

Check against delivery



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Human Rights Council intersessional panel discussion on the challenges and good practices in the prevention of corruption, and the impact of corruption on the enjoyment of human rights in the context of the COVID-19 pandemic

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Excellencies, Distinguished Delegates, Ladies and Gentlemen,

On behalf of the UN Working Group on Business and Human Rights, I am pleased to join this important intersessional dialogue focused on the impact of corruption on human rights during the COVID-19 pandemic. In the summer of 2020, the UN Working Group presented its thematic report to the Human Rights Council focusing on the connection between corrupt acts involving business entities and human rights abuses, and the need for States, businesses and civil society to connect the dots between the anti-corruption and business and human rights agendas. This report and its recommendations have been the catalyst for further policy developments and activities by stakeholders as part of a greater move to align these two strands of responsible business conduct. The UN Guiding Principles on Business and Human Rights, which is now more than a decade in existence, is the key framework that helps businesses to respect human rights and to prevent harm to rights holders arising from their business operations. Our thematic report focused on situations where corruption, for example in global supply chains, might lead to human rights abuses. For example, in global supply chains corruption may lead to harm to workers who are forced into debt bondage where bribes are paid, or harm to the public, when essential medicines, vaccines or PPE are diverted from supply chains or are counterfeit or of inferior quality.

Corruption often arises during crises, particularly when public institutions are weak. Procurement of medicines and supplies for health systems is one area most vulnerable to corruption. Corruption in the health-care sector causes annual losses of approximately \$500 billion. With health-care systems strained worldwide, diversion of critical resources due to corruption threatens the rights to health and life. A United Nations policy brief has highlighted the need to push back against those who seek opportunistically to use the crisis to steal through corruption resources intended for the pandemic response. TRACE, an anti-bribery business association, has recognized that the pandemic means that every sector will face new corruption, business and human rights challenges, including in relation to workforce and labour management, privacy and surveillance, supply chains, and security. It has highlighted how companies' anti-corruption programmes can integrate human rights, for example through due diligence and risk assessments. The pandemic makes responsible, coherent and coordinated action on business and human rights and corruption urgent.

During the pandemic, two interlinked challenges have arisen relating to corruption and the role of businesses. Both have human rights impacts. Public procurement, the purchase by governments and State-owned enterprises of goods, services and works and the award of government concessions, is susceptible to corruption, often in the forms of bribery, embezzlement and abuse of functions and price-fixing, cartels and other anti-competitive practices. Public procurement, and corresponding opportunities for corruption, may involve multiple sectors.

Some businesses will pay bribes to win a contract or concession, sometimes following demands from government officials. This may result in States not receiving value for money. In some cases, vital public services key to the realization of human rights, such as health care, education and housing, are partially or not delivered. In the Organization for Economic Cooperation and Development (OECD) member countries, 12 per cent of gross domestic product is spent on public procurement. According to the World Trade Organization (WTO), on average, government procurement accounts for 10 to 15 per cent of an economy's gross domestic product.

The pandemic also provides an opportunity to consider corruption in supply chains and how a business, wherever it is in the supply chain, can be implicated in human rights abuses by causing, contributing to or being directly linked to them due to its business relationships with other parties. Global supply chains are often susceptible to corruption, as companies and their agents may pay bribes to gain access to markets. Bribes may be paid to avoid government health and safety inspections, for example in factories. Corruption results in essential products, such as food and medicine, being diverted from public market supply chains into private hands. Even in non-crisis settings, corruption afflicts the pharmaceutical sector. Allegations of corruption in the health-care sector are persistent. Responses to the pandemic within these sectors may result in an increase in corrupt or abusive activities that may undermine States' responses. Drug diversion presents a challenge in pharmaceutical supply chains, as drugs may be diverted from public use to parties who pay bribes to acquire scarce medicines. The penetration of counterfeit and substandard medicines into supply chains is another challenge.

In March 2020, Global Health Action published, jointly with the World Health Organization, an issue on anticorruption, transparency, and accountability in the health sector. Topics covered related to the sector's ability to prevent, detect and sanction corruption in order to address the

threats that such corruption poses to the ability of health systems to perform effectively during crises. While the global need for health-care services provides opportunities for companies to engineer, produce and deliver equipment such as ventilators, there are risks of corruption and price-gouging due to scarcity of supply. The Basel Institute on Governance has noted that effective governance is needed during this public health crisis.

The pandemic highlights the risks to people posed by corruption and business-related human rights abuses. The Working Group reminded stakeholders that the business sector continues to have human rights responsibilities in this crisis. The Guiding Principles require that transactions conducted between States and business enterprises are subject to human rights due diligence, such that the human rights impacts of any measures (including the potential for corruption) are assessed and mitigated to the greatest extent. Business enterprises must respect human rights by exercising due diligence to prevent harms to people and address identified adverse impacts. The pandemic makes apparent the link between such due diligence and protecting the right to life.

Our recommendations to businesses, focused on Pillar II of the UN Guiding Principles is that human rights due diligence should also consider the risk of corruption as a potential issue that may have human rights impacts. For example, the risk of forced labour in global supply chains is an issue of global concern about which many States have made strong commitments, most recently the G7. During the pandemic, it has become apparent that PPE such as rubber gloves, have been made in factories with bonded labour often referred to as modern slavery. These situations are often connected to corruption in the supply chains. In addition, businesses that supply vital medicines and medical supplies to hospitals or other facilities, be they public or private, need to consider the potential for corruption and diversion of such supplies, and take steps to prevent such activity, otherwise the diversion of goods can have significant consequences.

Our report made recommendations to States focused on the State Duty to protect rights holders from human rights abuses connected to business activity. In the first phases of responding to the pandemic, governments faced urgent pressure to allocate money to combat the spread of the disease. This created opportunities to bypass normal procurement controls, to overcome such accountability systems as were in place, and to stymie efforts to create such systems on

the fly. Counterfeit goods in global supply chains have put the safety and well-being of health care professionals and the public at great risk

The scarcity of medical supplies such as tests, protective gear, hospital equipment, and now vaccines created an environment in which black marketeers and criminal groups could operate, and where inequalities have led to disparate and sometimes grossly unfair outcomes for different segments of society. Many countries and institutions are buying and importing medical equipment and supplies through emergency procurement processes, and anecdotal reports of the proliferation of substandard products, price gouging and bribery are growing.

For States, we recommended a focus on increased transparency of public procurement processes, the requirement of mandatory human rights due diligence, as we are now seeing being legislated within Europe and the EU, and finally, the disclosure of beneficial ownership, of companies. This last point is of vital importance. Investigators need to identify who may be the recipient of a government contract or award. Similarly, rights holders and victims may need to identify the true owners of anonymous or shell companies if they are harmed by that business' activity.

Some leading businesses who want to compete lawfully and on a level playing field are supportive of the UN Guiding Principles and increasingly of both anti-corruption measures as well as mandatory human rights due diligence. This connection of business and human rights and anticorruption is part of a comprehensive approach to sustainable and resilient markets.

The COVID-19 pandemic has shown us the need for States and business alike to renew their commitment to preventing corruption, through adherence to key instruments such as the UN Convention against Corruption. It is also important for us to emphasize that corruption is not just about economic advantage but has real human cost and impact. As we try to grapple with future crises, including the climate crisis, the corruption risk remains ever present, with the serious human rights impacts something to be considered and remembered.

Thank you.