

Corruption and Human Rights

Divya Prasad and Lázarie Eeckeloo



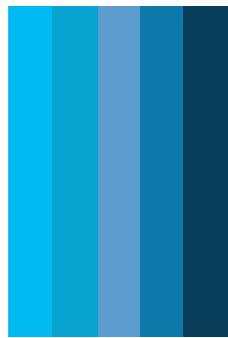
How to better integrate corruption issues in
the UN human rights mechanisms

A practitioners' guide and strategic advocacy
tool for civil society organisations

**GENEVA
ACADEMY**

Académie de droit international
humanitaire et de droits humains
Academy of International
Humanitarian Law and Human Rights

CCPR
Centre for Civil and Political Rights



Acknowledgements

The Centre for Civil and Political Rights and the Geneva Academy wish to thank several individuals and organizations for their contribution and support, without which this publication would not have been possible.

We wish to thank the following experts for their invaluable input and feedback:

Vrej Atabekian (OHCHR), Ayuush Bat-Ederne (OHCHR), Carin Benninger-Budel (OMCT), Carolyn Buff (OHCHR), Ergün Cakal (Danish Institute Against Torture), Gillian Dell (Transparency International), Alisher Ilkhamov (OSF), Fatima Kanji (International State Crime Initiative), Taisuke Komatsu (International Movement Against All Forms of Discrimination and Racism), Martin Kreutner (International Anti-Corruption Academy), Richard Lapper (OHCHR), Kristian Lasslett (Ulster University), Lucy McKernan (Global Initiative for Economic, Social and Cultural Rights), Richard Messick (the Global Anticorruption Blog), Juanita Olaya (independent researcher), Ilaria Paolazzi (Child Rights Connect), Elaine Ryan (Raoul Wallenberg Institute) and Christoph Spenlé (Federal Department of Foreign Affairs of Switzerland).

We organized several conferences in partnership with OHCHR, and this publication was based on a draft initiated by them. We are immensely grateful for the opportunities to discuss the link between corruption and human rights with experts of both fields. In particular, the following (former) treaty body members provided us with crucial insights in their work: Marion Bethel, Hilary Gbedemah, Ilze Brands Kheris, Zdzislaw Kedzia, Bamariam Koita, Marcia Kran, Cephas Luminas and Olivier de Schutter.

We would also like to thank all the other persons involved in this practitioners' guide, be they legal experts, corruption experts, NGO representatives, academics or OHCHR staff.

The Centre for Civil and Political Rights and the Geneva Academy thank the Federal Department of Foreign Affairs of Switzerland and Open Society Foundations for their support.

This work is licensed for use under a Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International License (CC BY NC-ND 4.0).

Design and lay-out : Gabriel Hernández (gabo.hernandez@gmail.com)

Imprimerie by Printer

© Corruption and Human Rights 2019

Centre for Civil and Political Rights

(CCPR Centre)

September 2019

TABLE OF CONTENTS

LIST OF ABBREVIATIONS	5
EXECUTIVE SUMMARY	6
FOREWORD	7
INTRODUCTION	8
A. Corruption	8
B. The link between corruption and human rights	9
C. Aligning and mainstreaming anti-corruption and human rights approaches	9
D. States' human rights obligations	11
CHAPTER I: CORRUPTION AS A THREAT TO THE FULL ENJOYMENT OF HUMAN RIGHTS	12
A. Corruption, non-discrimination and equality	12
B. Corruption as a threat to civil and political rights	13
1. Corruption as a threat to the right to life, liberty and security of person	13
2. Corruption as a threat to freedom from torture	14
3. Corruption as a threat to freedom from ill-treatment and torture in detention	15
4. Corruption as a threat to independence of the judiciary, due process and the right to a remedy	16
5. Corruption as a violation of the right to political participation	18
6. Corruption as a threat to freedom of expression	19
C. Corruption as a threat to economic, social and cultural rights	19
1. Corruption as a threat to general legal obligations under economic, social and cultural rights	19
2. Corruption as a threat to rights including the right to an adequate standard of living and to an education	21
CHAPTER II: INTEGRATING INTERNATIONAL HUMAN RIGHTS STANDARDS AND MECHANISMS INTO ANTI-CORRUPTION EFFORTS	25
A. Using human rights mechanisms to prevent and combat corruption	25
B. UN Mechanisms	25
C. Charter based mechanisms	26
1. Human Rights Council	26

2. Universal Periodic Review	27
3. Special procedures	29
4. Advisory Committee	31
5. Complaints procedure	31
D. Treaty based mechanisms	32
1. Reporting procedure	33
2. Complaints procedure	36
3. Confidential inquiries and early warning and urgent action procedures	37
CHAPTER III: PROTECTING THE HUMAN RIGHTS OF THOSE INVOLVED IN THE FIGHT AGAINST CORRUPTION	39
A. Journalistic freedom and corruption	39
B. Exposure of journalists and journalistic safeguards	40
C. Anti-corruption activists and human rights defenders	41
D. Protection of victims, witnesses, whistle-blowers and experts	43
ANNEX 1: REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE	45
Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, 16 January 2019	45
ANNEX 2: THE SAN JOSÉ GUIDELINES	48
ANNEX 3: THEMATIC GUIDE	51
Corruption, non-discrimination and equality	51
Corruption as a threat to the right to life, liberty and security of person	52
Corruption as a threat to freedom from torture and ill-treatment	53
Corruption as a threat to independence of the judiciary, due process and the right to a remedy	55
Corruption as a violation of the right to political participation	57
Corruption as a threat to the freedom of expression	57
Corruption as a threat to general legal obligations under economic, social and cultural rights	58
Corruption as a threat to rights including the right to an adequate standard of living and to an education	59

LIST OF ABBREVIATIONS

CAT	Committee Against Torture
CED	Committee on Enforced Disappearances
CEDAW	Convention on the Elimination of Discrimination Against Women
CEDAW Committee	Committee on the Elimination of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
Child Rights Convention	Convention on the Rights of the Child
CMW	Committee on Migrant Workers
CRC	Committee on the Rights of the Child
CRPD	Convention on the Rights of People with Disabilities
CRPD Committee	Committee on the Rights of People with Disabilities
CSO	Civil Society Organisation
HRC	Human Rights Council
HR Committee	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICED	International Convention for the Protection of All Persons from Enforced Disappearance
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
LOI	List of Issues
LOIPR	List of Issues Prior to Reporting
NGO	Non-governmental organisation
OHCHR	Office of the High Commissioner for Human Rights
SPT	Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Convention Against Torture	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UPR	Universal Periodic Review

EXECUTIVE SUMMARY

Corruption is a major obstacle to the observance and implementation of human rights. Moving from an economic and political perspective on corruption towards a human rights approach involves a shift in perception whereby corruption is viewed not as being solely a misappropriation of wealth and distortion of expenditure (which harms the economic and political stability of a country), but rather as a potential violation of human rights.

The linkage between anti-corruption measures and human rights can promote access to human rights mechanisms to combat corruption. A wide range of mechanisms exist for monitoring compliance with human rights at the national, regional and international levels. These mechanisms can receive individual complaints of alleged human rights violations and review the overall implementation of human rights by States.

This guide focuses on how United Nations (UN) human rights mechanisms can be better used to report on corruption issues. It provides guidance and practical recommendations on how to effectively integrate human rights into anti-corruption efforts.

Acts of corruption affect people and communities in different ways. They may amount to prohibited forms of discrimination or directly violate individual rights. Pervasive corruption weakens the accountability structures that protect human rights, contributing to impunity and impeding law enforcement. Corruption also negatively impacts collective rights. Combatting corruption is particularly important for ensuring the empowerment, participation and protection of people who are members of vulnerable or marginalised groups.

The UN system consists of several human rights mechanisms:

- The **Charter-based mechanisms**, which include the Human Rights Council (HRC), the Universal Periodic Review (UPR), the Special Procedures, the Advisory Committee and the Complaints Procedure.
- The **Treaty-based mechanisms** or treaty bodies: the Human Rights Committee (HR Committee), the Committee on Economic Social and Cultural Rights (CESCR), the CAT, the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), the Committee on the Rights of the Child (CRC), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on Enforced Disappearances (CED), the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), the Committee on the Rights of Persons with Disabilities (CRPD Committee) and the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).

Lastly, media, civil society, and NGOs have been instrumental in uncovering and reporting particular acts of corruption. Their vigilance and voices are crucial in motivating governments and other actors to act with integrity. Ensuring the involvement of different actors requires both a suitable policy climate and the appropriate legal safeguards. Human rights protection is indispensable in establishing both, and thus may encourage journalists, activists, experts, victims and witnesses to come forward and “blow the whistle”.

FOREWORD



Corruption is recognised throughout the United Nations (UN) system as one of the main challenges to sustainable development and the realisation of human rights. Resolute in this regard, the Human Rights Council (HRC/Council) has recognised that “transparent, responsible, accountable, open and participatory government, responsive to the needs and aspirations of the people, is the foundation on which good governance rests, and that such a foundation is one of the indispensable conditions for the full realisation of human rights”.¹ Moreover, in the context of Sustainable Development Goal 16 “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”, the 2030 Agenda for development refers to concrete actions for combatting corruption, namely, “significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime to corruption”.

However, anti-corruption practitioners have not been fully equipped to make the link between corruption and the realisation of human rights in the UN human rights mechanisms. Moreover, none of the UN human rights mechanisms have approached this issue in a systematic manner. As such, this guide has been created precisely in order to fill this gap.

The guide is intended to serve as a user-friendly practitioners’ manual and strategic advocacy tool for civil society organisations (CSOs), particularly anti-corruption groups/practitioners, by exploring how a human rights based approach, with its focus on the victims of corruption and State responsibility, can be used to complement and strengthen anti-corruption efforts. To this end, it focuses primarily on how UN human rights mechanisms can be better used to report on corruption issues, and it provides guidance as well as practical recommendations on effectively integrating human rights into anti-corruption efforts.

¹ Human Rights Council Resolution 31/14 on ‘The role of good governance in the promotion and protection of human rights’, A/HRC/RES/31/14, adopted on 23 March 2016.

INTRODUCTION



A. Corruption

Although there is no universally accepted definition of corruption, it is most frequently defined as the abuse of entrusted power for private gain.²

As observed at the Warsaw Conference in 2006, corruption “drains resources needed for services and infrastructure, perverts the rule of law, discourages external investment and aid, undercuts public confidence, feeds inequality and disenfranchises large segments of the population.”³ And in May 2018 the United Nations Secretary-General António Guterres, addressing the Commission on Crime Prevention and Criminal Justice at the UN in Vienna, said: “My overriding priorities since taking office are preventing conflicts and crises, and mobilizing efforts to implement the 2030 Agenda for Sustainable Development. [...] This brings me to the top of the list of contemporary criminal justice issues: the fight against corruption.”

Corruption can affect all branches and all levels of government across developing and developed countries.⁴ It can take place within the public and private sectors, in CSOs, media,

2 See, e.g., Transparency International, *The Anti-Corruption Plain Language Guide* (Berlin, 2009), p. 14; World Bank Group, *Helping Countries Combat Corruption: Poverty Reduction and Economic Management*, Washington DC, September 1997, p. 8 - this definition uses the words “public office” instead of “entrusted power”; it is therefore an outdated definition as it limits corruption to public-sector corruption, only. UNCAC itself does not define “corruption” but speaks about various forms of corruption, including private-private corruption. The Special Rapporteur on Torture defined corruption as the “abuse of entrusted or appropriated power to secure an undue advantage for any person or entity” in his recent report on the link between torture and corruption. The complete report is available here: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/59. For discussions on terminology: *Routledge Handbook of Political Corruption* (2014), Edited by Paul M. Heywood, chapter 2 and 3.

3 Report on the UN Conference on Anti-Corruption, Good Governance and Human Rights (Warsaw, 8 and 9 November 2006) - UN Doc. A/HRC/4/71.

4 Transparency International makes a distinction between grand, petty and political corruption. **Grand corruption** consists of acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good. **Petty corruption** refers to everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies. **Political corruption** is a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.

regional or international organisations, and it may span across national, transnational or international networks. These different forms of corruption are often interlinked.

Enablers of corruption include weaknesses in the rule of law, lack of transparency and accountability, weak civil society, social inequalities, lack of oversight, politicisation of administration, elitist interests and conflation of business and politics.

B. The link between corruption and human rights

Corruption is also a major obstacle to the observance and implementation of human rights, both as objective standards and as subjective rights. Corruption undermines the basic values of human dignity, equality, and freedom for all, but in particular those whose rights are already wrongfully curtailed such as people living in poverty and those who are disadvantaged or otherwise marginalised. It also destabilises democracy, good governance, and the administration of justice.

Corruption negatively impacts the enjoyment of human rights and can constitute a violation of human rights in concrete cases. In other words, corruption 'facilitates, perpetuates and institutionalises violations of human rights.'⁵ According to the HRC, it is 'difficult to find a human right that could not be violated by corruption'.⁶ Conversely, the protection of human rights should serve as an integral part of any anti-corruption campaign.

C. Aligning and mainstreaming anti-corruption and human rights approaches

Moving from an economic and political perspective on corruption towards a human rights approach involves a shift in perception whereby corruption is viewed not as being solely a misappropriation of wealth and distortion of expenditure (which harms the economic and political stability of a country), but rather as a potential violation of human rights.

The human rights and anti-corruption approaches differ. While the human rights approach revolves around the victim – State relationship and bestows rights on individuals, groups and peoples, from which concrete State obligations derive, the anti-corruption framework does not create rights for individuals. It focuses instead on the measures a State – and subsequently, business entities and other stakeholders - shall take, or consider taking, with a view to curbing corruption, through prevention⁷, education⁸, legal and institutional reform, criminalisation⁹, international cooperation¹⁰, the recovery of stolen assets¹¹ and remedies for victims¹².

5 UN Subcommittee for Prevention of Torture, Seventh Annual Report, CAT/C/52/2, 24 February 2014; A/HRC/40/59, §76.

6 Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights, A/HRC/28/73, 5 January 2015, §17.

7 Chapter II UNCAC

8 E.g., art. 60 UNCAC

9 Chapter III UNCAC

10 Chapter IV UNCAC

11 Chapter V UNCAC

12 E.g., art. 35 UNCAC

Although international anti-corruption instruments also deal with measures to prevent corruption and to some extent with the consequences of corruption in private law, they focus largely on the suppression of corruption through criminalisation.¹³ The criminal law approach does not offer ways of addressing the structural problems caused by corruption, as it is concentrated, by its very nature, on a single offence, and typically cannot address the collective and general effects of corruption.¹⁴ Using human rights mechanisms can therefore complement the criminal justice system.

The human rights perspective places emphasis on State responsibility, which requires the State to abstain from engaging in any form of corruption and to adopt effective measures to protect individuals from human rights violations caused by corruption. States are required not only to prosecute corruption, but also to take measures to address its negative effects. By integrating a human rights perspective into anti-corruption strategies, the implementation of preventive policies would be substantially fostered and enhanced.¹⁵

Moreover, the realisation of human rights creates an environment in which corruption can be effectively prevented and remedied.¹⁶ Of particular importance are the rights to information, to freedom of expression and opinion, to freedom of peaceful assembly and association, the right to participate in public affairs, the independence of the judiciary and a free press.

The linkage between anti-corruption measures and human rights can also promote access to human rights mechanisms to combat corruption. A wide range of mechanisms exists for monitoring compliance with human rights at the national, regional and international levels, which can receive individual complaints of alleged human rights violations. Unlike anti-corruption mechanisms such as the United Nations Convention Against Corruption (UNCAC) implementation review mechanism for instance, human rights mechanisms generally allow for substantial civil society engagement. However, none of these mechanisms have adopted a systematic approach to handling corruption-related issues.¹⁷ By drawing a link between acts of corruption and violations of human rights, new opportunities for litigation and monitoring can be identified.¹⁸

13 See for example Leonie Hensgen, "Corruption and human rights – making the connection at the United Nations", in the Max Planck Yearbook of United Nations Law, Armin von Bogdandy and Rüdiger Wolfrum, eds., vol. 17, pp. 197–219 (200) (Brill and Nijhoff, 2013), and the final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights, A/HRC/28/73.

