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THE IMPACT OF CORRUPTION ON HUMAN RIGHTS*

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1. The second half of the twentieth century saw the emergence of an international regime of human rights law in which the individual became the central figure. The last decade of that century saw the searchlight being increasingly focused on the phenomenon of corruption in which the individual is the principal victim. There is, however, no reference to corruption in any of the principal human rights instruments. Nor is there any mention of human rights in any of the regional or international treaties and resolutions that now recognize the corrosive effect of corruption and require governments to take a variety of steps to curb its continuing growth. This paper seeks to examine the interconnection between corruption and human rights, and whether there is a human rights obligation to combat corruption.

Forms of corruption

2. Acts involving corruption fall broadly into two categories. Conventional bribery, or 'petty corruption' occurs when a public official demands, or expects, 'speed money' or 'grease payments' for doing an act which he or she is ordinarily required by law to do (such as processing an application for a licence), or when a bribe is paid to obtain a service which the official is prohibited from providing (such as avoidance of a prosecution or preferential access to state employment, housing, medical care or education). This is the form of corruption which most people experience in the course of their daily lives.

3. 'Grand corruption' occurs when a person who formulates government policy or is a decision-maker (or someone who claims to be in a position to influence such person) seeks, as a *quid pro quo*, payment, usually into an off-shore account, for exercising the extensive discretionary powers vested in such person. Grand corruption plays a significant role in public procurement, construction, purchase of military equipment, and privatisation exercises. The amounts involved in these transactions are extraordinarily high. The documented examples include a bribe of \$300,000 allegedly paid to the national security adviser of a former president of South Korea in connection with the purchase of fighter planes; and a \$1.9 million bribe paid to senior members of the Belgian socialist party in connection with a defence contract.¹

Effect of corruption

4. When funds are diverted from their intended public use into private bank accounts, the country's resources are depleted and the government's ability to provide essential services to its people is seriously undermined. At independence, Nigeria was one of the most prosperous countries in Africa. A series of military coups led to its income from oil exploration, which formed the solid basis of its strong economy, being spirited away by its rulers into private offshore bank accounts. Nigeria began to be perceived as the most corrupt country in the world. After the restoration of democratic rule it was reported that \$825 million had been recovered by the government from a Swiss bank account of a former military ruler, and that \$618 million remained frozen in another Swiss account out of an estimated \$5 billion allegedly diverted by him while in office.² Similarly, \$12 million was transferred to the Pakistan Government from a Swiss bank account following the conviction of its

former prime minister and her husband of money laundering, reported to be one of about six offences under investigation in Switzerland;³ and the on-going investigation into the assets of a former president of Kyrgystan allegedly includes newspapers, radio stations, supermarkets, hotels, banks, an airport, the country's largest mobile telephone company worth an estimated \$250 million, and 209 other companies linked to his family.⁴

5. Even if part of this illicit money is acquired through commissions paid by foreign companies in pursuit of business (until recently with the active encouragement of their own governments which even offered tax concessions for bribes paid abroad), the consequences are equally disastrous. Few suppliers will be willing to absorb the costs of corruption by reducing their own margins of profit. Instead, the price is increased, or the quality of the goods or services reduced to accommodate the commission. The ordinary citizen, therefore, has to contend with sub-standard and over-priced goods and services. The distortion of the decision-making process also results in wrong suppliers or contractors being chosen, and wholly unnecessary or inappropriate purchases being made or projects undertaken. For example, Westinghouse has admitted paying \$17 million in commissions to a friend of a former president of the Philippines when it was awarded the contract to construct the Bataan nuclear power plant at a cost of over \$2 billion. The reactor sits on an active fault line that is part of the Pacific's 'rim of fire', creating a major risk of nuclear contamination if the plant ever becomes operational. Twenty years after its completion, the plant has not produced a single unit of electricity.⁵

