peoples’ economic right of self-determination is clearly being infringed upon.⁵⁴

⁴⁵ ICCPR, Art. 1 and 47, and ICESCR, Art. 1 and 25.

⁴⁶ See, *Resolution on Permanent Sovereignty over Natural Resources*, G.A. Res. 1803 (XVII), U.N. GAOR, 17th Sess., U.N. Doc. A/RES/1803 (XVII), 1962; *Resolution on Permanent Sovereignty over Natural Resources*, G.A. Res. 3171, U.N. GAOR, 28th Sess., Supp. No. 30, p. 52, U.N. Doc. A/9030, 1973; *Declaration on the Establishment of a New Economic Order*, G.A. Res. 3201 (S-VI), U.N. GAOR, 6th Spec. Sess., Supp. No. 1, p. 3, U.N. Doc A/9559, 1974, *Charter of Economic Rights and Duties of States*, G.A. Res. 3281 (XXIX), U.N. GAOR, 29th Sess., Supp. No. 31, p. 50, U.N. Doc. A/9631, 1974.

⁴⁷ It is alleged that Suharto, Former President of Indonesia, embezzled between 15 and 35 billion dollars in public assets. For a list of the world’s most corrupt leaders, see R. Hodess, *Introduction to Transparency International Global Corruption Report 2004*, p. 13.

⁴⁸ N. Kofele-Kale, *International Law of Responsibility for Economic Crimes: Holding Heads of State and Other High Ranking State Officials Individually Liable for Acts of Fraudulent Enrichment*, The Hague, Kluwer Law International, 1995, p. 113-164.

⁴⁹ *Ibid.*, p. 149-151.

⁵⁰ *Ibid.*

⁵¹ HRC, *Concluding Observations on Canada*, 1999, UN Doc. CCPR/C/79/Add. 105.

⁵² HRC, *Lubicon Lake Band v. Canada*, *Communication No. 167/1984*, (26 March 1990), U.N. Doc. Supp. No. 40 (A/45/40) 1990, p. 1.

⁵³ International Labour Organisation (hereinafter “ILO”), *Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries*, Adopted on 27 June 1989 by the General Conference of the International Labour Organisation at its seventy-sixth session, entry into force 5 September 1991, Article 7(1).

⁵⁴ N. Jayawickrama, *Corruption—A Violation of Human Rights?*, Transparency International Working Paper, 1998, p. 6. This example is far from merely being theoretical. There is evidence for example that in Papua New Guinea and the Solomon Islands government officials engaged in corrupt relations with the timber industry to the detriment of the traditional communities. See, P. Larmour, “Corruption and Governance in the South Pacific,” *Pacific Studies*, Vol. 20, No. 3, p. 6-8; S. Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform*, Cambridge, Cambridge University Press, 1999, p. 33.

47. The right of self determination is mainly affected by corruption at the highest levels of government, by those who have control of political and economic processes. In this context, the corrupt acts of embezzlement and illicit enrichment are most relevant. Other corrupt acts such as bribery, abuse of functions, or trading in influence usually take place in a specific context with a determined objective. This makes it easier to link the corrupt act to the specific right of an individual. For example, as will be analysed below, when a doctor requests a bribe from a person in order to provide health services, that person's right to health may be violated. However, in many cases of embezzlement and illicit enrichment, it is difficult to determine the individual person and the right that has been affected. Once a dictator manages to steal millions in state assets, it is not possible to identify one affected person. It is the whole population that is affected. For that reason, many cases of embezzlement and illicit enrichment will not be able to be connected to the violation of a specific human right of a certain individual or group of individuals. Embezzlement and illicit enrichment are most easily connected to violations of the right of self-determination.
48. Although the link between corruption and the right of self-determination is very strong, particularly with regards to its economic aspect, the application of this right remains rather theoretical. There are still debates about what the right provides for and whether it is an individual or collective right. The Human Rights Committee has refused to accept complaints pertaining to this right.⁵⁵ For that reason, the utility of this particular human right in the fight against corruption is, in practical terms, quite limited.

Right to Equality and Right to Non-Discrimination

49. The right to equality and its corollary, the right to non-discrimination, are fundamental human rights upheld by several articles in both the ICCPR and ICESCR.⁵⁶ All individuals are equal before the law and have the right to be protected by law on a basis of equality. The right to equal treatment requires that all persons be treated equally before the law without discrimination. These rights guarantee that those in equal circumstances are dealt with equally in law and in practice. However, it is important to stress that not every distinction or difference in treatment will amount to discrimination. In general international law, a violation of the principle of non-discrimination arises if: a) equal cases are treated in a different manner; b) a difference in treatment does not have an objective and reasonable justification; or c) if there is no proportionality between the aim sought and the means employed.⁵⁷
50. Thus, all persons are entitled to equality of treatment from public officials in the exercise of their powers, duties, and functions. However, if a person bribes a public official, that person acquires a privileged status in relation to other similarly placed individuals who have not partaken in bribery. There is a violation of the rights in question because equal cases are treated in a different manner and the difference in treatment results from a bribe, which is certainly not an objective and reasonable justification. In this case, corruption clearly alters the equality of treatment and results in discrimination.

⁵⁵ The Human Rights Committee has declined to hear individual complaints for violation of Article 1 submitted under the Optional Protocol to the ICCPR, stating that the Optional Protocol provides a recourse procedure for individual rights that have been violated and self-determination is a right conferred upon peoples, as such. HRC, *Kitok v. Sweden*, Communication No. 197/1985, U.N. Doc. Supp. No. 40 (A/43/40) 1998, p. 221. See also, HRC, *Lubicon Lake Band v. Canada*, *supra* note 52.

⁵⁶ Most notably, Art. 2(1) and 26 of the ICCPR, Art. 2(2) of the ICESCR, and Art. 3 of both the ICCPR and ICESCR. Art. 4(1) of the ICCPR prohibits discrimination in relation to derogations of rights, and Arts. 23, 24, and 25 guarantee respectively non-discrimination in relation to the rights of spouses, rights of the child, and rights to access public service.

⁵⁷ HRC, *General Comment No. 18: Non-discrimination*, 10 November 1989, (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 146 (2003), para. 13

51. States must ensure to everyone the equal enjoyment of all human rights. States have to respect, protect, and fulfil the right to equality and the right to non-discrimination of all men and women. To this end, states need to take a series of steps to ensure that in practice men and women enjoy all their rights on a basis of equality. The most notable step in this sense is to actively and truthfully combat corruption. However, it is not sufficient to enact anti-corruption laws and adopt anti-corruption policies. Furthermore, the violation of these rights by means of corrupt practices should have appropriate venues for redress such as courts and tribunals, and easily accessible remedies in the forms of compensation, reparation or restitution.
52. The *Human Rights Committee* has defined discrimination as “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”⁵⁸
53. There are four features of this definition to note in connection with corruption. First, the acts of discrimination are widely defined as “any distinction, exclusion, restriction or preference,” and a corrupt act intrinsically carries a distinction, exclusion and/or preference. Second, an act of discrimination is carried out on the basis of a ground, such as race, colour, and sex. In cases of corruption, it is the corrupt act itself which constitutes the ground. The phrase “other status” in the definition of discrimination shows that the list of prohibited grounds is not exhaustive.⁵⁹ Third, the definition of discrimination prohibits acts that have a discriminatory “purpose or effect.” Corruption has both a discriminatory purpose and by definition creates a discriminatory effect. Fourth, the discrimination must bring about the specific result of nullifying or impairing the equal recognition, enjoyment or exercise of another human right, such as the right to life, right to education, or right to health. Many corruption cases have such effect and create a preference in favour of one or more persons when exercising a right. For example, when students at primary level have to pay bribes in order to obtain a place at school, the right to non-discrimination is clearly violated, in conjunction with a violation of the right to education.
54. However, the requirement that the discrimination must result in nullifying or impairing the equal recognition, enjoyment, or exercise of another human right is not a *conditio sine qua non* for the existence of a violation. Discrimination can also take place even if no specific right is affected. Article 26 of the ICCPR prohibits discrimination in law or in fact in any field regulated and protected by public authorities and is not limited to those rights which are provided for in the ICCPR.⁶⁰ For instance, when a person gets a privilege in the process of obtaining an official document such as a passport or visa, or when a person bribes a customs official and is allowed to clear goods from customs without paying duties and taxes, there is no other human right affected but the right to equality, i.e. the right to be treated equally in the process of obtaining the visa or

⁵⁸ *Ibid.*, para.7. The right to equality and the right to non-discrimination do not necessarily imply identical treatment in every instance, and not every differential treatment amounts to discrimination. In fact, in certain situations affirmative action, which may involve the granting of a preferential treatment to part of the disadvantaged or marginalized persons, might be needed in order to diminish or eliminate conditions which cause or help to perpetuate discrimination of that part of those persons as long as such action is needed to correct discrimination in fact.

⁵⁹ For example, the Human Rights Committee has found that for the purpose of admissibility of a complaint of violation of the Covenant’s non-discrimination provisions the following constitute “other status”: *inter alia*, age (*Schmitz-de-Jong v. Netherlands* (Communication No. 855/99)), *Love v. Australia* (Communication No. 983/01)), nationality (*Gueye v. France* (Communication No. 196/85)), *Adam v. Czech Republic* (Communication No. 586/94)), *Karakurt v. Austria* (Communication No. 965/00)), marital status (*Danning v. Netherlands* (Communication No. 180/84)), *Sprenger v. Netherlands* (Communication No. 395/90)), *Hoofdman v. Netherlands* (Communication No. 602/94)), dwarfism (*Wackenheim v. France* (Communication No. 854/99)), place of residence within a state (*Lindgren et al v. Sweden* (Communication No. 298-9/88)), a difference between employed and unemployed persons (*Cavalcanti Araujo-Jongens v. Netherlands* (Communication No. 418/90)).

⁶⁰ HRC, *General Comment No. 18*, *supra* note 57, para. 12.

passport or when clearing goods from customs. This right stands independently from other human rights.

55. The utility of linking corruption with the rights to equality and non-discrimination in the fight against corruption is paramount. Inequality and discrimination are almost a necessary consequence of corruption. Corrupt practices are usually highly secretive and can be extremely difficult to discover and prove. Therefore, if corruption is suspected but unable to be proven, the next best option to hold accountable the perpetrator is to focus on the consequences of the suspected corrupt act and highlight the violation of the right to equality and the right to non-discrimination. For example, in order to prove that discrimination on the ground of sex has taken place, a comparison with an appropriate standard must be carried out, hence the treatment received by women must be compared with the one received by men. In corruption cases, the comparison will have to be carried out among all the people related to the activity where corruption is suspected. For instance, in a hospital where there is a “rumour” that bribes are required for better treatment, a comparison between all the patients might reveal that some patients have received preferential treatment. While correlating the preferential treatment with the acts of bribery might result impossible to prove, if patients under equal situation are treated differently and such difference in treatment does not have a reasonable and objective justification, there clearly exists a violation of the right to equality and the right to non-discrimination.

Right to Life

56. All persons possess the supreme and non-derogable right to life and the right to not be deprived of their life arbitrarily.⁶¹ The right to life should be given a broad interpretation to include a socio-economic aspect.
57. Corruption is linked to the right to life at several levels. At the most basic and obvious level, corruption could be the cause for assassinations. As it is the case with other sensitive issues, there are numerous cases of journalists or human rights defenders that are killed as a result of their reports or investigations of corruption.⁶² Also on a more basic level, it may be said that in countries where corruption is rampant in government institutions extrajudicial or summary executions are carried out with impunity.⁶³ Corruption within the police force may lead to a higher number of killings by the police.⁶⁴ These are the indirect consequences of corruption on the right to life. Widespread corruption creates an environment of impunity where violations of the right to life will be more frequent.
58. However, there are corruption cases that have an immediate connection with the right to life. To analyse this, it is useful to refer to the obligations upon states arising from the right to life. The most basic obligation for states is to refrain from intentional and unlawful seizure of life.⁶⁵ But states also possess positive obligations, such as the duty to protect individuals under their

⁶¹ ICCPR, Art. 6.

⁶² For example, the recent case of Daif al-Ghazal al-Shuhaibi a journalist killed in Libya. See, United Nations Economic and Social Council (hereinafter “U.N. Econ. & Soc. Council”), *Extrajudicial, Summary or Arbitrary Executions: Report of the Special Rapporteur, Philip Alston: Addendum: Summary of Cases Transmitted to Governments and Replies Received*, U.N. Doc. E/CN.4/2006/53/Add.1, 27 March 2006, p. 145.

⁶³ U.N. Econ. & Soc. Council, *Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution, Report of the Special Rapporteur, Asma Jahangir*, U.N. Doc. E/CN.4/2004/7, 22 December 2003, para. 92 and 93.

⁶⁴ U.N. Econ. & Soc. Council, *Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution, Report of the Special Rapporteur, Asma Jahangir*, submitted pursuant to Commission on Human Rights resolution 2003/53, Addendum, Mission to Jamaica, U.N. Doc. E/CN.4/2004/7/Add.2, 26 September 2003, para. 65.

⁶⁵ This is not, however, an absolute prohibition. Deprivation of life by the state is sometimes justified, as in the case of self-defence of law enforcement officials or in the application of death penalty in due legal form in countries that still retain such penalty.

jurisdiction from being killed by state agents and third parties.⁶⁶ Furthermore, states have the obligation to satisfy the basic needs necessary for sustaining the lives of those persons who cannot do so themselves. For example, states are expected to combat infant mortality and increase life expectancy by adopting measures to eliminate malnutrition and epidemics,⁶⁷ and furthermore, by providing healthcare and family planning programmes for women.⁶⁸

59. In addition, upon the death or disappearance of individuals, states have the obligation to carry out an effective official investigation.⁶⁹ To not carry out such an investigation in an effective way would constitute a violation of the right to life of the victim.⁷⁰ The *European Court of Human Rights* for example, has determined that an investigation is ineffective if it is not initiated promptly, if it is short in length and limited in scope, if it contains unexplained failures to take obvious steps, or if the organs in charge of the investigation display a lack of independence. Ineffective investigations displaying these characteristics violate the right to life.⁷¹ Furthermore, corruption in the investigation could provide an additional basis to declare such an investigation ineffective and similarly constitute a violation of the right to life.
60. The right to life is said to be infringed upon by corruption when, as an example, a corrupt Minister allows the illicit dumping of toxic waste or other dangerous substances in an area which is planned for future residential use. The government's failure to take adequate steps to protect the community from exposure to radio-activity known to cause cancer and genetic defects is said to constitute a violation of the right to life.⁷² In fact, it has been reported that the use of bribery to influence public officials' decisions to allow the illegal importation of toxic waste from other countries is a common practice around the world.⁷³ Another example of corruption infringing on the right to life is the case of a senior education official who, after accepting a bribe from a construction company, purchased inferior materials from that company for the construction of a school building, which resulted in the building collapsing and killing school children.⁷⁴

⁶⁶ HRC, *General Comment No. 6, Article 6: The Right to Life*, (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 127 (2003), para. 3.

⁶⁷ HRC, *General Comment No. 6, supra* note 66, para.5. In addition, states have a duty to refrain from resorting to war and to the production or possession of nuclear weapons as such practices are a threat to the right to life. See, HRC, *General Comment No. 6, supra* note 66, para.2 and HRC, *General Comment No. 14, Nuclear Weapons and the Right to Life: Article 6*, (Twenty-third session, 1984), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 139 (2003), para. 2-7.

⁶⁸ HRC, *General Comment No. 28: Equality of Rights between Men and Women (Article 3)*, U.N. Doc. CCPR/C/21/Rev.1/Add.10, 29 March 2000, para 10.

⁶⁹ See, for example, HRC, *Basilio Laureano Atachabua v. Peru*, Communication No. 540/1993, U.N. Doc. CCPR/C/56/D/540/1993 (1996), para. 8.2; HRC, *Bleier v. Uruguay*, Communication No.30/1978, views of 29 March 1982, para. 14; Inter-American Court of Human Rights, *Fairén Garbi and Solís Corrales Case*, Judgement of 15 March, 1989, Series C No. 6 para. 157-161; European Court of Human Rights (hereinafter "ECHR"), *Yasa v. Turkey*, Application No. 22495/93, Judgement of 2 September 1998, para. 100; ECHR, *Tanrikulu v. Turkey*, Application No. 23763/94, Judgement of 8 July 1999, para. 103.

⁷⁰ See, for example, HRC, *Joaquín David Herrera Rubio et al. v. Colombia*, Communication No. 161/1983, U.N. Doc. CCPR/C/OP/2, 1990, p. 192, para. 11; ECHR, *Tanli v. Turkey*, Application No. 26129/95, Judgement of 10 April 2001, para. 154.

⁷¹ M. Sepúlveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights*, Antwerpen, Intersentia, 2003, p. 144, quoting ECHR, *Kiliç v. Turkey*, Application No. 22492/93, Judgement of 28 March 2000, para. 83; ECHR, *Velokova v. Bulgaria*, Application No. 41488/98, Judgement of 18 May 2000, para. 78 and 82; and ECHR, *Kaya v. Turkey*, Application No. 22535/93, Judgement 28 March 2000, para. 109.

⁷² N. Jayawickrama, *supra* note 54, p. 6.

⁷³ United Nations Commission on Human Rights, *Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights*, Report submitted by the Special Rapporteur on Toxic Waste, Mrs. Fatma-Zohra Ouhachi-Vesely, U.N. Doc. E/CN.4/2001/55, 19 January 2001, p. 17.

⁷⁴ N. Jayawickrama, *supra* note 54, p. 5. In Turkey, 84 secondary school children died when the school building collapsed because it had been improperly built, allegedly because of corruption. See, U.N. Econ. & Soc. Council, *The Right to Education: Report Submitted by the Special Rapporteur Katarina Tomasevski*, U.N. Doc. E/CN.4/2004/45, 15 January 2004, para. 51.