14 Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights, A/HRC/28/73.

15 Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights, A/HRC/28/73.

16 The reverse is true as well: when corruption can be prevented, human rights are more likely to be respected. For example, reducing the number of bribes to judges may likely enhance the likelihood of fair trials.

17 Between 2007 and 2017, the treaty bodies mentioned corruption in 336 reviews out of a total of 1 271 State reviews. This amounts to corruption being mentioned in 26,5% of the State reviews conducted by the treaty bodies during the said ten-year period. However, there are big differences between the different treaty bodies: CED does not mention corruption at all; CERD mentions corruption in 5% of its reviews; CEDAW Committee in 9% of its reviews; CRPD Committee in 14% of its reviews; CAT in 26% of its reviews; while CESCR mentions corruption in 55% of its reviews; CRC in 41,5% of its reviews; CMW in 40% of its reviews; and the Human Rights Committee in 36% of its reviews. Moreover, the subjects of their concern differ as well: CRPD Committee is mainly concerned about corruption related to health care and extortion by criminal gangs; CMW about corruption related to trafficking; CERD about corruption in the judiciary; CEDAW Committee about access to remedies; CAT about corruption in the judiciary, detention and among law enforcement officials; CRC about the allocation of resources and about corruption in general; CESCR about corruption in general; and the Human Rights Committee about corruption in the judiciary and in detention.

18 Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights, A/HRC/28/73.

D. States' human rights obligations

Human rights impose obligations on States at three levels: respect, protection and fulfilment.

The obligation to respect requires States to avoid measures that hinder or prevent the enjoyment of human rights. This implies that the State should criminalise and prosecute specific acts of corruption and also take measures to prevent corruption.

The obligation to protect requires States to take measures that prevent third parties from interfering with the enjoyment of human rights. When such interference has nevertheless taken place, States are required to ensure that perpetrators are held to account¹⁹ and that victims have access to appropriate remedies. For example, the State should protect rights holders against corrupt practices by non-state actors, in particular those in positions of power like business corporations.

The obligation to fulfil requires States to take positive measures that enable individuals and communities to fully enjoy human rights.²⁰ In the context of corruption, the State is, in particular, responsible for empowering people to enjoy their rights, developing the capacities necessary for the enjoyment of rights, (for example granting access to education and health care), establishing procedures enabling individuals and groups to claim rights violated by corruption and demand remedies and compensation, and finally to counter corruption as a systemic obstacle to human rights.

¹⁹ See art. 24, 25 and 27 of the UNCAC.

²⁰ Cf, e.g., General Comment No. 13 "The right to education (article 13 of the Covenant)", Twenty-first session, 1999, paras. 46-47.

CHAPTER I: CORRUPTION AS A THREAT TO THE FULL ENJOYMENT OF HUMAN RIGHTS



Corruption affects people and communities in different ways.²¹ It may amount to prohibited forms of discrimination or directly violate individual rights. Pervasive corruption weakens the very accountability structures that protect human rights, contributing to impunity and impeding law enforcement. Corruption also negatively impacts collective rights.²² Combatting corruption is particularly important for ensuring the empowerment, participation and protection of people who are members of vulnerable or marginalised groups.

The relevant legal framework for anti-corruption practitioners willing to use the UN human rights mechanisms, include the following instruments:

1. The United Nations Convention Against Corruption (UNCAC);
2. The nine core human rights treaties and their optional protocols.²³

A. Corruption, non-discrimination and equality

The rights to equality and non-discrimination are impeded by corruption as it creates **discrimination in access to and distribution of public services** in favour of those who are able to influence the authorities to act in the latter's undue personal interest. The economically and politically disadvantaged suffer disproportionately from the consequences of corruption because they are particularly dependent on public goods,

21 A/HRC/23/26, para. 5.

22 ICHRP and TI, *Corruption and Human Rights: Making the Connection* (Geneva, International Council on Human Rights Policy, 2009). Available from www.ichrp.org/files/reports/40/131_web.pdf, pp. 27–28.

23 The International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture); the Convention on the Rights of the Child (Child Rights Convention); the Convention on the Elimination of Discrimination Against Women (CEDAW); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Convention for the Protection of All Persons from Enforced Disappearance (ICED); the Convention on the Rights of People with Disabilities (CRPD) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW).

and do not have the political and/or economic resources to navigate the system.²⁴

Corruption is also an indirect barrier to equality. By slowing down economic growth and decreasing government revenues, corruption limits the ability of the State to provide essential goods and services and thus **disproportionately impacts people living in poverty**. Since poverty is often greatest amongst people in marginalised social groups, corruption often aggravates the effects of discrimination. Poverty and discrimination may expose marginalised people to bribe solicitation.²⁵ Corruption also compounds social inequalities by increasing the power of elites and giving them more incentives to hold onto power.²⁶

B. Corruption as a threat to civil and political rights

Some civil and political rights are exposed to the negative impacts of corrupt practices to a larger extent than others. Rights to due process, to political participation, and to information are at heightened risk from corrupt acts.

1. Corruption as a threat to the right to life, liberty and security of person

The right to life, liberty and security of a persons. is directly and indirectly impeded by corruption. For example, victims, witnesses of corruption or whistle blowers may be exposed to unlawful killings, arbitrary arrests or detention or other forms of deprivation of liberty which would prevent disclosures regarding corruption or its consequences as discussed in greater detail in Chapter IV.

The payment of bribes to avoid the enforcement of government regulatory standards may likewise expose people to physical risks, whether from unsafe buildings and consumables or environmental hazards.²⁷

Additionally, corruption in the penitentiary system poses a risk to the life, liberty and security of inmates. This is an issue that the HR Committee has regularly expressed concern about, as discussed more fully hereinbelow.

The HR Committee, in its Concluding Observations to Uzbekistan in 2015, referred to Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to life, in the context of 'allegations of widespread corruption and extortion and hazardous working conditions in the cotton sector and poor living conditions during the harvest' which had, in certain instances, resulted in deaths. It recommended, *inter alia*, that Uzbekistan 'review its laws and practices to ensure financial transparency and address corruption in the cotton industry and take all measures necessary to prevent deaths in connection with cotton harvesting, thoroughly investigate such cases when they occur and provide effective remedies, including adequate compensation, to victims' families.'²⁸

Large-scale diversion and misallocation of government resources through embezzlement and bribery may diminish the State's ability to deliver goods and services that

24 Morten Koch Andersen, Why Corruption Matters in Human Rights, Journal of Human Rights Practice, Volume 10, Issue 1, 1 February 2018, pp. 179–190.

25 Jensen, S. & Andersen, M. K. (Eds.) (2017), Corruption and Torture: Violent Exchange and the policing of the urban poor. (1. ed.) Aalborg Universitetsforlag.

26 ICHRP and TI, Making the Connection, pp. 7–10.

27 See also Bacio Terracino, Corruption as a Violation, pp. 20–21.

28 Human Rights Committee, Concluding observations on the fourth periodic report of Uzbekistan, CCPR/C/UZB/CO/4, 17 August 2015.

are essential to individual survival and well-being, by, *inter alia*, reducing the resources available for development and poverty reduction. For instance, corruption results in public resources going into big infrastructure projects or military procurement where kickbacks are high, to the detriment of sectors like health care and education, as discussed in greater detail hereinbelow.²⁹

Finally, the bribery of law enforcement officials and members of the judiciary may directly subvert an individual's fair trial rights, particularly the right to challenge the grounds for arrest and detention and/or to obtain compensation for wrongful detention, as outlined more fully hereinbelow.

2. Corruption as a threat to freedom from torture

There is a recognised correlation between the levels of corruption within a State and the prevalence of torture and ill-treatment: corruption breeds ill-treatment, and disregard for human rights contributes to the prevalence of corruption.³⁰ The Special Rapporteur on torture issued a report in January 2019 in which he examined the link between corruption and torture or ill-treatment.³¹

Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, 16 January 2019

Corruption not only hinders the effective implementation of human rights obligations, but also creates an environment conducive to human rights abuses, including torture and ill-treatment.

In this report, the Special Rapporteur establishes **six kinds of causalities** between corruption and any form of torture or ill-treatment. More information can be found in Annex 1.

In the years between 2010 and 2017, the Committee against Torture (CAT) reviewed 169 State reports, of which around 30 mention corruption. As with the HR Committee, corruption in the judiciary is the most frequent concern raised by the CAT.

The CAT has also raised issues relating to, *inter alia*, corruption among security forces; corruption in the context of enforced disappearances and human trafficking respectively; a national strategy against corruption, the ratification of UNCAC and the adoption of anti-corruption laws.³²

Amongst recommendations adopted by the CAT, those made to Cambodia in 2011 are detailed and concrete in terms of outlining the actions that should be taken by the State in order to ensure their implementation.³³ The recommendations included a call to establish a protection programme for victims and whistleblowers, to provide statistics and to ensure an independent judiciary and Bar Association.

29 OECD, CleanGovBiz – Integrity in Practice – The rationale for fighting corruption (Background brief), 2014 (<https://www.oecd.org/cleangovbiz/49693613.pdf>)

30 Committee against Torture, Seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/52/2, 20 March 2014

31 Torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/40/59, 6 January 2019, available here: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/59.

32 CCPR Centre, The UN Treaty Bodies and their approach to corruption (supra)

33 Committee against Torture, Concluding observations of the Committee against Torture – Cambodia -CAT/C/KHM/CO/2, 20 January 2011

In addition to the Treaty Bodies, the HRC has also focussed attention on the adverse impact of corruption on freedom from torture and other cruel, inhuman and degrading treatment. At its 37th session, the HRC adopted, without a vote, resolution A/HRC/RES/37/19 on 'the negative impact of corruption on the right to be free from torture and other cruel, inhuman or degrading treatment or punishment'. The resolution recognised *inter alia* that 'the threat or act of torture and other cruel, inhuman or degrading treatment or punishment may be used as a means of perpetrating acts of corruption'; and 'measures to combat torture and other cruel, inhuman or degrading treatment or punishment should give due attention to the detrimental effects of corruption, and that efforts to prevent and combat corruption and efforts to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment can be mutually reinforcing'. The resolution 'urges States to adopt, implement and comply fully with legal and procedural safeguards against torture and other cruel, inhuman or degrading treatment or punishment, and ensure that these safeguards are not compromised by any form or practice of corruption, recognizing that such safeguards can also be a valuable protection against corrupt practices.'³⁴ [Emphasis added].

3. Corruption as a threat to freedom from ill-treatment and torture in detention

The **HR Committee** has frequently expressed concerns regarding corruption in the penitentiary system. Between 2007 and 2017, it adopted four recommendations about corruption within penitentiary institutions namely in respect to Bulgaria (2011), Albania (2013), Cambodia (2015) and Azerbaijan (2016).³⁵ In the case of Azerbaijan for instance, the HR Committee recommended that Azerbaijan 'combat corruption within prison facilities and improve conditions of detention in accordance with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).'

Additionally, **the CAT** often refers to corruption within the detention framework and among law enforcement officials.³⁶ For instance, in its Concluding Observations made in 2012, it recommended that Armenia 'take effective measures to keep under systematic review all places of detention, including the existing and available health services therein, and should take measures to eliminate corruption in prisons.'³⁷

The **Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (SPT) has also raised concerns regarding corruption in detention or prison systems of countries such as Paraguay, Honduras, Mexico and Benin. Unlike the CAT, the SPT's recommendations have been specific, detailed and concrete. They include undertaking independent audits of specific prisons, adopting codes of conduct for staff and making penitentiary institutions' budgets public.³⁸

Additionally, the SPT has also examined the interplay between corruption and the prevention of torture and other ill-treatment. It made the following observations in this regard in its

34 A/HRC/RES/37/19 on 'The negative impact of corruption on the right to be free from torture and other cruel, inhuman or degrading treatment or punishment' adopted on 23 March, 2018.

35 CCPR Centre, The UN Treaty Bodies and their approach to corruption – Lázarië Eeckeloo (2018)

36 CCPR Centre, The UN Treaty Bodies and their approach to corruption (supra)

37 Committee against Torture, Concluding observations of the Committee against Torture – Armenia - CAT/C/ARM/CO/3, 6 July 2012

38 CCPR Centre, The UN Treaty Bodies and their approach to corruption (supra); Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the follow-up visit to the Republic of Paraguay from 13 to 15 September 2010, CAT/OP/PRY/2, 30 May 2011.

seventh annual report: ‘there is a strong correlation between the levels of corruption within a State and the levels of torture and ill-treatment found there. One reason is that in States with high levels of corruption there may be less likelihood of torture and ill-treatment being either discovered or prosecuted. (...) Therefore, eradicating corruption and preventing torture and ill-treatment are not disparate processes, but are interdependent. Corruption within a State seriously impedes the eradication of torture and ill-treatment. Hence, to prevent torture and ill-treatment it is also critical to prevent and eradicate corruption. There must be vigilance, and where corruption is present it must be rooted out and punished appropriately, in accordance with the law.’³⁹

4. Corruption as a threat to independence of the judiciary, due process and the right to a remedy

Judicial guarantees - due process rights and the right to a remedy - are jeopardised in several ways when people who administer justice engage in corruption. Judicial corruption can be defined as “acts or omissions that constitute the use of public authority for the private benefit of court personnel, and result in the improper and unfair delivery of judicial decisions”.⁴⁰ This broad definition covers “bribery, extortion, intimidation, influence peddling and the abuse of court procedures for personal gain” by judges, court support staff and referees. In this context, it should be noted that the HR Committee has frequently expressed concerns regarding corruption in the judiciary. For instance, in its Concluding Observations on Georgia in 2014, the HR Committee acknowledged ‘the need to uphold the rule of law and fight corruption, to provide victims of human rights abuses with an effective remedy and to avoid impunity for perpetrators of human rights violations and corruption.’⁴¹ The bribery of judges directly violates the human right to a fair trial as enshrined under Article 14 of the ICCPR,⁴² which guarantees, notably, the equality of all persons before the courts and tribunals and their entitlement ‘to a fair and public hearing by a competent, independent and impartial tribunal established by law’. A judge who solicits or accepts a bribe is not independent because he or she is subject to external interference and is partial to conducting unfair hearings. For example, a decision to withhold documents from the defence is likely to violate fair trial requirements, the principle of equality of arms, and the right to be informed promptly and in detail of the charges against a defendant. In all these ways, corruption violates the right to equality before the law. It

39 Committee against Torture, Seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/52/2, 20 March 2014.

40 Mary Noel Pepys, “Corruption within the Judiciary: Causes and Remedies”, in *Global Corruption Report 2007: Corruption in Judicial Systems*, Transparency International (ed.) (Cambridge, Cambridge University Press, 2007), pp. 3–14 at 3. See also ICHRP and TI, *Making the Connection*, p. 35.

41 Human Rights Committee, Concluding observations on the fourth periodic report of Georgia, CCPR/C/GEO/CO/4, 19 August 2014.

42 Article 14 of the ICCPR provides as follows: “1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

is thus imperative that judges remain independent and follow protocols for reporting and responding to any attempt to influence their handling of a case.

In this context, it is worth noting the CAT's detailed recommendations to Cambodia in 2011, which touched upon the need to ensure the independence of the judiciary as well as the legal system more generally.⁴³

The UNCAC echoes Article 14 of the ICCPR and takes a particularly strong stance on the integrity of judges, with Article 11 providing the following: 'Bearing in mind the independence of the judiciary and its crucial role in combating corruption each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.'