6. In the developing world, corruption caused by human greed at the highest levels of government invariably leads to corruption dictated by human need. A national household survey conducted in Bangladesh some years ago revealed that 44.6% of households made a payment for the admission of children into schools, while 36% made payments to secure admission into hospitals. 65% had bribed land registrars for recording a false lower sale price of a land transaction, while 54% had bribed to secure bank loans; 33% had paid money to obtain electricity connections, 32% had paid less for water 'by arrangement with the meter reader'; 47% were able to reduce the tax assessment on house and property 'by arrangement with municipal staff', while 65% found it impossible to obtain trade licences without money or influence. Of course, 63% of these involved in litigation had paid bribes to either court officials or the opponent's lawyer, 89% of those surveyed being of the view that judges were corrupt.⁶

Correlation between level of corruption and respect for human rights

7. Transparency International and Freedom House regularly monitor the extent of corruption and respect for human rights respectively. While the ranking of countries in such surveys must always be treated with caution, the surveys are reliable indicators of global trends. Table 1 identifies the twelve countries which, according to the 2005 Corruption Perception Index, are the most corrupt. According to the 2006 Freedom House assessment, ten of these countries are classified as being 'not free', while two are 'partly free'.

TABLE 1

<i>Country</i>	<i>Corruption Perception Index: score</i>	<i>Corruption Perception Index: position</i>	<i>Freedom House: political rights score</i>	<i>Freedom House: civil liberties score</i>	<i>Freedom House: status</i>
Chad	1.7	158	8	18	Not free
Bangladesh	1.7	158	22	31	Partly free
Turkmenistan	1.8	155	0	1	Not free
Myanmar	1.8	155	-1	6	Not free
Haiti	1.8	155	5	16	Not free
Nigeria	1.9	152	21	28	Partly free
Equatorial Guinea	1.9	152	1	9	Not free
Cote d'Ivoire	1.9	152	6	15	Not free
Angola	2.0	151	8	21	Not free
Tajikistan	2.1	144	9	21	Not free
Sudan	2.1	144	1	6	Not free
Somalia	2.1	144	8	7	Not free

Note: *Political rights* (0-40) include electoral process, political pluralism and participation, and functioning of government. *Civil liberties* (0-60) include freedom of expression and belief, associational and organizational rights, rule of law, and personal autonomy and individual rights

8. Table 2 contains the twelve countries that are considered to be the least corrupt. All of them, with the exception of Singapore, are classified as being 'free'.

TABLE 2

<i>Country</i>	<i>Corruption Perception Index: score</i>	<i>Corruption Perception Index: position</i>	<i>Freedom House: political rights score</i>	<i>Freedom House: civil liberties score</i>	<i>Freedom House: status</i>
Iceland	9.7	1	40	60	Free
Finland	9.6	2	40	60	Free
New Zealand	9.6	2	39	57	Free
Denmark	9.5	4	40	58	Free
Singapore	9.4	5	17	33	Partly free
Sweden	9.2	6	40	60	Free
Switzerland	9.1	7	40	59	Free
Norway	8.9	8	40	60	Free
Australia	8.8	9	40	60	Free
Austria	8.7	10	40	58	Free
Netherlands	8.6	11	40	59	Free
United Kingdom	8.6	11	39	57	Free

9. When the countries in Table 1 are compared with those in Table 2, it is evident that where corruption is pervasive, respect for human rights is at its lowest. For a corrupt system to prevail, civil and political rights need to be restricted. Corrupt officials need to protect themselves from exposure by the media and from scrutiny by the courts, and cannot afford to be voted out of power. The press, the judiciary, the civil service, and the electoral process are therefore intimidated, manipulated, and

subverted. Patronage and sycophancy become the order of the day, and the moral foundation of society is eroded.

10. Although not reflected in the Tables above, the effect on the enjoyment of economic, social and cultural rights is equally debilitating. When substantial national resources are diverted from public use into private benefit, or development aid is mismanaged, misused or misappropriated, the development process is aborted. The government is no longer in a position to fulfil its minimum human rights obligation, namely, 'to take steps', individually and through international assistance and co-operation, 'to the maximum of its available resources', to achieve progressively the full realization of the social, economic, and cultural rights of its citizens.

11. It is not suggested that corruption is peculiar to developing countries or societies in transition. In one form or another, corruption exists within every state. It is a global phenomenon. But the countries in Table 2 are able to contain corruption and achieve high scores for integrity and freedom because they possess legal and institutional mechanisms that function. In these countries governance is participatory, transparent and accountable, and there is respect for human rights. The recent experience in Eastern and Central Europe offers an interesting analogy. The prospect of membership of the European Union, which is conditional upon conformity with prescribed standards of governance, has been a powerful incentive for formerly corrupt and authoritarian states to embark on legal and institutional reform. A significant commitment to anti-corruption activity was evident in those countries whose accession was probable but not certain, as compared to those countries which are not yet candidates for accession.

