

**THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY**

Corruption and Human Rights

**CORRUPTION AS A VIOLATION OF HUMAN RIGHTS**

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## **PURPOSE OF THIS WORK**

1. In recent years, scholars have begun to examine the links between corruption and human rights. This has 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. It 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 that threatens the social fabric. A social approach to corruption places emphasis on the individuals that suffer its consequences. As a result, it has become evident that corruption has an undeniable connection with individuals and their inherent human rights.
2. Corruption may have a widespread and long-term impact on human rights. However, this work concentrates solely on one specific impact: when corruption violates human rights. The present paper aims at describing the underlying conceptual framework when establishing corruption as a violation of human rights. To that end, several examples of corrupt practices that violate human rights will be given in order to illustrate the notion of corruption as a human rights violation. The aim is to provide a “model analysis” that can be used to determine if other corruption cases also constitute a violation of human rights.
3. As evidenced in the next section, understanding corruption as a violation of human rights serves mostly to add a new perspective to those working for human rights and those fighting against corruption.

## **THE RELEVANCE OF LINKING CORRUPTION AND HUMAN RIGHTS**

### **Human rights provide additional fora and mechanisms to fight corruption**

4. A clear understanding of the impact of corruption on human rights will open the door to existing human rights machinery on which to base further action against corruption. Identifying certain corrupt practices as human rights violations might result in discussing the problem of corruption at human rights fora which would add further channels of communication and new players to the combat against corruption. Additionally, certain typical human rights mechanisms (international human rights courts, U.N. complaints mechanisms, or national human rights institutions) might prove useful to also remedy corrupt practices that violate human rights.

### **Social empowerment and public pressure**

5. If corruption is perceived as a violation of human rights it will raise awareness among people of the consequences of corruption on individual interests and how detrimental a minor corrupt practice may be for victims and the population generally. This might engage large sectors of the citizenry into strong supporters in fighting corruption. Moreover, if certain everyday corrupt practices are seen as a violation of human rights it will empower victims of corruption to look for venues for redress.

### **A human rights approach may circumvent legalistic difficulties**

6. Corrupt practices that may not necessarily be illegal and thus cannot be counterattacked through law enforcement can be combated through the human rights machinery. For instance, in many judicial systems nepotism or political favouritism are not considered corruption in strict legal terms, i.e. it is not prohibited by the law. However, such practice may result in a violation of the rights of political participation and right to equal access to public service. In these cases human rights constitute a way out from strict legal rules. If a corrupt practice does not satisfy legal requirements it may still result in a human rights violation and if it is regarded, understood and explained in terms of a human rights violation such practice may be overruled.

### **To fight corruption constitutes a state human rights obligation**

7. If corruption in many circumstances violates human rights it is hence required from states to fight corruption in order to ensure to everyone the enjoyment of those rights.

### **Corruption is a human rights issue**

8. Corruption is not foreign to the human rights movement as it has the potential of undermining the enjoyment and full realisation of human rights. Promotion and protection of human rights needs to have an anti-corruption aspect.

## WHAT IS UNDERSTOOD BY “CORRUPTION”?

9. 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 contractor 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,” or when a public employee claims to be sick but goes on vacation.
10. Such differing ideas about what constitutes corrupt practices have resulted in different definitions of corruption. Today, probably the most used definition is the one adopted by the non-governmental organization *Transparency International*: “corruption is the abuse of entrusted power for private gain.”
11. It is important to note that corruption can also take place solely within the private sector. 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.
12. 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.<sup>1</sup> Undoubtedly, corruption is relevant to the relationship between transnational corporations and human rights. In this context, the notion of Corporate Social Responsibility is increasingly taking into account the problem of corruption. For example, the CSR initiative of the United Nations, the Global Compact, contains an Anti-Corruption Principle: “Business should work against corruption in all its forms, including extortion and bribery.” 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.
13. 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. Experience has shown that privatisations are prone to corruption, thus any definition of corruption should include the private sector.
14. Hence, in general corruption is understood as the abuse of entrusted power both in the private and public sectors for private gain. Yet, in this work, a much more specific definition is needed. Only by specifying the wide definition of corruption can one expect to analyse when and how different corrupt practices entail a violation of human rights. Hence, it is necessary to have recourse to a legal definition of corruption.
15. 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,

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<sup>1</sup> 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.

which is the 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.