The HR Committee touched upon such issues in its Concluding Observations made in respect to Azerbaijan in 2016, where it recommended that the country 'step up efforts to effectively prosecute and punish perpetrators of corruption, and ensure that the subject of fighting corruption is part of the training curriculum for judges.'⁴⁴

Additionally, in its Concluding Observations made to Turkmenistan in 2017, the HR Committee expressed concern regarding 'alleged corruption in the judiciary and about the independence of judges, which remains severely undermined by the President's exclusive authority to appoint and dismiss judges and the lack of security of tenure of judges, who are appointed for renewable five-year terms.' Accordingly, it recommended that Turkmenistan 'combat corruption in the judiciary effectively and prosecute and punish perpetrators, including judges who may be complicit therein.'⁴⁵

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."

43 Committee against Torture, Concluding observations of the Committee against Torture – Cambodia -CAT/C/KHM/CO/2, 20 January 2011

44 Human Rights Committee, Concluding observations on the fourth periodic report of Azerbaijan, CCPR/C/AZE/CO/4, 16 November 2016.

45 Human Rights Committee, Concluding observations on the second periodic report of Turkmenistan, CCPR/C/TKM/CO/2, 20 April 2017.

Finally, corruption in a judicial proceeding is likely to give rise to a separate violation of the right to an effective remedy enshrined in Article 2(3) of the ICCPR.⁴⁶ This right includes an entitlement to effective and equal access to justice, which is properly administered. Therefore, corruption in a court or tribunal may deny a person a fair opportunity to vindicate his or her rights.

It is worth noting in this context that the HR Committee, in its Concluding Observations made to Cameroon in 2017, expressed concerns regarding, *inter alia*, ‘persistent allegations of corruption’ and the executive branch’s interference with the judiciary; the fact that the judiciary’s independence was not sufficiently guaranteed in law and in practice, especially with regard to procedures for the selection of judges and disciplinary measures against judges; violations of the right to a fair trial in certain cases as substantiated by opinions adopted by the Working Group on Arbitrary Detention; and the continued jurisdiction of military courts to try civilians.⁴⁷

5. Corruption as a violation of the right to political participation

By undermining the accountability of decision-makers to the public, corruption weakens governance. When corruption is prevalent, those in public positions are less likely to act in the interests of society. As a result, corruption damages the legitimacy of democratic regimes and leads to a loss of public support for democratic institutions. Corruption also threatens particular human rights such as those relating to political participation. For example, the manipulation of elections, referenda, or plebiscites through bribing voters directly violates Article 21(1) and (3) of the Universal Declaration of Human Rights (UDHR) and Article 25(a) and (b) of the ICCPR, as does the corruption of political party officials through campaign contributions.⁴⁸ The HR Committee in its Concluding Observations to Bosnia Herzegovina in 2017, recommended that the country:

- (a) ‘adopt an electoral system that guarantees equal enjoyment of the rights of all citizens under article 25 of the Covenant, irrespective of ethnicity’;
- (b) ‘as a matter of urgency, amend its Constitution and Election Law to remove provisions that discriminate against citizens from certain ethnic groups by preventing them from fully participating in elections’; and
- (c) ‘step up its efforts to combat corruption, particularly among government figures, to ensure effective participation in public life.’⁴⁹

46 Art 2(3) of the ICCPR provides as follows: “Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.”

47 Human Rights Committee, Concluding observations on the fifth periodic report of Cameroon, CCPR/C/CMR/CO/5, 30 November 2017.

48 Bacio Terracino, Corruption as a Violation, p. 18; Kenya National Commission on Human Rights, The Human Rights Dimensions of Corruption (Nairobi, 2006). Available at <http://www.knchr.org/ReportsPublications/ThematicReports/EconomicSocialandCultural.aspx>, p. 21.

49 Human Rights Committee, Concluding observations on the third periodic report of Bosnia and Herzegovina, CCPR/C/BIH/CO/3, 13 April 2017.

6. Corruption as a threat to freedom of expression

Efforts to combat corruption may be enhanced by measures to promote freedom of expression as enshrined in Article 19 of the ICCPR.⁵⁰ Conversely, human rights to information are at risk from corruption. This is because acts of corruption may be used to obtain valuable government permissions to broadcast information via traditional media, as well as to influence the people who work within or control media outlets. Public or private actors may additionally be motivated to prevent the exposure of corrupt acts by preventing or discouraging other people from exchanging information about corruption. They may be tempted to retaliate against specific whistleblowers and/or to suppress wider expressions of discontent about the problem of corruption. Alternatively, they may prevent access to information held by public bodies that would or could be indicative of corruption.

The HR Committee has clarified that, '[t]o give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation [...].'⁵¹ Additionally, the HR Committee, in its Concluding Observations to Azerbaijan,⁵² expressed concern regarding the lack of laws guaranteeing the right to information and the fact that the laws inherited from the former regime had not been amended to guarantee the rights provided for in Article 19 of the ICCPR.

C. Corruption as a threat to economic, social and cultural rights

The harm caused by corruption is not limited to the civil and political sphere. Corruption also violates or leads to violations of specific economic, social and cultural rights and amounts to deliberately retrogressive measures.

1. Corruption as a threat to general legal obligations under economic, social and cultural rights

At the outset, corruption may be viewed as a violation of Article 2(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR),⁵³ which sets out the fundamental obligation of States in respect of the realisation of economic, social and cultural rights enshrined therein.

50 Art. 19 of the ICCPR provides as follows: "1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals."

51 General Comment 34 (2011), CCPR/C/GC/34, para. 19.

52 Human Rights Committee, Considerations of Reports Submitted by States Parties Under Article 40 of the Covenant, CCCPR/C/79/Add.38, 3 August, 1994

53 Prof. Dr. Anne Peters, Basel Institute on Governance, Corruption and Human Rights, Working Paper Series 20, 2015

Each element of Article 2(1) of the ICESCR⁵⁴ provides for State obligations, that may become difficult or even impossible to fulfil when corruption is present. The first element, or the principal obligation, is ‘to take steps’ to ensure these rights. Pursuant to the ICESCR, such steps must be ‘deliberate, concrete and targeted’.⁵⁵ The steps to be taken must include eliminating obstacles to the realisation of economic, social, and cultural rights. Given that corruption represents such an obstacle, it follows that States are, in principle, required by the ICESCR to take anti-corruption measures.⁵⁶

The second element of Article 2(1) of the ICESCR requires the State to take these steps “with a view to achieving progressively the full realisation of the rights recognised in the present Covenant”. Accordingly, States are under an obligation to grant a certain priority in the allocation of resources to the realisation of human rights.⁵⁷ The misappropriation of public funds at the highest level violates this obligation as it prioritises the financing of the standard of living of high-level public officials over the realisation of social human rights.⁵⁸

The third element of Article 2(1) of the ICESCR requires States to utilise “the maximum of [the] available resources” at their disposal. It is the State itself which primarily defines what resources are available to it and what the maximum is.⁵⁹ Nevertheless, pursuant to para 27 of the Limburg Principles, the CESCR may take into consideration the “equitable and effective use of [...] the available resources” in deciding whether the State party has taken appropriate measures. Similarly, this element effectively creates a prohibition against the diversion of resources which were originally allocated towards social purposes.⁶⁰ In fact, Treaty Bodies such as the Committee on the Rights of the Child (CRC) have in their Concluding Observations to States, referred to anti-corruption measures precisely in the context of allocation of budgetary resources.⁶¹

54 Art. 2(1) of the ICESCR provides as follows: “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

55 CESCR, General Comment No. 3, The Nature of States Parties’ Obligations (Art. 2, Para. 1) (1990).

56 Martine Boersma, *Corruption: A Violation of Human Rights and a Crime Under International Law?* Cambridge: Intersentia, 2012.

57 Limburg Principles on the Implementation of the International Covenant on Economic, Social, and Cultural Rights (1986), *Human Rights Quarterly* 9, 1987.

58 Martine Boersma, *Corruption: A Violation of Human Rights and a Crime Under International Law?* (supra)

59 Ben Saul/David Kinley/Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*, Oxford: OUP, 2014.

60 Magdalena Sepúlveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights*, Antwerp: Intersentia, 2003.

61 For instance, in the CRC’s Concluding observations on the combined third and fourth periodic reports of Morocco, CRC/C/MAR/CO/3-4 of 14 October 2014, it made the following recommendations in relation to allocation of resources:

(a) ‘Utilize a child-rights approach in the elaboration of the State budget, by implementing a tracking system for the allocation and the use of resources for children throughout the budget. The State party should also use this tracking system for impact assessments on how investments in any sector may serve “the best interests of the child”, ensuring that the differential impact of such investment on girls and boys is measured;

(b) Conduct a comprehensive assessment of budget needs and establish transparent allocations to progressively address the disparities in indicators related to children’s rights;

(c) Ensure transparent and participatory budgeting through public dialogue, especially with children and for proper accountability of local authorities;

(d) Define strategic budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies; and (e) Take immediate measures to combat corruption and strengthen institutional capacities to effectively detect, investigate and prosecute corruption.’

The fourth and final element of Article 2(1) of the ICESCR relates to the State's obligation to use "all appropriate means". This obligation is further reiterated in Article 8(4) of the Optional Protocol to the ICESCR in terms of "reasonableness".⁶² While the concepts of 'appropriateness and reasonableness' might be seen as limiting or qualifying State obligations by implying that they only need to be fulfilled in a 'reasonable' manner, such concepts also serve to set a benchmark by stipulating that State measures must not fall short of what is considered 'appropriate' or 'reasonable' for progressively achieving the full realisation of the rights recognised in the ICESCR. It is the State which bears the primary responsibility of determining which means are appropriate and reasonable. Accordingly, in this context, it is the State which must decide upon the kind of anti-corruption strategy it wishes to formulate and adopt, the kind of legislative measures it wishes to enact, the authorities it wishes to set up and the amount of resources it intends to grant such authorities. Additionally, as per the settled jurisprudence of the CESCR, States have a substantial "margin of appreciation" in this regard.⁶³ Nevertheless, the ultimate determination as to whether all appropriate measures have been taken rests with the CESCR.⁶⁴

Accordingly, a State's failure to comply with the obligations imposed by any of the aforementioned elements of Article 2(1) of the ICESCR, would result in it being in violation of the Covenant. In such circumstances, the CESCR would be in a position to make the authoritative determination that a State with rampant corruption is violating its fundamental obligation arising from the ICESCR by pursuing an evidently deficient anti-corruption policy.⁶⁵

Additionally, corrupt acts by public officials or a State's inadequate anti-corruption policy more generally, may give rise to concrete violations of human rights such as the right to health (Article 12 of ICESCR) of certain patients who are denied access to medical services as they are unable to pay bribes to corrupt hospital staff.⁶⁶ The manner in which corruption results in concrete violations of various rights enshrined in the ICESCR is dealt with in greater detail below.

2. Corruption as a threat to rights including the right to an adequate standard of living and to an education

The right to an adequate standard of living is enshrined in Article 25 of the UDHR and elaborated in Article 11 of the ICESCR. The right to health is recognised as part of the right to an adequate standard of living under Article 25 of the UDHR and is further enshrined in Article 12 of the ICESCR. These provisions collectively entitle everyone to adequate food, water, housing and health. The right to education appears in Article 26 of the UDHR and Article 13 of the ICESCR. Additionally, the CESCR has issued several General Comments which outline what those rights mean and elaborate upon the duties of States to respect, protect, and fulfil them.⁶⁷

62 Article 8(4) of the Optional Protocol to the ICESCR provides as follows: When examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant.

63 CESCR, An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" under an Optional Protocol to the Covenant – Statement, UN Doc. E/C.12/2007/1 of 10 May 2007.

64 CESCR, General Comment No. 3, The Nature of States Parties' Obligations (Art. 2, Para. 1), 1990.

65 Prof. Dr. Anne Peters, Basel Institute on Governance, Corruption and Human Rights (supra).

66 Ibid.

67 Examples of such ICESCR General Comments include: General Comment No: 4: The right to adequate housing E/1992/23, 1 January, 1992; General Comment No: 15: The right to water, E/C.12/2002/11, 20 January 2003; General Comment No.14: The right to the highest attainable standard of health, E/C.12/2000/4, 11 August 2000; General Comment No: 12: The right to adequate food (Art.11), E/C.12/1999/5, 12 May 1999.

Corruption, in its various forms, can result in a State to violating economic, social and cultural rights in the following ways, among others:

First, since corruption can slow down economic growth and decrease government revenue, it can also **limit the State's ability to provide** essential goods and services.⁶⁸ It is worth noting that the CESCR has raised concerns regarding corruption related to, *inter alia*, access to healthcare or the payment of non-official fees for healthcare services (in violation of Article 12 of the ICESCR); corruption related to access to food, housing or land allocation (in violation of Article 11 of the ICESCR); as well as corruption in the justice system; and in the social security system (in violation of Article 9 of the ICESCR).⁶⁹ For instance, in its Concluding Observations to Yemen in 2011, the CESCR acknowledged the serious resource constraints of the country, the impact of which it observed was 'further aggravated by widespread corruption'. It emphasised the State's obligations to 'ensure the satisfaction of, at the very least, minimum essential levels of each of the rights in the ICESCR, as elaborated upon in its General Comment No. 3 (1990) on the nature of States parties' obligations. The Committee further stressed the following: 'even where the resources available in the country are demonstrably inadequate, the obligation remains for the State party to strive to ensure the widest possible enjoyment of the relevant rights, including through international cooperation and assistance.'⁷⁰

Second, corrupt transactions result in people being **arbitrarily denied access** to socio-economic rights in several ways.⁷¹ Bribes may be paid, influence traded, or offices misused to obtain access to government services, such as medical care, in violation of Article 12 of the ICESCR, school admission in violation of Article 13 of the ICESCR, or connections to town water lines in violation of Article 11 of the ICESCR. Corruption may constitute a condition for obtaining these services at all or within a reasonable time. Alternatively, these forms of corruption may be used to gain access to entities, such as real property rights, that are already held by others in violation of the right to housing encompassed within Article 11 of the ICESCR. A State whose officials deny access to essential goods and services through bribery, breaches its duties to respect and to fulfil those economic, social and cultural rights. A State that fails to prevent, investigate, and punish such corrupt acts by officials or third parties breaches its duty to protect those economic, social and cultural rights. It is relevant to note in this regard the CESCR's recommendations that countries investigate allegations of corruption, address the root causes of corruption, adopt all necessary legislative and policy measures to combat impunity and evaluate the measures taken to eradicate corruption.⁷²

Third, firms and individuals may also use corruption to **avoid regulatory standards**.⁷³ In exchange for bribes or under pressure from corrupt third parties, inspectors may ignore unsafe work practices in violation of Article 7 of the ICESCR; regulators may prematurely authorize the sale of drugs or medical devices in violation of Article 12 of

68 See, e.g., ICHRP and TI, Making the Connection, pp. 46, 50 also citing E/CN.4/2001/53, paras. 69, 75.

69 CCPR Centre, The UN Treaty Bodies and their approach to corruption (supra)

70 Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights – Yemen - E/C.12/YEM/CO/2, 22 June 2011.

71 Detailing these connections, see Bacio Terracino, Corruption as a Violation, pp. 31–22; ICHRP and TI, Making the Connection, pp. 50–51, 56.

72 CCPR Centre, The UN Treaty Bodies and their approach to corruption (supra), For instance, Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights – Montenegro - E/C.12/MNE/CO/1, 14 December 2014.

73 ICHRP and TI, Making the Connection, pp. 50–51, 53–55. See further, Bacio Terracino, Corruption as a Violation, pp. 16, 20–21, 24.

the ICESCR; or environmental officers may fail to enforce standards that protect water catchments or farmlands from contamination in violation of Articles 11 and 12 of the ICESCR. In all these cases, corruption is likely to result in a breach of the State's duty to respect economic, social and cultural rights, and to provide goods and services capable of fulfilling those rights.