Impact on human rights

12. Corruption *per se* perpetuates discrimination. When a person offers a bribe to a public official, and that bribe is accepted, that person immediately acquires a privileged status in relation to other persons similarly placed who have not offered any such gratification. The principle of non-discrimination is fundamental to the concept of human rights. The following is a brief analysis of the impact of corruption on four selected rights.

The right to health

13. The health service, on which governments reportedly spend more than \$3 trillion each year, is an attractive target for corruption.⁷ The diversion of funds at source is a common practice. For example, a Central American country received a \$39 million government loan from a Western European country to modernize its hospitals. The loan was conditional on at least half of it being used to buy products from the lending country. The consortium from the lending country to which this contract was awarded allegedly paid a commission of \$8.8 million which found its way into the bank accounts of the directors of the state agency responsible for providing health services and senior government officials including the country's president. The loan, plus an extra \$7.5 million of local funds, was spent on purchasing much equipment that was not needed.⁸ In an East Asian country, anecdotal evidence suggests that between 5-10% of the health budget disappears before it is paid out by the finance

ministry to the health ministry. More is then siphoned off as funds are channelled to provincial governors and directors of operational districts, and then to directors or managers of local hospitals and clinics. The potential for profit-making in the health sector is such that it is common practice to pay large sums of money to secure positions in that sector: up to \$100,000 for the post of director of a provincial or national office, and £3000 for a low-level job. These sums represent a large investment considering that government employee salaries are generally low: on average \$40 per month.⁹

14. Procurement of medical supplies is another potential source of corruption. Reports commissioned by the World Bank indicate that health ministry officials and hospital administrators often inflate the cost of medical equipment in collusion with private suppliers. Excessive quantities of medicines not required for regular use but only for uncommon illnesses or exceptional cases (and therefore not subject to the usual controls) are also purchased because of commissions offered for these orders. Of particular concern in this area is the role of the pharmaceutical industry which is known to be excessively generous towards medical practitioners. For instance, an investigation into medical procurement programmes in Turkey found that pharmaceutical companies had allegedly bribed doctors and hospital managers to use and prescribe specific brands.¹⁰ A study in the United States revealed that physicians who enjoy hospitality provided by drug companies and accept money to attend or speak at company-sponsored symposia or receive research support from them, are more likely to request hospitals to purchase new drugs that have little or no advantage over the drugs already available.¹¹

15. These forms of corruption in the health sector have led to the phenomenon of informal payments – charges for services or supplies that are supposed to be free. A study in five South Asian countries – Bangladesh, India, Nepal, Pakistan and Sri Lanka – found that bribes are required in all five countries for admission to the hospital, to obtain a bed, and to receive subsidized medications.¹² A World Bank survey has revealed a similar situation in Slovakia, Latvia, Bulgaria and Romania.¹³ A survey of hospital patients in Kazakhstan found that informal payments secured better-quality services, less waiting time, and longer length of hospital stay. These informal payments are retained by the physicians, and not invested on improved medical equipment and infrastructure, raised nursing standards or other necessary elements of the health system.¹⁴

The right to education

16. The education sector is another attractive target for corruption, particularly in South and South East Asia, the Balkans, the former Soviet Union and Africa. Documented forms of such corruption include:¹⁵

- Charges levied on ‘free’ school admission forms
- School places ‘auctioned’ to the highest bidder
- Examination questions sold in advance
- Grades and passes obtained through bribes to teachers and public officials. The prices are generally known, and candidates are expected to pay upfront
- Examination results released only upon payment
- Students who fail examinations re-admitted under false names
- Funds intended for teaching materials and school buildings embezzled

- Purchase of sub-standard educational material due to bribes from manufacturers and instructors' copyrights
- Teacher recruitment and postings influenced by bribes or sexual favour.