61. It is interesting to note that in the above examples, the right to life is violated by an act that *derives* from a corrupt act (allowing the illicit dumping of toxic wastes and purchasing inferior materials for construction). But, this act of corruption was a necessary condition for the violation. Without the bribe, the official in the first example would not have allowed the illicit dumping of toxic wastes and the official in the second example would not have accepted inferior construction materials. Hence, though there is not a direct connection, corruption in these examples is nonetheless an essential contributing factor in a chain of events that eventually leads to the death of innocent people, and a violation of the right to life.

Right to Freedom from Torture or Cruel, Inhuman, or Degrading Treatment or Punishment

62. Freedom from torture or cruel, inhuman, or degrading treatment or punishment is a right protected under all circumstances.⁷⁵ This right protects the dignity, as well as the mental and physical integrity of every human being.⁷⁶ There is no agreed-upon list of prohibited acts or sharp distinctions between what constitutes torture, or cruel, inhuman and degrading treatment or punishment. The distinctions will depend on the nature, the purpose, and the severity of the treatment.⁷⁷ The *Convention against Torture* defines torture as any act that intentionally inflicts severe physical or mental pain or suffering on a person in order to obtain from him or from a third person information or a confession, or in order to punish him for an act he or a third person has committed or is suspected of having committed, or in order to intimidate or coerce him or a third person, or for any reason based on discrimination.⁷⁸ Evidently, the scope of what constitutes torture, and cruel, inhuman, degrading treatment, or punishment is wide,⁷⁹ however, it seems not to be interpreted as constituting the degrading situations that arise from poor socio-economic conditions.⁸⁰ It is the duty of states to protect individuals against acts of torture inflicted by people acting in their official, non-official, or private capacity.⁸¹
63. There seems to be few corrupt practices that can be directly related to a violation of this right. However, some corruption cases have been reported where corruption is an indirect cause of torture, or cruel, inhuman, degrading treatment or punishment. These are cases where a person has been threatened or subjected to ill-treatment after witnessing or denouncing a corruption case.⁸² However, the connection between corruption and the restriction of the right in such cases is rather indirect. This is because corruption in these cases functions more as a remote cause, but is not utilised as a means to achieve the infringement of the right.
64. Nevertheless, corruption can be linked in a more direct way to one specific aspect of the right under consideration. It is commonly understood that the right of persons deprived of their liberty to be treated with humanity and dignity is a component of the right to freedom from torture or

⁷⁵ ICCPR, Art. 7.

⁷⁶ HRC, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment, Article 7*, (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 151 (2003), para. 2.

⁷⁷ *Ibid.*, para. 4.

⁷⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, Art. 1.

⁷⁹ The right contained in Art. 7 of the ICCPR also covers corporal punishment, including excessive chastisement to punish for a crime or as an educative or disciplinary measure. Prolonged solitary confinement of detainees can also amount to torture, or cruel, inhuman or degrading treatment. HRC, *General Comment No. 20, supra* note 76, para.5 and 6.

⁸⁰ M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, Kehl am Rhein, N.P. Engel, 2005, p. 159.

⁸¹ HRC, *General Comment No. 20, supra* note 76, para. 1.

⁸² See for example, United Nations Committee against Torture, *Communication No. 221/2002: Sweden*, CAT/C/34/D/221/2002, 18 May 2005.

cruel, inhuman, or degrading treatment or punishment. Individuals deprived of their liberty need special protection because of their vulnerable situation.

65. Everyone deprived of their liberty in prisons, hospitals, detention camps, correctional institutions, or elsewhere must be treated with humanity and dignity.⁸³ Emphasis is made on the rights of detainees with regard to criminal justice systems and certain procedural guarantees, which constitutes part of the right of detainees to be treated with humanity and dignity.⁸⁴ However, the interpretation of being treated with “humanity and dignity” should be broad. For example, with regards to prisoners, basic rules have been formulated to protect them such as the *United Nations Standard Minimum Rules for the Treatment of Prisoners*.⁸⁵ These rules set out in detail the minimum conditions acceptable in the treatment of prisoners, such as: minimum floor space and cubic content of air for each prisoner, adequate sanitary facilities, clothing which in no manner should be degrading or humiliating, a separated bed, and food of adequate nutritional value.⁸⁶ Similar rules to the ones just described concerning prisoners apply to all other institutions where people are deprived of their liberty.
66. Research shows that corruption can affect the right of persons deprived of their liberty to be treated with humanity and dignity. Corruption by way of embezzlement of funds that are destined to finance prison services may result in fewer resources and deteriorating detention conditions. Embezzlement can occur at different levels, from the highest ministerial level down to the person in charge of the prison or institution where people are held. Corruption of this type will certainly affect the treatment of prisoners, possibly to a degree which would render their treatment inhuman and undignified. This may happen, for example, if a lack of resources results in a shortage of food for prisoners or if there are no financial resources to provide them with necessary blankets or beds. If corruption is at the origin of the lack of financial resources, it may be directly linked with a violation the right of persons denied of their liberty to be treated with humanity and dignity. However, the degree of connection between the corrupt act and the violation of the right vary from case to case. While in one case the embezzlement of funds may be the sole cause for the lack of resources and thus the violation of the prisoners rights, in another case the embezzlement of funds might be just one of a series of causes for the lack of resources. In the latter case, corruption might not be considered as the essential contributing factor that led to the violation of the right.
67. However, most cases of corruption in prison happen between prisoners and prison officials or guards. Corruption at this level ranges from officers accepting cash payments from inmates to have them transferred to less secure prisons, to permitting the bringing of mobile phones and drugs into prisons.⁸⁷ In the prisons of many countries, corruption through bribery is often the only way to receive adequate treatment. Many prisoners pay bribes to the prison authorities for more lenient treatment such as not being forced to do hard labour, or for the use of a clean toilet instead of a filthy one or to receive medical treatment from the prison doctor.⁸⁸ Such corrupt practices have

⁸³ ICCPR Art. 10. HRC, *General Comment No. 21, Replaces general comment 9 concerning humane treatment of persons deprived of liberty: Article 10*, (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 153 (2003), para.2.

⁸⁴ During detention accused persons should be separated from convicted ones and should be treated as unconvicted persons. Similarly, accused juveniles should be separated from adults and be treated in accordance to their age. States are reminded that the essential aim of penitentiary systems should be reformation and social rehabilitation. ICCPR, Art. 10(2) and (3).

⁸⁵ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

⁸⁶ *Ibid.*, Part I : Rules of General Application.

⁸⁷ Times Online, *Corruption 'Rife' Among Prison Staff, Report Claims*, 31 July 2006, <http://www.timesonline.co.uk/tol/news/uk/crime/article695367.ece>

⁸⁸ Burma Issues, *From Prison to Frontline: Portering for SDPC Troops during the Offensive in Eastern Karen State*, Burma, September-October 2003.

been documented mostly with regards to corruption in prisons, but apply equally to corruption in other institutions.

68. The right of persons deprived of their liberty to be treated with humanity and dignity imposes certain obligations on states regardless of their material resources.⁸⁹ States need to respect and ensure the enjoyment of this right by all people deprived of their liberty without discrimination. However, when people deprived of their liberty need to bribe the authorities in order to have access to the minimum conditions that qualify as humane and dignified treatment, the state is clearly not meeting its obligations. This creates a direct violation of the right of people deprived of their liberty to human and dignified treatment.

Right to Liberty and Security

69. The right to liberty and security of the person entails two distinct rights: the right to liberty of the person and the right to personal security. The right to liberty of the person does not grant complete freedom from arrest or detention. Instead, this right acts as a substantive guarantee that arrest or detention will not be arbitrary or unlawful.⁹⁰ Thus, the right to liberty of the person entails that everyone has the right to not be arbitrarily deprived of his liberty.⁹¹ All deprivations of liberty must be on the basis of grounds and procedures established by law and a series of minimum guarantees must be respected.⁹² This right concerns all kinds of deprivations of liberty, whether based on criminal activity, mental illness, vagrancy, drug addiction, educational purposes, or immigration violations.⁹³
70. Although the right to security was originally intended to cover the personal security of persons deprived of liberty, it is now accepted as an independent right, and has been recognised in cases concerning death threats, assassination attempts, harassment, and intimidation.⁹⁴ In such cases, the state has an obligation to take reasonable and appropriate measures to protect the person.
71. Corruption can affect the right to liberty and security mainly at two levels. On the one hand, corruption can be indirectly related to violations of this right. There are numerous cases reported around the world where people bringing attention to cases of corruption or so called

⁸⁹ HRC, *General Comment No. 21*, *supra* note 83, para.4.

⁹⁰ Associated to the right to liberty is the right to not be detained for debt contained in Art. 11 of the ICCPR. No person can be imprisoned merely on the ground of his inability to fulfil a contractual obligation. The prohibition relates expressly to a contractual obligation. Hence, deprivation of liberty based on the non-fulfilment of statutory obligation of private or public law is permissible. Moreover, criminal offences related to civil law debts, such as fraud and fraudulent bankruptcy can be subject to imprisonment.

⁹¹ ICCPR, Art. 9.

⁹² Every person has the right to the following minimum guarantees when deprived of his liberty: to be informed promptly of the reasons of his arrest and any charges against him; to take *habeas corpus* proceedings before a court; to be brought promptly before a judge or other officer exercising judicial powers who must either release him or authorise pre-trial detention; to be subjected to trial within a reasonable time; and to be compensated if detention was unlawful. Pre-trial detention should be the exception and not the rule. See, ICCPR, Art. 9.

⁹³ HRC, *General Comment No. 8: Right to Liberty and Security of Persons, Article 9*, (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 130 (2003), para.1.

⁹⁴ See, HRC, *William Eduardo Delgado Páez v. Colombia*, Communication No. 195/1985, U.N. Doc. CCPR/C/39/D/195/1985 (1990), *Chiiko Bwalya v. Zambia*, Communication No. 314/1988, U.N. Doc. CCPR/C/48/D/314/1988 (1993), *Oló Babamonde v. Equatorial Guinea*, Communication No. 468/1991, U.N. Doc. CCPR/C/49/D/468/1991 (1993), *Katombe L. Tshishimbi v. Zaire*, Communication No. 542/1993, U.N. Doc. CCPR/C/53/D/542/1993(1996), *Anthony Leebong (Represented by Ronald McHugh of Clifford Chance, London) v. Jamaica*, Communication No. 613/1995, U.N. Doc. CCPR/C/66/D/613/1995 (12 August 1999), *Carlos Dias v. Angola*, Communication No. 711/1996, U.N. Doc. CCPR/C/68/D/711/1996 (2000), *Rodger Chongwe v. Zambia*, Communication No. 821/1998, U.N. Doc. CCPR/C/70/D/821/1998 (2000), and *Jiménez Vaca v. Colombia*, Communication No. 859/99, U.N. Doc. CCPR/C/74/D/859/1999 (2002).

“whistleblowers,” are silenced through imprisonment, threats, and even killings.⁹⁵ Such practices not only infringe upon the right to liberty and security, but also the right to freedom of expression. In these cases, when people receive threats or are killed because they have investigated or denounced a corruption case, the right to personal security of those people is violated. The state fails to protect the physical integrity of those people.

72. However, different is the case when a person investigating or reporting a corruption case is imprisoned. As deprivation of liberty is a legitimate form of state control, then the arrest or detention of a person investigating or reporting corruption suggests that the deprivation of liberty has been ordered by a state official. This can be carried out in many ways. One possibility is for the state to fabricate a criminal case against the person and accuse him of a crime. Another strategy which has been used in many states is to attempt to silence a person with the justification that the person threatens some state interest. Usually in these cases the person can be accused of crimes such as dishonour to the government, defamation, threat to national security, or subversion. Moreover, this also results dissuasive for persons willing to denounce corruption cases in the future. As a consequence, when people are formally arrested or detained the deprivation of liberty is not arbitrary and is carried out on the basis of grounds and procedures established by law. For that reason, in cases where persons denouncing corruption are imprisoned, it might be difficult to prove that the right to liberty is violated. And even if it is possible, the violation of the right to liberty as well as the a violation of the right to personal security as described above can only be indirectly related to corruption. In such cases, where corruption leads to the infringement of the right, the connection between corruption and the restriction of the right is rather indirect. This is because the infringement of the right is not carried out through corrupt means. The corrupt practice in this case is a remote cause of the violation.
73. Nevertheless, experience shows that there are certain situations where corruption can be linked to violations of the right to liberty and security in a more direct way. There are reports of police arresting individuals with the sole purpose of subsequently asking for bribes in order to release them. In such cases, the police makes arrests without producing a warrant and relatives may be asked to pay a “ransom” for the release of a person who would normally be released later anyway for lack of evidence, because no charges are pressed, or because the offence of which the person is accused is not punishable with a custodial sentence.⁹⁶ These cases show how states fail to meet their obligations to respect and ensure the right to liberty and security. Contrary to what the right entails, the deprivation of liberty is arbitrary and is not carried out on the basis of grounds and procedures established by law, and the minimum guarantees are not respected. States have an obligation to take reasonable and appropriate measures to protect the person. But when a person is detained for the sole purpose of extracting from him a bribe, the right to liberty and security of that person is violated through corruption.

Right to Liberty of Movement

74. Liberty of movement is an essential condition for the development of a person.⁹⁷ Thus, all human beings have the right to liberty of movement.⁹⁸ This right includes the right of people lawfully within the territory of a state to be free to move within that territory and to choose their place of

⁹⁵ See for example the case of Mustafa Abid who denounced corruption in the Moroccan military and as a result was charged for dishonoring the military and sentenced to more than two years in prison, or the case of Yao Fuxin in China and Le Chi Quang in Vietnam. P. Eigen, *supra* note 7; U.N. Econ. & Soc. Council, *Opinions adopted by the Working Group on Arbitrary Detention*, U.N. Doc. E/CN.4/2004/3/Add.1, 26 November 2003, p. 3-6 and 23-25.

⁹⁶ U.N. Econ. & Soc. Council, *Report of the Working Group on Arbitrary Detention on its Visit to Mexico*, U.N. Doc. E/CN.4/2003/8/Add.3, 17 December 2002, para. 40. See also, R. Hardjono, and S. Teggemann, (Eds), *The Poor Speak Up: 17 Stories of Corruption*, The Partnership for Governance Reform - Indonesia, p. 56-67.

⁹⁷ HRC, *General Comment No. 27: Freedom of Movement*, U.N. Doc. CCPR/C/21/Rev.1/Add.9, 2 November 1999, para. 1.

⁹⁸ ICCPR, Art. 12.

residence, as well as the right to leave any country including one's own and to enter one's own country.⁹⁹

75. The right to liberty of movement entails the right to obtain the necessary travel documents to assert the right.¹⁰⁰ It is this specific aspect of the right that is most related to corruption. Research shows that corruption in the process of obtaining documents can affect the right to travel both within a country and to leave a country.¹⁰¹ In many countries, documents such as registration or identity cards are required in order for citizens to pass police and military checkpoints set up along the main roads, as well as to cross a border. If a person is required to pay a bribe in order to obtain a document, this person cannot assert his right to liberty of movement.
76. States have the obligation to respect and ensure the right to liberty of movement. When states fail to prevent and combat such corrupt practices, they also fail to meet their obligations pertaining to the right. In addition, states must respect and ensure all human rights on a basis of equality and non-discrimination. When the ground to obtain registration or identity cards or passports is not objective, and people in identical situations are treated differently, there is discrimination in the issuance of those documents. The person that does not bribe the official issuing the documents is placed at a disadvantage compared to another person that does bribe the official. Therefore, in this respect, corruption violates the right to liberty of movement.

Right to a Fair Trial

77. The right to a fair trial, also called right to procedural guarantees in trials or rights of due process, is composed of a broad range of rights which provide for a fair, effective and efficient administration of justice (the judiciary, the police, and prosecutors).¹⁰² All individuals are entitled to equality before the courts and tribunals, and have the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.¹⁰³
78. The relationship between corruption and human rights is particularly relevant with regards to the right to a fair trial. This is the case because corruption is widespread and systemic in the administration of justice of several countries.¹⁰⁴ Experience shows that there are many ways in which corruption can affect the administration of justice and the right to a fair trial.¹⁰⁵ However, the most important way is through bribing judges to obtain a favourable judgment, to speed up

⁹⁹ The right to liberty of movement can be subject to restrictions. According to Art. 12(3) of the ICCPR, such right can be hampered "to protect national security, public order (ordre public), public health or morals, or the rights and freedoms of others." However, restrictions should be provided by law, must be necessary in a democratic society for the protection of these purposes, and consistent with other rights of the ICCPR, such as equality and non-discrimination. See, HRC, *General Comment No. 27*, *supra* note 97, paras.11 and 18.

¹⁰⁰ *Ibid.* para. 9.

¹⁰¹ See, for example, U.N. Econ. & Soc. Council, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Juan Miguel Petit, Addendum: Communications to and from Governments*, U.N. Doc. E/CN.4/2006/67/Add.1, 27 March 2006, para. 88-90.

¹⁰² ICCPR, Art. 14.

¹⁰³ ICCPR, Art. 14(1).

¹⁰⁴ See, for example, U.N. Econ. & Soc. Council, *Report of the Special Rapporteur on the Independence of Judges and Lawyers Leandro Despouy, Addendum: Mission To Kyrgyzstan*, U.N. Doc. E/CN.4/2006/52/Add.3, 30 December 2005; U.N. Econ. & Soc. Council, *Report of the Special Rapporteur on the Independence of Judges and Lawyers Leandro Despouy, Addendum: Mission To Tajikistan*, U.N. Doc. E/CN.4/2006/52/Add.4, 30 December 2005; U.N. Econ. & Soc. Council, *Report of the Special Rapporteur on the Independence of Judges and Lawyers Dato' Param Cumaraswamy*, Submitted in Accordance with Commission on Human Rights Resolution 2002/43: Report on the Mission to Indonesia, 15-24 July 2002, U.N. Doc. E/CN.4/2003/65/Add.2, 13 January 2003; U.N. Econ. & Soc. Council, *Report of the Special Rapporteur on the Independence of Judges and Lawyers Dato' Param Cumaraswamy*, Submitted in Accordance with Commission on Human Rights Resolution 2001/39: Addendum: Report on the Mission to Mexico, U.N. Doc. E/CN.4/2002/72/Add.1, 24 January 2002.