Fourth, public officials may **misappropriate funds** intended for food, water, health, housing, and education programmes or they may **divert materials** bought for those programmes for personal gain in violation of Articles 11 and 12 of the ICESCR. This renders the State less able to provide essential goods and services of adequate quality and quantity to its peoples.⁷⁴ Thus, schools and hospitals have fewer supplies; teachers and doctors receive relatively low salaries (and hence are more likely to seek bribes); and food or financial assistance programmes have less to buy or distribute. In these ways, misappropriation can lead to violations of the duty to respect and to fulfil human rights. The CESCR has touched upon the issue of misappropriation of public resources in its recommendations. For instance, in its Concluding Observations to Yemen in 2011, the Committee recommended that the country, 'step up its efforts to combat corruption and misappropriation of State funds in the area of social security, including social insurance benefits, and prosecute those responsible.'⁷⁵

Fifth, corruption in government and in the provision of government goods and services is likely to impair the economic, social and cultural rights of **specific sectors of the population**⁷⁶ such as people living in poverty. The CESCR's recommendations to Tunisia in its 2016 Concluding Observations are pertinent in this regard. The Committee requested that the country 'monitor on a regular basis the implementation of the national health strategy and the effectiveness of the systems put in place to improve access to health care in rural areas experiencing a shortage of medical professionals, to measure the impact of the systems on the enjoyment of the right to health and to take remedial action where necessary.' It further recommended that 'in order to fight corruption in the health-care system, patients be informed of their rights through a "charter of patients' rights" that would explain the avenues available for filing a complaint if they witness attempted corruption.' It also stressed, Tunisia's obligation to 'guarantee that everyone, without discrimination, has access to affordable medication.'

People living in poverty bear the largest burden of higher tariffs in public services imposed by the costs of corruption, as they have no alternative to using these services. Accordingly, they may be completely denied access to such services by virtue of their inability to pay bribes.⁷⁷ For instance the right of children to free elementary education under Article 26(2) of the UDHR and Article 13 of the ICESCR, for example, will be compromised when teachers or school officials demand bribes in exchange for enrolment.⁷⁸ Furthermore, the growing privatization of education (including in the field of basic education, which remains a core obligation of the State, as well as early childhood care) heightens the risk of discrimination on the grounds of wealth

74 ICHRP and TI, Making the Connection, p. 56.

75 Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights – Yemen (supra).

76 See further Bacio Terracino, Corruption as a Violation, pp. 14–15.

77 OECD, CleanGovBiz – Integrity in Practice – The rationale for fighting corruption (supra)

78 ICHRP and TI, Making the Connection, pp. 54, 58–60. See further, Bacio Terracino, Corruption as a Violation, pp. 27–30; UNDP, Fighting Corruption in the Education Sector: Methods, Tools and Good Practices (New York) 2011, pp. 17–19. Available from www.undp.org/poverty, pp. 17–19.

or social status.⁷⁹ The CESCR has noted that private institutions involved in higher education and early childcare providers were often insufficiently or poorly regulated,⁸⁰ and has further indicated that failure by States to adopt a regulatory framework for private providers of education, including sanctions for abusive practices, constitutes a violation of their obligations under the ICESCR.⁸¹

Several studies provide evidence of the negative correlation between corruption and the quality of government investments, services and regulations.⁸² For example, child mortality rates in countries with high levels of corruption are about one third higher than in countries with low corruption, infant mortality rates are almost twice as high and student dropout rates are five times as high.⁸³

79 Report of the Special Rapporteur on the right to education to the 69th session of the General Assembly, A/69/402, 24 September 2014, paras 48-49; and Committee on Economic, Social and Cultural Rights, General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, 60th session, 17 October 2016, para 24.

80 Report of the Special Rapporteur on the right to education to the 69th session of the General Assembly (supra) paras 35 and 56; and Committee on Economic, Social and Cultural Rights, General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities (supra).

81 Report of the Special Rapporteur on the right to education to the 69th session of the General Assembly (supra) para 1; and General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities (supra)

82 OECD, CleanGovBiz – Integrity in Practice – The rationale for fighting corruption (supra)

83 Sanjeev Gupta, Hamid Davoodi and Rosa Alonso-Terme, Does corruption affect income inequality and poverty? *Economics of Governance*, 2002, vol. 3, issue 1, pp. 23-45.

CHAPTER II: INTEGRATING INTERNATIONAL HUMAN RIGHTS STANDARDS AND MECHANISMS INTO ANTI-CORRUPTION EFFORTS



A. Using human rights mechanisms to prevent and combat corruption

Anti-corruption practitioners (including those belonging to civil society) should consider combating corruption by using human rights machinery, which provides them with an avenue to, *inter alia*:

- contribute to the development of anti-corruption policies and standards;
- monitor and report on corruption;
- and highlight and bring to the attention of UN human rights mechanisms, cases of human rights violations arising from corruption.

Human rights mechanisms can be used to tackle corruption as an obstacle to the full enjoyment of human rights, as well as a specific violation of human rights. These mechanisms can be divided broadly into 1) UN mechanisms and 2) Non-UN mechanisms such as national human rights institutions. However, for the purpose of this Guide, we will focus exclusively on the UN human rights mechanisms.

B. UN Mechanisms

The United Nations system consists of several human rights mechanisms:

- The **Charter-based mechanisms**, which include the Human Rights Council (HRC), the Universal Periodic Review (UPR), the Special Procedures, the Advisory Committee and the Complaint Procedure. These mechanisms are “charter-based” because the authority to create them stems from the UN Charter.⁸⁴

84 The UN Charter is available here: <http://www.un.org/en/charter-united-nations/>

- The **Treaty-based mechanisms** or Treaty Bodies: the HR Committee, the CESCR, the CAT, the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), the CRC, the Committee on the Elimination of Racial Discrimination (CERD), the Committee on Enforced Disappearances (CED), the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), the Committee on the Rights of Persons with Disabilities (CRPD Committee) and the SPT.

C. Charter based mechanisms

1. Human Rights Council

The HRC is an **inter-governmental body within the UN system** responsible for strengthening the promotion and protection of human rights around the globe, as well as for addressing situations of human rights violations and making recommendations on them. It can discuss all thematic human rights issues and situations that require its attention.

The Council meets in Geneva ten weeks a year and is composed of 47 UN Member States, elected by the UN General Assembly. They serve for an initial period of three years, and cannot be elected for more than two consecutive terms.

The HRC holds meetings throughout the year providing a multilateral forum to address human rights violations wherever and whenever they occur. It responds to human rights emergencies and makes recommendations on how to better implement human rights on the ground. The Council has the mandate to discuss all thematic human rights issues and country-specific situations that require its attention. The HRC adopted two resolutions, which explicitly address the “negative impact of corruption on the enjoyment of human rights”.⁸⁵

The Council held its first session in June 2006. A year later, the Council adopted its “Institution-Building” package through Resolution 5/1 to guide its work and set up its procedures and mechanisms. Among the Council’s **subsidiary bodies** are the UPR, the Special Procedures, the Advisory Committee and the Complaint Procedure.

Engaging with the Human Rights Council⁸⁶

In Resolution 60/251⁸⁷ the General Assembly acknowledged the important role played by NGOs and other civil society actors nationally, regionally and internationally in the promotion and protection of human rights.

NGOs can be accredited to participate as observers in the Council’s sessions. Once accredited as observers, NGOs are able to:

- submit written statements to the Council ahead of a given session, individually or jointly with other NGOs, on subjects that are relevant to the Council’s work, and

85 Res. A/HRC/29/L.19 of 29 June 2015, available here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/163/81/PDF/G1516381.pdf?OpenElement>; and Res. A/HRC/RES/35/25 of 23 June 2017, available here: <https://undocs.org/A/HRC/RES/35/25>.

86 NGO and NHRI Information in the Human Rights Council section of the OHCHR website: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NgoNhrInfo.aspx>; and OHCHR, Working with the United Nations Human Rights Programme, A Handbook for Civil Society (2008), available electronically at: https://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf

87 UN General Assembly, A/RES/60/251, 72nd plenary meeting, 15 March 2006.

in respect of which the NGO possesses special competence. Once received and processed by the Council's Secretariat, NGO written statements become part of the official documentation of the Council's sessions;

- make oral interventions during all substantive items of the Council's agenda, which encompasses both general debates and interactive dialogues at Council sessions;⁸⁸
- participate in debates, interactive dialogues and panel discussions;
- and organise "parallel events" or side-events on issues relevant to the Council's work,⁸⁹ which generally take place on the margins of the Council session. Such events which comprise of presentations and interactive discussions, provide NGOs with a platform to share their experiences and to engage in dialogue with other NGOs, States and other stakeholders (including special procedures mandate-holders and distinguished panellists such as human rights experts) on diverse human rights issues and situations of pertinence to the Council.

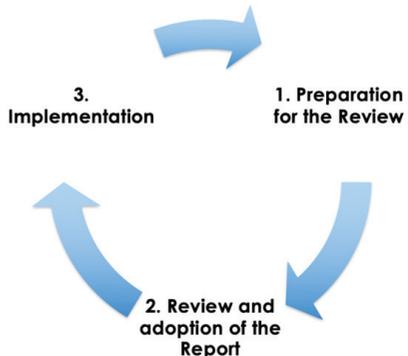
2. Universal Periodic Review

The UPR is a HRC mechanism aimed at improving the human rights situation on the ground in each of the 193 UN Member States⁹⁰. Under this mechanism, the human rights situation of all UN Member States is reviewed every four and a half years. The basis of the review is the UN Charter, the UDHR, the human rights instruments to which the State is party and any pledges or commitments made by the State. Each year 42 States are reviewed during three Working Group sessions, usually held during the months of January/February, May/June and October/November.

The UPR is a cyclical process comprised of **three key stages**:

- Preparation for the review and reporting on implementation;
- Review of the human rights situation of the State under review and adoption of a report;
- Implementation of recommendations and mid-term reporting.

The UPR process in three phases



88 Representatives of NGOs wishing to make oral interventions should register in person at the "List of Speakers" desk in the meeting room (the plenary). Registration forms for individual and joint statements can be downloaded from the Human Rights Council's homepage and should be brought in person to that desk when registering. This can be done via the: 'Link to Oral Statement Registration', found on the 'NGO Participation in the Human Rights Council' section of the OHCHR website.

89 For procedural details and rules to be followed in respect of all these activities, NGOs are advised to consult the 'NGO Participation in the Human Rights Council' section of the OHCHR website which also contains a link to the following document: 'A practical guide for NGO participants (about accreditation, attending the session, access to the public gallery, requesting a room for a parallel event, making an oral statement, documentation and resources, and participation in general, etc.): https://ohchr.org/Documents/HRBodies/HRCouncil/PracticalGuideNGO_en.pdf

90 More info: <https://www.upr-info.org/en/upr-process/what-is-it>.

The UPR offers a powerful framework for a **periodic review of the human rights situation** of all UN member States as an inter-State mechanism, whereby States report about their human rights situation to other States, which have the opportunity to ask questions and make comments and recommendations to the State under review. It covers all human rights and related issues and is based on comprehensive information from the government concerned and other sources, including national human rights institutions, treaty bodies, special procedures, UN agencies and programmes, and NGOs. The proceedings culminate with an outcome report which summarises the dialogue, including the questions posed to the State under review and its responses, as well as the comments and recommendations made regarding the State under review. In the UPR sessions conducted thus far, recommendations and voluntary pledges regarding the issue of corruption have appeared in numerous instances.⁹¹

Over the first two UPR cycles, 299 recommendations were given on corruption to various countries: 124 in the first cycle and 175 in the second cycle. The third cycle is currently ongoing, and with approximately one third of the countries having been reviewed, the number of recommendations on corruption stands at 34. The countries that received the most recommendations on corruption during the first two cycles, were Mozambique and Equatorial Guinea (both 14). Ukraine received 16 recommendations in the third cycle alone. The States that made the most recommendations on corruption during the first two cycles were the USA (27), Canada (19) and the Russian Federation (14).

Corruption is not a high-profile subject in the UPR process: it is ranked 48th of 56 themes. The corruption-related recommendations are less action-oriented than the average UPR recommendation.

During the second cycle of the UPR, which ran between 2012 and 2016, countries made the following types of recommendations in regard to the need for the country under review to combat corruption:

- Slovenia recommended that Bulgaria, ‘accelerate judicial reform and enhance the fight against corruption in order to improve human rights standards in the country.’
- Turkey recommended that Croatia ‘finalise the draft strategy and action plan to combat corruption and effectively prosecute the perpetrators’ of corrupt acts.’
- Canada recommended that Moldova, ‘enhance the independence of the judiciary and strengthen rule of law through anti-corruption initiatives, increased transparency in the justice sector, and the elimination of external influence in judicial proceedings.’

All the aforementioned recommendations were accepted by the countries under review.

Engaging in the UPR process

Civil society actors including NGOs may contribute to the UPR process by:

- attending sessions of the Working Group on the UPR;
- participating in consultations held by governments to prepare their national reports on the human rights situation in their countries;

91 www.upr-info.org (as on Sep 2018).

- engaging in the UPR Pre-sessions held in Geneva for every country under review;
- meeting with diplomats based in the countries under review or in the capitals;
- submitting reports on the human rights situation in States under review for potential inclusion in the summary of stakeholders' submissions prepared by the Office of the UN High Commissioner for Human Rights (OHCHR). The OHCHR summary is taken into consideration by the Working Group when reviewing States;
- and contributing to follow-up on the implementation of UPR recommendations.

3. Special procedures

Special Procedures is the general name given to the mechanisms established to address either **specific country situations or thematic issues** in all parts of the world. Special Procedures are either an individual namely a Special Rapporteur or independent expert; or a working group. They are prominent, independent experts who are appointed by the HRC and work on a voluntary basis.

All Special Procedures report to the HRC on their findings and recommendations, and many also report to the General Assembly. They are sometimes the only mechanism that will alert the international community to certain human rights issues, as they can address situations in all parts of the world without the requirement for countries to have ratified a human rights instrument. As of 1 December 2018, there are 44 thematic mandates and 12 country mandates.

In their reports, the mandate holders recognise **corruption** as both a structural obstacle to the realisation of human rights and a major source of specific human rights violations. They have identified widespread corruption across public authorities and more specific problems in different government structures ranging from those that administer justice, to those that provide social services.

For example, the Special Rapporteur on independence of judges noted in one of his reports that the judicial system in a country that he visited was in an alarming state, especially as a result of, *inter alia*, corruption.⁹² The Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography stressed that the testimonies gathered during a country visit overwhelmingly pointed to corruption and police negligence as one of the main causes of exploitation and trafficking.⁹³

Additionally, a recent report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence dated 25 July 2018, makes the following observations regarding corruption in the context of transitional justice:

'The challenge posed by corruption and how to address and fight it during political transitions has come to the fore in the past five to seven years, when corruption emerged in a number of countries as a major grievance alongside joblessness and other violations of social and economic rights, in addition to rampant violations of civil and political rights.

[...] The issue of corruption then appeared in a new light, as it was seen as an enabler of various other gross violations: as a means to project economic and political power for private and/or partisan ends, and hence to maintain a culture of oppression. [...]

⁹² See, e.g., Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy - A/HRC/4/25/Add.3; Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston - A/HRC/8/3/Add.4.

⁹³ Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography -A/HRC/7/8/Add.2.

[...] Against this background, it becomes evident that a deeper understanding of the issue of corruption will not only shed more light on the preconditions that have allowed gross violations to be committed in the first place but will also help to identify the structural deficiencies that would need to be addressed under the heading of “guarantees of non-recurrence”.’

Accordingly, the Special Rapporteur has outlined his intention to make a thorough assessment and conceptual study of the interplay of corruption with gross violations of civil, political, economic, social and cultural rights, in transitional contexts; and to review recent practices of transitional justice mechanisms aimed at addressing corruption and other economic crimes.⁹⁴

Engaging with Special procedures through reporting

Civil society may contribute to the work of the special procedures in the following ways:

- by submitting individual cases of human rights violations to the concerned Special Procedure mandate holders (as outlined in greater detail below under ‘Engaging with Special Procedures through the Complaints Procedure’);
- providing information and analysis on specific human rights concerns and alerting Special Procedure holders of the risk of potential human rights violations that may arise from the introduction of new legislation;
- providing support for Special Procedures’ country visits;
- working at the local or national level to advocate, disseminate, follow up and implement the work of Special Procedures;
- inviting Special Procedure mandate holders to participate in their own initiatives;
- meeting individual mandate holders throughout the year;
- and participating in the annual meeting of Special Procedure mandate holders.