17. In a Eastern European country, until very recently, there were reportedly two ways of obtaining a university place. The first involved students taking private classes from the lecturers who sat on the admissions board. The second required the parents simply to bribe the admissions board before the entrance examinations. In both instances, the students would be 'fed' pre-agreed questions in the oral examination and given advance warning of the subjects in the written examination.¹⁶

The right to free and fair elections

18. The integrity of the electoral process, which mandates that the free expression of the will of the people shall be the basis of government, is seriously undermined by several forms of corruption. One is vote buying. A candidate in the Philippines admitted distributing the equivalent of \$160,000 to voters on the eve of the 1992 congressional election. Prosecutors in Taiwan consider that a typical legislative candidate in an urban area might distribute up to \$3 million. An institute which monitors poll fraud in Thailand estimates that candidates gave a total of \$460 million to voters in the 2001 legislative elections.¹⁷

19. As the cost of contesting an election grows, so do the financiers. They could be from the private sector, foreign governments, or even organized crime. Political contributors may seek, in return, appointments, decorations or titles, a seat in parliament, licences and government contracts, or a change of government policy or legislation favourable to a specific interest group.¹⁸ Recent investigations in Poland revealed an attempt by a film producer to intervene on behalf of a media consortium during the passage of legislation that would have prevented the consortium from purchasing a television station. The film producer allegedly represented senior members of the then government, and demanded a \$17.5 million bribe from the consortium to halt the legislative process.¹⁹

The right to a fair trial

20. In the last decade, evidence began to surface of widespread corruption in judicial systems in many parts of the world. Corruption, in this context, includes not only monetary bribery, but also other insidious, and equally damaging, forms of corruption arising from the interaction between the judiciary and the executive, as well as from the relationship between the judiciary and the legal profession. Apart from public perception surveys which indicate a serious lack of faith in national judiciaries, there is now mounting credible evidence of judicial corruption. For instance, in Kenya, 6 judges of the Court of Appeal, 17 judges of the High Court, and 82 magistrates were held to have been involved in acts of corruption. In addition to the abuse of judicial discretion, there is also evidence from many jurisdictions of court officials demanding bribes to open files, refund bail money, provide copies of judgments or being induced to lose or misplace case files or delay trials, judgments and rulings.

21. A former president of the Supreme Court of Jordan has provided several illustrations from his own personal experience of non-monetary judicial corruption.²⁰ These include judges being pressurized by executive authorities to render justice contrary to law; judges seeking to obtain material and moral advantages and benefits from the executive; internal interference from a higher-ranking judge which, if resisted, could lead to the lower-ranking judge being transferred to a remote area of the country; judges acting partially for reasons of kinship, religion, nationality, or political orientation; the improper use of judicial office to obtain a bank loan or to secure a higher position or career advancement for a friend or relative; judges receiving benefits from the government, such as offers of employment to the judges' children; and political protection for corrupt judges.

22. An essential element of the right to a fair trial is an independent and impartial tribunal. Another inherent element of a fair trial is the procedural equality of parties - or what is generally called 'the equality of arms'. If the judicial system is corrupt, neither of these elements exist. If one of the parties has bribed the judge, or has bribed a court official and obtained access to documents to which the other party has no access or caused documents to disappear, there is no equality of arms. A bribed judge will, of course, be neither independent of the parties, nor impartial. A corrupt judiciary also means that the legal and institutional mechanism designed to curb corruption, however well-targeted, efficient or honest, remains crippled.

13. The impact of corruption on human rights is not limited to the rights examined above, but is more widespread and intrusive. For example, if a corrupt minister were to lease to an oil exploration or timber exploitation company substantial portions of territory in which an identifiable group of persons sharing a common economic life have lived, hunted, trapped and fished since time immemorial, the right of that group not to be deprived of their means of subsistence may be violated. If a corrupt official were to allow the illicit dumping of toxic and dangerous substances and waste in an area which is planned for use in the future for residential purposes, the government's failure to take adequate steps to protect the community from exposure to radioactivity known to cause cancer and genetic defects may constitute an infringement of the right to life. If the proprietor of a media empire decides to deny access in a country to a particular news channel which the government of that country disapproves of, in exchange for a lucrative contract with that government in a related field, the right to freedom of expression would be infringed.