16. 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.
17. 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.”

### **Corrupt acts**

18. There is no one single comprehensive list of acts that is universally accepted as constituting corruption. National laws vary on which criminal acts are considered corrupt acts. However, on the basis of the latest and broadest international anti-corruption convention, namely the United Nations Convention against Corruption (UNCAC), 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*

19. 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.
20. 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 takes place 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 international business. 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.

#### *Embezzlement*

21. 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. The embezzlement of property can also occur in the private sector in the course of economic, financial or commercial activities.

### *Trading in influence*

22. 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. For some it is irrelevant whether or not the influence is ultimately exerted and whether or not it leads to the intended result. 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*

23. 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.

### *Illicit enrichment*

24. 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. 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 proof. 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.”

## **THE IMPACT OF CORRUPTION ON HUMAN RIGHTS**

25. There is agreement that the consequences of corrupt practices are widespread and negative for our society. Evidently, corruption has the potential of undermining the enjoyment of human rights in all areas, be they economic, social, cultural, civil, or political. However, the impact of corruption on human rights will vary in each case. While many corrupt practices violate human rights, as it will be described below, in many cases corruption has a harmful effect on human rights but does not constitute a violation. A corrupt election procedure may result in political instability in the form of protests, riots and subsequent suppression of human rights in order to restore stability. The human rights violations that take place after the election are originated by a corrupt practice but are independent from it.
26. In many cases corruption will lead to human rights violations but will not itself violate a human right. Corruption in these cases is a factor fuelling human rights violations but can only be distantly linked to the infringement upon human rights. For example, there are numerous cases where people investigating or reporting corruption cases, so called whistleblowers, are silenced through harassment, threat, imprisonment and even killings. In such cases the right to liberty, the right to freedom of expression, and the right to freedom from torture or cruel, inhuman or degrading treatment may be violated. However, corruption in these cases functions as a remote cause of the violation as it is corruption that triggered the work of the whistleblowers. Yet in such cases, the human rights of the whistleblowers are not violated through corrupt practices.
27. It is important to distinguish cases where corruption is at the origin of subsequent violations of human rights from cases where corruption is itself part of the violation or a means to achieve a violation.

**States' Obligation to Take Steps to the Maximum of their Available Resources with a View to Progressively Achieve the Full Realisation of Economic, Social, and Cultural Rights (ICESCR Art. 2.1)**

One particular obligation arising from the International Covenant on Economic, Social and Cultural Rights (ICESCR) merits a separate analysis because it relates to all economic, social and cultural rights. 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. In other words, states accept two obligations: to immediately 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.

The obligation to take steps and to devote the maximum of available resources is an immediate one. To this end, states must adopt a range of different measures, such as enacting relevant legislation, providing judicial remedies, and taking administrative, financial, educational or social measures. 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.

Corruption reveals that the state is not taking steps in the right direction. When funds are stolen by corrupt officials or when access to health care, education, and housing is dependent on bribes the state resources are clearly not being used to their maximum towards the realisation of economic, social and cultural rights. 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.<sup>2</sup> The *United Nations Committee on the Rights of the Child* 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 economic, social and cultural rights of children, to the maximum extent of available resources as provided under Article 4 of the Convention.<sup>3</sup> 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.

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<sup>2</sup> 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.

<sup>3</sup> 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.