¹⁰⁵ See, Transparency International, *Global Corruption Report 2007: Corruption in the Judiciary*, Cambridge, Cambridge University Press, 2007.

procedures, or to obtain bail – just to name a few examples.¹⁰⁶ In certain countries, it is estimated that 50 to 70 percent of federal judges are corrupt and sometimes this may even involve the Supreme Court.¹⁰⁷ In addition, corruption affects the administration of justice and the right to a fair trial when corrupt acts take place before the case reaches the courts, mostly at the enforcement level if the police, for example, manipulate evidence in favour of one of the parties, or at the prosecution level if the prosecutor alters the facts of the case.

79. The most relevant consequence of corruption in the administration of justice is that it renders a hearing unfair and affects the equality of the parties and the independence and impartiality of the tribunal.¹⁰⁸ The right to equality before the courts and tribunals is a specific expression of the more general right to equality and non-discrimination. Previously, it was stated that corruption violates the general right to equality and non-discrimination. Hence, the presence of corruption in a judicial proceeding will similarly affect the equality of the parties. If a judge is bribed by one of the parties to rule in their favour, there is a clear violation of the right to equality of the party affected. If the right to equality before the courts and tribunals is affected, automatically the right to an impartial and independent tribunal is also infringed upon. When the judge is corrupted to give privilege to one party at the expense of the other, the tribunal is thus neither impartial nor independent.
80. It is important to highlight that it has been held that tribunals not only have to be impartial, but must also give the appearance of being impartial.¹⁰⁹ Thus, as it happens in several countries, when a particularly tribunal gives the impression of being corrupt and there is a general perception that corruption is widespread and systemic in the judiciary, there is an infringement of the right to an impartial and independent tribunal.
81. The independence of the tribunal can be affected by corrupt practices in another way. It is commonly held that the judiciary must be independent, referring to, *inter alia*, independence from the executive and the legislature. Although political interference can come about by threat, intimidation or other non-corrupt means, it does also come about through corruption. Contrary to the situation with other rights, the independence of the judiciary in general and of a court or tribunal in particular, is not usually infringed upon through bribery, but by means of trading in influence and abuse of functions. One example might be of a judge that is appointed by the executive in exchange for future judgments in accordance to the interests of the executive. In such a case, the currency of corruption is the judicial post. This might constitute a case of trading in influence. There are however many cases where the judiciary is not independent but for reasons not due to corruption. For example, party loyalties of judges can interfere in their decisions.¹¹⁰ Or, judges can be intimidated or manipulated by the executive so as to obtain judgments favourable to their political or economic interests. There is a very thin line between lack of independence of the judiciary as a result of corrupt practices from lack of independence due to party loyalties, intimidations or manipulations.

¹⁰⁶ See, for example, *Report on Corruption in India's Judiciary of 2005* at <http://www.livemint.com/2007/05/02160432/Corruption-in-Judiciary.html> (last visited on 28 May 2007).

¹⁰⁷ See, U.N. Econ. & Soc. Council, *Special Rapporteur on the Independence of Judges and Lawyers: Mission to Mexico*, *supra* note 104, para. 63; U.N. Econ. & Soc. Council, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography*, Juan Miguel Petit, *Addendum: Mission to Ukraine*, U.N. Doc. A/HRC/4/31/Add.2, 24 January 2007, para. 70; U.N. Econ. & Soc. Council, *Special Rapporteur on the Independence of Judges and Lawyers: Mission to Indonesia*, *supra* note 104, para. 30 and 31.

¹⁰⁸ The effects of corruption on the administration of justice described in this section also apply to procedural guarantees of aliens against expulsion provided under Art. 13 of the ICCPR. All aliens lawfully in the territory of a state have the right to procedural guarantees in the event of expulsion. If expelled an alien has the right to expect the expulsion procedure to be carried out only in pursuance of a decision reached in accordance with law and should be able to challenge the decision of expulsion and benefit from judicial review.

¹⁰⁹ See, *inter alia*, ECHR, Judgment of 9 June 1998, *Incal v. Turkey*, No. 41/1997/825/1031, para. 65, and the Judgment of 25 February 1997, *Findlay v. United Kingdom*, para. 73.

¹¹⁰ For example, in Paraguay, when a Supreme Court judge's position falls vacant, his party affiliation becomes the requirement for the fresh appointee. *Transparencia Paraguay*, "Politics and Nepotism Plague Paraguay's Courts," in *Transparency International*, *supra* note 105, p. 256.

82. Moreover, corruption in the process of appointment of judges may also have a consequence on the competence of judges. Appointments that should be based on personal qualifications, moral authority and competence are replaced by corrupt interests. Thus, if corruption is present in the appointment of a judge, such a case not only affects the independence of the judiciary but also its competence.
83. As just described, every person has the right to a minimum degree of quality of the administration of justice. This is expressed through parameters of equality of parties, fairness of the hearing, and competence, independence and impartiality of the tribunal. These are basic rights to procedural guarantees to which all human beings are entitled to when they face the administration of justice. However, the right to a fair trial also provides for specific guarantees to protect the accused in criminal procedures. In the determination of any criminal charge against a person, everyone is entitled to the following guarantees: to be informed about the charge against them promptly, in detail and in a language they understand; to have adequate time and facilities to prepare their defence; to communicate with counsel of their own choosing; to be tried without undue delay; to be tried in their presence; to defend themselves in person or through legal assistance; to examine witnesses against them and to make use of their own witnesses; to have the free assistance of an interpreter if they cannot understand the language used in court; and not to be compelled to testify against themselves or to confess guilt.¹¹¹ Also as part of the right to a fair trial, everyone has the right to be presumed innocent until proven guilty beyond reasonable doubt.¹¹² Therefore, the burden of proof rests with the prosecution. Furthermore, the right to a fair trial also includes the right of a convict to judicial review by a higher court, the right to compensation in certain cases of wrongful conviction, and the right not to be re-tried for an offence for which the person has already been convicted or acquitted (*ne bis in idem*).¹¹³
84. Although a corrupted judicial proceeding already constitutes a violation of the right of the accused to a fair hearing by a competent, independent and impartial tribunal, it may also constitute a violation of one of the aforementioned guarantees. For example, in a criminal proceeding the accused has the right to be tried without undue delay. However, research indicates that there are many cases where judges are bribed to delay the proceedings as much as possible.¹¹⁴ Through corrupt means one or more of these minimum guarantees can be restricted so as to negatively affect the rights of the accused.
85. As described above, corruption can violate the essential elements of the right to a fair trial. Corrupt practices in the administration of justice affect the equality of parties, the fairness of the hearing, and the competence, independence and impartiality of the tribunal. Corruption can similarly restrict the specific guarantees that protect the accused in criminal procedures. Yet, all the cases of corruption mentioned in this section, in addition to infringing upon the right to a fair trial, also affect another fundamental right: the right to an effective remedy.

Right to an Effective Remedy

86. Another fundamental right of international human rights law is the right to an effective remedy. Any person whose rights or freedoms as recognised in the ICCPR have been violated has the right

¹¹¹ ICCPR, Art. 14(3).

¹¹² ICCPR, Art. 14(2).

¹¹³ ICCPR, Arts. 14(5), 14(6), and 14(7). The accused is also protected by the prohibition of retroactive criminal laws set down in Art. 15 of the ICCPR. This refers to the long-recognised criminal law principles of “*nullum crimen sine lege*” and “*nulla poena sine lege*.” The former means that no one can be found guilty of a crime which did not constitute a criminal offence under national or international law at the time it took place. The latter refers to the principle that only penalties that were applicable at the time when the criminal offence was committed can be applied. Subsequent heavier penalties cannot be applied to the offender. However, he can benefit from a subsequent lighter penalty.

¹¹⁴ Transparency International, *supra* note 105, p. xiii and xiv.

to an effective remedy.¹¹⁵ States are under an obligation to provide accessible, effective and enforceable remedies to uphold civil and political rights.¹¹⁶ Also called the right to access to justice, the person claiming the remedy is entitled to have his right determined by a competent domestic authority,¹¹⁷ and states shall ensure that competent authorities enforce such remedies when granted.¹¹⁸ Cessation of an ongoing violation is an essential element of the right to an effective remedy.¹¹⁹ A failure by a state to investigate allegations of violations and bring the perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR

87. The examples of corrupt practices in the administration of justice mentioned in the previous section show how the state may fail to investigate allegations of violation and bring to justice the perpetrators, thus breaching the right to an effective remedy. Essential to the enjoyment of this right is the effective administration of justice. For a proper administration of justice, states must ensure that equality before the courts is established by law and guaranteed in practice, including equal access to courts, fair and public hearings, and competence, impartiality and independence of the judiciary.¹²⁰ Corrupt practices ultimately undermine the effectiveness and quality of the administration of justice. In addition, the right to an effective remedy must be exercised on the basis of equality and non-discrimination, just as is the case with all other human rights. When corruption is present in the administration of justice, the state fails to respect and ensure that the right to an effective remedy is exercised without discrimination.
88. Consequently, corruption in the administration of justice has the double effect of infringing upon the right to a fair trial and the right to an effective remedy. For instance, if a worker is unfairly dismissed from a company and the worker then brings a lawsuit against the company, such company may bribe the judge to obtain a favourable judgment. In the end, this person's right to a fair trial is violated in conjunction with the right to an effective remedy for the unfair dismissal. This is an example of the ways in which corrupt practices that affect the equality of the parties, the fairness of hearings, the independence, impartiality, and competence of the tribunal also result in a violation of the right to an effective remedy. States must guarantee that remedies are accessible, effective and enforceable. In the above example and all others mentioned in the previous section, the state fails to uphold this guarantee and thus violates the right to an effective remedy.
89. Another corrupt practice that may result in a violation of the right to an effective remedy is the embezzlement of funds allocated to justice. This can be done by a judge or a state official. Taking away resources from the administration of justice will affect its quality and effectiveness. The lack of resources for a proper administration of justice may result in insufficient personnel if there are no resources to afford the necessary amount of personnel just to name one example. This in turn might create a backlog of cases and excessively delay procedures, thus infringing upon a person's right to be tried without undue delay and, consequently, violating their right to a fair trial and an effective remedy. However, in this case it is important to highlight that corruption might be considered an indirect cause of the violation. And, in practice, it might prove very difficult to connect the violation of the guarantee of undue delay with the lack of personnel and the embezzlement of funds. For this reason, it might be easier to connect corruption to the violation of

¹¹⁵ ICCPR, Art. 2(3).

¹¹⁶ HRC, *Annual Report*, A/61/40 (Vol 1), para.144.

¹¹⁷ Although judicial authorities are preferred, administrative and legislative are also accepted. In cases of serious human rights violations only a judicial remedy constitutes an effective remedy. See, HRC, *Bautista de Arellana v. Colombia*, Communication No. 563/1993, U.N. Doc. CCPR/C/55/D/563/1993 (1995); and *José Vicente and Amado Villafañe Chaparro et al. v. Colombia*, Communication No. 612/1995, U.N. Doc. CCPR/C/60/D/612/1995 (1997).

¹¹⁸ It is worth noting that Art. 2(3) of the ICCPR restricts the right to an effective remedy to redress only rights and freedoms set forth in the ICCPR. Art. 8 of the Universal Declaration of Human Rights is wider in scope and provides for "the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to [everyone] by the Constitution or by law."

¹¹⁹ HRC, *General Comment No. 31*, *supra* note 20, para. 15.

¹²⁰ *Ibid.*, para. 3.

the right to an effective remedy in a specific proceeding and not at a more general level when funds destined to the administration of justice are embezzled.

Right to Freedom of Opinion, Expression, and Information

90. All persons have the right to hold opinions and express them without any interference.¹²¹ While freedom of opinion tends to be a private matter pertaining to the mind, freedom of expression is a public matter, a matter of human relationship.¹²² The right to freedom of expression includes freedom to impart information and ideas of all kinds, and also freedom to seek and receive them in whatever medium, either orally, in writing or in print, in the form of art, or through any other media of choice. These rights should be protected not only against interference by public authorities but also by private parties.¹²³
91. There is a very strong connection between corruption and these rights because they constitute an important tool to combat corruption, particularly the right to seek information.¹²⁴ The freedom to impart information and to seek information on corruption cases undermines the secrecy of the practice and helps to identify the causes and consequences of corruption and allows the designing of proper policies to combat against it. As a consequence, those who benefit from corruption need to suppress this right as much as possible. This creates situations where a corruption case leads to the infringement of the rights to freedom of opinion, expression and information. There are numerous cases reported almost daily around the world where people, mostly journalists, investigating and denouncing corruption cases are harassed, threatened, and sometimes killed in order to prevent them from making corruption cases public.¹²⁵ As a result, the rights of all persons to freely hold and express opinions and to seek and receive information without interference are affected. These attacks on people investigating and denouncing corruption can come from both the private and public sector and can be carried out in many ways. In order to silence the person, recourse has been made to fabrication of criminal cases or to accuse the person for crimes such as dishonour to the government, defamation, threat to national security, or subversion. This also results dissuasive for persons willing to denounce corruption cases in the future.
92. In fact, the rights to freedom of opinion, expression and information can be legally restricted in order to prevent their abuse when it can result in undermining the rights of others or of the community as a whole. However, restrictions to these rights must be provided by law, must be necessary to respect the rights or reputations of others, or must be necessary to protect national security, public order, or public health or morals.¹²⁶ Hence, any restriction to freedom of expression and information must respect these minimum requirements. Therefore, whether the prosecution of journalists for dishonour to the government, defamation, threat to national security, or subversion meets these requirements will ultimately depend on each particular case. However, it is difficult to envision that the prosecution and imprisonment of a journalist that is reporting on corruption can constitute an acceptable and legal restriction of freedom of expression and information.

¹²¹ ICCPR, Art. 19. See also, HRC, *General Comment No. 10: Freedom of Expression, Article 19*, (Nineteenth session, 1983), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 132 (2003).

¹²² M. Nowak, *supra* note 80, p. 441.

¹²³ *Ibid.*, p. 448.

¹²⁴ In this sense, see for example, Open Society Justice Initiative's activities on Freedom of Information and Expression, at <http://www.justiceinitiative.org/activities/foifoe>. See also, Transparency International, *Using The Right to Information as an Anti-Corruption Tool*, available at http://www.transparency.org/global_priorities/access_information; Transparency International, *Global Corruption Report 2003: Special Focus: Access to Information*.

¹²⁵ See all the reports of the Special Rapporteur on the Promotion and Protection on the Right to Freedom of Opinion and Expression, particularly, *The Right to Freedom of Opinion and Expression: Addendum: Summary of Cases Transmitted to Governments and Replies Received*, U.N. Doc. E/CN.4/2005/64/Add.1, 29 March 2005. See also reports on the state of freedom of expression in different countries by the non governmental organisation Article 19, at www.article19.org.

¹²⁶ ICCPR, Art. 18(3).

93. In all the aforementioned cases where corruption leads to the infringement of the rights to freedom of opinion, expression and information, the connection between corruption and the restriction of the right is rather indirect. This is because corruption is not utilised as a means to achieve the infringement of the right, but functions more as a remote cause.
94. However, these rights can also be infringed upon in a direct way when specific corrupt acts are carried out precisely to interfere with the enjoyment of the right. This happens, for example, when bribes are given to a journalist to change the facts of news.¹²⁷ Such corrupt act may involve the simple payment of a bribe but usually works in a less evident way, such as publishing publicity materials in exchange for advertising in the same media.¹²⁸ Although the payment is made through publicity, it still constitutes bribery. These practices can come from both the private and public sector, however, the latter has the power of using other corrupt means to force the media to be favourable to the government.¹²⁹ In this sense, another example is the trading in influence, whereby a public official may obtain an undue advantage -favourable press- from a media group and in exchange he abuses his influence to benefit the media group, for example, by extending their cable-television licence. In this sense, the *Human Rights Committee* has recently stated that when the state is involved in corrupt practices that are conducive to undermining freedom of expression, it is incompatible with the right to freedom of opinion, expression and information.¹³⁰
95. States have undertaken the obligations to respect and ensure the rights to freedom of opinion, expression, and information. Although in all the examples mentioned in this section the state fails to meet its obligation and consequently the rights are violated, corruption is not always to blame for the violation. In the cases where corruption indirectly leads to the restriction of the rights, although the state is not complying with its obligations, it may not necessarily be said that corruption is directly related to those obligations. In other words, it is not the corrupt practice that evidences that the state is failing to meet its obligation to respect and ensure the rights, but rather, the failure to comply with the corresponding obligations is evidenced by the actions that follow the investigation and reporting on the corruption case, i.e. the threats, harassment, and killing of people. The state would comply with its obligation if it would allow the investigation and reporting of the corruption cases or if, failing that, it would provide an effective remedy to the journalist that has been harassed or threatened by private parties.
96. On the contrary, in cases where the rights are directly infringed upon by corrupt means, for example when free speech is used as a trading commodity in corrupt practices, corruption constitutes the violation of the rights to freedom of opinion, expression, and information. When corrupt practices take place which are specifically aimed at restricting these rights, the state fails to meet its obligation to respect and ensure the rights to freedom of opinion, expression, and information to its people.

¹²⁷ See index that ranks states according to the likelihood that print journalists will seek or accept cash for news coverage from government officials, businesses, or other news sources. Dr. D. Kruckeberg and K. Tsetsura, *A Composite Index by Country of Variables Related to the Likelihood of the Existence of 'Cash for News Coverage'*, 21 July 2003, Research commissioned by the Institute for Public Relations (USA), The International Public Relations Association (UK), and Sponsored by Hürriyet, a Member of Dogan Media Group (Turkey).