Civil society actors can also nominate candidates as special procedures mandate holders.

Engaging with Special Procedures through the Complaints Procedure

Special Procedure mandate holders may be empowered to take action on complaints concerning individual cases of human rights violations or a general pattern of human rights abuse, based on information received from relevant and reliable sources (mainly civil society actors). Communications can be submitted to Special Procedure mandate holders by a victim or by any other person, organisation or institution that possesses credible information about the case, as long as the mandate permits them to do so. The decision concerning intervention is at the mandate holder’s discretion. If he or she is of the view that the communication does not require action, appropriate information is shared with the complainant.

Action on individual cases by Special Procedures is an important instrument for protecting human rights, which should be kept in mind in fighting corruption. Such communications are particularly useful in urgent cases as they permit urgent or preventive action to be taken by way of ‘urgent appeals’. They also have other advantages, namely: such cases may be brought regardless of the State in which they occur and whether that State has ratified any of the human rights treaties; it

⁹⁴ Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A-HRC-39-53, 25 July 2018

is not necessary for domestic remedies to have been exhausted prior to using this communications procedure; the communication is not required to be made by the victim, although the source making the complaint must be reliable; and a complaint may be submitted simultaneously before a Treaty Body and a Special Procedure mandate holder (provided there is a relevant mandate).

4. Advisory Committee

The HRC Advisory Committee functions as a think-tank for the HRC: it provides the Council upon request with implementation-oriented, thematic **studies and research-based advice** on issues pertaining to the mandate of the Council; namely the promotion and protection of all human rights. The Advisory Committee may propose suggestions for further enhancing its procedural efficiency, as well as further research proposals within the scope of the work set out by the Council. The Advisory Committee convenes for up to two sessions per year.

The Advisory Committee has recommended that examination of the issue of **corruption** as a possible cause for human rights violations should be integrated into the UPR. The Advisory Committee went on to recommend that in the framework of the Council's complaints procedure, specific attention should be paid to possible violations of human rights caused by corruption.⁹⁵

Moreover, the Council requested in 2017 that the Advisory Committee conduct a study into the possibility of utilising non-repatriated illicit funds, including through monetization and/or the establishment of investment funds. It also requested that the Committee seek further views and the input of relevant international and regional organisations, UN bodies, national human rights institutions and NGOs.⁹⁶

Engaging with the Advisory Committee

- NGOs may submit written statements relevant to the work of the Human Rights Council Advisory Committee ahead of the relevant session.
- Accredited NGOs may make oral statements under substantive items of the agenda. The speakers' desk is usually located inside the conference room. NGOs can only be (pre-) registered by persons holding a badge of the concerned NGO.
- Accredited NGOs may organise parallel events related to the work of the HRC, taking into account availability of rooms.

5. Complaints procedure

The HRC accepts **communications from individuals, groups, or NGOs** that claim to have been victims of, or have direct knowledge of, human rights violations. Complaints may be submitted regardless of whether the State in question has ratified any particular human rights treaty. Complaints are initially confidential, but depending on its evaluation of the complaint, the Council may decide to take it up for public consideration, or to

95 Human Rights Council Advisory Committee "Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights" (A/HRC/28/73), distr. 5 January 2015. Available at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_73_ENG.doc

96 More information on the study: <https://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/Illicitfunds.aspx>

refer the matter to the OHCHR in order to provide technical assistance in resolving the situation.

The confidential complaint procedure before the HRC aims “to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.”⁹⁷ It should be impartial, objective, efficient, victim-oriented, and conducted in a timely manner. The complainant may be a person or a group of persons claiming to be the victims of violations of human rights and fundamental freedoms or any person or group of persons, including NGOs, claiming to have direct and reliable knowledge of the violations concerned (*actio popularis*). The Council’s complaint procedure is the **only universal complaints mechanism** covering all human rights and all fundamental freedoms in all States regardless of whether the State concerned is a party to the treaty/(ies) covering the rights that it is accused of violating.

The extent to which **corruption** has been subject to such procedures is unknown, since the procedure is confidential. Nevertheless, there is no reason, in principle, that would prevent corruption from being brought to the attention of the HRC in this way if it is sufficiently widespread and/or endemic as to lead to a consistent pattern of gross human rights violations.

Engaging with the Complaint Procedure

Individuals, groups or NGOs that claim to be victims of human rights violations or that have direct, reliable knowledge of such violations, can submit such information to the HRC’s complaint procedure.⁹⁸

D. Treaty based mechanisms

There are nine Treaty Bodies, **one for each core international human rights treaty**. These bodies consist of independent experts who monitor the implementation of the following international human rights treaties: the ICCPR; the ICESCR; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture); the Convention on the Rights of the Child (Child Rights Convention); the Convention on the Elimination of Discrimination Against Women (CEDAW); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Convention for the Protection of All Persons from Enforced Disappearance (ICED); the Convention on the Rights of People with Disabilities (CRPD) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW). A tenth treaty body, the SPT, established under the Optional Protocol to the Convention Against Torture, monitors places of detention in States parties to the Optional Protocol.

The Treaty Bodies are created in accordance with the provisions of the treaty that they monitor. Each Treaty Body has its own working methods and procedures, but their secretariats are currently working to harmonise their methods in order to facilitate participation.

The Treaty Bodies have four procedures that enable them to monitor the implementation of human rights on the ground, namely a **reporting procedure**; an inter-state procedure; an inquiry procedure; and a **complaints procedure**. Furthermore, the Committees also

97 Human Rights Council resolution 5/1 of 18 June 2007

98 More information on the complaint procedure can be found here: https://www.ohchr.org/Documents/HRBodies/ComplaintProcedure/FAQComplaintProcedure_en.pdf

publish their interpretation of the content of human rights provisions, known as General Comments, related to the treaties they oversee.⁹⁹ However, for the purposes of this Guide, we will focus on the reporting and complaints procedures respectively and how they can be utilised by civil society in the context of tackling corruption.

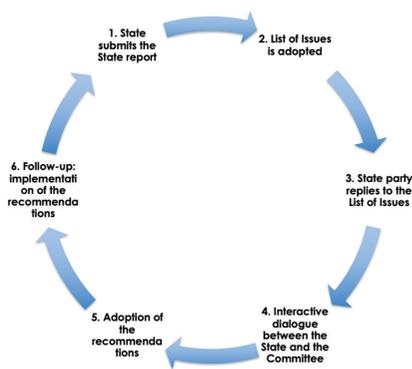
NGOs play an essential role in articulating human rights concerns and providing the competent bodies including Treaty Bodies with information. In their submissions, including to human rights Treaty Bodies, NGOs often highlight the adverse impact of corruption on human rights and report on human rights violations resulting from corruption.

1. Reporting procedure

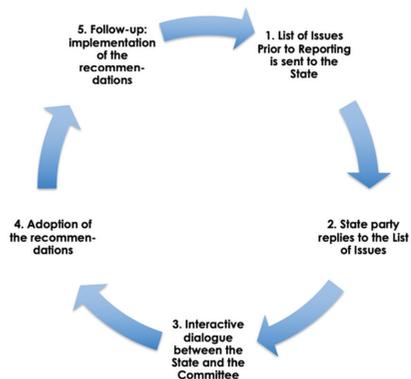
Under the reporting procedure, the **Treaty Bodies consider States parties' reports**. As illustrated in the diagram below, the reporting cycle begins with the State party's submission to the relevant Committees of its report regarding its compliance with obligations under the treaty concerned. On the basis of this report the concerned Treaty Body/Committee usually prepares a list of issues requesting more information from the State party. The State party is then invited to provide written responses to the list of issues. This is followed by a public dialogue between Committee members and representatives of the State party, on the basis of which, the Committee adopts concluding observations and makes recommendations regarding actions to be taken by the State party. This process is called the review. A further crucial step relates to the follow-up of the implementation by the concerned State party of the Committee's recommendations.¹⁰⁰

To reduce the reporting burden of States, all Treaty Bodies except the CED have adopted the "simplified reporting procedure", whereby the Committees send State parties a list of issues (a so-called "list of issues prior to reporting", or LOIPR) and consider their written replies to this LOIPR instead of a periodic report. As a result, States have one report less to submit per Treaty Body.¹⁰¹

Reporting cycle under human rights treaties



Simplified Reporting Procedure



⁹⁹ <http://research.un.org/en/docs/humanrights/>

¹⁰⁰ CCPR, Centre for Civil and Political Rights, Participation in the Reporting Process available electronically at: http://ccprcentre.org/files/media/NGO_Guidelines_English1.pdf; CCPR, Tool for civil society, available electronically at: http://ccprcentre.org/files/media/FU_tool_ENG.pdf; <https://www.ohchr.org/en/hrbodies/pages/followupprocedure.aspx>

¹⁰¹ For more information regarding the Simplified Reporting Procedure: CCPR, Centre for Civil and Political Rights, Participation in the Reporting Process, p. 9, available electronically at: http://ccprcentre.org/files/media/NGO_Guidelines_English1.pdf;

The Treaty Body system differs from the HRC in several ways¹⁰²:

- The Treaty Bodies each monitor the implementation of their own treaty, which limits the scope of the review, while the HRC considers the whole human rights situation in a country, independent of which human rights treaties were ratified by the State.
- Members of the Treaty Bodies are independent experts, while the HRC is an inter-governmental body composed of States.
- Countries have to ratify the treaty in order to be reviewed by the Treaty Body, while there is no such requirement for the HRC which reviews all countries in the context of the UPR process.

Engaging with the reporting procedure of the Treaty Bodies

NGOs have four ways through which they can participate in this process.

- **Monitoring the reporting obligations of States parties:** Civil society can serve to encourage governments to meet reporting deadlines to Treaty Bodies under the respective treaties to which they are a party, and can raise public awareness about a State's obligation to submit a report at a given time. Civil society can provide States with complementary information on treaty implementation gathered in the course of their activities, and collaborate with States in respect of implementation of treaty obligations. If a State party has neither submitted a report for an excessive period of time nor responded to a Treaty Body's requests for a report, Treaty Bodies may consider the situation in the country at one of its sessions in the absence of a report from the State party.
- **Submitting written information:** Civil society actors like NGOs have the opportunity to provide input and to influence the Treaty Body process at various stages of the reporting cycle: a report before the list of issues is adopted, a report before the review in Geneva and a follow-up report on implementation measures that the State has taken since the review took place. Generally, civil society actors should submit information and material following the submission of the State party report but before its consideration by the concerned treaty body. Civil society actors can join forces and submit reports produced by a coalition of actors. It is advisable that civil society actors submit any written reports as early as possible before the scheduled examination of the State's report to enable the Treaty Body concerned to take them into consideration.¹⁰³ In some cases, national NGOs are also involved in the preparation of the State party report.¹⁰⁴ The modalities for submitting information vary from one human rights Treaty Body to another, and depend on the type of report that is submitted.¹⁰⁵ There are important requirements regarding word limits and deadlines.

102 For more information : <https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

103 A Handbook for Civil Society (2008) (supra)

104 <http://www.omct.org/escr/about/submitting-alternative-reports/>; http://ccprcentre.org/files/media/NGO_Guidelines_English1.pdf

105 Refer to the Annex in Chapter 4 of A Handbook for Civil Society (2008) (supra) for the various modalities regarding reporting requirements, submission of written information, attending the sessions of the different treaty bodies etc. Prior to submitting written information, civil society must ensure that the State has ratified or acceded to the relevant instrument (i.e. treaty) and the extent of any reservations made by the State; verify when the next State report is due and when the next session of the concerned treaty body is scheduled to be held; familiarise themselves with the contents of previous States parties reports as well as the previous concluding observations and previous lists of issues relating to the respective States parties; and be aware of the reporting guidelines of each human rights treaty body to enable civil society to gauge the extent to which States parties' reports conform to them.

– **Attending and contributing to Treaty Body sessions:** State party reports are considered at public meetings, which civil society actors may attend as observers subject to accreditation having been requested in advance from the relevant secretariat.¹⁰⁶ Attending Treaty Body sessions enables civil society actors to:

- observe the dialogue between the concerned Treaty Body and the State;
- and gain first-hand knowledge regarding the issues raised and the recommendations made by the concerned treaty body. The rules and procedures governing the participation of civil society in treaty body sessions, as well as in the pre-sessional period, vary among the different treaty bodies.

While civil society actors do not participate in the dialogue between the State party and the Treaty Body, they may, nevertheless, make presentations to Treaty Body members on the issues contained in their written submissions. Most Committees including the HR Committee, the CESCR, the CAT, the CEDAW Committee and the CMW set aside time for oral briefings by civil society during their reporting sessions. Additionally, some Treaty Bodies provide for informal, closed meetings, where civil society actors can express their concerns to the Committee. These briefings normally take place on the day preceding or on the day of consideration of the State report of the relevant country. Those meetings are closed and enable Treaty Body members to ask for clarifications or examples of cases.

Some Treaty Bodies work with pre-sessional working groups, where civil society actors have the opportunity to submit written information. The significance of civil society contributions to pre-sessional working groups arises, *inter alia*, from the fact that they may be incorporated into the lists of issues to be sent to States parties. Certain committees such as the CESCR, CEDAW Committee, CRPD Committee and the CRC allocate a specific time for civil society contributions to their pre-sessional working groups. While other committees may not provide such a formal channel for civil society contributions, they may nevertheless be open to receiving civil society contributions in informal meetings arranged with the committee members by contacting the relevant committee's secretariat.

– **Following up on Treaty Bodies' Concluding Observations:** Following the adoption of the Concluding Observations by the relevant treaty body, civil society can undertake follow-up activities at the national level to raise awareness of the recommendations and to encourage the State party to implement the Concluding Observations, including through the promotion of national legislative reforms and the development of new national policies. The Concluding Observations can also serve as the basis for civil society's dialogue with the concerned country's national government, and their programme of action in that country. Additionally, civil society may also supply the committees with targeted and focused information about governments' progress in implementing the Concluding Observations and recommendations, in a follow-up report.

106 Information about accreditation can be found here: <https://www.ohchr.org/EN/HRBodies/CERD/Pages/Accreditation.aspx>

2. Complaints procedure

Most of the core human rights conventions provide for the **submission of individual complaints to Treaty Bodies** in cases of human rights violations concerning one or more specific individuals. These individual complaints are referred to as communications. The case law of Treaty Bodies like the HR Committee has significantly contributed to the protection of human rights and the development of its doctrine. Civil society can submit individual complaints to all the Treaty Bodies, except for the CMW, for which the complaints procedure has not entered into force yet.

Engaging with the complaints procedure of the Treaty Bodies

A person or organisation including NGOs can bring a complaint **on behalf of the individual** victim provided they have received the victim's written consent to do so, in the form of a 'power of attorney' or an 'authority to act'. However, such consent is not necessary if there are strong grounds for believing that it is impossible to obtain given the circumstances of the particular case.

Other **admissibility requirements** include the following:

- It has to be shown that the alleged victim is individually and directly affected by the alleged violation. A so-called *actio popularis* is not admissible.
- The alleged violation must relate to a right actually protected by the treaty in question.
- The Treaty Bodies are not competent to act as an appellate instance of national courts.
- The complaint has to be sufficiently substantiated.
- The complaint must refer to events that occurred after the entry into force of the complaint mechanism of the relevant Treaty Body in the State party.
- In general, the same matter cannot have been submitted to another international body, including other Treaty Bodies and regional mechanisms. However, cases submitted to Special Procedures can simultaneously be submitted to a Treaty Body. Moreover, cases which have been rejected by regional courts may be eligible for consideration by the Treaty Bodies. The HR Committee accepts cases as long as "the same matter is not *being examined* under another procedure of international investigation or settlement".¹⁰⁷
- Domestic remedies must have been exhausted, unless there is sufficient evidence that proceedings at the national level have been unreasonably prolonged or would be ineffective.
- The complaint cannot relate to a provision of the treaty to which the State has expressed a substantive reservation.
- The complaint cannot be a frivolous, vexatious or otherwise inappropriate use of the complaint procedure.