## CORRUPTION AS A VIOLATION OF HUMAN RIGHTS

28. It has been widely held that corruption violates human rights. However, most of the time such assertions fail to show in a detailed manner the ways in which the rights are infringed on by different corrupt practices. Such claims are overtly general and seem to hold that every corrupt situation affects a human need and thus violates human rights. Although all corrupt practices may in the long run affect a human right, this is not synonymous with a violation of human rights. To avoid such generalisations it is pertinent to analyse when and how a corrupt practice entails a human rights violation.
29. All individuals are endowed with human rights, and all states are obliged to ensure that their populations enjoy these rights. In turn, each human right gives rise to specific obligations of states. For people to enjoy their human rights, states need to carry out these obligations. In general, states possess three types of human rights obligations. States must respect, protect and fulfil all human rights. The obligation to respect requires states to refrain from interfering directly or indirectly with the enjoyment of human rights. The obligation to protect requires states to prevent third parties from interfering in any way with the enjoyment of human rights. States must also fulfil human rights, thus have to take positive measures to assist individuals and communities in enjoying those rights.
30. There is a violation of a human right when an act or omission of a state is not in conformity with its obligation to respect, protect and fulfil the human rights of persons under its jurisdiction. However, to make such an assessment, it is key to determine what specific conduct is required of the state concerning each human right. 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. The term "violation" should only be utilised when a legal basis and an identifiable corresponding legal obligation exist.
31. 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.
32. In order to determine if a particular corrupt practice violates a human right it is central to first identify which actions or omissions are required from the state to protect, respect and fulfil that specific human right. A clear understanding of the scope and content of the right is necessary to identify such state obligations.
33. Second, the corrupt practice in question has to be analysed in the context of the scope and content of a human right and if it affects such content in a direct or indirect way and the state fails to meet its obligation to protect, respect and fulfil the human right one may refer to corruption as violating a human right.
34. Corruption is directly in connection to a violation of human rights when the corrupt act is deliberately used as a means to violate the right. Corruption in this case affects the enjoyment of the right. For example, a bribe offered to a judge *per se* affects the independence and impartiality of that judge and hence the right to a fair trial is violated. In this case the bribe is specifically used to affect the fairness of a trial.
35. In other cases, corruption directly violates a human right by preventing individuals from having access to such right. Conditionality of access to human rights produces the violation. When an individual in order to have access to health or education needs to bribe a doctor to obtain medical

treatment or a teacher to be allowed to attend a class his right to health and education is infringed by corruption.

36. In other situations, corruption will be considered to violate human rights in an indirect way. When a corrupt practice constitutes an essential contributing factor in a chain of events that eventually leads to a violation of a right corruption can still be blamed for violating human rights. In this case the right is violated by an act that derives from a corrupt act. But, the act of corruption constitutes a necessary condition for the violation. For example, 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. If a corrupt Minister allows the illicit dumping of toxic waste in a place close to a residential area the rights to life and health of the people in the area are violated. Yet, the rights are violated by the act of allowing the illicit dumping of toxic wastes. The rights to life and health in this example are not directly violated by the bribe received by the corrupt Minister. What violates the human rights is an act that derives from such corrupt act. But, the act of corruption was a necessary condition for the violation. Without the bribe, the official would not have allowed the illicit dumping of toxic wastes. Hence, even when there is not a direct connection, corruption may nonetheless be an essential contributing factor in a chain of events that eventually leads to a violation, and as such corruption indirectly violates human rights.
37. The following sections describe how the most common corrupt practices may violate either directly or indirectly several fundamental human rights.

#### **Summary Review of a Human Rights Violation**

1. Identify the corrupt practice

- Establish what corrupt act is involved (bribery, embezzlement, etc.)
- Identify perpetrator, victim and harm to the victim

2. Identify if the harm to the victim affects his/her human rights

- Study the scope and content of the human rights in question
- Establish what were the state's obligations concerning the human right in question

3. Evaluate if the corrupt practice constitutes a violation of a human right

- Determine if the state provides to the victim venues for redress and remedies for such harm
- Establish if the harm suffered by the victim reflects the failure of the state to respect, protect, or fulfil the human rights in question
- Establish how direct is the connection between the corrupt act and harm suffered by the victim on the one hand, and the content of the human right and the obligation required from the state on the other hand
  - Does the corrupt act itself go against the content of the human right and simultaneously reflects itself the failure of the state to meet its obligations concerning that right?
  - Does the corrupt act lead to other actions by other actors that eventually affect a human right? In this case, is the corrupt act an essential factor in the chain of events that lead to the infringement of a human right?