¹²⁸ See, K. Tsetsura, *Bribery for News Coverage: Research in Poland*, Commissioned by the Polish Public Relations Consultancies Association, The Institute for Public Relations and the International Public Relations Association, 2005, available at www.instituteforpr.com

¹²⁹ See, for example, The Economist, *The Media in Argentina : No Criticisms Please*, 12 January 2006.

¹³⁰ HRC, *Concluding Observations, Italy*, UN Doc. CCPR/C/ITA/CO/5, 24 April 2006, at para. 20.

Right to Freedom of Thought, Conscience, Religion, and Belief

97. Every human being has the right to freedom of thought, conscience and religion.¹³¹ This includes the freedom to choose and adopt a religion or belief. This right is broad and includes freedom of thought, personal conviction and the commitment to religion or belief, on all matters whether manifested individually or in community with others. It is worth noting that freedom of thought and the freedom of conscience are protected on the same footing as the freedom of religion and belief.¹³² The terms “belief” and “religion” should be interpreted broadly as to include theistic, non-theistic and atheistic beliefs, and the right to not profess any religion or belief, as well as traditional and newly established religions.¹³³
98. The right to freedom of thought, conscience, religion or belief includes the right to manifest, covering a wide range of practices, such as ritual and ceremonial acts giving direct expression to belief, the building of places of worship, the observance of holidays and days of rest, dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group.¹³⁴ The right to manifest one’s religion or belief can be limited by law if necessary for the protection of public safety, order, health or morals, or the fundamental rights of others.¹³⁵
99. There are two main ways in which corruption can affect this right. One is by restricting the freedom to choose and adopt a religion or belief. This can happen through the so-called proselytism, defined by the World Council of Churches and the Vatican as “a corruption of Christian witness,” because it employs coercion or bribery to bring about conversion. For instance, a certain religion may bribe people in order to attract them and enlarge their list of followers. In this way, the right to choose and join a religion of one’s own choosing is not exercised in complete freedom. Another way in which corruption may affect the right to freedom of thought, conscience, religion, and belief is by impairing the exercise and enjoyment of this right. In many countries religions or beliefs need to be accepted and registered by the state. But there have been reports where public officials ask for bribes for the state registration of religions or churches.¹³⁶ If the religion or church cannot be registered it is practically impossible for its followers to gather and give expression to their religion and belief.
100. In the above examples, the state fails to meet its obligation to respect and ensure the right to freedom of thought, conscience and religion to all the people under its jurisdiction. Through corrupt means, the freedom to choose and adopt a religion or belief, and the enjoyment and expression of one’s religion are violated.

Rights to Privacy and Family Life

101. Everyone has the right to privacy and respect for private and family life.¹³⁷ Family, home, correspondence, honour, and reputation constitute the main aspects of private life but by no means the only ones. Other specific aspects of privacy are: personal data protection, control over one’s name, sexual privacy, and searches and surveillance. The right to respect for privacy includes

¹³¹ ICCPR, Art. 18.

¹³² HRC, *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion, Article 18*, (Forty-eighth session, 1993), U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 155 (2003), para.1.

¹³³ *Ibid.*, para.2.

¹³⁴ *Ibid.*, para.3 and 4.

¹³⁵ ICCPR, Art. 18(3).

¹³⁶ U.N. Econ. & Soc. Council, *Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir: Addendum: Summary of Cases Transmitted to Governments and Replies Received*, U.N. Doc. E/CN.4/2005/61/Add.1, 15 March 2005, para. 169.

¹³⁷ ICCPR, Art. 17.

private acts in public, for example the right to be different, to drink alcohol, to be homosexual, or to take part in events disapproved of by society.¹³⁸

102. A component of the right to family life is the right to marry and found a family, and the right to protection and assistance for the family.¹³⁹ A marriage can only be entered into with the full consent of the future spouses and both spouses should have equality of rights and responsibilities.¹⁴⁰ Discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody, maintenance or alimony, visiting rights or the loss or recovery of parental authority must be prohibited, bearing in mind the paramount interest of the children in this matter.¹⁴¹ The family, as the natural and fundamental group unit of society, has also a right to protection and assistance by society and the state, especially when they are still responsible for the care and education of dependent children.¹⁴² Although the meaning of “family” differs from state to state, as long as a group of persons are regarded as a family under the legislation and practice of a state, it must benefit from the protection offered by human rights law.¹⁴³
103. All persons have the right to be protected against arbitrary or unlawful interference with their privacy and family life, whether this interference comes from state authorities or individuals or companies.¹⁴⁴ Corruption can interfere with privacy and family life in a similar way as interfered with the right of self-determination. The right to privacy and family life can manifest itself in many ways, and can relate to a particular way of life, the maintenance of traditional beliefs and practices, and to cultural traditions associated with the use of land resources. For example, in one such case, the *Human Rights Committee* has held that the construction of a hotel at a fishing lagoon and on a traditional burial site of an indigenous community violated their right to privacy, family life and family protection.¹⁴⁵ If in this example the company constructing the hotel had obtained the lease on the fishing lagoon and traditional burial site by bribing a public official, then it could be held that corruption, in turn, violated the right to privacy, family life and family protection of the affected group of people.
104. This is only one of the aspects of the right to privacy and family life on which corruption can have a negative effect. Another would take place when the rights under consideration are affected through corruption in a family-related trial. At times, specific elements of the right to privacy and family life may be enforced through the administration of justice. Thus, when corruption is present in a judicial proceeding by bribing the judge to benefit one of the parties, such as in a divorce case or child custody case, such corrupt act not only violates the right to a fair trial, but also the right to privacy and family life.¹⁴⁶
105. Corruption in both examples has an essential role. Without the bribe the public official would not lease the territory to the company, and without the bribe the judge would give an impartial and independent ruling in a divorce or child custody case. Hence, as corruption constitutes an essential

¹³⁸ M. Nowak, *supra* note 80, p. 379.

¹³⁹ ICCPR, Art. 23 (2).

¹⁴⁰ ICCPR, Art. 23 (3) and (4). This equality extends to all matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets. HRC, *General Comment No. 19: Protection of the Family, the Right to Marriage and Equality of the Spouses, Article 23*, (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 149 (2003), para.8.

¹⁴¹ *Ibid.*, para.9.

¹⁴² ICCPR, Art. 23 (1), and ICESCR, Art. 10 (1).

¹⁴³ HRC, *General Comment No. 19, supra* note 140, para. 2.

¹⁴⁴ HRC, *General Comment No. 16: the Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, Article 17*, (Twenty-third session, 1988), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 142 (2003), para.1.

¹⁴⁵ HRC, *Hopu and Bessert v. France (Communication No. 549/1993)*, U.N. Doc. CCPR/C/60/D/549/1993/Rev.1. (1997).

¹⁴⁶ For a detailed analysis of this, see section on the Right to a Fair Trial.

element in the chain of events that lead to the violation it may be argued that the above constitute valid example of corruption violating the right to privacy and family life.

Rights of the Child

106. Children, as well as adults, possess civil, political, economic, social and cultural human rights. In many ways their rights are similar to the human rights of adults, such as the right to equality and non-discrimination, the right to life, the right to freedom of thought, conscience and religion, and the right to education. However, because of their special status as minors and because of their physical and mental immaturity, children need special protection, thus human rights that are specific to children have been identified.¹⁴⁷ These rights are numerous, such as the right to be registered, named and given a nationality upon birth, the right to not be separated from their parents, the right to engage in play and recreational activities, or the right to be protected from child labour.
107. Many of the rights of the child that are shared with adults, such as the right to life or the right to health, can be violated by corruption in the same way as they are violated with regards to adults, as analysed in this work. Yet, the right to education is particularly important to children, as they are the principal holders of that right. Thus, as explained in more detail in the section on the right to education, corruption in the education sector very often violates the right to education of children.
108. In addition, corruption can affect certain other rights which are specific to children. Three rights can be identified as particularly affected by corrupt practices: the right of the child to be protected in adoption procedures, the right of the child to be protected from trafficking and sexual exploitation, and the right to be protected from child labour.
109. Children possess the right to special protection in case of adoption, particularly in cases of intercountry adoptions. To this end, states must ensure that the adoption of a child is authorised only by a competent authority following legal procedures and taking into account the best interest of the child. Moreover, it is specifically required of states to take measures to ensure that the adoption does not result in improper financial gain for those involved in it.¹⁴⁸ Experience shows that in many cases of intercountry adoption, corruption is a necessary part of the procedure.¹⁴⁹ Sometimes, huge bribes are given to judges and orphanages to speed up the adoption process, or corrupt judges may, for example, accept false documents purporting to contain the consent of the birthparents.¹⁵⁰ Such corrupt practices reflect that, the right of the child to be protected in the adoption process is violated because the adoption results in a financial gain for the parties involved in the procedure, and because it does not follow legal procedures, and it does not take into account the best interest of the child. All this is in direct violation of Article 21 of the Convention on the Rights of the Child. Corruption in intercountry adoption can also violate other rights of the child, such as the right to identity. Every child has the right to preserve his identity, including nationality, name and family relations.¹⁵¹ The child's right to an identity implicitly includes the right to the truth

¹⁴⁷ See, Convention on the Rights of the Child, Adopted and Opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990; ICCPR, Art. 24, and ICESCR, Art. 10(3).

¹⁴⁸ Convention on the Rights of the Child, Art. 21(d).

¹⁴⁹ This was observed, for example, in Romania, Cambodia, and Russia. See, U.N. Econ. & Soc. Council, *Report Submitted by the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Juan Miguel Petit: Addendum: Mission To Romania*, U.N. Doc. E/CN.4/2005/78/Add.2, 26 January 2005, para. 21; Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child : Cambodia*, U.N. Doc. CRC/C/15/Add.128, 28 June 2000, para. 40; U.N. Econ. & Soc. Council, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Ms. Ofelia Calcetas-Santos: Addendum: Mission to the Russian Federation*, U.N. Doc. E/CN.4/2001/78/Add.2, 6 February 2001, para. 5.

¹⁵⁰ United Nations Children's Fund (UNICEF), *innocenti digest, Intercountry adoption*, December 1998, p. 6.

¹⁵¹ Convention on the Rights of the Child, Art. 8.

about his own history. In cases of corrupt intercountry adoptions, in order to cover the tracks of the illegal procedure, evidence of the children's family lineage, their ethnic roots, and their medical histories are forever lost, thus violating the right of the child to an identity. Corruption in intercountry adoptions facilitates the commercialisation of children with all the risks and abuses that this implies, likewise violating several basic human rights to which the child is entitled.

110. Corruption impairing the rights of the child is also present in cases of trafficking children, particularly for sexual exploitation. Children have to be protected from all forms of sexual exploitation and sexual abuse,¹⁵² and from abduction, sale, and trafficking.¹⁵³ Nonetheless, children are more often than expected victim of these crimes. In order to carry out the trafficking or sexual exploitation of children, criminals commonly partake in corruption, usually bribery. For instance, government officials need to be bribed so that the criminals are supplied with the necessary documents to cross borders, and law enforcement officials must be bribed so they turn a blind eye to these activities.¹⁵⁴ Even hotel owners or members of the judiciary are sometimes bribed by criminals trafficking and exploiting children.¹⁵⁵ In all these cases, when children are not protected by the state against such criminal practices, the rights of the child to be protected from all forms of sexual exploitation and sexual abuse, and from abduction, sale, and trafficking are violated. Bribery and corruption constitute an essential element in the chain of events that lead to and sustains these violations of the rights of the child.
111. A similar situation takes place concerning child labour. Children possess the right to be protected from economic exploitation and from performing any work that is harmful to their health and development.¹⁵⁶ Children under an age determined by law should not be allowed to work. In many countries, the enforcement of laws against child labour remains minimal because labour inspectors are bought through bribes by employers.¹⁵⁷ When a child is working in a factory and the labour inspector that is supposed to enforce the law and protect children chooses not to do so in exchange for a bribe from the employer, the state is failing to meet its obligation to protect the child. Consequently, the right of the child to be free from economic exploitation and labour are violated. Once again, corruption is essential to carry out the violation.
112. On a more general level, the *Committee on the Rights of the Child* has made a connection between corruption and its effect on the rights of the child.¹⁵⁸ The Committee has referred to the fact that corruption has a negative effect on the level of resources available for the implementation of the *Convention on the Rights of the Child*, and thus states cannot comply with their obligation to implement

¹⁵² Convention on the Rights of the Child, Art. 34.

¹⁵³ Convention on the Rights of the Child, Art. 35; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted and opened for signature, ratification and accession by General Assembly resolution, A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002.

¹⁵⁴ Different UN Special Rapporteurs have identified cases where corruption is present in trafficking and sexual exploitation cases. See, U.N. Econ. & Soc. Council, *Report submitted by the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Mr. Juan Miguel Petit: Addendum: Mission to Paraguay*, U.N. Doc. E/CN.4/2005/78/Add.1, 9 December 2004, para. 63-66; U.N. Econ. & Soc. Council, *Report submitted by the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Juan Miguel Petit: Addendum: Mission to Brazil*, U.N. Doc. E/CN.4/2004/9/Add.2, 3 February 2004, para. 58. See also, Committee on the Elimination of Discrimination against Women, *Observations finales du Comité - CEDAW : Ecuador*, U.N. Doc. A/58/38, 18 July 2003, para. 282-336.

¹⁵⁵ U.N. Econ. & Soc. Council, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Ms. Ofelia Calceas-Santos*, U.N. Doc. E/CN.4/2001/78, (25 January 2001), para. 94.

¹⁵⁶ Convention on the Rights of the Child, Art. 32.

¹⁵⁷ International Labour Office, *Child Labour: A Textbook for University Students*, 2004, p. 206. For a specific case, see for example the case of Pakistan, *Report for the WTO General Council Review of Trade Policies of Pakistan*, Geneva, 23 and 25 January 2002.

¹⁵⁸ Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Tajikistan*, U.N. Doc. CRC/C/15/Add.136, 23 October 2000, para. 5; Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Kenya*, U.N. Doc. CRC/C/15/Add.160, 7 November 2001, para. 9; Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Georgia*, U.N. Doc. CRC/C/15/Add.124, 28 June 2000, para. 18 and 19.

economic, social and cultural rights of children, to the maximum extent of available resources as provided under Article 4 of the Convention. Indeed, the embezzlement of funds by a public official at a ministerial level would result in less availability of economic resources to assign, for example, to sectors of law enforcement meant to protect children from human trafficking, sexual exploitation and labour. Consequently, due to a lack of resources, labour inspectors are underpaid, which might in turn provoke them to accept bribes from employers to ignore the exploitation of children. In this sense, corruption has a snowball effect on the violation of human rights in general and rights of the child in particular.

Right to Work and Right to Social Security

113. Every person has the right to earn his living by a freely chosen and accepted work.¹⁵⁹ This right should not be understood as a right to obtain employment, but as a right of access to employment opportunities.¹⁶⁰ An essential element of the right to work is that work must be freely chosen and accepted. In this sense, the right to work is complemented by the prohibition of slavery, servitude and forced and compulsory labour.¹⁶¹ While all these are comparable practices, they are, however, different. Slavery has been defined as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”¹⁶²
114. Servitude seems to be broader in scope and includes slavery-like practices such as debt bondage, human trafficking, and serfdom. Laws against both slavery and servitude constitute absolute prohibitions and do not accept exceptions or derogations. Such practices are also prohibited even in the event of voluntary participation on the part of the victim. On the other hand, forced or compulsory labour, which is inherently involuntary, is considered to be “all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntary.”¹⁶³ The right to not be subjected to forced or compulsory labour knows some limitations as the prohibition accepts some exception and derogations. Practices of compulsory labour are permissible in the following situations: hard labour as punishment for a crime, work in detention, military service, duties in cases of emergency, and civic obligations.¹⁶⁴
115. There are however, many cases of forced labour around the world and in several of those cases corruption is somehow involved. Corruption can be linked to the restriction of the right to work if a labour inspector is bribed by an employer so laws prohibiting forced labour are not enforced. As stated above, freely chosen work is an essential element of the right to work. Hence, in this example, corruption as a necessary tool to sustain forced labour also violates the right to work.
116. Furthermore, the right to work also entails access to decent work and the right not to be unfairly deprived of employment.¹⁶⁵ Experience shows that this last element of the right to work, the right not to be arbitrarily dismissed, can be infringed upon as a result of corruption. This has happened particularly concerning corruption within the private sector. Cases have been reported where managers of a private company embezzle assets up to the point of bankruptcy, ultimately leading to the dismissal of employees.¹⁶⁶ Violations can exist even before bankruptcy is reached, because if

¹⁵⁹ ICESCR, Art. 6(1).

¹⁶⁰ S. Marks and A. Clapham, *International Human Rights Lexicon*, Oxford, Oxford University Press, 2005, p. 436.

¹⁶¹ ICCPR, Art. 8. The prohibition of slavery, servitude and forced and compulsory labour also complements the right to be recognised as a person before the law in Art. 16 of the ICCPR.

¹⁶² Slavery Convention, entered into force on 9 March 1927, Art. 1(1).

¹⁶³ ILO Convention (No. 29) Concerning Forced Labour, Adopted on 28 June 1930 by the General Conference of the International Labour Organisation at its fourteenth session, entry into force 1 May 1932.

¹⁶⁴ ICCPR, Art. 8(3).

¹⁶⁵ CESCR, *General Comment No. 18: The Right to Work, Article 6*, U.N. Doc. E/C.12/GC/18, 6 February 2006, para. 6 and 7.

¹⁶⁶ For example, a notorious case in China of embezzlement and bribery in a state-owned enterprise led to a fraudulent bankruptcy. Subsequent protests by workers resulted in some workers' imprisonment as subversives. This case led to a

workers denounce the embezzlement of company assets they will often be dismissed.¹⁶⁷ In these two cases, corruption contributes to the restriction of the right to work by leading to an unfair deprivation of employment. Whether corruption can be considered a violation of the right to work has to be determined on a case by case basis. However, it may be argued that if the embezzlement of assets is an essential element that leads to the arbitrary dismissal of workers, then corruption can be considered as violating the right to work.