107 Article 5.2 (a) Optional Protocol to the International Covenant on Civil and Political Rights, emphasis added.

Corruption has been invoked in several communications. So far, Treaty Bodies have referred to corruption in the merits of views, but until now it has never considered corruption as a direct violation of human rights.¹⁰⁸ Complainants usually refer to the existence of widespread corruption in the country as one of the aspects of the case, putting into question the impartiality of the relevant domestic bodies, especially the judiciary. For example, the CAT heard that the complainants would be at risk of torture by corrupt police officers in their country of origin, in the event that they were expelled from the respondent state following an unsuccessful asylum application. They also alleged that they had been subjected to pressure in their country of origin to engage in corruption. The Committee did not find corruption irrelevant but it was of the view that the complaints were unsubstantiated on the evidence.¹⁰⁹

It is worth noting that **communications procedures before Treaty Bodies are optional**, in the sense that State parties to the human rights treaties can choose to recognise the competence of the corresponding Treaty Body by ratifying the relevant protocol. If the State party has not recognised the competence of the Committee to receive individual communications, that Committee will not be able to accept complaints against that State party.

3. Confidential inquiries and early warning and urgent action procedures

Upon receipt of reliable information on **serious, grave or systematic violations** by a State party of rights set forth in the Conventions they monitor, the CAT (Article 20 of the Convention Against Torture), the CEDAW Committee (Article 8 of the Optional Protocol to CEDAW), the CRPD Committee (Article 6 of the Optional Protocol to CRPD), the CED (Article 33 of ICED), the CESCR (Article 11 of the Optional Protocol to ICESCR) and the CRC (Article 13 of the Optional Protocol [on a communications procedure] to the Child Rights Convention) may initiate confidential inquiries.¹¹⁰

Civil society may, through the information supplied to Committees, **influence their decision** to undertake a confidential inquiry. Confidential inquiries are important mechanisms that enable civil society to bring violations and situations of concern to the attention of the Treaty Bodies. In fact, confidential inquiries undertaken by Treaty Bodies such as the CAT (on Brazil, Egypt, Mexico, Peru, Serbia and Montenegro, Sri Lanka and Turkey) were all initiated on the basis of information received from NGOs. Civil society actors may provide further information to the relevant treaty body even after the confidential inquiry is under way.

Similarly, information received from civil society actors like NGOs and indigenous groups has also served to trigger the early warning and urgent action procedures of Treaty Bodies like the CERD.

108 For example, HR Committee, H.E.A.K. v. Denmark, 24 September 2015, CCPR/C/114/D/2343/2014; HR Committee, Kruk v. Belarus, 9 December 2015, CCPR/C/115/D/1996/2010; HR Committee, Andrés Felipe Arias Leiva v. Colombia, 18 December 2018, CCPR/C/123/D/2537/2015; and others.

109 CAT 298/2006, A/62/44, (2007) Annex VII, A, p. 305-316.

110 More information on this procedure can be found on the websites of the respective treaty bodies.

Engaging with confidential inquiries and early warning and urgent action procedures

Civil society can submit information to the relevant Treaty Body if they have information about serious, grave or systematic human rights violations, to **request the opening** of an inquiry procedure.

The **submission** should:

- indicate the State party alleged to be violating rights under the treaty;
- be written in one of the UN languages;
- provide a factual description of the alleged violations and indicate the rights under the treaty which are alleged to have been infringed. It should also, where possible, indicate the extent to which the infringement of these rights is grave or systematic;
- and not be exclusively based on reports disseminated by mass media.

CHAPTER III: PROTECTING THE HUMAN RIGHTS OF THOSE INVOLVED IN THE FIGHT AGAINST CORRUPTION



Anti-corruption campaigns require multifaceted efforts and the involvement of various actors. Media, civil society, and NGOs have been instrumental in uncovering and reporting particular acts of corruption. Their vigilance and voices are crucial in motivating governments and other actors to act with integrity. Ensuring the involvement of different actors requires both a suitable policy climate and the appropriate legal safeguards. Human rights norms, principles and approaches are indispensable in establishing both, and thus may encourage journalists, activists, experts, victims and witnesses to come forward and “blow the whistle”.

A. Journalistic freedom and corruption

A free press provides a key platform for both highlighting incidents of corruption and informing state agencies, non-government actors, and the public about the sources, manifestations and consequences of systemic corruption. **Firstly**, the media tangibly contributes to anti-corruption efforts. Both incidental and systematic reporting across a variety of channels have prompted investigations, law reforms, and personnel changes – including at the highest levels of government. **Secondly**, the media helps to prevent corruption through investigative journalism that exposes public officials and politicians engaging in corrupt conduct, by publicising the results of anti-corruption campaigns and by contributing to the stigmatisation of corruption. Its intangible benefit is “the broader social climate of enhanced political pluralism, enlivened public debate and a heightened sense of accountability among politicians, public bodies and institutions.”¹¹¹ Thus, in many instances, a free press becomes a natural ally of anti-corruption campaigners and victims of corruption.

However, the media and journalists may act as public watchdogs against corruption only if they enjoy professional freedom and independence. Hence there are obvious

111 R. Staphenurst, *The Media's Role in Curbing Corruption*, World Bank 2000, p. 3; E. Byrne, A.-K. Arnold and F. Nagano, *Building Public Support for Anti-Corruption Efforts. Why Anti-Corruption Agencies Need to Communicate and How*, World Bank 2010, p. 9.

concerns around media censorship, which helps to conceal corruption and thus prevents its disclosure, public censure and investigation.

Journalistic and media freedoms are frequently subjected to attacks as a means of preventing the disclosure of instances of corruption, the existence of corrupt state policies and mechanisms, and networks of corrupt officials. As Abid Husain, a former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pointed out, in many instances, “restrictions on the freedom of opinion and expression limit to a significant extent the possibility of violations becoming known and investigated. [...] such trends perpetuate patterns of government corruption and impunity.”¹¹²

B. Exposure of journalists and journalistic safeguards

The human rights mechanisms discussed in Chapter II are also engaged in the protection of journalists and are empowered to scrutinize the compliance of States with their obligations in this respect.

The former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue observed that journalists face significant challenges in carrying out their work: ‘These range from restrictions to movement, including deportations and denial of access into a country or a particular area; arbitrary arrests and detention, particularly during public crises or demonstrations; torture and other cruel, inhuman or degrading treatment or punishment, including sexual violence against female journalists; confiscation of and damages to equipment, information theft, illegal surveillance and office break-ins; intimidation, including summons to police stations for questioning, harassment of family members, death threats, stigmatisation and smear campaigns to discredit journalists; abductions or enforced disappearance to killings.’¹¹³ In addition, the former Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, produced shocking estimates of the number of journalists who were targeted, including fatally, for their involvement in investigative research, reporting and denouncing of, issues including, *inter alia*, corruption.¹¹⁴

It is not enough for States to enact laws prohibiting interference with journalistic freedoms and criminalising physical attacks or threats against journalists. Under international human rights law, the State is obliged to promptly and effectively hold perpetrators to account. Investigative journalists, in particular, are likely to require special protection as they are confronted, not only with various forms of censorship, harassment and intimidation, but also arbitrary arrests, torture, enforced disappearances, and unlawful killings. This, in turn, creates a climate of fear in society and inevitably chills efforts to challenge corruption.

It is worth noting that the **HRC** has also condemned threats and attacks against journalists and addressed the conditions necessary for their protection. In the present context, it is particularly worth noting HRC Resolution 35/25,¹¹⁵ in which the Council

112 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted in accordance with Commission resolution 2001/47, E/CN.4/2002/75, 30 January 2002, para. 98.

113 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, A/HRC/20/17, 4 June 2012, para. 48.

114 Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/19/55, 21 December 2011, paras. 37, 40–41, 55–59.

115 Human Rights Council Resolution 35/25 on ‘The negative impact of corruption on the enjoyment of human rights’, A/HRC/RES/35/25, adopted on 23 June, 2017.

recognised the importance of creating a safe and enabling environment and protecting journalists, whistle-blowers, witnesses and anti-corruption activists from threats arising from their activities in preventing and fighting corruption.¹¹⁶

Additionally, during the 37th session of the HRC, the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, drew the Council's attention to the risks faced by journalists covering corruption, tax evasion and illicit financial flows. Particular reference was made to the murders of journalists Daphne Caruana Galizia in October 2017 and Ján Kuciak in February 2018, for their reporting on political corruption in Malta and Slovakia respectively, and the HRC was requested to remain vigilant regarding similar situations.¹¹⁷ There are many other cases where the security of those on the frontline of the fight against corruption is at risk, and these deserve great attention.¹¹⁸

Additionally, the **Treaty Bodies** have also made recommendations to States regarding the safety of journalists and restrictions on freedom of expression. While the recommendations may not expressly indicate that these journalists were being targeted solely for their anti-corruption reporting, in the case of certain countries, this link appears to be implicit. For instance, in its Concluding Observations made to Bosnia Herzegovina, in 2017, the HR Committee expressed concern regarding 'reports of harassment and intimidation of journalists'; the fact that 'the media continues to be subjected to excessive influence from governments, political parties and private interest groups'; and 'the political and financial pressures faced by public broadcasters from the Government, which leads to self-censorship and subjective reporting.'¹¹⁹

C. Anti-corruption activists and human rights defenders

Human rights defenders are "individuals, groups and associations ... contributing to ... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals."¹²⁰ "What is most important in characterising a person as a human rights defender is not the person's title or the name of the organisation he or she works for, but rather the human rights character of the work undertaken. It is

116 Report of the United Nations High Commissioner for Human Rights on Safety of Journalists, A/HRC/39/23, 6 August 2018, para 20.

117 Report of the United Nations High Commissioner for Human Rights on Safety of Journalists (supra) para 35.

118 The case of well-known Maltese investigative journalist, Daphne Caruana Galizia, illustrates how the internet is being used as a tool and a platform in the fight against corruption, as her popular blog was relentlessly used to highlight cases of alleged high-level corruption targeting politicians across party lines, including around the Panama Papers tax scandal. Her assassination is, however, a grave reminder that those making online contributions are also exposed to similar security risks as journalists of traditional media and must thus be afforded the same human rights safeguards as the latter. See The Independent, 'Daphne Caruana Galizia murder: Three charged over killing of Maltese journalist who exposed Panama Papers corruption', 6 December, 2017, available at: <https://www.independent.co.uk/news/world/europe/daphne-caruana-galizia-murder-three-charged-ten-arrested-video-footage-a8095166.html>. Also see Reuters, 'Maltese journalist's son says she was murdered for exposing corruption', 17 October, 2017, available at: <https://uk.reuters.com/article/uk-malta-carbomb/maltese-journalists-son-says-she-was-murdered-for-exposing-corruption-idUKKBN1CM1KH>. Another emblematic case was the attack and killing of Kateryna Hadziuk in 2018, a Ukrainian anti-corruption activist who exposed corruption in her hometown Kherson.

119 Human Rights Committee, Concluding observations on the third periodic report of Bosnia and Herzegovina, CCPR/C/BIH/CO/3, 13 April 2017.

120 Para. 4 of the Preamble of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), A/63/288 Annex.

not essential for a person to be known as a “human rights activist” or to work for an organisation that includes “human rights” in its name in order to be a human rights defender.”¹²¹

Anti-corruption activists and whistleblowers may therefore be recognised as human rights defenders, especially if they ultimately contribute to the protection of human rights or resort to human rights standards and/or mechanisms in their work. This would give them access to protection established under international human rights instruments.

The 1998 **United Nations Declaration on Human Rights Defenders** occupies a central place among the human rights instruments in this context. The Declaration specifies the rights of human rights defenders and related principles concerning (a) participation, (b) collection and dissemination of information on human rights, their implementation and violations, (c) networking with other defenders and campaigning for human rights, and (d) the remedial measures to protect the rights of defenders. Although the Declaration is supported by the entire human rights machinery, it also has its own monitoring and implementation mechanism, i.e. Special Rapporteur on human rights defenders. Thus, anti-corruption activists whose work has a human rights dimension, which is generally the case, may benefit not only from the standards laid down in the Declaration but also from the protection provided by the relevant Special Rapporteur(s) and – as appropriate – other human rights bodies and procedures including by way of remedies which encompass the right to make complaints about official policies and acts relating to human rights; the right to have such complaints promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law; and the right to obtain from such an authority a formal decision, providing redress, as well as compensation, if appropriate.¹²²

It is worth noting in this context, the recommendations made to States by Treaty Bodies in respect to those engaged in combating corruption including anti-corruption activists. For instance the CESCR in its Concluding Observations to Vietnam in 2014, recommended that the State ‘effectively enforce compliance with the legal provisions on assets declaration and on protection of the human rights of those who are engaged in anti-corruption activities, in particular victims, whistle-blowers, witnesses and their lawyers.’¹²³

Additionally, the CESCR in its Concluding Observations to Uzbekistan in 2014, recommended that the country ‘set up a comprehensive policy and mechanism to combat and prevent petty and systemic corruption’, including, *inter alia*, by ‘ensuring safe, accessible and visible channels for reporting corruption, in particular in the areas of health care, education and residence registration, as well as the effective protection of anti-corruption activists and human rights defenders involved.’¹²⁴

121 http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx_

122 Art. 12 and 9 of the Declaration on Human Rights Defenders respectively.

123 Committee on Economic, Social and Cultural Rights, Concluding observations on the second to fourth periodic reports of Viet Nam, E/C.12/VNM/CO/2-4, 15 December 2014.

124 Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Uzbekistan, E/C.12/UZB/CO/2, 13 June 2014.

D. Protection of victims, witnesses, whistle-blowers and experts

The protection of victims, witnesses, whistle-blowers and experts of corruption is crucial to anti-corruption efforts.¹²⁵ Any gaps in their protection may not only expose those involved to serious additional harm and risks but also undermine the broader struggle against corruption. Impunity of perpetrators is widespread because victims, witnesses, whistle-blowers and experts fear the consequences of denouncing corruption and of testifying. The fear and/or risk of self-incrimination perpetuates corrupt practices. The participation of victims is essential for developing effective anti-corruption strategies and projects. It is worth noting that “victims are often socially marginalised individuals and groups who are harder to reach, but have an important role to play, particularly in areas such as establishing and demonstrating the true nature and extent of the harm caused by corruption.”¹²⁶ The UNCAC lays down a legal framework for the protection of victims, witnesses, whistle-blowers and experts and imposes on all State parties the duty to provide effective protection from potential retaliation or intimidation of witnesses and experts who testify or provide other evidence in corruption cases.¹²⁷ This protection should also apply to their relatives and other persons close to them, as appropriate.

There is no one-size-fits-all model for such measures given differences in the domestic legal systems of States. Many countries have developed comprehensive witness and whistle-blower protection programmes which may also be applied in the case of corruption.¹²⁸ Similarly, human rights law also contains complex and highly important standards of protection for these categories of persons and offers mechanisms which could apply in this context, as discussed in greater detail below.

Victims of human rights violations are entitled to an effective remedy, which includes equal and effective access to justice; to procedural guarantees (due process) in criminal court proceedings; and to adequate, effective and prompt reparation for harm suffered. Before the relevant bodies (e.g. anti-corruption commissions, police, investigation bodies, prosecution services and courts), victims, witnesses, whistle-blowers and experts should be treated with dignity and compassion; and protected from intimidation and harm. They should also be fully informed about the legal framework and the criminal justice process.

While planning and implementing anti-corruption measures, those responsible or otherwise involved should recognise the human rights standards concerning victims, witnesses, whistle-blowers and experts as one of the basic parameters. They should consider and duly observe the core human rights instruments as well as soft laws, such as, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.¹²⁹

125 See art. 32 UNCAC

126 United Nations Office on Drugs and Crime (UNODC), UN Anti-Corruption Toolkit, 3 ed., Vienna, September 2004, p. 14. para 19.