## Corruption as a violation of the right to a fair trial and to an effective remedy

38. The right to a fair trial under Article 14 of the International Covenant on Civil and Political Rights (ICCPR) 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). 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.
39. 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. Experience shows that there are many ways in which corruption can affect the administration of justice and the right to a fair trial. However, the most immediate way is through bribing judges to obtain a favourable judgment, to speed up procedures, or to obtain bail – just to name a few examples. 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.
40. 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. 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.
41. It is important to highlight that tribunals not only have to be impartial, but must also give the appearance of being impartial. 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.
42. 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. In fact, 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.
43. 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.
44. 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 (ICCPR Art. 14(3)): 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.

45. Also as part of the right to a fair trial, everyone has the right to be presumed innocent until proven guilty beyond reasonable doubt (ICCPR Art. 14.2). 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 (ICCPR Arts. 14.5, 14.6, and 14.7).
46. Although a corrupt 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 concurrently 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, there are many cases where judges are bribed to delay the proceedings as much as possible. Through corrupt means one or more of the aforementioned minimum guarantees can be restricted so as to negatively affect the rights of the accused.
47. 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 above in addition to infringing upon the right to a fair trial, also affect another fundamental right: the right to an effective remedy (ICCPR Art. 2.3).
48. Any person whose rights or freedoms as recognised in the ICCPR have been violated has the right to an effective remedy. States are under an obligation to provide accessible, effective and enforceable remedies to uphold civil and political rights. 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, and states shall ensure that competent authorities enforce such remedies when granted. Cessation of an ongoing violation is an essential element of the right to an effective remedy.<sup>4</sup> 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.
49. 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. Corrupt practices ultimately undermine the effectiveness and quality of the administration of justice.
50. 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 simultaneously 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

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<sup>4</sup> United Nations Human Rights Committee (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. 15.

in a violation of the right to an effective remedy. States must guarantee that remedies are accessible, effective and enforceable. When there is corruption the state fails to uphold this guarantee and thus violates the right to an effective remedy.

### **Corruption as a violation of the rights of the child**

51. 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. 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 mostly in the 1989 United Nations Convention on the Rights of the Child (CRC) and ICCPR Art. 24 and ICESCR Art. 10.3. The rights of the child 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.
52. 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.
53. 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.
54. 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 (CRC Art. 21.d). Yet, in many cases of intercountry adoption corruption is part of the procedure. 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. 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 (CRC Art. 8). The child's right to an identity implicitly includes the right to the truth 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.
55. Corruption impairing the rights of the child is also present in cases of trafficking of children, particularly for sexual exploitation. Children have to be protected from all forms of sexual exploitation and sexual abuse (CRC Art. 34), and from abduction, sale, and trafficking (CRC Art. 35 and Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography). Nonetheless, children are often 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. 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. Corruption is essential to carry out the violation.

56. 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 (CRC Art. 32). 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. 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.
57. Bribery and corruption constitute an essential element in the chain of events that leads to and sustains these violations of the rights of the child. Without corruption all these illegal activities, like fraudulent intercountry adoptions, trafficking of children, and child labour could not take place.

### **Corruption as a violation of the right to work**

58. Every person has the right to earn his living by a freely chosen and accepted work (ICESCR Art. 6(1)). This right should not be understood as a right to obtain employment, but as a right of access to employment opportunities. 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 (ICCPR Art. 8).
59. There are however, many cases of forced labour 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.
60. Furthermore, the right to work also entails access to decent work and the right not to be unfairly deprived of employment.<sup>5</sup> 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.<sup>6</sup> Violations can exist even before bankruptcy is reached, because if workers denounce the embezzlement of company assets they will often be dismissed.<sup>7</sup> In these

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<sup>5</sup> United Nations Committee on Economic, Social and Cultural Rights (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.