117. A further element of the right to work is that work must attain a certain standard of quality of just and favourable conditions, such as a fair wage sufficient for a decent living, healthy and safe conditions of work, and equal pay for equal work.¹⁶⁸ It is at this level that corruption is most prevalent in restricting the right to work. It has been reported that labour inspectors sometimes respond to bribery by employers, consequently turning a blind eye to restrictions to minimum wage, equal pay for equal work, and all other laws protecting just and favourable conditions of work.
118. An additional component of the right to work is the right to social security including social insurance.¹⁶⁹ Social security is defined as the protection society provides for its members through a series of public measures against economic and social distress that would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age, or death. Social security can be divided into different forms: medical care, sickness benefit, old-age benefits, employment injury benefits, family benefits, maternity benefits, invalidity benefits, and survivors' benefits.¹⁷⁰ Corruption can impair the right to social security mostly through embezzlement of funds allocated to social security. For instance, embezzlement of funds from a scheme destined to provide payment for victims of employment injury can result in reducing the amount paid to each victim. Similarly, embezzlement from a pension scheme will reduce the resources available for retired people and can result in payments that are not sufficient for living. This in turn may lead to restriction of other rights, such as the rights to an adequate standard of living. These cases merely exemplify the ways in which corruption may infringe certain forms of the right to social security. Evidently, a similar situation occurs if funds are embezzled from other schemes, such as the ones destined to maternity benefit, invalidity benefit, etc.
119. As is the case in all other human rights, the right to work imposes several obligations on states. The principal obligation of states is to take steps to maximize available resources towards progressively achieving the full realisation of the right to work and right to social security.¹⁷¹ As just described, when corruption is widespread and systemic in a country, resulting in widespread and systematic bribery of labour inspectors or generalised embezzlement of funds allocated to social security schemes, the state is not acting in accordance with its obligation and the rights are therefore violated.

complaint before the Freedom of Association Committee of the Governing Body of the ILO, *Case(s) No(s). 2189, Report No. 333 (China): Complaint against the Government of China presented by the International Confederation of Free Trade Unions (ICFTU) and the International Metalworkers' Federation (IMF)*. See, also, Human Rights Watch, *Paying the Price: Work Unrest in Northeast China*, Vol. 14, No. 6, C, August 2002, p. 16 and 17.

¹⁶⁷ For example, it has been reported that in Serbia and Montenegro workers reporting corruption and mismanagement were suspended from their job and received menaces. U.N. Econ. & Soc. Council, *Report submitted by the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Ambeyi Ligabo, Addendum: Mission to the State Union of Serbia and Montenegro*, U.N. Doc. E/CN.4/2005/64/Add.4, 8 February 2005, para. 62.

¹⁶⁸ ICESCR, Art. 7.

¹⁶⁹ ICESCR, Art. 9.

¹⁷⁰ ILO, Convention Concerning Minimum Standards of Social Security, Adopted on 28 June 1952, entered into force on 27 April 1955.

¹⁷¹ ICESCR, Art. 2(1).

120. In addition, states must guarantee that the right to work will be exercised without discrimination,¹⁷² and that they will respect, protect, and fulfil the right to work. The obligation to respect requires states to refrain from interfering with the enjoyment of the right. To this end, states must prohibit in law and in practice state interference with the right. As previously mentioned, it is common practice in many countries for labour inspectors responsible for uncovering, reporting on, and imposing sanctions for breaches of labour law to extort bribes from employers.¹⁷³ When labour inspectors, acting as public officials, accept bribes to overlook violations of workers rights, the state itself is not respecting the rights of those workers.
121. States also have to protect the rights of workers from interference from third parties. If workers are arbitrarily dismissed as a result of corrupt management, or are subjected to forced labour or unjust and unsafe conditions by employers, which in turn are protected by corrupt labour inspectors, the state is failing to protect the rights of those workers. Finally, the obligation to fulfil the right to work implies that states must adopt measures to ensure the full realisation of the right. Insufficient expenditure or misallocation of public funds, resulting in the non-enjoyment of the right to work, has been identified as a violation of the obligation to fulfil.¹⁷⁴ This is pertinent with regards to the embezzlement of funds destined to social security. When a retired worker is paid a pension that is not sufficient for a decent living because a corrupt official embezzled millions from the pension scheme (scheme to which the person made regular payments during all his working years), the state is not complying with its obligation to protect and fulfil the right to social security of this individual.
122. As just described, the right to work and the right to social security, as well as freedom from slavery, servitude and forced and compulsory labour, can be restricted by actions that are triggered by, or need the protection of, corrupt practices, mostly the acts of bribery and embezzlement. Because such practices are an essential contributing factor to the violation of the rights, it may be argued that in those cases corruption violates the right to work and the right to social security.

Right to Freedom of Association

123. The right to freedom of association, or right to peaceful assembly, makes reference to the right of all persons to gather peacefully, without arms, in a private or public place with the common intention to express an opinion, an idea or information to others.¹⁷⁵ Examples of associations can be political parties, non-governmental organisations, and professional or sporting clubs. The right protects institutionalised meetings and serves a democratic function in the process of forming, expressing and implementing political opinions.¹⁷⁶

¹⁷² ICESCR, Art. 2(2).

¹⁷³ See for example the following cases: ILO, Committee of Experts on the Application of Conventions and Recommendations, *Individual Observation concerning Convention No. 81, Labour Inspection, 1947 Brazil* (ratification: 1989) Published: 1999, para. 3 ; ILO, Committee of Experts on the Application of Conventions and Recommendations, *Individual Direct Request concerning Convention No. 81, Labour Inspection, 1947 Brazil* (ratification: 1989) Submitted: 2000, para. 2; ILO, Committee of Experts on the Application of Conventions and Recommendations, *Individual Observation concerning Convention No. 81, Labour Inspection, 1947 Costa Rica* (ratification: 1960) Published: 2004, para. 3; ILO, International Labour Conference Committee: *Examination of individual case concerning Convention No. 81, Labour Inspection Convention, 1947 Uganda* (ratification: 1963) Published: 2001, para. 4. See also, Report produced by Samuel Grumiau for the ICFTU (International Confederation of Free Trade Unions) with the assistance of the ITGLWF (International Textile, Garment and Leather Workers' Federation) and the support of the national trade union centres LO (Norway) and FNV (Netherlands), *Garments 'Made in Bangladesh' The Social Reality Behind the Label*, Dr. L. S. Sunga and Dr. I. Bottigliero, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, *In-Depth Study on the Linkages between Anti-Corruption and Human Rights for the United Nations Development Program*, Lund, Sweden, 15 January 2007, p. 30

¹⁷⁴ CESCR, General Comment 18, *supra* note 165, para. 36.

¹⁷⁵ ICCPR, Art. 21. This right does not cover religious or purely social meetings which are protected by Art. 18(1) and 17 of the ICCPR.

¹⁷⁶ M. Nowak, *supra* note 80, p. 481.

124. When attempting to connect corruption to this right, it becomes evident that although corrupt practices do take place in associations such as political parties, non-governmental organisations, and professional and sporting clubs, it is not so much the right to peaceful assembly as such which is affected, but other aspects related to the association. For example, it is agreed that different corrupt practices take place in many ways in the activities of political parties, such as concerning elections campaign, party financing, or party activities in Parliament.¹⁷⁷ Similarly, corruption in sports clubs, in the form of match fixing, is also a known activity. However, most corrupt practices of this type will affect and violate other human rights (in the case of political parties, for example, the right to political participation), but do not seem to specifically violate the right to peaceful assembly as such. In order for such a violation to occur, a corrupt practice must be aimed particularly at restricting the capacity of people to gather peacefully or form associations.
125. Alternatively, corruption can be directly connected to another aspect of the right to freedom of association. That is the right to join and form trade unions.¹⁷⁸ Everyone can form and join the trade union of his choice to protect his economic and social interests. Trade unions have the right to function freely and all persons have the right to strike provided that it is exercised in conformity with the law.¹⁷⁹ This right can be affected by corrupt practices mostly at the level of the accessibility to join the trade union and at the level of the functioning of the union. There are cases where workers have been bribed in order to withdraw from or not join a trade union.¹⁸⁰ This expressly interferes with the establishment, functioning, and administration of a trade union. The inherent purpose for the existence of trade unions is that people can freely join them and consolidate an important worker force. However, when people are bribed to withdraw from the union, the force and unity of the union as a whole is undermined, thus affecting the workers right to freedom of association. As a result, the state fails to protect trade unions from bribery by anti-union employers, or if it is the state itself that bribes workers and influences them not to join trade unions, there is a clear and direct violation through corrupt means of the right to join and form trade unions

Rights of Political Participation

126. The rights of political participation refer to the right of every citizen to be involved in the conduct of public affairs, in a direct manner or through chosen representation. People directly participate in the conduct of public affairs by exercising their right to vote or their right to be a candidate, at free and fair elections carried out on the basis of a universal and equal suffrage by secret ballot. A further component of the rights of political participation is the right to equal access to public service, which means that access to positions in public service should be based on an objective and reasonable process.¹⁸¹
127. With regards to the right to vote, the state has the duty to ensure that individuals eligible to vote can exercise this right freely. Persons entitled to vote must be free to vote for any candidate without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.¹⁸² States must

¹⁷⁷ See for example, V. Blechinger, *Corruption and Political Parties*, Sectoral Perspectives on Corruption, November 2002.

¹⁷⁸ ICCPR, Art. 22, and ICESCR, Art. 8(1).

¹⁷⁹ ICESCR, Art. 8 (1)(c) and (d).

¹⁸⁰ See, ILO, *Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 1996, para. 760; *324th Report of the Committee on the Freedom of Association*, Governing Body, 280th Session, Geneva, March 2001, GB.280/9, Case No. 2090, para. 209; *330th Report of the Committee on the Freedom of Association*, Governing Body, 286th Session, Geneva, March 2003, GB.286/11, Case No. 2090, para. 232, and Case No. 2203, para. 810; and *337th Report of the Committee on the Freedom of Association*, Governing Body, 293 rd Session, Geneva, June 2005, GB.293/7, Case No. 2388, para. 1354.

¹⁸¹ HRC, *General Comment No. 25, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, Article 25*, (Fifty-seventh session, 1996), U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996), para.23.

¹⁸² *Ibid.*, para. 19.

protect voters from any form of coercion or compulsion and from any unlawful or arbitrary interference with the voting process.¹⁸³ It is fairly straightforward to determine that the bribing of voters in order to persuade them to vote or refrain from voting constitutes an interference with the integrity of an election and therefore, a violation of the right to vote. The same can be said about the bribing of election officials to encourage them to interfere with the electoral process by stuffing ballot boxes in favour of a particular candidate or party and falsifying the count. States must take effective measures to ensure that all persons entitled to vote are able to exercise their right. The *Human Rights Committee* has stated that any abusive interference with registration or voting, including intimidation or coercion of voters, should be prohibited by penal laws that must be strictly enforced.¹⁸⁴ However, many times it is the state itself which bribes voters and election officials to favour a particular candidate loyal to the ruling power.¹⁸⁵

128. In addition, it is important to take into account that such corrupt acts as vote buying and bribery of election officials to encourage them to interfere with the electoral process do not only violate the right of voters, but also the right of candidates to stand for election. Restrictions on such a right must be justified by objective and reasonable criteria and candidates should not be excluded by unreasonable or discriminatory requirements.¹⁸⁶ If citizens are bribed to vote for one particular candidate, the right of the other candidates to stand for election in a fair and free process is clearly being impaired.
129. Moreover, a potential candidate can see his right to stand for election restricted by other corrupt means, for example if the pertinent Electoral Commission incurs in trading in influence or is bribed by an opponent and the candidate is therefore not permitted to register. An example from the recent presidential elections in Nigeria can illustrate this idea. The Nigerian Independent National Electoral Commission (INEC) disqualified numerous candidates during the nomination period. Of particular relevance is the case of former Vice-President Atiku Abubakar, who stood against the ruling party. Despite a Federal High Court Abuja judgment that ordered INEC to include Atiku Abubakar's on the list of candidates, INEC refused to comply until a Supreme Court ruling. *A priori*, this does not show any corrupt intention, however it is interesting to highlight that at the federal level all INEC Commissioners are appointed by the President after consultations with the Council of State and confirmation by the Senate, and at the state level, all 37 Resident Electoral Commissioners are appointed directly by the President.¹⁸⁷ Although at first sight this example does not necessarily constitute a case of abuse of functions, it serves the purpose of demonstrating that the right to stand for election can be restricted by a wide range of practices. There is trading in influence when electoral commissioners abuse their influence with a view to obtaining an undue advantage, which can be monetary or not, from a person who will benefit from such influence. Such corrupt practice will violate the right to stand for election.
130. Corrupt practices can also negatively affect another component of the rights of political participation: the right to equal access to public service. Access to positions in public service should be based on an objective and reasonable process. However, experience shows that many times the way to have access to work in the public or civil service is through corrupt avenues. It is important to distinguish between the different means used to obtain a job in public administration. Certain practices, such as nepotism or political favouritism, although ethically questionable, do not

¹⁸³ *Ibid.*, para. 20.

¹⁸⁴ *Ibid.*, para. 11.

¹⁸⁵ See, for example, corrupt practices related to the recent presidential election in Nigeria. National Democratic Institute, *Statement of the National Democratic Institute (NDI) International Election Observer Delegation to Nigeria's April 21 Presidential and National Assembly Elections*, 23 April 2007, available at, www.Accessdemocracy.Org/Library/2151_Ng_Election_Statement_042307.Pdf; Human Rights Watch, *Nigeria: Polls Marred By Violence, Fraud*, 17 April 2007, available at, <http://hrw.org/english/docs/2007/04/16/nigeri15708.htm>; European Union Election Observation Mission: Federal Republic of Nigeria, *Statement of Preliminary Findings and Conclusions: Elections Fail to Meet Hopes and Expectations of the Nigerian People and Fall Short of Basic International Standards*, 23 April 2007.

¹⁸⁶ *Ibid.*, para.15.

¹⁸⁷ *Ibid.*

constitute an illegal act in many countries. Hence, even though it may be argued that nepotism goes against the right to equal access to public service, in general it does not constitute a corrupt practice in legal terms. Consequently, those acts are not analysed in this work.

131. Nonetheless, there are cases where people have resorted to traditional corrupt acts, specifically bribery, to obtain employment in the public service.¹⁸⁸ When a person obtains employment in public administration because he bribed the person in charge of hiring personnel, such an act violates all the elements of the right to equal access to public service. No distinctions are permitted between citizens in the enjoyment of this right on any ground. Any distinction should be on the basis of objective and reasonable criteria, which bribery is not. Additionally, this right, as is the case with any other right, must be exercised on a basis of equality and non-discrimination.¹⁸⁹ When a person is refused employment in the public service because he is not willing to partake in bribery, this person sees their right to equal access to public service and their right to equality and non-discrimination violated by corruption.
132. All the examples presented in this section violate the right of citizens to take part in the conduct of public affairs, directly or through chosen representation. By definition, corruption goes against a free and fair electoral process and a merit based appointment to public service. Most importantly, bribery, abuse of functions, or trading in influence in an election process infringe upon the free expression of the will of the electorate, and as such, violate the rights of all citizens, be they voters or candidates.

Rights of Minorities

133. Every person that belongs to an ethnic, religious or linguistic minority has the right, in community with members of their group, to enjoy their own culture, to profess and practise their own religion, and to use their own language.¹⁹⁰ These rights are specific for minorities and thus are distinct, but additional, to other rights of the ICCPR.¹⁹¹ Persons designed to be protected by these rights are those who belong to a group and who share a common culture, religion or language.¹⁹² Minorities entitled to these rights do not need to be permanent residents of the state concerned. Migrant workers and visitors in a state are also entitled to these rights.¹⁹³
134. Corrupt practices can mostly be linked to two of these rights: the right to culture and the right to religion of minorities. In the latter case, an analogy can be made with corrupt practices that violate the general right to freedom of thought, conscience, religion, and belief. As it was stated before, the right to choose and join one's religion is not exercised in complete freedom when leaders of a certain religion bribe people in order to attract them and enlarge the list of followers of that religion. This also applies to the right to religion of minorities. Similarly, if a religion needs to be registered and approved by the state and public officials ask for bribes in order to register the religion of a minority, the right of the minority to profess and practise its own religion is violated through this corrupt practice. In these examples, the state fails to meet its obligation to respect and ensure the right to religion of minorities.

¹⁸⁸ For example, recently it has been reported that in Bolivia people seeking jobs in public administration had to get the signatures of specific MAS (Movimiento al Socialismo) officials (the ruling party) and then pay between US \$300-1000 in order to receive a position. People from all sections of public administration have reportedly received jobs in this manner. Committee for a Workers' International, Daniel Johnson, CWI-Cochabamba, Bolivia, *High-Ranking MAS Officials Guilty of Corruption: Workers Movement Must Fight for Genuine Accountability and Socialist Democracy*, 3 April 2007.

¹⁸⁹ ICCPR, Art. 2(1).

¹⁹⁰ ICCPR, Art. 27.

¹⁹¹ HRC, *General Comment No. 23: Rights of Minorities, Article 27*, (Fiftieth session, 1994), U.N. Doc. CCPR/C/21/Rev.1/Add.5 (1994), para.1.

¹⁹² *Ibid.*, para. 5.1.

¹⁹³ *Ibid.*, para.5.2.