127 Art. 13, 32 (1) and 33 UNCAC.

128 For more details, see United Nations Office on Drugs and Crime, Technical Guide to the United Nations Convention against Corruption, United Nations, New York, 2009, p. 103; see also “Good practices for the protection of witnesses in criminal proceedings involving organized crime”, prepared by the same organization and available on its website.

129 United Nations General Assembly Resolution A/RES/60/147 on Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005, Annex.

Victims, witnesses, whistle-blowers and experts of corruption may also revert to human rights mechanisms in order to protect their rights. At the domestic level, these are primarily courts and national human rights institutions, whereas at the international level, these include, in particular, the communication procedures before Treaty Bodies such as the HR Committee and the CESCR; as well as the special procedures, especially the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the independence of judges and lawyers; and the Working Group on Arbitrary Detention.

In the context of victims, witnesses, whistle-blowers and experts seeking recourse from the Treaty Bodies, it is worth noting the Guidelines against Intimidation or Reprisals (San José Guidelines),¹³⁰ which are aimed at providing practical guidance to enhance the efficiency and effectiveness with which protection is provided by Treaty Bodies to individuals and groups at risk of, or facing intimidation or reprisals for, seeking to cooperate or cooperating with UN human rights treaty bodies. Furthermore, some Committees have appointed a Rapporteur or a focal point on reprisals, who can be contacted when a person has suffered an act of intimidation or reprisal when seeking to cooperate, while cooperating, or after having cooperated with the treaty bodies.

Having touched upon how the San José Guidelines enable Treaty Bodies to protect persons like witnesses, victims, whistle-blowers and experts more efficiently from the risk of reprisals and intimidation, it is worth noting the type of recommendations made by Treaty Bodies in respect of these groups. For instance, the CMW, in its Concluding Observations to Mauritania in 2016, expressed concerns regarding reports that migrant workers and their families had 'fallen victim to corrupt practices on the part of officials in various institutions having responsibilities in connection with the implementation of the Convention' (i.e. the ICMW). Whilst encouraging Mauritania to continue to address any instances of corruption, it recommended that the State 'thoroughly investigate any cases that appear to involve officials working in areas related to the implementation of the Convention and impose the appropriate sanctions, as necessary.' It further recommended that the State 'conduct information campaigns with a view to encouraging migrant workers and members of their families who claim to be victims of corruption to file complaints and that the State party seek to raise awareness among migrant workers and members of their families about the services that are available to them free of charge.'¹³¹

130 Guidelines against Intimidation or Reprisals (San José Guidelines), HRI/MC/2015/6, Twenty-seventh meeting of chairpersons of the human rights treaty bodies, 30 July 2015, available [here](http://docstore.ohchr.org/SelfServices/FilesHandlerashx?enc=FhOD6sgggzAhFXD9F%2FeKaHS27qvp-Che6dslpF%2FUJwxIT1COppApy%2FKS4sCgBIC1dCOEV43rwh1wkdiQZvdiUCVS4vxJunDilA4oBSwwpbK-4P727D1y%2BZLdPfcKY5dXo): <http://docstore.ohchr.org/SelfServices/FilesHandlerashx?enc=FhOD6sgggzAhFXD9F%2FeKaHS27qvp-Che6dslpF%2FUJwxIT1COppApy%2FKS4sCgBIC1dCOEV43rwh1wkdiQZvdiUCVS4vxJunDilA4oBSwwpbK-4P727D1y%2BZLdPfcKY5dXo>, and outlined in Annex 2 below.

131 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the initial report of Mauritania, CMW/C/MRT/CO/1, 31 May 2016.

ANNEX 1:

REPORT OF THE SPECIAL RAPPOREUR ON TORTURE

Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, 16 January 2019

Corruption not only hinders the effective implementation of human rights obligations, but also creates an environment conducive to human rights abuses, including torture and ill-treatment.

In this report, the Special Rapporteur establishes **six kinds of causalities** between corruption and any form of torture or ill-treatment:

- The advantage that is demanded, constitutes torture or ill-treatment in itself. For example, in exchange for housing, a person is forced to perform a sexual act.
- Acts or threats of ill-treatment are used as a tool to demand an advantage. For example, corrupt prison staff uses torture to extort money from detainees.
- An advantage is offered in exchange for torture or ill-treatment, or to avoid investigation and adjudication. For example, police officers are offered advantages in return for intimidating, punishing or coercing persons on behalf of criminal networks.
- State officials demand advantages by exploiting the pre-existing exposure of persons to acts or threats of torture or ill-treatment on the part of other perpetrators. For example, law enforcement officials demand bribes from shopkeepers in return for protection from abuse at the hands of criminal gangs.
- Torture or ill-treatment as a 'side-effect' of corruption, where corruption can contribute to the exposure of persons to torture or ill-treatment or pose an obstacle to its prevention, investigation, or redress. For example, high-level officials taking bribes from companies in return for contracts involving resource exploitation, which pose a real risk of coercive practices against indigenous populations, including harassment and violence.
- Torture or ill-treatment and corruption as 'side-effects' of other policies and practices, where the States' failure to prevent corruption or torture or ill-treatment can be traced to high-level policies that do not deliberately aim to facilitate corruption or torture. For example, the allocation of resources and the introduction of budget cuts.

Corruption and torture or ill-treatment are best understood as two concurrent effects of the same original cause, namely a **failure of the surrounding governance system to prevent the rise and exercise of unchecked power**.

- One of the most fundamental root causes of corruption and torture or ill-treatment is the **absence of a strict separation of powers** between the executive, judicial and legislative branches of Government. For example, judges are often

reluctant to impartially adjudicate accusations of corruption, torture or ill-treatment against lower courts, security services or administrative authorities. Therefore, while measures targeting corruption and torture or ill-treatment at the level of individual officials, institutions and processes remain indispensable, the only realistic prospect for eradicating either phenomenon is to effectively address the underlying systemic governance failures.

- The fight against corruption, torture and ill-treatment requires an effective international and national **normative and institutional framework** and its rigorous implementation. States should ratify the relevant treaties, for example CAT and UNCAC.
- The Guiding Principles on Business and Human Rights clearly impose a positive duty on States to **protect against human rights abuses related to corporate practices**, including those involving corruption. In practice, acts or threats of violence, forced labour, modern slavery, inhuman working conditions and human trafficking at the hands of corporate actors are often facilitated and enabled by corruption and lack of transparency in complex corporate supply chains.
- **Inadequate funding of public services**, including poor infrastructure and equipment, and insufficient number, remuneration and training of staff significantly increase the risk of corruption and abuse. The risks of torture and ill-treatment are particularly high where insufficiently resourced public services and institutions are authorized to use force and coercion, such as military and police forces, border guards, prison staff and, in some contexts, publicly mandated private security contractors. Rigorous recruitment and training processes and appropriate remuneration of prison staff have been found to contribute towards reducing corruption and ill-treatment.
- Corruption has a disproportionate impact on people belonging to groups exposed to particular risks. Practices of corruption and torture or ill-treatment can only be eradicated by measures that comprehensively address and effectively remove the underlying **social injustice in line with the universal principles of non-discrimination** and of effective separation of powers.
- So-called “tough on crime” policies create environments conducive to corruption and torture or ill-treatment. For example, criminalizing and imposing mandatory detention for irregular border crossings or minor drug offences inevitably leads to **excessive incarceration**, prolonged pretrial detention and overcrowded, under-resourced detention facilities, with corruption and abuse to be expected in such situations. Moreover, the case-by-case handling of petty offences is often left to police discretion, which encourages extortion or the use of torture to obtain forced confessions. States should develop policies and practices comprehensively addressing the challenges arising in crime prevention, migration management and social care, and should avoid any deprivation of liberty that is not lawful, strictly required and proportionate in the circumstances.

The Special Rapporteur has made the following **recommendations** to States to strengthen their capacity to ensure the effective prevention of and accountability for torture and ill-treatment in settings affected by corruption:

- Ratification and implementation of the relevant international instruments;
- Zero-tolerance policies on corruption and on torture or ill-treatment;
- Integration of anti-torture and anti-corruption practices and mutual mainstreaming;
- Independent monitoring and reporting through an accessible, well-resourced and

fully independent oversight and accountability mechanism;

- Pay particular attention to contexts particularly exposed to corruption and torture or ill-treatment, including extra-custodial use of force, detention, policies related to asylum and migration, protection of whistleblowers and victims, lobbying activities regarding the adoption of a law and socioeconomic marginalisation and discrimination;
- Transnational efforts: cooperate internationally in order to ensure effective policies and practices;
- Synergies within the United Nations: all the relevant bodies and agencies systematically examine the interaction between corruption and human rights violations, including torture and ill-treatment, in their respective reporting and strengthen their exchanges, coordination and cooperation with a view to fostering, throughout the United Nations, a holistic understanding of the shared root causes and the causal interactions between corruption and human rights violations, and of the most effective measures for the prevention and eradication of such abuse.;
- Establishment of a thematic Special Procedure mandate to examine the causal connections between corruption and human rights violations and integrate these questions expressly both into the UPR and into the Council's complaints procedure

ANNEX 2: THE SAN JOSÉ GUIDELINES

The San José Guidelines are based on certain *general principles* namely:

- (a) everyone's right to have unhindered access to and to communicate with the Treaty Bodies and their members for the effective implementation of the mandates of the Treaty Bodies;
- (b) everyone's freedom from any form of intimidation or reprisals, or fear of intimidation or reprisals, when seeking to cooperate or cooperating with the Treaty Bodies;
- (c) the responsibility of States to avoid acts constituting intimidation or reprisals and to prevent, protect against, investigate and ensure accountability and to provide effective remedies to victims of such acts or omissions;
- (d) equality and non-discrimination;
- (e) the need to respect the "do-no-harm" principle, participation, confidentiality, safety, security, and free and informed consent;
- (f) The mainstreaming of a gender perspective in the work of the Treaty Bodies.

The San José Guidelines envisage the appointment within each Treaty Body of a rapporteur or focal point on intimidation or reprisals, to coordinate proactive implementation of the policy, which includes receiving and assessing allegations, and determining the appropriate course of action.¹³²

These Guidelines further provide for certain '*Preventive Measures*', which include:

- (a) **Specific Measures:** where possible, Treaty Bodies should take steps to prevent intimidation and reprisals. Preventive measures could include permitting requests from individuals or groups to provide information to the relevant Treaty Body in a confidential manner and reminding States parties of their primary obligation to prevent and refrain from all acts of intimidation or reprisals against individuals and groups seeking to cooperate or cooperating with the Treaty Bodies.
- (b) **Protection Measures:** when it is alleged that an individual or group is at risk of intimidation or reprisals for seeking to communicate or for having communicated with a treaty body, including as a result of filing or of considering or attempting to file a formal complaint to a Treaty Body in the framework of the individual communications procedures, the Committee concerned can request the relevant State party to adopt protection measures for the individual or group concerned. Such measures can include requests to refrain from any acts of intimidation or reprisals and to adopt all measures necessary to protect those at risk. The State party may be requested to provide the Committee, within a specific deadline, with information on measures taken to comply with this request.
- (c) **Awareness-raising:** Treaty Bodies should take initiatives that affirm the crucial importance of cooperation with all stakeholders in addressing intimidation or

132 International Service for Human Rights, Reprisals Handbook, 2018, (available at <https://www.ishr.ch/news/reprisals-new-ishr-handbook-reprisals-human-rights-defenders>)

reprisals. Such initiatives may include making the protection of members of civil society and others a regular item on the agenda of informal meetings with States parties, broadly disseminating these Guidelines and adopting public statements, possibly jointly with other human rights mechanisms

Additionally, these Guidelines provide for the following '**Further Measures**':

- (a) **Raising concerns confidentially with State party authorities:** When allegations of intimidation or reprisals are received, with the consent of the individual or group concerned when appropriate, the relevant Treaty Body should, as appropriate, contact the State party to request information, express its concern and request an investigation and the immediate cessation of any such acts. The Treaty Bodies may also interact with State authorities in a discrete manner, through confidential correspondence or a meeting with a representative of the permanent mission of the State party, or any other appropriate means.
- (b) **Security measures during Treaty Body sessions:** In the case of an imminent threat or danger of violence during a treaty body session, the United Nations Department of Safety and Security should be approached to take appropriate security measures.
- (c) **Contacting regional and national mechanisms:** In addressing allegations of intimidation or reprisals, the Treaty Bodies may, when appropriate, seek the cooperation of regional and national mechanisms that may be able to be of assistance.
- (d) **Concluding Observations, decisions, views, reports and follow-up requests:** When appropriate, the Treaty Bodies should require States parties, in their Concluding Observations, decisions, views, reports and follow-up requests, to take the measures necessary to protect individuals and groups from intimidation or reprisals.
- (e) **Reporting by Treaty Bodies to the General Assembly and the Economic and Social Council:** The Treaty Bodies should, as appropriate, include information on cases of intimidation or reprisals in their annual or biennial reports.
- (f) **Posting on the Internet:** The Treaty Bodies may, as appropriate, make information regarding allegations of reprisals, including relevant communication with States parties, public by posting it on the Treaty Body web page of the OHCHR website.
- (g) **Use of the media:** The Treaty Bodies may, when appropriate, issue a public statement on specific incidents or generalised practices of intimidation or reprisals and circulate it to international and national media outlets, or make comments to the media and on social media.
- (h) **Requesting assistance from the UN High Commissioner for Human Rights:** The Treaty Bodies may request the assistance of the United Nations High Commissioner for Human Rights with a view to obtaining the cessation of alleged acts of intimidation or reprisals, which may include an investigation in accordance with international human rights standards.
- (i) **Coordination with other procedures:** When allegations of intimidation or reprisals are received, in addition to the action taken by the Treaty Body itself, the secretariat may also inform individuals or groups making such allegations that they may submit an urgent communication to the Special Procedure mandate holders of the HRC, including the Special Rapporteur on the situation of human rights defenders. The Treaty Bodies can also refer such allegations to other mechanisms

and procedures, when appropriate, in order to encourage an efficient, effective and coordinated response.

- (j) **Follow-up:** The Treaty Bodies may, as appropriate, request the UN resident coordinator, the UN country team, UN agencies, peacekeeping operations or any other appropriate agency or representation to take steps in support of individuals or groups who have been intimidated or are at risk of reprisals for seeking to cooperate or cooperating with the Treaty Bodies.
- (k) **Reference to the UN's political organs:** Where appropriate, the Treaty Bodies may seek to raise issues relating to intimidation or reprisals before the HRC and other UN political organs.

ANNEX 3: THEMATIC GUIDE

This annex lists the issues that can be addressed to each Treaty Body under the angle of corruption. These issues will either have been addressed by the relevant Committee in the past, or fall within the relevant treaty, but do not comprise an exhaustive list.

Corruption, non-discrimination and equality

Treaty Bodies have addressed the fact that the economically and politically disadvantaged suffer disproportionately from the consequences of corruption.

