

OHCHR'S KEY MESSAGES ON THE NEGATIVE IMPACT OF CORRUPTION IN THE ENJOYMENT OF HUMAN RIGHTS

“Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism, and other threats to human security to flourish.”¹ Corruption has magnified the multiple crises that the world faces.

In its 2021 Special Session Against Corruption, the United Nations General Assembly adopted the Political Declaration titled “**Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation**”, where Member States expressed concern “about the negative impact that all forms of corruption, including the solicitation of undue advantages, can have on access to basic services and the enjoyment of all human rights, and recognize that it can exacerbate poverty and inequality and may disproportionately affect the most disadvantaged individuals in society”, and pledged “to prevent and combat corruption and strengthen international cooperation in a manner consistent with our obligations [...] and respect for all human rights, justice, democracy and the rule of law at all levels”.

Corruption undermines the achievement of the Sustainable Development Goals. **The United Nations Common position to address global corruption** indicates that the UN System will prioritize inclusive responses with a focus on the key principles of the rule of law, the respect for human rights, and the promotion of gender equality and sustainable development. Anti-corruption, rooted in SDG 16 (Peace, Justice and Effective Institutions), is an enabler of the 2030 Agenda and an accelerator to the achievement of all Sustainable Development Goals.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) highlights the following key messages to guide anti-corruption efforts and responses:

1 **Corruption is an obstacle to the realization of all human rights.** Civil, political, economic, social, and cultural, as well as the right to development. Corruption has a destructive effect on State institutions and on the capacity of States to respect, protect and fulfil human rights, particularly of those persons and groups in situations of vulnerability and marginalization. Corruption and associated illicit financial flows pose a major challenge to many societies as they divert public revenues and cripple public budgets that should provide healthcare, housing, education, and other essential services. It undermines States’ ability to meet their pre-existing legal obligations to maximize all available resources to progressively realize Economic, Social and Cultural Rights (ESCRs). By eroding the tax base, and discouraging public and private investment, corruption and associated illicit financial flows strip societies of vital and scarce resources, which are indispensable for the structural transformation, economic growth, and sustainable development of all countries.² Corruption heavily erodes public confidence in state institutions, the Rule of Law, as well as States efforts to uphold human rights.

¹ Forward by Kofi A. Annan, United Nations Secretary General, to United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41 (UNCAC).

² Opening remarks delivered by Michelle Bachelet, UN High Commissioner for Human Rights at the Intersessional seminar on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, 8 February 2022.

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A human rights-based approach is needed to strengthen anti-corruption efforts. A human rights-based approach to anti-corruption means putting international human rights and claims of the people (the “rights-holders”) and the corresponding obligations of the State (the “duty bearer”) in the centre of the anti-corruption debate and efforts at all levels and integrating international human rights principles, including non-discrimination, equality, participation, inclusion, accountability, transparency, and the rule of law. A human rights-based approach places the victim at the centre of the anti-corruption efforts and responses.

3

States have duties to ensure that anti-corruption measures are consistent with their human rights obligations and to address as a matter of priority the root causes of corruption and guarantee transparency and accountability in public administration. Upholding human rights is critical for preventing and suppressing corruption. States must ensure that anti-corruption efforts and responses are consistent with their human rights obligations and adopt a victim-centred approach. These efforts are inextricably linked to their efficient policies that aim to fulfil their human rights obligations and, more concretely, their ESCR obligations. An efficient anti-corruption strategy must be informed by key human rights principles and address the root causes of corruption. An independent judiciary, freedom of the press, freedom of expression, access to information, transparency in the political system and accountability are essential both for successful anticorruption strategies and for the enjoyment of human rights.³ Anti-corruption efforts should also take into consideration business conduct and be aligned with the implementation of the Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework and the corresponding National Action Plans.⁴

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Corruption is not a victimless crime. Disadvantaged groups and persons suffer disproportionately from corruption. Due to pre-existing inequalities and intersectional discrimination, corruption has a disproportionate impact on women, children, migrants, persons with disabilities and persons living in poverty, as they are often more reliant on public goods and services and have limited means to look for alternative private services. Corruption perpetuates existing gender inequalities. Persons and groups in situations of vulnerability and marginalization have fewer opportunities to participate in the design and implementation of public policies and programmes and lack the resources to seek accountability and reparations, which exacerbates the negative impact of corruption in the enjoyment of their human rights.

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Judicial corruption weakens the administration of justice. Judicial corruption has been defined as “any action intended to influence the impartiality and independence of judges and other actors involved in the administration of justice, including prosecutors, judiciary staff and jurors”.⁵ Judicial corruption weakens the administration of justice and undermines its ability to guarantee the protection of human rights and directly or indirectly impedes and constitutes a threat for judges, prosecutors, lawyers, and other legal professionals to carry out their professional functions.⁶ Corruption is an obstacle to exercising the right to a fair trial and severely undermines the public’s confidence in the judiciary.⁷ Judicial corruption seriously undermines the independence and impartiality of the judiciary, contravening articles 2 and 14 of the International Covenant on Civil and Political Rights.