<sup>6</sup> 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 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.

<sup>7</sup> 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*

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 indirectly violating the right to work.

61. 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 (ICESCR Art. 7). 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.
62. The states' human rights obligation to respect the right to work 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.<sup>8</sup> 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.
63. 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.
64. Finally, the states' human right 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.<sup>9</sup>

### **Corruption as a violation of the rights of political participation**

65. 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 (ICCPR Art. 25). 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

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*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.*

<sup>8</sup> 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.*

<sup>9</sup> CESCR, *General Comment No. 18, supra* note 5, para. 36.

access to public service, which means that access to positions in public service should be based on an objective and reasonable process.<sup>10</sup>

66. 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. States must protect voters from any form of coercion or compulsion and from any unlawful or arbitrary interference with the voting process.
67. 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 direct 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 *United Nations 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.<sup>11</sup>
68. 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. 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.
69. 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. 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.
70. 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, often 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 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.
71. Nonetheless, there are cases where people have resorted to traditional corrupt acts, specifically bribery, to obtain employment in the public service. 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

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<sup>10</sup> 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.

<sup>11</sup> *Ibid.*, para. 11.

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. 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.

72. 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, directly violate the rights of all citizens, be they voters or candidates.

### **Corruption as a violation of the right to food**

73. 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 (ICESCR Art. 11.2). The right to adequate food guarantees all people the ability to feed themselves. It is 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.<sup>12</sup>
74. However, the right to food does not imply that states must provide free food for everyone. 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.<sup>13</sup>
75. Corruption can seriously undermine the realisation of the right to food. The *U.N. Special Rapporteur on the Right to Food* identified corruption as one of the seven major economic obstacles that hinder or prevent the realisation of the right.<sup>14</sup> 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.
76. 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.<sup>15</sup> 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. Similarly, the right is violated if, through corruption, a person is allocated agricultural land of better quality or larger area. In addition, the

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<sup>12</sup> 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.

<sup>13</sup> *Ibid.*, para. 15.

<sup>14</sup> 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.

<sup>15</sup> CESCR, *General Comment No. 12, supra* note 12, para. 12.

granting of licenses for land use dependent on bribery provides availability of food in an unequal and discriminative way.

77. 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.<sup>16</sup> 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.<sup>17</sup> 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. 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 indirectly violating the right to food, but also possibly violating the right to health and right to life.
78. 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.<sup>18</sup> 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. 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. The right to adequate food of these people is clearly violated by corruption.
79. 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.<sup>19</sup>

### Corruption as a violation of the right to water

80. 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.<sup>20</sup> It has been 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.<sup>21</sup> Indeed, if a person's access to water is restricted through corrupt means, then corruption has to 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.

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<sup>16</sup> *Ibid.*, para. 9.

<sup>17</sup> *Ibid.*, para. 10.

<sup>18</sup> *Ibid.*, para. 13.

<sup>19</sup> U.N. Econ. & Soc. Council, *Special Rapporteur on the Right to Food*, *supra* note 203, para. 28.

<sup>20</sup> 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.

<sup>21</sup> 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.

81. 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. Corruption can have a detrimental effect on the quality of water. For example, if a company bribes a public inspector to cover up the discharge of waste into water resources, the quality of the water will suffer. Consequently, people utilising that water for personal consumption will see their right to water of a good quality infringed upon.
82. 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 (ICESCR Art. 2.1), and must guarantee that the right is enjoyed without discrimination (ICESCR Art. 2.2). 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.<sup>22</sup>
83. 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. The *United Nations Committee on Economic, Social and Cultural Rights* (CESCR) has identified the failure of the state to effectively regulate and control water services providers as violations of this obligation.<sup>23</sup> 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 in connection to a violation of the right to water.
84. 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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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.

### **Corruption as a violation of the right to adequate housing**

85. The right to adequate housing, a component of the right to an adequate standard of living, is concerned with the measures required to ensure that everyone has housing which is safe, healthy

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<sup>22</sup> CESCR, *General Comment No. 15*, *supra* note 20, para. 21.