Committee	Situation	Possible human rights violation	Relevant article UNCAC
Human Rights Committee	Discrimination and extortion of religious minorities (Bangladesh 2017)	Non-discrimination and equality (arts. 2 and 26 ICCPR, art. 2 CRC, art. 2 ICESCR, art. 2 CEDAW, art. 5 CRPD, art. 2 CERD, art. 7 CMW)	Arts. 7, 15 and 19
	Corruption among law enforcement officials and related to that, discrimination of vulnerable groups (Russian Federation 2015)	Non-discrimination and equality (arts. 2 and 26 ICCPR) Right to life, liberty and security of the person (arts. 6 and 9 ICCPR) Prohibition of torture (arts. 7 and 10 ICCPR) Right to a fair trial and a remedy (arts. 2 and 14 ICCPR)	Arts. 7, 8, 10, 15, 19 and 20
	Restrictions imposed on NGOs in the fight against money laundering (Kyrgyzstan 2014)	Non-discrimination and equality (art. 2 ICCPR) Freedom of Association (art. 22 ICCPR)	Arts. 13, 14 and 23
	Discrimination on grounds of sexual orientation and gender identity: extortion from LGBT persons in police stations in return for not disclosing their sexual orientation or gender identity (Azerbaijan 2016)	Non-discrimination and equality (arts. 2 and 26 ICCPR)	Arts. 7, 8, 15 and 19
Committee on Migrant Workers	Extortion involving the families of detained migrants (Mexico 2017)	Non-discrimination and equality (art. 7 CMW)	Arts. 8, 15 and 19
Committee on the Elimination of Discrimination Against Women	Corruption linked to women in prostitution	Non-discrimination and equality (art. 2 CEDAW)	Arts. 7, 15, 19 and 20
	Corruption related to help programmes of indigenous communities		
Committee on the Rights of the Child	Extortion of refugees and asylum seekers	Non-discrimination and equality (art. 2 CRC)	Arts. 7, 8, 10, 15, 19 and 20

Corruption as a threat to the right to life, liberty and security of person

Committee	Situation	Possible human rights violation	Relevant article UNCAC
Human Rights Committee	Death penalty should not be imposed for corruption related crimes, but only for the most serious crimes (Thailand 2017 and Sudan 2007)	Right to life, liberty and security of the person (arts. 6 and 9 ICCPR)	-
	Widespread corruption and extortion and hazardous working conditions in the cotton sector and poor living conditions during the harvest, which have resulted in deaths (Uzbekistan 2015)	Right to life, liberty and security of the person (arts. 6 and 9 ICCPR) Prohibition of slavery (art. 8 ICCPR)	Arts. 7, 8, 10, 12, 15, 19, 20 and 21
	The broad definition of terrorist acts in the Terrorism and Money-laundering Act (Tunisia 2008)	Right to life, liberty and security of the person (arts. 6 and 9 ICCPR) Right to a fair trial (art. 14 ICCPR)	Arts. 14, 23 and 31
	Extortion in detention centers (Bangladesh 2017)	Right to life, liberty and security of the person (arts. 6 and 9 ICCPR) Prohibition of torture (arts. 7 and 10 ICCPR)	Arts. 7, 8, 10, 15, 19, 20
	Extortion by vigilante groups (Burkina Faso 2016)	Right to life, liberty and security of the person (arts. 6 and 9 ICCPR) Right to a fair trial (art. 14 ICCPR)	Arts. 12 and 21
	Fraud during elections (Honduras 2017)	Right to life, liberty and security of the person (arts. 6 and 9 ICCPR) Right to participate in public life (art. 25 ICCPR)	Arts. 7, 8, 15 and 19
Committee Against Torture	Corruption in detention centers	Arts. 10 and 11 CAT	Arts. 7, 8, 10, 15, 19 and 20
	Corruption among law enforcement officials and security forces		
	Enforced Disappearances	Art. 2 CAT	Arts. 7, 8, 10, 11, 15, 19, 25
Committee on Migrant Workers	Corruption in law enforcement agencies, resulting in complicity to human trafficking (Belize 2014)	Art. 11 CMW	Arts. 7, 8, 10, 11, 15, 19 and 20
	Extortion of migrant workers and their families (Honduras 2016)	Art. 16 CMW	Arts. 7, 8, 10, 15, 19 and 20
Committee on the Elimination of Discrimination Against Women	Corruption related to human trafficking	Art. 6 CEDAW	Arts. 7, 10, 12, 15, 19, 20 and 21
	Corruption among law enforcement officials	Art. 2 CEDAW	Arts. 7, 8, 10, 11, 15, 19 and 20

Committee	Situation	Possible human rights violation	Relevant article UNCAC
Committee on the Rights of the Child	Corruption related to human trafficking	Human trafficking, illicit transfer, abduction, sale and all forms of exploitation of children (arts. 11, 35 and 36 CRC)	Arts. 7, 10, 12, 15, 19, 20 and 21
	Right to life of children	Right to life (Art. 6 CRC) Right to liberty (article 37 CRC)	Arts. 5 and 7

Corruption as a threat to freedom from torture and ill-treatment

Committee	Situation	Possible human rights violation	Relevant article UN-CAC
Committee Against Torture	Corruption in the judiciary	Prohibition of torture (CAT)	Art. 11
	Corruption in detention centers		Arts. 7, 8, 10, 11, 15, 19 and 20
	Corruption among law enforcement officials and security forces		Arts. 6, 10, 11 and 36
	Corruption in the Authority in charge of combating corruption		Arts. 7, 8, 10, 15, 19 and 20
	Treatment of refugees and asylum seekers		Arts. 7, 10, 12, 15, 19, 20 and 21
	Corruption linked to human trafficking		Arts. 7, 8, 10, 11, 15, 19, 25
	Enforced Disappearances		Art. 31
	Fight against terrorism		
Committee on the Elimination of Discrimination Against Women	Violence against women	Art. 2 CEDAW	Arts. 11 and 30
Committee on the Rights of the Child	Sexual exploitation of children	Prohibition of torture (Arts. 37 and 39 CRC)	Arts. 7, 10, 12, 15, 19, 20 and 21
	Gender-Based Violence of children and the lack of investigations due to corruption		Arts. 11 and 30

Committee	Situation	Possible human rights violation	Relevant article UN-CAC
Human Rights Committee	Corruption within penitentiary facilities (Bangladesh 2017, Bolivia 2013, Cambodia 2015, Poland 2010, Georgia 2014, Azerbaijan 2016 and Bulgaria 2011)	Right to life, liberty and security of the person (arts. 6 and 9 ICCPR) Prohibition of torture (arts. 7 and 10 ICCPR)	Arts. 7, 8, 10, 15, 19, 20
	Corruption among law enforcement officials, leading to discrimination of vulnerable groups or complicity in human trafficking (Albania 2008, Russian Federation 2015, Kazakhstan 2016)	Non-discrimination and equality (arts. 2 and 26 ICCPR) Right to life, liberty and security of the person (arts. 6 and 9 ICCPR) Prohibition of torture (arts. 7 and 10 ICCPR)	
	Impunity for acts of corruption or extortion (Georgia 2014, Dominican Republic 2017, Azerbaijan 2016)	Right to a fair trial and to a remedy (arts. 2 and 14 ICCPR) Right to participate in public life (art. 25 ICCPR)	Art. 30
	Intimidation and harassment of persons exposing corruption, tax evasion and other scandals (Azerbaijan 2016)	Prohibition of torture (arts. 7 and 10 ICCPR and CAT) Right to a fair trial (art. 14 ICCPR) Freedom of expression (art. 19 ICCPR) Freedom of assembly (art. 21 ICCPR) Freedom of association (art. 22 ICCPR)	Arts. 32 and 33

Corruption as a threat to independence of the judiciary, due process and the right to a remedy

Committee	Situation	Possible human rights violation	Relevant article UNCAC
Human Rights Committee	Corruption in the judiciary and fair trial rights, independence of judges and their appointment, selection, dismissal and promotion procedures (Cameroon 2017, Turkmenistan 2017 and 2012, Romania 2017, Moldova 2016 and 2011, Jamaica 2016, Burkina Faso 2016, Kazakhstan 2016 and 2011, Benin 2015, Côte d'Ivoire 2015, Cambodia 2015, Kyrgyzstan 2014, Sierra Leone 2014, Chad 2014 and 2009, Tajikistan 2013, Indonesia 2013, Paraguay 2013, Bolivia 2013, Albania 2013, Angola 2013, Armenia 2012, Capo Verde 2012, Yemen 2012, Bulgaria 2011, Mongolia 2011, Azerbaijan 2016 and 2009, Russian Federation 2009, Rwanda 2009 and Georgia 2007)	Right to a fair trial (art. 14 ICCPR) Right to a remedy (art. 2 ICCPR)	Art. 11
	Corruption among law enforcement officials (Albania 2013)	Right to a fair trial (art. 14 ICCPR) Right to a remedy (art. 2 ICCPR)	Arts. 7, 8, 10, 11, 15, 19 and 20
	The broad definition of terrorist acts in the Terrorism and Money-laundering Act (Tunisia 2008)	Right to life, liberty and security of the person (arts. 6 and 9 ICCPR) Right to a fair trial (art. 14 ICCPR)	Arts. 14, 23 and 31
	Impunity for acts of corruption or extortion (Georgia 2014)	Right to a fair trial and to a remedy (arts. 2 and 14 ICCPR) Right to participate in public life (art. 25 ICCPR)	Art. 30
	Intimidation and harassment of persons exposing corruption, tax evasion and other scandals (Azerbaijan 2016)	Prohibition of torture (arts. 7 and 10 ICCPR and CAT) Right to a fair trial (art. 14 ICCPR) Freedom of expression (art. 19 ICCPR) Freedom of assembly (art. 21 ICCPR) Freedom of association (art. 22 ICCPR)	Arts. 32 and 33
	Extortion by vigilante groups (Burkina Faso 2016)	Right to life, liberty and security of the person (arts. 6 and 9 ICCPR) Right to a fair trial (art. 14 ICCPR)	Arts. 12 and 21

Committee	Situation	Possible human rights violation	Relevant article UNCAC
Committee Against Torture	Corruption in the judiciary	Arts. 2, 11 and 16 CAT	Arts. 11, 15, 19 and 20
	Corruption among law enforcement officials		Arts. 7, 8, 10, 11, 15, 19 and 20
	Corruption restricting the right to a lawyer	Right to counsel (arts. 2 and 13 CAT)	Arts. 7 and 11
Committee on the Elimination of Racial Discrimination	Corruption within the judiciary	Arts. 5 and 6 CERD, and General Comment 31, §12 on the prevention of racial discrimination in the administration and functioning of the criminal justice system	Arts. 11, 15, 19 and 20
	Corruption among law enforcement officials		Arts. 7, 8, 10, 11, 15, 19 and 20
Committee on the Elimination of Discrimination Against Women	Access to remedies or justice	Art. 15 CEDAW	Arts. 7, 11, 15, 19 and 20
	Corruption among law enforcement officials and armed forces	Art. 2 CEDAW	Arts. 7, 8, 10, 11, 15, 19 and 20
Committee on Economic, Social and Cultural Rights	Corruption in the justice system	Art. 2(1) CESCR	Arts. 11, 15, 19 and 20
Committee on the Rights of the Child	Corruption in the judiciary, in particular the juvenile justice system, leading to impunity	Right to a fair trial (art. 40 CRC) Right not to be separated from parents (art. 9 CRC)	
	Corruption among government and law enforcement officials, and in the public sector in general	Right to security and liberty (art. 37 CRC)	Arts. 7, 8, 10, 11, 15, 19 and 20

Corruption as a violation of the right to political participation

Committee	Situation	Possible human rights violation	Relevant article UNCAC
Human Rights Committee	Corruption among public officials (Bosnia and Herzegovina 2017)	Right to participate in public life (art. 25 ICCPR)	Arts. 7, 8, 10, 15, 19 and 20
	Fraud during elections (Honduras 2017)	Right to life, liberty and security of the person (arts. 6 and 9 ICCPR) Right to participate in public life (art. 25 ICCPR, art. 7 CEDAW, art. 29 CRPD)	Arts. 7, 8, 15 and 19
	Corruption in the government (Dominican Republic 2017)	Right to participate in public life (art. 25 ICCPR)	Arts. 7, 8, 9, 10, 15, 17, 18, 19, 20, 23 and 24
	Impunity for acts of corruption or extortion (Dominican Republic 2017)	Right to a fair trial and to a remedy (arts. 2 and 14 ICCPR) Right to participate in public life (art. 25 ICCPR)	Art. 30

Corruption as a threat to the freedom of expression

Committee	Situation	Possible human rights violation	Relevant article UNCAC
Human Rights Committee	Intimidation and harassment of persons exposing corruption, tax evasion and other scandals (Azerbaijan 2016)	Prohibition of torture (arts. 7 and 10 ICCPR and CAT) Right to a fair trial (art. 14 ICCPR) Freedom of expression (art. 19 ICCPR) Freedom of assembly (art. 21 ICCPR) Freedom of association (art. 22 ICCPR)	Art. 30
Committee on Economic, Social and Cultural Rights	Stigmatization of Human Rights Defenders that denounce corruption (DRC, 2009)	Art. 2(1) ICESCR, CESCR's Statement on human rights defenders of economic, social and cultural rights (E/C.12/2016/2)	Arts. 32 and 33

Corruption as a threat to general legal obligations under economic, social and cultural rights

Committee	Situation	Possible human rights violation	Relevant article UN-CAC
Committee on Economic, Social and Cultural Rights	Widespread corruption having an impact on the enjoyment of CESCR in general	Enjoyment of economic, social and cultural rights (art. 2 ICESCR)	Arts. 7, 8, 15, 16, 19 and 20
Committee on the Rights of the Child	Widespread corruption having an impact on the enjoyment of children's rights in general	Arts. 2, 3 and 4 CRC Right to survival and development (art. 6 CRC) Right to be heard (art. 12 CRC)	
	Allocation of resources to children or children-related departments	Art. 4 CRC	Arts. 7 and 8
Committee on the Elimination of Discrimination Against Women	Corruption in employment and recruitment for public services	Right to work (art. 7 CEDAW)	Arts. 7, 8, 15, 16, 19 and 20
	Corruption among health care personnel	Right to health (art. 12 CEDAW)	

Corruption as a threat to rights including the right to an adequate standard of living and to an education

Committee	Situation	Possible human rights violation	Relevant article UNCAC
Committee on Economic, Social and Cultural Rights	Limited access to health care because non-official fees are required for services	Right to health (art. 12 ICESCR)	Arts. 7, 8, 15, 16, 19 and 20
	Corruption resulting in limited or discriminatory access to food or water	Right to food and water (art. 11 ICESCR) Non-discrimination (art. 2(2) ICESCR)	
	Corruption resulting in limited or discriminatory access to housing	Right to housing (art. 11 ICESCR) Non-discrimination (art. 2(2) ICESCR)	
	Corruption related to land allocation	Right to housing, food and water (art. 11 ICESCR) Right to take part in cultural rights (art. 15 ICESCR)	
	Corruption in the social security system	Right to social security (art. 9 ICESCR)	
	Violations of the labour law linked to corruption (DRC 2009)	Right to work (arts. 6 and 7 ICESCR)	
Committee on the Rights of the Child	Allocation of resources to health care, education and social services	Right to health (art. 24 CRC) Right to education (Art. 28 and 29 CRC) Right to social services (art. 26 CRC) Right to an adequate standard of living (art. 27 CRC)	Arts. 7, 8, 11, 15, 16, 19 and 20
		Corruption resulting in limited access to education	
	Corruption related to the issuance of birth certificates	Right to recognition as a person before the law (art. 7 CRC)	
	Corruption related to adoption	Art. 21 CRC	
	Corruption resulting in limited access to health care	Right to health (art. 24 CRC)	
	Corruption among the inspectors of child labour	Right to work (art. 32 CRC)	
Committee on the Elimination of Discrimination Against Women	Corruption in employment and recruitment for public services	Right to work (art. 7 CEDAW)	Arts. 7, 8, 15, 16, 19 and 20
Committee on the Rights of Persons with Disabilities	Corruption resulting in limited access to health care (China)	Right to health (art. 25 CRPD)	



Centre pour les droits civils et politiques
(CCPR Centre)

Rue de Varembe 1, Case postale 183,
1202 Genève (Suisse)

Tel : +41(0)22 / 33 22 555

Email : info@ccprcentre.org

Web : www.ccprcentre.org



**GENEVA
ACADEMY**

Académie de droit international
humanitaire et de droits humains
Academy of International
Humanitarian Law and Human Rights

Geneva Academy of International
Humanitarian Law and Human Rights
Villa Moynier, 120B Rue de Lausanne,
CP 1063, 1211 Genève 1 (Suisse)

Tel: +41(0)22 908 44 83

Email: info@geneva-academy.ch

Web: www.geneva-academy.ch



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of
Foreign Affairs FDFA



**OPEN SOCIETY
FOUNDATIONS**