6

Human rights defenders working against corruption must be protected against attacks, threats, intimidation, or criminalization and cases of human rights violations committed against them must be investigated and prosecuted in a prompt, efficient, transparent and independent manner and that the perpetrators of such violations brought to justice. Activists, whistle-blowers, journalists, academics, lawyers, medical workers, and others fighting against and exposing corruption are human rights defenders, provided that their work is peaceful and motivated by human rights concerns.⁸

3 OHCHR, The Human Rights Case Against Corruption (Geneva, 2013), pp. 4.

4 Connecting the business and human rights and the anticorruption agendas Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (A/HRC/44/43) 17 June 2020.

5 Report of the Special Rapporteur on the independence of judges and lawyers (A/72/140) 25 July 2017 para. 47.

6 Report of the Special Rapporteur on the independence of judges and lawyers (A/HRC/35/31) 9 June 2017, para. 115.

7 Report of the Special Rapporteur on the independence of judges and lawyers (A/67/305) 13 August 2012, para. 33.

8 Report of the Special Rapporteur on the situation of human rights defenders, At the heart of the struggle: human rights defenders working against corruption (A/HRC/49/49) 18 December 2021, para. 10.

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Pandemic responses must respect and protect the human rights principles of equality, non-discrimination, participation, and dignity. The COVID-19 pandemic served as a catalyst for corruption, negatively impacting the enjoyment of human rights. It contributed to debilitating social protection schemes and health systems. A survey of 58 countries carried out in April 2020 found that corruption in healthcare services weakened healthcare delivery, contributing to COVID-19 deaths in every third country surveyed.⁹ As the impacts of the pandemic continue to be felt, we are witnessing not just a health crisis, but also increasingly a crisis of governance, a crisis of trust. Pandemic responses must respect and protect the human rights principles of equality, non-discrimination, participation, and dignity. The same principles should also empower anti-corruption efforts, ensuring that public resources are spent so that no one is left behind. Practices such as e-procurement, open contracting, and spending dashboards allow oversight agencies, the media, and the public to detect and deter corruption risks in government contracts and purchases, including those made during emergencies.¹⁰

8

Ensure accountability and effective remedies for human rights harms caused by corruption. International anti-corruption instruments require States to ensure that victims of corruption have a right to pursue a remedy. Article 35 of the United Nations Convention against Corruption requires States parties “to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.” As part of the effective implementation of anti-corruption measures, States should carry out thorough and independent investigations into all cases of corruption at all levels and publish their results, with a view to effectively combating impunity in this sphere and provide remedies to those affected.

9

Adopt a human rights-based approach when dealing the return of proceeds of crime. OHCHR Recommended Principles on Human Rights and Asset Recovery detail a human-rights based approach to asset recovery and return of proceeds of corruption and provide best practices.¹¹ Under human rights law, States should allocate returned assets in an accountable, transparent, and participatory manner that accords with the rule of law. The Human Rights Council, called on States requesting the repatriation of funds of illicit origin to apply these principles in the decision-making process regarding the allocation of repatriated funds for the purpose of realizing economic, social and cultural rights.¹²

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There is an urgent need for collaboration, normative and policy coherence between international efforts in the fields of anti-corruption and human rights. While the United Nations Convention Against Corruption (UNCAC) is a milestone in global anti-corruption efforts, the United Nations strategic response to combatting corruption will benefit from relevant resolutions, including those adopted by the Human Rights Council. Human rights should be integrated into the activities of the UN agencies working to fight corruption and other relevant stakeholders, including civil society and social media. The UN Common position to address global corruption states that recommendations touching on corruption generated through other forums, including in the Universal Periodic Review Mechanism of the Human Rights Council and its special procedures, as well as the United Nations Human Rights Treaty Bodies, should also be considered when delivering technical assistance and that support should be given to inter-governmental processes, such as the Human Rights Council, to ensure that anti-corruption remains high on the political agenda.

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In the performance of their duties all UN Staff shall respect, promote and encourage respect for human rights. UN Staff shall abide by the principles of the United Nations Charter an all-applicable United Nations rules and OHCHR Staff also by its Code of Conduct which includes among other things refraining from and opposing any act of corruption or fraud. UN Staff should exercise due diligence to ensure that human resources processes, such as recruitment, payment of salaries and benefits and procurement processes, such as conducting a thorough analysis of a vendor’s human rights record, respect human rights.

For more information: www.ohchr.org/en/corruption

⁹ Nemexis, Fraud's impact on healthcare during COVID-19, Global survey on fraud and corruption affecting healthcare systems during COVID-19 in April 2020.

¹⁰ Opening remarks delivered by Nada Al-Nashif, United Nations Deputy High Commissioner for Human Rights Intersessional panel discussion on 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

¹¹ OHCHR Recommended Principles on Human Rights and Asset Recovery (2022). Principle 7. Receiving States should allocate returned assets in an accountable, transparent and participatory manner.

¹² A/HRC/RES/40/4, para. 21.