135. Experience shows that corruption can also negatively affect the right of minorities to enjoy a particular culture. The right to culture of minorities has been interpreted in broad and flexible terms. It embraces the maintenance of traditional beliefs and practices, but also includes social and economic activities that are part of the minority's tradition.¹⁹⁴ Culture may manifest itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples.¹⁹⁵ When a corrupt practice restricts the availability and accessibility to land resources necessary for a minority group to enjoy their culture, it may result in the violation of their right to culture. This can take place for example when in exchange for a bribe a public official leases to a company a portion of territory in which persons belonging to a minority have always exercised their traditional beliefs and practices, and the activities of the company affect the free exercise of the minority groups' traditional beliefs and practices.¹⁹⁶
136. States are under an obligation to ensure that the existence and the exercise of the rights of minorities are protected against denial or violation by state or private actors. Positive measures of protection are therefore required. The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole.¹⁹⁷

Right to Food

137. The right to food, also referred to as the right of everyone to be free from hunger is a component of the more general right to an adequate standard of living.¹⁹⁸ The right to adequate food guarantees all people the ability to feed themselves. It is widely defined as physical and economic access, at all times, to adequate food and means for its procurement. The core of the right to food implies the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.¹⁹⁹
138. However, the right to food does not imply that states must provide free food for everyone.²⁰⁰ States have to take steps to progressively achieve the full realisation of the right, and to provide access to food in an equal and non-discriminatory way. The right to food also imposes on states three specific obligations: the obligation to respect existing access to adequate food, the obligation to protect the right by preventing third parties, such as corporations, from interfering in any way with the enjoyment of the right, and the obligation to fulfil the right by adopting the necessary measures to achieve its full realisation.²⁰¹
139. Corruption can seriously undermine the realisation of the right to food.²⁰² The U.N. *Special Rapporteur on the Right to Food* identified corruption as one of the seven major economic obstacles

¹⁹⁴ S. Joseph, J. Schultz, and M. Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*, Oxford, Oxford University Press, 2004, p. 769.

¹⁹⁵ HRC, *General Comment No. 23*, *supra* note 191, para. 7. See also, *Lubicon Lake Band v. Canada*, *supra* note 52, para. 33. A particular way of life associated with the use of land resources has also been interpreted as essential to the right to self-determination and the rights to privacy and family life. See in this work sections on those rights. Although, minority rights should not be confused with the right of self-determination. Self-determination refers to peoples, whereas rights of minorities are for individuals. HRC, *General Comment No. 23*, *supra* note 191, para. 3.1 and 3.2.

¹⁹⁶ This example is far from merely being theoretical. There is evidence for example that in Papua New Guinea and the Solomon Islands government officials engaged in corrupt relations with the timber industry to the detriment of the traditional communities. See, P. Larmour, *supra* note 54, p. 6-8; S. Rose-Ackerman, *supra* note 54, p. 33.

¹⁹⁷ HRC, *General Comment No. 23*, *supra* note 191, para. 9.

¹⁹⁸ ICESCR, Art. 11(2).

¹⁹⁹ CESCR, *General Comment No. 12: The Right to Adequate Food, Article 11*, U.N. Doc. E/C.12/1999/5, 12 May 1999, para.8.

²⁰⁰ U.N. Econ. & Soc. Council, *Third Report of the Special Rapporteur on the Right to Food, Jean Ziegler*, U.N. Doc. E/CN.4/2003/54, 10 January 2003, para. 18.

²⁰¹ CESCR, *General Comment No. 12*, *supra* note 199, para. 15.

²⁰² U.N. Econ. & Soc. Council, *Report Special Rapporteur on the Right to Food*, *supra* note 200, para. 27.

that hinder or prevent the realisation of the right.²⁰³ In 1996, the Declaration of the World Food Summit expressly mentioned corruption as one of the causes of food insecurity. As it is commonly held with regards to other economic, social and cultural rights, corruption diverts essential resources away from social spending and thus affects, in either a direct or indirect way, the realisation of the right to food. Certain specific corrupt practices common around the world are known to negatively affect particular elements of the right to food.

140. An essential element of the right to adequate food is availability. This refers to the possibilities either to feed oneself directly from productive land or other natural resources, or for well functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.²⁰⁴ Hence, corrupt practices generally related to the possession and use of land and natural resources can restrict the availability of food and violate the right. For example, when in order to obtain a license for possession and use of land a person needs to bribe the public authority in charge of allocating land licenses, the availability of food is seriously impaired to that person.²⁰⁵ Similarly, the right is violated if, through bribery, a person is allocated agricultural land of better quality or larger area. In addition, the granting of licenses for land use dependent on bribery provides availability of food in an unequal and discriminative way.
141. Corruption may also affect other elements of the right to food. Through corrupt practices, dietary needs and food safety, two essential elements of the right to food, can be compromised to a level that the right is violated. Food must satisfy dietary needs which consist of an adequate mix of nutrients, calories and proteins necessary for physical and mental health and growth.²⁰⁶ In addition, food must be free from adverse substances. This means that the government must set and enforce health and safety standards for food quality.²⁰⁷ Particular acts of corruption are known to have taken place where a food producer obtains a food production license by bribing the relevant food safety agency. This can result in unsafe food supply for a considerable amount of people.²⁰⁸ Hence, when bribery at the level of food regulation opens the door for tainted food to be placed in the market for general consumption, the food safety and dietary needs recognised in the right to food are not respected. In this case, corruption may not only be blamed for violating the right to food, but also possibly violating the right to health and right to life.
142. Other incidences of corruption such as the abuse of functions or embezzlement may also affect the food safety and dietary needs recognised in the right to food. When a public official misappropriates part of a subsidy scheme or other funds allocated for a food programme to instead purchase low-cost and substandard quality food, the dietary needs and food safety of that programme or scheme will be affected, possibly resulting in the violation of the right to food of the beneficiaries of the food scheme.²⁰⁹

²⁰³ U.N. Econ. & Soc. Council, *Report by the Special Rapporteur on the Right to Food, Jean Ziegler*, Submitted in Accordance with Commission on Human Rights Resolution 2000/10, U.N. Doc. E/CN.4/2001/53, 7 February 2001, para. 69.

²⁰⁴ CESCR, *General Comment No. 12*, *supra* note 199, para. 12.

²⁰⁵ For similar cases in Mongolia, see, U.N. Econ. & Soc. Council, *The Right To Food: Report of the Special Rapporteur, Jean Ziegler, Addendum: Mission To Mongolia*, U.N. Doc. E/CN.4/2005/47/Add.2, 8 March 2005, para. 26.

²⁰⁶ CESCR, *General Comment No. 12*, *supra* note 199, para. 9.

²⁰⁷ *Ibid.*, para. 10.

²⁰⁸ For example, the recent case in China where it was revealed that the former head of China's Food and Drug Administration had accepted bribes in exchange for approving food and drug production licenses. International Herald Tribune, *China Sentences Former Drug Regulator to Death*, 29 May 2007.

²⁰⁹ For example, in 2002, as a part of its support and subsidy scheme to poor farmers the Government of Bangladesh apparently procured from local farmers 100,000 metric tones of wheat at a cost of approximately US\$ 15 million (Bangladeshi Taka 1 billion). However, it was later alleged that this procurement was not from local Bangladeshi farmers as was required. Instead, it was alleged that the funds were largely misappropriated and low-cost, poultry grade feed was imported from India, but disguised as wheat from Bangladesh. In places where this wheat, which was unfit for human consumption, was later distributed, it is alleged that major health problems resulted. U.N. Econ. & Soc. Council, *The Right to Food: Report of the Special Rapporteur, Jean Ziegler, Addendum: Mission To Bangladesh*, U.N. Doc. E/CN.4/2004/10/Add.1, 29 October 2003, para. 43.

143. Another important element of the right to adequate food is accessibility, which may also be restricted by corruption. Food must be both economically affordable and physically accessible. A specific aspect of the element of accessibility is that socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes.²¹⁰ Corruption restricts accessibility to food mainly by undermining such programmes. In practice, corruption has been present in many such food programmes and schemes designed to alleviate food necessities of socially vulnerable people. This is because programmes and schemes designed to give everyone access to food often have large budgets, thus creating opportunities and incentives for corruption. When a person in the programme embezzles funds which were destined to buy and distribute food, or when he embezzles the food itself, and diverts the food into the black market for personal profit, this practice will result in socially vulnerable people without direct access to their food ration.²¹¹ The right to adequate food of these people is clearly violated by corruption.
144. In all the examples given in this section, states fail to meet their obligations arising from the right to adequate food. The U.N. *Special Rapporteur on the Right to Food* has stated that combating corruption forms part of a state's obligation to respect, protect, and fulfil the right to adequate food.²¹²

Right to Water

145. The human right to water is based on the understanding that safe water is needed to prevent death from dehydration, to reduce risk of water-related diseases and for use by consumption, cooking, and personal and domestic hygiene. Hence, water facilities and services have to be physically and economically accessible to everyone without discrimination.²¹³ It is argued that much of the lack of access to clean water and the increasing water pollution, are not caused by the lack of natural supply of water or by an engineering problem but by corruption.²¹⁴ A recent report on corruption in the water sector holds that corruption affects the governance of water by affecting who gets what water when, where and how.²¹⁵ Indeed, if a person's access to water is restricted through corrupt means, then corruption might be blamed for violating that person's right to water. For example, bribes are paid by companies to state water regulators to allow for excessive abstraction from rivers and groundwater reservoirs, which can ultimately result in the denial of water access to neighbouring communities.²¹⁶
146. Moreover, an additional element of the right to water is that water must be adequate for human dignity, life and health. Although the adequacy of water may vary according to different conditions, in all circumstances the water supply must be continuous and sufficient for personal and domestic uses, and must be of a good quality for a person's health. In fact, research shows that corruption can have a detrimental effect on the quality of water. As an example, if a company bribes a public

²¹⁰ CESCR, *General Comment No. 12*, *supra* note 199, para. 13.

²¹¹ For example, in India, the Public Food Distribution Scheme aimed at preventing famine was seriously undermined by corruption. It is estimated that approximately 36 per cent of the food grains distributed were diverted onto the black market. See, U.N. Econ. & Soc. Council, *The Right to Food: Report of The Special Rapporteur on the Right to Food, Jean Ziegler, Addendum: Mission to India*, U.N. Doc. E/CN.4/2006/44/Add.2, 20 March 2006, para. 32. For more cases in India, see www.righttofoodindia.org.

²¹² U.N. Econ. & Soc. Council, *Special Rapporteur on the Right to Food*, *supra* note 203, para. 28.

²¹³ CESCR, *General Comment No. 15: The Right to Water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2002/11, 20 January 2003, para. 12.

²¹⁴ P. Stålgren, *Corruption in the Water Sector: Causes, Consequences and Potential Reform*, Swedish Water House Policy Brief No. 4, SIWI, 2006, p. 3. See also, World Water Assessment Programme, *Water, a Shared Responsibility: The United Nations World Water Development Report 2 (WWDR 2)*, pag. 9.

²¹⁵ *Ibid.*

²¹⁶ A multinational company was accused of sucking drinking-water wells dry and its waste was said to pollute groundwater. Allegedly, the company got away with those acts for years by bribing the local authorities. M. Worth, Water Integrity Network, *Corruption Allegations Leave Bitter Taste in India's Coke*, 22 May 2007.

inspector to cover up the discharge of waste into water resources, the quality of the water will suffer.²¹⁷ Consequently, people utilising that water for personal consumption will see their right to water of a good quality infringed upon.

147. The right to water imposes on states several obligations. States have to take deliberate, concrete, targeted steps towards the full realisation of the right to water,²¹⁸ and must guarantee that the right is enjoyed without discrimination.²¹⁹ Moreover, as with regards to other human rights, states also have specific obligations to respect, protect and fulfil the right to water. The obligation to respect requires that states refrain from interfering directly or indirectly with the enjoyment of the right, like refraining from engaging in practices or activities that deny or limit equal access to water.²²⁰ However, corruption in the water sector should be linked more to the state obligations to protect and fulfil the right. The obligation to protect requires states to prevent third parties from interfering in any way with the enjoyment of the right to water.²²¹ The *Committee on Economic, Social and Cultural Rights* has identified the failure of the state to effectively regulate and control water services providers as violations of this obligation.²²² When companies get away with excessive abstraction from rivers and groundwater reservoirs through corrupt means such as bribery, thus resulting in the denial of water access to neighbouring communities, the state is not complying with its obligation to protect the right to water. The same is true when companies discharge waste in water resources, adversely affecting the quality of the water. In such cases, corruption is clearly and directly in connection to a violation of the right to water.
148. Furthermore, states possess the obligation to fulfil the right to water, requiring them to take positive measures to assist individuals and communities in enjoying the right, to ensure that there is appropriate education concerning the use of water, and to provide access to the right when people are unable to realise the right themselves.²²³ As violations of this obligation, the CESCR has identified failure of the state to take measures to reduce the inequitable distribution of water facilities and services, as well as the insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to water by individuals or groups, particularly the vulnerable or marginalised.²²⁴ The embezzlement of funds from the water sector takes away monetary resources which could be used to improve the water system. Another corrupt practice that siphons off scarce resources is the commonly occurring falsified meter reading. In many countries, people bribe inspectors to falsify meter readings in order to reduce the payment of the water service.²²⁵ This corrupt act multiplied by thousands, can result in less income for the water sector and less investment aimed at providing more access to water. This example shows how the state fails to fulfil but also to protect the right to water. However, in all the examples given where water accessibility and adequacy was restricted through corrupt means, the state concerned also fails to comply with its obligation to take steps to the maximum of its available resources to progressively achieve the full realisation of the right to water.

Right to Adequate Housing

149. The right to adequate housing, a component of the right to an adequate standard of living,²²⁶ is concerned with the measures required to ensure that everyone has housing which is safe, healthy and adequate. In addition, the right aims at eliminating discrimination in the field of housing, and at

²¹⁷ P. Stålgren, *supra* note 214, p. 3.

²¹⁸ ICESCR, Art. 2(1).

²¹⁹ ICESCR, Art. 2(2).

²²⁰ CESCR, *General Comment No. 15*, *supra* note 213, para. 21.

²²¹ *Ibid.*, para. 23.

²²² *Ibid.*, para. 44.

²²³ *Ibid.*, para. 25.

²²⁴ *Ibid.*, para. 44.

²²⁵ P. Stålgren, *supra* note 214, p. 8.

²²⁶ ICESCR, Art. 11(1).

prohibiting forced or arbitrary evictions or acts of unjust dispossession.²²⁷ The right to adequate housing does not entail that the government has to build housing for the entire population or that housing must be provided free of charge to whomever requests it.²²⁸ It is a right of *access*. What constitutes adequate is dependent on social, economic, climatic, ecological, and other factors, however, there are certain minimum elements which form part of the right and should always be taken into account.²²⁹ Corruption may violate this right by restricting one or more of its elements.

150. All persons should possess a degree of legal security of tenure which guarantees protection against forced eviction, harassment and threats. This can be seriously undermined by corrupt means, when corruption is at the origin of the evictions. This happens if a company is interested in a piece of land to build a new commercial enterprise but the land is occupied by an urban poor area. In such a case the company may resort to bribing a key official in order to be awarded a lease over the land. This, in turn, may result in the forced eviction of the inhabitants of the area. The bribes can also be given directly to relevant people in the urban area instead than bribing a public official. There are other cases in which village leaders were bribed into signing blank contracts with the local land administration, who then sold the land to developers, eventually leading to the eviction of the entire village.²³⁰ In this and other ways, corruption can impair the security of tenure of the right to adequate housing.
151. Adequate housing also entails that houses must contain facilities essential for health, security, comfort, and nutrition, such as heating, safe drinking water, lighting, sanitation and washing facilities. Moreover, housing must be habitable in terms of space and protection from cold, rain, threats to health and structural hazards. Corruption in procurement can also affect this aspect of the right to housing. Embezzlement of funds in a programme destined to build housing units, or bribery in the selection of contractors, may result in construction of substandard quality.
152. In addition, adequate housing requires that the location of the housing units allows access to employment, health-care services, schools, and other social facilities. Housing policies should also enable the expression of cultural identity, and the cost of housing should be affordable and commensurate with income levels. Accessibility, a further element of the right to housing, can also be clearly affected by corruption. Housing should be accessible to all, and disadvantaged groups in particular should be accorded some degree of priority consideration in the housing sphere. In many countries when housing programmes are implemented, the easiest way to obtain a house is by bribing the relevant person. In other occasions, people are promised alternative housing after being evicted. But access to such alternative housing is often dependent upon bribing the person in charge of housing distribution. Sometimes, well-intentioned housing subsidised programmes designed for disadvantaged groups are hijacked by administrators of the programme who require bribes in order to allocate low-cost housing units.
153. Another corrupt act that affects accessibility to the right to adequate housing is the abuse of functions. In many countries, it is the provincial or regional government who owns the majority of land. Many times informal settlements are built on those lands. This gives the power of eviction to provincial or regional administration officials who might abuse it. Cases have been known to exist where the public official requires a bribe in order to grant permission to build on that land.²³¹ In this way, corruption can clearly and directly restrict the access to housing.

²²⁷ S. Marks and A. Clapham, *supra* note 160, p. 212-213.

²²⁸ U.N. Econ. & Soc. Council, *The Right to Adequate Housing: Final Report Submitted by Mr. Rajindar Sachar, Special Rapporteur*, UN Doc. E/CN.4/Sub.2/1995/12, 12 July 1995.

²²⁹ CESCR, *General Comment No. 4: The Right to Adequate Housing, Article 11(1) of the Covenant*, U.N. Doc. E/1992/23, 13 December 1991, para. 8.

²³⁰ In 2005, 7000 farmers were evicted from 670 hectares of land by way of bribing village leaders in the Guangdong province in China. Centre on Housing Rights and Evictions (hereinafter "COHRE"), *Forced Evictions: Violations of Human Rights*, 2006, p. 69.

²³¹ See, COHRE, *Listening to the Poor?: Housing Rights in Nairobi*, COHRE Fact Finding Mission to Nairobi, Kenya, Final Report, June 2006, p. 85-86.