<sup>23</sup> *Ibid.*, para. 44.

<sup>24</sup> *Ibid.*, para. 25.

<sup>25</sup> *Ibid.*, para. 44.

<sup>26</sup> P. Stålgren, *supra* note 21, p. 8.

and adequate (ICESCR Art. 11.1). In addition, the right aims at eliminating discrimination in the field of housing, and at prohibiting forced or arbitrary evictions or acts of unjust dispossession. 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. 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.<sup>27</sup> Corruption may violate this right by restricting one or more of its elements.

86. 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.<sup>28</sup> In this and other ways, corruption can impair the security of tenure of the right to adequate housing.
87. 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.
88. 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.
89. 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.
90. 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

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<sup>27</sup> 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.

<sup>28</sup> 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 (COHRE), *Forced Evictions: Violations of Human Rights*, 2006, p. 69.

known to exist where the public official requires a bribe in order to grant permission to build on that land.<sup>29</sup> In this way, corruption can clearly restrict the access to housing.

91. As it is the case with all other human rights, states have certain obligations concerning the right to housing. States are 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 led 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.
92. 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, even 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.
93. 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.

### **Corruption as a violation of the right to health**

94. The right to health (ICESCR Art. 12), also known by its more technical name, the right to the highest attainable standard of physical and mental health, 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.”<sup>30</sup> While this right does have a broad scope, it does not entail the right to be healthy. The right to health includes 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.<sup>31</sup> 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.
95. 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. Of the many ways that corruption can take place in the health 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.

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<sup>29</sup> See, COHRE, *Listening to the Poor?: Housing Rights in Nairobi*, COHRE Fact Finding Mission to Nairobi, Kenya, Final Report, June 2006, p. 85-86.

<sup>30</sup> 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. 9.

<sup>31</sup> *Ibid.*, para. 11.

96. 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.
97. 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. 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.
98. 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.<sup>32</sup> 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. 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.<sup>33</sup>
99. Health facilities, as well as goods and services must be accessible to everyone without discrimination. Accessibility not only entails physical accessibility but also economic.<sup>34</sup> The CESCR has emphasised that equality of access to health care and health services is of the utmost importance.<sup>35</sup> 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,” 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. 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.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup>
100. 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.

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<sup>32</sup> *Ibid.*, para. 12.

<sup>33</sup> United Nations News Service, *UN health agency launches initiative to fight corruption in medicines procurement*, 30 October 2006.

<sup>34</sup> CESCR, *General Comment No. 14*, *supra* note 30, para. 12.

<sup>35</sup> *Ibid.*, para. 19 and para. 43.

<sup>36</sup> 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.

<sup>37</sup> 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.

<sup>38</sup> World Bank, *Azerbaijan Health Sector Note*, (Volumes I and II). Washington, DC: World Bank, 2005.

101. 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.<sup>39</sup> 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.<sup>40</sup> 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.
102. 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 (ICESCR Art. 2.2). States also are under the general obligation to take steps towards the full realisation of the right to health (ICESCR Art. 2.1). 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.<sup>41</sup> 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 high indices of systematic corruption have higher rates of infant mortality.<sup>42</sup> 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.
103. 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 CESCR 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.<sup>43</sup> 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.
104. 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.<sup>44</sup>

<sup>39</sup> CESCR, *General Comment No. 14*, *supra* note 30, para. 12.

<sup>40</sup> N. Jayawickrama, *Corruption—A Violation of Human Rights?*, Transparency International Working Paper, 1998, p. 5.

<sup>41</sup> 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.

<sup>42</sup> 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

<sup>43</sup> CESCR, *General Comment No. 14*, *supra* note 30, para. 50.

<sup>44</sup> *Ibid.*, para. 35.