154. As it is the case with all other human rights, states have certain obligations concerning the right to housing. States must take steps to achieve the progressive realisation of the right and must guarantee that the right is exercised without discrimination. It is the issue of discrimination the most relevant concerning corruption of the right to housing. As stated before in this work, corrupt practices commonly produce an unequal and discriminatory enjoyment of human rights. When corruption restricts the access to adequate housing, discrimination is taking place. A person that is denied access to housing because he is not willing to pay the necessary bribe sees his right to housing violated.
155. As is the case with other human rights, states are also obligated to respect, protect and fulfil the right to adequate housing. The obligation to respect requires states to refrain from interfering with the enjoyment of the right. However, in cases where people are evicted as a consequence of a corrupt practice, or when people must endure substandard and dangerous housing because corruption leads to selecting the less qualified contractor during the procurement process, states are clearly interfering in the enjoyment of the right to housing of those people, and thus not complying with their obligation to respect the right.
156. States need also to fulfil the right to adequate housing, thus they should adopt measures to achieve the full realisation of the right. When funds that could be used for fulfilling the right to adequate housing, for example by building more subsidised housing units, are instead embezzled by corrupt officials, there is a clear non-compliance with the obligation to fulfil the right. The same should be said when access to housing is dependent on bribing the relevant official. Moreover, when the bribe is requested by a non-governmental official, such as by an intermediate agent in the allocation of housing units, the state is also failing to comply with its obligation to protect the right.
157. All the corruption cases presented above, evidence the ways in which a corrupt act may constitute the essential reason for the state not to comply with its obligations. And this results in corruption violating the right to housing.

Right to Health

158. The right to health, also known by its more technical name, the right to the highest attainable standard of physical and mental health,²³² is defined as the “right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realisation of the highest attainable standard of health.”²³³ While this right does have a broad scope, it does not entail the right to *be* healthy. Not only does it include health care, but also the underlying determinants of health, such as safe drinking water, adequate sanitation, adequate supply of safe food, nutrition, housing, occupational health, environmental health, and access to health-related information.²³⁴ Another core component of the right has been identified, which the state must guarantee under all circumstances regardless of its available resources: access to maternal and child health care, including family planning, immunisation against the major infectious diseases, appropriate treatment of common diseases and injuries, essential drugs, adequate supply of safe water and basic sanitation, and freedom from serious environmental health threats.²³⁵
159. Corruption in the health sector can take many forms, such as bribery of regulators and medical professionals, manipulation of information on drug trials, the diversion of medicines and supplies, and corruption in procurement.²³⁶ Of the many ways that corruption can take place in the health

²³² ICESCR, Art. 12.

²³³ CESCR, *General Comment No. 14*, *supra* note 38, para. 9.

²³⁴ *Ibid.*, para. 11.

²³⁵ B. Toebes, *The Right to Health as a Human Right in International Law*, Antwerpen, Intersentia, 1999, p. 284.

²³⁶ Transparency International, *Global Corruption Report 2006*, p. xvii.

sector, probably the most noticeable is corruption in hospitals. Money escapes from hospitals through opaque procurement of equipment and supplies, ghost employees, absenteeism, exaggerated construction costs, inflated hospital price tags, and requiring patients to pay bribes for treatment that should be without charge.²³⁷ The U.N. *World Health Organisation* has stated: “Corruption occurs at different stages of the chain and may take on different forms ranging from bribery of government officials to register medicines without the required information and deliberate delays by officials to solicit bribes, to favouritism rather than professional merit in selecting members of registration committees and thefts and embezzlement in the distribution chain, including in health care facilities.”²³⁸

160. In general terms, corruption in the health sector can be structured in three levels: corrupt practices taking place at the level of financial resources management, at the level of management of medical supplies, or at the level of the health worker and patient relationship.
161. The rationale behind claiming that corruption is a violation of the human right to health usually stems from the general notion that money lost to corruption could be used to buy medicines, equip hospitals or hire medical staff.²³⁹ Corruption is also said to affect the right to health in an indirect way, reducing government spending on health as money goes to large-scale projects where the corrupt misuse of funds is easier to hide and presents more opportunities for corruption and personal gain.²⁴⁰ However, such claims do not clearly show the direct link between corruption and human rights. There are numerous corruption cases in the health sector that, depending on the specificities of each case, may or may not constitute a violation of the right to health. In order to determine when corrupt practices may constitute a violation of the right to health it is useful to follow the guidelines identified by the *Committee on Economic, Social and Cultural Rights* that constitute the framework of the right: availability, accessibility, and quality of health.²⁴¹
162. Functioning public health and health-care facilities, goods, services, and programmes have to be available in sufficient quantity within the state. Although the precise nature of these facilities will vary, they must include the underlying determinants of health, such as safe and potable drinking water, adequate sanitation facilities, hospitals, clinics, professional personnel receiving domestically competitive salaries, and essential drugs.²⁴² Many corruption cases in the health sector restrict this aspect of the right to health. For example, corruption in the procurement of medicines affects the availability of drugs.²⁴³
163. Health facilities, as well as goods and services must be accessible to everyone without discrimination. Accessibility not only entails physical accessibility but also economic.²⁴⁴ The

²³⁷ Transparency International, *supra* note 236, p. 48. A World Bank research project on absenteeism determined that 35% of health workers were absent from their facilities in certain regions of Bangladesh, Ecuador, India, Indonesia, Peru, and Uganda. See, N. Chaudhury, J. S. Hammer, M. Kremer et al., “Missing in Action: Teacher and Health Worker Absence in Developing Countries,” *Journal of Economic Perspectives* 20, 1 (Winter 2006); J.S. Hammer, N. Chaudhury, “Ghost Doctors: Absenteeism in Bangladeshi Health Facilities,” *World Bank Economic Review* Vol. 18, p. 423-441.

²³⁸ J. Clare Cohen, “Pharmaceuticals and Corruption: a Risk Assessment,” in Transparency International, *Global Corruption Report 2006*, p. 84 (citing www.pharmabiz.com, 18 March 2005). The World Health Organisation has recently set up a group of anti-corruption and medicines experts to promote greater transparency in regulation and procurement. To this end, legislative reform on laws against corruption will be stimulated in order to strengthen regulatory authorities and procurement practices.

²³⁹ Transparency International, *supra* note 236, p. xvi.

²⁴⁰ P. Mauro, “Corruption and the Compositions of Government Expenditure,” *Journal of Public Economics*, Vol. 69, No. 2, p. 265.

²⁴¹ A less relevant element concerning corruption is acceptability of health (all health facilities, goods and services must be respectful of medical ethics and culturally appropriate). CESCR, *General Comment No. 14*, *supra* note 38, para. 12.

²⁴² *Ibid.*, para. 12.

²⁴³ It has been estimated that as much as 25 percent of procured medicines can be lost to fraud, bribery, and other corrupt practices. This represents approximately US\$ 12.5 billion. United Nations News Service, *UN health agency launches initiative to fight corruption in medicines procurement*, 30 October 2006.

²⁴⁴ CESCR, *General Comment No. 14*, *supra* note 38, para. 12.

Committee on Economic, Social and Cultural Rights has emphasised that equality of access to health care and health services is of the utmost importance.²⁴⁵ This is key to the issue of corruption. Corruption in the health sector, as is the case with many other human rights, also usually violates the right to equality and non-discrimination. A common corrupt practice in hospitals is the payment of bribes or so-called “informal payments,”²⁴⁶ where patients are forced to offer bribes at hospitals in order to be treated, x-rayed, allocated a bed in the ward or operated upon.²⁴⁷ The *U.N. Special Rapporteur on the Right to Health* has stated that the accessibility to health care is hindered by corruption, particularly by the request of informal payments.²⁴⁸ Research has found evidence that corruption in the form of informal payments for care reduces access to services, especially for the poor, and causes delays in care-seeking behaviour.²⁴⁹ Studies have shown that in certain regions about 35% of births in rural areas take place at home, in part because of high charges for care in facilities where care was supposed to be free.²⁵⁰

164. The aforementioned examples show that when bribes are requested from patients, their access to health is severely restricted. This clearly goes against the requirement of accessibility. When a person seeking health service is asked for a bribe in order to receive treatment, the right to health of that patient is violated, as the request for a bribe restricts his access to health and places him in a position of inequality before other patients.
165. Health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, *inter alia*, skilled medical personnel, as well as scientifically approved and unexpired drugs and hospital equipment.²⁵¹ Corrupt practices in the health sector directly go against the requirement of quality. An often-used example is the case of a Minister of Health who, contrary to his obligation, corruptly purchases expired drugs and when an epidemic breaks out, a whole community is affected.²⁵² In this example, not only is the right to health clearly infringed upon, but also the right to life. Even if the expired drugs purchased corruptly by the Minister of Health are never utilised, they constitute a threat to an individual or group of individuals, thus clearly going against the state’s obligation to ensure the realisation of the right to health, expressly stipulated under both Articles 2(1) and 12 of the ICESCR. Health quality, and particularly drug’s quality, can be seriously affected by corrupt practices.²⁵³
166. In the health sector, most corruption cases affect several elements of the right to health. This is particularly true in the case of embezzlement of public funds by public officials. As an example,

²⁴⁵ *Ibid.*, para. 19 and para. 43.

²⁴⁶ A survey carried out by Transparency International Morocco revealed that of those who had been in contact with members of the public health service, 40 percent admitted to making an illicit payment for a service or supply that was supposed to be free of charge. See, A. Akesbi, S. Benchekroun, and K. El Mesbahi, Transparency International Morocco, “Informal Payment Take a Toll on Moroccan Patients,” in Transparency International, *supra* note 236, p. 75. Similar cases have also been reported in Bangladesh, and Uganda. See, Zaman, A. Abdul, “Corruption in the Public Health Service in Bangladesh,” in Transparency International, *supra* note 236, p. 343-345; and U.N. Econ. & Soc. Council, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Paul Hunt, Addendum: Mission to Uganda*, U.N. Doc. E/CN.4/2006/48/Add. 2, 19 January 2006, para. 21.

²⁴⁷ Warioba Report, *supra* note 27, p. 4.

²⁴⁸ U.N. Econ. & Soc. Council, *The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Report of the Special Rapporteur, Paul Hunt, Addendum: Mission to Mozambique*, U.N. Doc. E/CN.4/2005/51/Add. 2, 4 January 2005, para. 41; U.N. Econ. & Soc. Council, *Report Submitted by the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Paul Hunt, Addendum: Mission to Romania*, U.N. Doc. E/CN.4/2005/51/Add. 4, 21 February 2005, para. 36.

²⁴⁹ M. Lewis, *Who Is Paying for Health Care in Eastern Europe and Central Asia?* Human Development Sector Unit, Europe and Central Asia Region. Washington, DC, World Bank, 2000.

²⁵⁰ World Bank, *Azerbaijan Health Sector Note*, (Volumes I and II). Washington, DC: World Bank, 2005.

²⁵¹ CESCR, *General Comment No. 14*, *supra* note 38, para. 12.

²⁵² N. Jayawickrama, *supra* note 54, p. 5.

²⁵³ In China, for example, an estimated 192,000 people died in 2005 because of counterfeit drugs. See, J. Clare Cohen, “Pharmaceuticals and Corruption: a Risk Assessment,” in Transparency International, *Global Corruption Report 2006*, p. 84 (citing www.pharmabiz.com, 18 March 2005).

part of the health budget can “disappear” before it is paid out by the Ministry of Finance to the Ministry of Health.²⁵⁴ More money is then siphoned off as funds are channelled from the national government to provincial governors and eventually to directors or managers of local hospitals.²⁵⁵ As resources are drained from health budgets through embezzlement and procurement fraud, less funding is available to pay salaries and fund operations and maintenance, leading to demotivated staff, lower quality of care, and reduced service availability and use.²⁵⁶ In other words, corrupt acts have the potential of interfering simultaneously with the availability, accessibility, and quality of the right to health.

167. An additional way of analysing the ways in which corrupt practices may violate the right to health is by referring to the states’ obligation with regards to this right. These obligations are varied. States have the immediate obligation to guarantee that the right will be exercised without discrimination.²⁵⁷ In this context, there is an interesting link between bribes paid to health workers and the accessibility and quality requirements of the health services. A study on corruption shows that among the people that admitted to having paid bribes to obtain healthcare, 23% stated that they were forced to pay because they could not get the health service without paying, while 73% admitted to having paid bribes to either get a better treatment or to save time.²⁵⁸ Hence, if a bribe was required as a response to extortion from a health worker or to have access to a minimum standard of quality, there is direct violation of the right to health.
168. Somehow different is the case of payments meant to be a token of gratitude or given to have access to higher levels of quality of health services. In this case, the elements of access and quality of care received by the patient are sufficient. But, there is discrimination in the provision of health services with regards to the rest of the patients. The right to equality and non-discrimination applies in the enjoyment of all other human rights, including the right to health. Hence, even if the bribe or informal payment has no effect on the availability, accessibility, or quality of health, such corrupt act still constitutes a violation of the right to health. As previously stated, corruption has as a necessary consequence the discrimination of the people that do not participate in the corrupt act. Hence, in general terms, it can be held that in most corruption cases in the health sector discrimination is taking place.
169. States also are under the general obligation to take steps towards the full realisation of the right to health.²⁵⁹ However, when corruption in the health sector is widespread and systematic, the state does not seem to be taking steps in the right direction. The *UN Special Rapporteur on the Right to Health* has specifically referred to this and held that when a state does not reach its goals in order to progressively achieve the realisation of the right to health due to corruption in the health sector, then the state has failed to comply with its obligations concerning the right to health.²⁶⁰ A specific example of one aspect of the right to health may help clarifying this point. As stated above, states have to guarantee the accessibility to maternal and child health care. However, a study carried out by the International Monetary Fund (IMF) using data from 71 countries shows that countries with

²⁵⁴ For example, it is stated that in Cambodia it is known that between 5 and 10 percent of the health budget “disappears” before it is paid out by the Ministry of Finance to the Ministry of Health. See, L. Prevenslik-Takeda, “Corruption in Cambodia’s Health Sector,” in Transparency International, *supra note* 236, p. 23.

²⁵⁵ *Ibid.*, p. 23.

²⁵⁶ See, www.u4.no

²⁵⁷ ICESCR, Art. 2(2).

²⁵⁸ See, <http://www.livemint.com/2007/05/02221904/Corruption-Catalogue-governme.html> Also, for example, a survey in Bangalore, India, showed that 17% of households that participated in the initiative (report cards) claimed to have paid bribes in hospitals. The purpose of the bribes was mostly, to ensure good and proper treatment, to pay for doctor's or other hospital staff services, to have the patient cleaned and looked after, as a response to extortion from doctors, or simply as token of gratitude. See, K. Gopakumar, Transparency International Working Paper, *Citizen Feedback Surveys to Highlight Corruption in Public Services: The Experience of Public Affairs Centre*, Bangalore, 1998.

²⁵⁹ ICESCR, Art. 2(1).

²⁶⁰ U.N. Econ. & Soc. Council, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, Paul Hunt, U.N. Doc. E/CN.4/2006/48, 3 March 2006, para. 40.

high indices of systematic corruption have higher rates of infant mortality.²⁶¹ Thus, corruption goes directly against what is provided under Article 12 (2)(a) of the ICESCR, whereby in order to achieve the full realisation of the right to health, states must take steps to reduce infant mortality.

170. As with other rights, states also have specific obligations to respect, protect, and fulfil the right to health. The obligation to respect requires states to refrain from interfering directly or indirectly with the enjoyment of the right to health. As violations of the obligation to respect the right to health, The *Committee on Economic, Social and Cultural Rights* has identified the denial of access to health facilities, and the denial of goods and services to particular individuals or groups as a result of *de jure* or *de facto* discrimination.²⁶² Thus, when a person is asked for a bribe to access to health service, there is a clear *de facto* discrimination and the state is not complying with its obligation to respect a person's enjoyment of the right to health.
171. The obligation to protect requires states to take measures that prevent third parties from interfering with the right to health. To this end, states should adopt legislation or policies ensuring equal access to health care and health-related services provided by third parties, should control the marketing of medical equipment and medicines by third parties, and should ensure that medical practitioners and other health professionals meet appropriate standards of education, skill and ethical codes of conduct.²⁶³ As violations of the obligation to protect, the *Committee on Economic, Social and Cultural Rights* has identified the omission or failure to regulate the activities of individuals, groups, or corporations, and the failure to protect consumers and workers from practices detrimental to health.²⁶⁴ This is the most important obligation upon states concerning corruption in the health sector. When the state fails to regulate the activities in the health sector, and doctors ask for bribes, funds are stolen, medicine goes missing and a person is affected by such corrupt practices, then the state is not complying with its obligation to protect. In this context, corrupt practices in the pharmaceutical industry are particularly relevant. Unethical drug promotion and physician conflict of interest can have negative effects on health outcomes, as well. Promotional activities and other interactions between pharmaceutical companies and physicians, if not tightly regulated, can influence physicians to engage in unethical and corrupt practices.²⁶⁵ Studies have shown that these interactions can lead to non-rational prescribing²⁶⁶ and increased costs with little or no additional health benefit. If states do not protect the right to health in their jurisdictions against these kinds of abuses, they violate their duty to protect the right.
172. The obligation to fulfil requires states to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realisation of the right to health. As violations of the obligation to fulfil, the *Committee on Economic, Social and Cultural Rights* has identified the insufficient expenditure or misallocation of public resources resulting in the non-enjoyment of the right to health by individuals or groups.²⁶⁷ Recent surveys carried out by the World Bank in a series of developing countries to compare budget allocations to actual spending at the facility level have confirmed that resources are not allocated according to underlying budget decision.²⁶⁸ When

²⁶¹ S. Gupta, H.R. Davoodi, E. Tiongson, *Corruption and the Provision of Health Care and Education Services*, Governance, Corruption and Economic Performance, Washington, D.C., International Monetary Fund, 2002. IMF Working Paper 00/116, Appendix Table 9 p.27

²⁶² CESCR, *General Comment No. 14*, *supra* note 38, para. 50.

²⁶³ *Ibid.*, para. 35.

²⁶⁴ *Ibid.*, para. 51.

²⁶⁵ J. Kassirer, "The Corrupting Influence of Money in Medicine," in Transparency International *supra* note 236. See also, J. Kassirer, *On the Take: How Medicine's Complicity with Big Business Can Endanger Your Health*, New York, Oxford University Press, 2005.

²⁶⁶ A. Wazana, "Physicians and the Pharmaceutical Industry: Is a Gift Ever Just a Gift?," in *Journal of the American Medical Association*, Vol. 283, 2000, p. 373-380.