105. 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.<sup>45</sup> 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 the right to health.
106. 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. Studies have shown that these interactions can lead to non-rational prescribing<sup>46</sup> 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.
107. 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 CESCR has identified the insufficient expenditure or misallocation of public resources resulting in the non-enjoyment of the right to health by individuals or groups.<sup>47</sup> When 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.
108. 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.

### **Corruption as a violation of the right to education**

109. 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. 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.
110. 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.<sup>48</sup> This creates opportunities and incentives for

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<sup>45</sup> *Ibid.*, para. 51.

<sup>46</sup> 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.

<sup>47</sup> *Ibid.*, para. 52.

<sup>48</sup> 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.

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.

111. 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 Charter.<sup>49</sup> 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 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.<sup>50</sup>
112. Education institutions and programmes must be available in sufficient quantity.<sup>51</sup> 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. 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.
113. 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.<sup>52</sup> In this context, education must be affordable to all and completely free at the primary level.
114. Corrupt practices in the education sector, particularly at the school and classroom levels, can restrict or completely obstruct access to education. First, 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. Second, 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.
115. 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.<sup>53</sup> 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

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<sup>49</sup> K. Singh, "Education: International Obligations and Regional Legal Normative Action in Africa," *African Yearbook of International Law*, Vol. 12, 2004, p. 456.

<sup>50</sup> 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 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.

<sup>51</sup> CESCR, *General Comment No. 13*, *supra* note 50, para 6

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

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.

116. 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 (ICESCR Art. 13.3). This also implies the freedom of individuals to establish and direct their own educational institutions (ICESCR Art. 13.4). This dimension of the right to education can also be hindered by corruption. For example, if 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. 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.
117. 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.
118. 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 as it will be shown later in this work.
119. 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.<sup>54</sup> 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.<sup>55</sup> 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.
120. 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 to education, particularly with regards to access and quality of education. When this takes place, states are not complying with their obligation to protect the enjoyment of this right.
121. The obligation to fulfil requires states to take positive measures that enable and assist individuals and communities to enjoy the right to education. States must work towards free education and

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<sup>54</sup> 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.

<sup>55</sup> CESCR, *General Comment No. 13*, *supra* note 50, para. 59.

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.

122. As seen in this section, most corrupt practices in the education sector infringe upon one or more of the elements of the right to education (availability, accessibility, acceptability, and adaptability). Such cases evidence the ways in which corruption may violate in a direct way the right to education.

## **EMBEZZLEMENT OF FUNDS DESTINED TO SOCIAL PROGRAMMES AS A VIOLATION OF HUMAN RIGHTS**

123. The rationale behind claiming that corruption is a violation of human rights usually stems from the general notion that money lost to corruption could be used to buy medicine, equip schools, and provide for food. Hence, it is useful to analyse in more detail the corrupt practice of embezzlement, particularly the embezzlement of funds destined to social programmes. This recurrent corrupt practice may affect a wide range of human rights.
124. As described earlier, the right to health (ICESCR Art. 12) is usually understood in terms of the availability, accessibility, acceptability, and quality of the public health and health-care facilities, goods, services, and programmes. Health facilities, as well as goods and services have to be available in sufficient quantity within the state, accessible to everyone without discrimination, and scientifically and medically appropriate and of good quality. Most corruption cases affect several of these elements of the right to health. This is particularly true in the case of embezzlement of public funds by public officials. Part of the health budget can “disappear” before it is paid out by the Ministry of Finance to the Ministry of Health. 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. 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. In other words, corrupt acts and especially embezzlement have the potential of interfering simultaneously with the availability, accessibility, and quality of the right to health and thus violate such right.
125. Embezzlement may also affect the food safety and dietary needs recognised in the right to food (ICESCR Art. 11.2). 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. Food must also be accessible to everyone, i.e. 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. 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. The right to adequate food of these people is clearly violated by corruption.
126. The embezzlement of funds originally allocated to provide education takes away needed resources to equip educational institutions. The right to education (ICESCR Arts. 13 and 14) provides that education institutions and programmes must be available in sufficient quantity. 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.
127. Several different corrupt practices in the education sector have a negative effect on the availability of education and most notably the embezzlement of funds. 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. 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 the right to education and thus the right to education is violated.

128. Likewise, corruption by way of embezzlement of funds that are destined to finance prison services may result in fewer resources and deteriorating detention conditions. Everyone deprived of their liberty in prisons, hospitals, detention camps, correctional institutions, or elsewhere have the right to be treated with humanity and dignity (ICCPR Art. 10). For example, in the treatment of prisoners, humanity and dignity means: 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.<sup>56</sup>
129. Embezzlement of prison funds 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 linked with a violation of the right of persons denied of their liberty to be treated with humanity and dignity.
130. The corrupt practice of embezzlement or misappropriation of assets may also affect the right to a fair trial and to an effective remedy (ICCPR Art. 14 and 2.3). Embezzlement of funds allocated to justice takes away resources from the administration of justice and 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 as provided under the ICCPR article 14.3(c) and, consequently, violating their right to a fair trial and an effective remedy.
131. When money goes missing the state is not complying with a principal human rights obligation: to use the *maximum of its available resources* to achieve the full realisation of economic, social and cultural rights (ICESCR Art. 2.1). In addition, the corrupt practice of embezzlement usually involves assets that were destined to provide goods or services to the citizenry. Hence, in most cases the embezzlement of funds prevents the state from delivering those goods or services and thus fulfilling human rights. In such cases, as seen in this section through several examples the embezzlement of assets might result in human rights violations.

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<sup>56</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners*, Part I: Rules of General Application.

## CORRUPTION RESULTS IN DISCRIMINATION

132. The impact of corrupt practices on the rights to equality and non-discrimination merits a separate analysis as corruption by definition constitutes a means of escaping equal treatment and in most cases results in discrimination.
133. All individuals possess the right to equality and non-discrimination (ICCPR Arts. 2.1, 3, 26 and ICESCR Arts. 2.2, 3). Everyone is equal before the law and has the right to be protected by law on a basis of equality. These rights guarantee that those in equal circumstances are dealt with equally in law and in practice. 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.
134. 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.”
135. 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. However, the phrase “other status” in the definition of discrimination shows that the list of prohibited grounds is not exhaustive. Thus, discrimination on the basis of any ground including corruption is prohibited. 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 distinction, exclusion, restriction or preference of one or more persons when exercising a right.
136. However, discrimination can also take place even if no specific right apart from the right to equality 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. 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 passport or when clearing goods from customs. This right stands independently from other human rights.
137. 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.
138. Similarly, when a person is asked for a bribe in order to obtain a service to which the person was entitled without any payment, that person is excluded in relation to other individuals in the same situation. 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 corruption which is certainly not an objective and reasonable justification.

139. 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. 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.
140. Corruption in the health sector, as is the case in many other human rights, also usually violates the right to equality and non-discrimination. As described above, when bribes are requested from patients, their access to health is severely restricted. Moreover, states have the immediate obligation to guarantee that the right will be exercised without discrimination. 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.<sup>57</sup> 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.
141. 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. Yet, 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 because it is provided in a discriminatory way.
142. Corruption in the education sector also results in discrimination. 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. The *Committee on Economic, Social and Cultural Rights* has identified the failure to take measures that address *de facto* educational discrimination to constitute a violation of the right to education. Thus, when a person is asked for a bribe in order to access 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.
143. Furthermore, corruption may have more of a tendency to negatively affect the human rights of people that belong to a specific vulnerable group. In highly corrupt environments where the enjoyment of certain human rights is dependent on bribes people belonging to vulnerable groups usually lack the necessary economic resources and thus may have no access to basic human rights. Also, often they are discriminated against through corrupt means.

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<sup>57</sup> 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.

144. 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. 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.<sup>58</sup> 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 forces the worker to pay for its return. Visibly, corruption can magnify and exacerbate existing human rights problems of vulnerable groups.
145. 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.<sup>59</sup>
146. 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.

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<sup>58</sup> I.L.O., *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.

<sup>59</sup> 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.