²⁶⁷ *Ibid.*, para. 52.

²⁶⁸ For example, in Uganda and Tanzania, local or district councils have diverted large parts of the funds disbursed by central government to other uses as well as for private gains, with leakages affecting up to 41 % of the allocated resources. In Ghana, only 20 % of non-wage public health expenditures actually reached the service delivery points, with a large proportion of the leakage occurring between line ministries and district levels. See, www.u4.no.

funds destined to provide health service are embezzled and thus resulting in less availability, accessibility, and quality of health services, the state might be held to be violating its duty to fulfil the right to health.

173. There are numerous direct ways by which corruption can violate the right to health. The most prevalent acts of corruption violating the right to health are bribery in hospitals and embezzlement of funds and assets destined to health services. Most of those practices affect the availability, accessibility, and quality of health services. As described in this section, when the state does not come to prevent and combat such practices, corruption thus leads to a clear and direct violation of the right to health.

Right to Education

174. The right to education is guaranteed in several international instruments, most notably Articles 13 and 14 of the ICESCR. In general terms, this right has two main dimensions: a social dimension and a freedom dimension.²⁶⁹ The social dimension refers to the right to receive an education directed towards the aims and objectives identified in Article 13(1) of the ICESCR. The right to receive an education requires states to make various forms of education (primary, secondary, higher, and fundamental) available and easily accessible to all. While primary education must be free and compulsory, secondary and higher education are made generally available and accessible through the progressive introduction of free education.
175. Corruption is also highly present in the education sector. In most countries, the education sector is one of the largest components of the public sector. It consumes between 20% and 30% of the total budget, employs the highest proportion of educated human resources, and concerns between 20% and 25% of the population.²⁷⁰ This creates opportunities and incentives for corruption which occur in numerous forms and at all levels. Rigged bids for tender, embezzlement of funds, illegal registration fees, absenteeism, and fraud in examinations are some of the forms that corruption can take in the education sector.²⁷¹ Corruption in the education sector can be classified on the basis of different criteria, for example according to the level of occurrence (at the Ministry of Education level, at the region-district, at school level, or at classroom level); according to the level of education (primary, secondary, higher); according to actors involved or according to the nature of the exchange.²⁷² It can also be classified into corruption in services and academic corruption. The latter refers to issues such as the creation of paper or diploma mills, whereby a person can buy a fake diploma directly from the world wide web.²⁷³
176. Corruption in the education sector has already been linked to the human right to education. For example, the *African Commission on Human and Peoples' Rights* held that the arbitrary closure of universities and secondary schools for two years, accompanied by non-payment of teachers' salaries because of widespread corruption, which prevented students from attending school and teachers from providing education to the students, violated the right to education under the African

²⁶⁹ M. Sepulveda, T. van Banning, G. Gudmundsdottir, et al., *Human Rights Reference Handbook*, Ciudad Colon, University for Peace, 2004, p. 291.

²⁷⁰ J. Hallak and M. Poisson, UNESCO, International Institute for Education, *Corrupt Schools, Corrupt Universities: What Can Be Done?* Paris, International Institute for Education Planning, 2007.

²⁷¹ These and more examples of corruption in the education sector can be found at the International Institute for Educational Planning (IIEP), International Programme on "Ethics and Corruption in Education," available at <http://www.unesco.org/iiep/eng/focus/etico/etico1.html> (last visited 29 June 2007). See also, U4, Ulstein Anti-Corruption Resource Centre, Theme: Corruption in the Education Sector, at www.u4.no. A World Bank research project on absenteeism determined that 19% of teachers were absent from their facilities in certain regions of Bangladesh, Ecuador, India, Indonesia, Peru, and Uganda. J. Hallak and M. Poisson, *supra* note 271.

²⁷² *Ibid.*

²⁷³ *Ibid.*, p. 57-58

Charter.²⁷⁴ This shows a rather general and indirect link between corruption and the right to education. In order to determine when corrupt practices may constitute a direct violation of the right to education, it is of use to follow the right's features of availability, accessibility, acceptability, and adaptability. Education in all its forms and at all levels should contain those features.²⁷⁵

177. Education institutions and programmes must be available in sufficient quantity.²⁷⁶ Availability also means that educational institutions and programmes must be equipped with what they require to function, such as buildings, sanitation facilities, safe drinking water, trained teachers receiving competitive salaries, and teaching materials.²⁷⁷ Several different corrupt practices in the education sector have a negative effect on the availability of education. Most notably, the embezzlement of funds originally allocated to provide education takes away needed resources to equip educational institutions.²⁷⁸ When funds are stolen it is the children, who suffer the largest consequences, having to make do with poor quality educational equipment. Moreover, the lack of resources also results in lower salaries for teachers, which is part of the reason why they incur into regular absenteeism or corrupt practices, such as asking for bribes. Thus, the embezzlement of funds also indirectly creates more opportunities for corruption.
178. The second feature of the right to education is accessibility, by which education should be accessible to everyone without discrimination. Accessibility not only refers to physical access but also to economic access.²⁷⁹ In this context, education must be affordable to all and completely free at the primary level. Corrupt practices in the education sector, particularly at the school and classroom levels, can restrict or completely obstruct access to education. First, as previously stated, corruption entails discrimination. Thus, when children are requested to make informal payments, their access to education is not based on standards of equality but on ability to pay a bribe, which amounts to discrimination and corruption. Secondly, many corrupt practices affect the accessibility to education. When the admission to class is only granted after paying a bribe, or when parents are asked to pay for private tuition in which the teacher teaches their child the essentials of the curriculum after official school hours, or when parents have to pay if they want their child's exercise books to be corrected, only people possessing sufficient economic resources and willing to incur in corruption have access to education. Most importantly, all corrupt practices that entail the disbursement of money at primary education contravene the fact that this must be free. Evidently, the majority of corrupt practices in the education sector, particularly at the school and classroom levels, restrict the accessibility to education.
179. Further features of the right to education are acceptability and adaptability. The form and substance of education should be acceptable to students and parents with regards to the relevance, cultural appropriateness and quality; and should also be flexible to adapt to the need of changing societies.²⁸⁰ Corruption in the education sector has an impact on the standards of quality of education, thus affecting the element of acceptability of the right to education. Corruption in procurement affects the acquisition of educational material, meals, buildings, and equipment, usually resulting in poor quality products. Recruitment of personnel may also be tainted by corruption. Bribes in recruitment procedures may result in unqualified teachers being appointed. Hence, corruption in the education sector also produces substandard education.

²⁷⁴ K. Singh, "Education: International Obligations and Regional Legal Normative Action in Africa," *African Yearbook of International Law*, Vol. 12, 2004, p. 456.

²⁷⁵ CESCR, *General Comment No. 13*, *supra* note 38, para 6; U.N. Econ. & Soc. Council, *Preliminary Report of the Special Rapporteur on the Right to Education, Katarina Tomaševski*, U.N. Doc. E/CN.4/1999/49, 13 January 1999, and subsequent reports.

²⁷⁶ CESCR, *General Comment No. 13*, *supra* note 38, para 6

²⁷⁷ *Ibid.*

²⁷⁸ For example, an audit carried out in Uganda showed that only 13% of funds allocated for non-salary items like textbooks and supplies reached the schools. D. Chapman, *supra* note 28.

²⁷⁹ CESCR, *General Comment No. 13*, *supra* note 38, para. 6

²⁸⁰ *Ibid.*

180. The right to education also has a freedom dimension. This concerns the right to academic freedom and institutional autonomy and it implies the personal freedom of individuals or their parents or guardians to choose educational institutions meeting their educational, religious, and moral convictions.²⁸¹ This also implies the freedom of individuals to establish and direct their own educational institutions.²⁸² This dimension of the right to education can also be hindered by corruption. For example, parents are required to pay bribes in order to transfer a child from one school to another or simply to keep their child in school.²⁸³ When parents need economic resources in order to bribe the school they would prefer for their children, or when parents simply do not want to partake in corrupt practices, they are not free to choose the education institutions for their children as required by the right to education.
181. As evidenced, corruption in the education sector affects the right to education in many ways. In order to determine when such corrupt practices constitute a violation of the right, it is useful to briefly refer to the obligations upon states concerning the right to education.
182. States have several obligations with regards to the right to education. Pursuant to article 2(2) of the ICESCR, states possess the immediate and general obligation of guaranteeing the right to education without discrimination of any kind irrespective of constraints upon resources. When corruption restricts the access to education, discrimination is clearly taking place. In addition, even when the minimum levels of availability, accessibility, acceptability, and adaptability of education are provided, corruption may violate the right to education in other ways. If corruption is used as a tool for unfair advantage or advancement by a student instead of a means of extortion by a teacher, the right to education is still affected. This happens for example, in cases where a student bribes a teacher to obtain a higher grade. In such a case, the right to receive education is being realised in a discriminative way. In this context, the state is violating the right to education and the right to equality and non-discrimination.
183. As provided in article 2(1) of the ICESCR, states also have the general obligation to take steps to progressively achieve the full realisation of the right to education. When corruption in the education sector is widespread and systematic, the state does not seem to be taking steps in the right direction. But most importantly, the right to education, like all human rights, imposes on states three specific obligations: the obligations to respect, protect, and fulfil. The obligation to respect requires states to avoid measures that hinder or prevent the enjoyment of the right to education. States must prevent denial of access to education both in law and practice. Direct or indirect costs, such as compulsory levies on parents (sometimes portrayed as voluntary, when in fact they are not) constitute disincentives to the enjoyment of the right to education.²⁸⁴ The *Committee on Economic, Social and Cultural Rights* has identified that the failure to take measures that address *de facto* educational discrimination constitutes a violation of the right to education.²⁸⁵ Thus, when a person is asked for a bribe in order to access their education, there is a clear *de facto* discrimination and the state is not complying with its obligation to respect the enjoyment of that person's right to education.
184. The obligation to protect requires states to take measures that prevent third parties from interfering with the enjoyment of the right to education. To this end, states must combat discrimination in access to education and must maintain an acceptable educational standard of quality. Most of the examples under this section are of cases where third parties interfere in the enjoyment of the right

²⁸¹ ICESCR, Art. 13(3).

²⁸² ICESCR, Art. 13(4).

²⁸³ U.N. Econ. & Soc. Council, *The Right to Education: Report Submitted by Katarina Tomasevski, Special Rapporteur, in Accordance with Commission Resolution 2002/23: Addendum: Mission to Indonesia*, 1-7 July 2002, U.N. Doc. E/CN.4/2003/9/Add.1, 4 November 2002, para. 9.

²⁸⁴ CESCR, *General Comment No. 11: Plans of Action for Primary Education, Article 14*, U.N. Doc. E/C.12/1999/4, 10 May 1999, para. 7.

²⁸⁵ CESCR, *General Comment No. 13, supra* note 38, para. 59.

to education, particularly with regards to access to and quality of education. When this takes places, states are not complying with their obligation to protect the enjoyment of this right.

185. The obligation to fulfil requires states to take positive measures that enable and assist individuals and communities to enjoy the right to education.²⁸⁶ States must work towards free education and must make education facilities and teaching materials available to their citizens. When embezzlement of funds destined to education result in lack of education facilities and teaching materials, the state is clearly not complying with its obligation to fulfil.
186. As seen in this section, corruption can violate the human right to education. However, because of the unique role of education in our society, corruption in the education sector may represent much more than the loss of public funds. The highest cost of corruption is the loss of trust necessary to the development of communities, if the young come to believe that school admission, marks and personal success comes not through merit and hard work, but through favouritism, bribery, and fraud.²⁸⁷

The Impact of Corruption on the Rights of Vulnerable Groups

187. The present work has been commissioned to identify the ways in which corruption disproportionately affects the human rights of vulnerable groups, such as women, children, migrant workers, disabled persons, and AIDS victims. For empirical research on the impact of corruption on human rights with special emphasis on gender, see the paper commissioned by the ICHRP to Namawu Alhassan Aolo “Corruption, Human Rights and Gender: Voices of the People.”
188. In theory, corruption should affect the human rights of everyone equally. In this respect, there should be no correlation between the effects of corruption and the fact that the victim of the corrupt act may or may not belong to a specific vulnerable group. In most cases, the person partaking in corruption only guards individual interest in mind, usually to obtain a preference that will benefit them in some way, most often in monetary terms. Nevertheless, in practice, there are indicators that corruption may have more of a tendency to negatively affect the human rights of people that belong to a specific vulnerable group.
189. Vulnerable groups can see their rights violated by corrupt practices when the person partaking in corruption wants to exploit their vulnerability and social stigma to his advantage. For instance, due to social stigma, it is unlikely that a person belonging to a vulnerable group will publicly challenge the corrupt behaviour of a public official. Thus, vulnerable groups are easy prey for people partaking in extortion.²⁸⁸ For example, a survey carried out by the ILO in the construction industry of a particular country showed how corrupt officials take advantage and perpetuate the vulnerable position of irregular migrant workers.²⁸⁹ All respondents claimed that they had been repeatedly under pressure from law enforcement agencies. A worker without a residence permit always faces the threat of deportation, which has led to the emergence of a criminal business that blackmails and harasses these workers in order to extort money. In addition, companies offer temporary permits that are usually forged, making these migrants easy prey for corrupt law enforcement officers. For violating residency regulations, police require migrants to hand over their passport, which can then only be retrieved for a fee. Failing this, the passport is handed over to the intermediary, who then

²⁸⁶ *Ibid.*, para. 47.

²⁸⁷ See, D. Chapman, *supra* note 28, p. 7.

²⁸⁸ C. Nyamu-Musembil, “Gender and corruption in the administration of Justice,” in Transparency International, *supra* note 105, p. 123.

²⁸⁹ ILO, *A Global Alliance against Forced Labour: Report of the Director General*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005, International Labour Conference, 93rd Session 2005, Report I (B), p. 49, para. 232.

forces the worker to pay for its return. Visibly, corruption can magnify and exacerbate existing human rights problems of vulnerable groups.

190. Furthermore, vulnerable groups may see their rights disproportionately affected when people intentionally discriminate against them through corrupt means. In the above case, the person partaking in corruption is mostly concerned with obtaining an advantage by exploiting the weakness of a person from a vulnerable group, but does not have an ultimate motive to further discriminate against them. In this case, however, corruption is specifically used as tool to further abuse people and discriminate against them. For example, people belonging to a vulnerable group may be asked to pay bribes precisely because they are part of a vulnerable group. There are reports that corruption impacts the Roma population more severely. According to these reports, Roma, when compared to other people, are disproportionately asked to pay bribes in order to have access to health and education.²⁹⁰
191. Those who partake in corruption systematically attempt to protect themselves by maintaining the *status quo*. Persons in a position of power that are benefiting from corrupt practices will attempt by all means, including further corruption, to protect themselves and maintain their position of power. As a consequence, people that are not in a position of power, such as members of vulnerable groups, are further oppressed to prevent any change in social class and power relations. In a nutshell, corruption reinforces the exclusion of vulnerable groups.

CONCLUDING REMARKS

192. The underlying purpose of this work is to forge closer ties between the anti-corruption and human rights communities. To this end, this paper merges the two fields of study to identify and analyse when a corrupt act is in itself a violation of human rights, as well as when it has an indirect link to a violation. The most common occurring corrupt acts were described in the first part of this paper and the way that corrupt practices impact specific human rights was analysed in the second part. This exercise revealed important considerations with regards to the links between corruption and human rights.
193. Certain corrupt practices are only in an indirect manner linked to a violation of human rights. These acts lead to a human rights violation, but the violation itself is due to the actions triggered by corruption rather than the corrupt act. Corruption in these cases is a factor fuelling human rights violations and can only be distantly linked to the infringement upon human rights.
194. Other corrupt practices may constitute a violation of human rights in and of themselves. As evidenced through several examples, corruption is clearly and directly in connection to a violation of human rights when the corrupt act is expressly used as a means to violate the right, or when the corrupt practice is an essential factor in the chain of events that eventually violates the human right. It has been shown that all human rights are susceptible to being violated through corrupt means, although it has been evidenced that some rights are more prone to be affected by corruption than others. For different reasons, rights such as the right to a fair trial, to an effective remedy, to education, and the rights of political participation are more prone to direct violation by acts of corruption. This is not necessarily the case for other rights, such as the right to privacy and family life or the right to freedom of thought, conscience, religion, and belief.
195. After studying the connections between specific corrupt practices and human rights, one right needs to be highlighted: the right to equality and non-discrimination. As described in the analysis of most human rights, corruption by definition constitutes a means of escaping equal treatment and

²⁹⁰ U.N. Econ. & Soc. Council, *Report Submitted by the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Juan Miguel Petit: Addendum, Mission to Albania*, U.N. Doc. E/CN.4/2006/67/Add.2, 27 March 2006, para. 47.

having access to preferential treatment. Thus, most corrupt practices result in the violation of this fundamental right of international human rights law.

196. Linking corruption and human rights serves mostly to add a new perspective to those working for human rights and those fighting against corruption. To study and understand these links is particularly interesting for those engaged in anti-corruption activities as it will open the door to existing human rights machinery (*inter alia*, international human rights courts, U.N. complaints mechanisms, national human rights institutions, etc.) on which to base further action against corruption. However, a deeper understanding of the links between corruption and human rights is also an immediate matter of concern for the human rights field due to the fact that corruption can violate human rights and ultimately has the potential of undermining all human rights efforts.
197. As this work has revealed, a variety of corrupt practices violate human rights, hence, it can be argued that states have an obligation to combat corruption as part and parcel of their obligations to uphold human rights. The main obligations for states arising from human rights are to respect, protect, and fulfil those rights. Moreover, with regards to economic, social and cultural rights, states also have to take steps to the maximum of their available resources to progressively achieve the full realisation of those rights. As was continually shown in this paper through the analysis of each human right, states fail to meet human rights obligations when a corrupt act takes place, that is why states are obliged to take all necessary actions to prevent, investigate, and punish corrupt practices that violate human rights.

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