A human rights obligation to combat corruption

24. The conclusion appears to be irresistible that human rights are violated not only by an authoritarian government, but also by a government that allows corruption to become endemic in the country. Indeed, an authoritarian government that systematically violates human rights is more likely to be corrupt as well because of the absence of checks and balances. Similarly, a corrupt government which rejects both transparency and accountability is not likely to be a respecter of human rights. Therefore, the campaign to contain corruption and the movement for the promotion and protection of human rights are not disparate processes. They are inextricably linked and interdependent.

25. Experience suggests the importance of a holistic approach to combating corruption; not one that relies solely or principally on the application of the criminal law after the event. Where corruption is endemic, it is usually the result of systemic failures. This underscores the need for a comprehensive programme of systemic reform designed to prevent corruption occurring in the first place. Since corruption occurs when there is a meeting of inclination and opportunity, a strategy to contain corruption is likely to be successful if it addresses both these elements: increase the likelihood of corruption being detected and punished, and minimize the situations in which corruption can occur. It is not necessary to reinvent that wheel. The challenge is to apply the international law of human rights to operate the wheel.

26. An immediate impediment to the application of human rights law is the attitude of governments. While many may have already ratified or acceded to international human rights instruments, they are less enthusiastic in fulfilling the obligations they have undertaken. While some neglect to perform the reporting function, others persistently ignore the decisions of the monitoring bodies. For example, Sri Lanka acceded to the Optional Protocol to the ICCPR several years ago. But the Supreme Court of Sri Lanka, faced with several decisions critical of its performance, recently upheld the government's submission that the recognition of the power of the Human Rights Committee to receive and consider a communication that a right under that Covenant had been violated, was inconsistent with the Constitution and therefore void.

27. The judiciary too will need to be a willing partner if human rights law is to be utilized to combat corruption. The Supreme Court of India has repeatedly demonstrated how this could be done. For example, the court took notice of an article that appeared in a daily newspaper stating that a private company to which a former minister of environment and forests had a direct link, had built a motel on the bank of a river on land leased by the government. The company had also encroached upon an additional area of land that had later been leased out to the company when the minister was in office. The motel used earthmovers and bulldozers to turn the course of the river, create a new channel and divert the river's flow in order to save the motel from future floods. The court ordered the company to remove the constructions on the bank of the river and to pay compensation to restore the environment.²¹

28. Where initiatives to combat corruption have succeeded, it has been because of a genuine political commitment and determination. Where such political leadership has not surfaced, it is necessary to mobilise civil society to provide the necessary incentive. Public opinion and the actions of civil society organizations can be, and frequently are, the trigger for addressing corruption in government. By insisting that governments adopt such legislative and other measures as may be necessary to give effect to the recognized rights, or by seeking to vindicate them through the courts and human rights commissions, civil society will be able to profitably employ human rights law to combat corruption.

29. Viewed from a human rights perspective, the following are some of the measures that are recommended. Many of them are based on existing good practice.

The Legislature

- a. Establish a constitutionally protected independent Elections Commission.
- b. Formulate principles for the conduct of a free and fair election and provide a mechanism to enable the Elections Commission to seek, when necessary, the intervention of the judiciary to enforce these principles.
- c. Enact a law or formulate principles to regulate, and ensure equity and transparency in, the funding of political parties and candidates.
- d. Establish standards of conduct for legislators in the form of a Leadership Code or Principles of Public Office.
- e. Establish a Public Accounts Committee under the chairmanship of an opposition member, to receive the annual report of the Auditor General and thereby hold the executive to account.
- f. Enact a law that requires the regular declaration of the assets, income, liabilities and life-styles of decision-makers and other public officials who hold positions where they transact with the public and are well-placed to extract bribes. The declaration should be made to an independent monitoring body, and the public must have the right and the opportunity to access such declarations.
- g. Enact a constitutionally entrenched Bill of Rights based on the two international human rights covenants.

The Executive

- h. Establish a constitutionally protected independent Public Service Commission to be responsible for the appointment, transfer and disciplinary control of public servants.
- i. Formulate standards of ethical conduct for public servants, and consider the establishment of a government agency responsible for public ethics development and training.
- j. Formulate a code of conduct for ministers and provide an enforcement mechanism.
- k. Undertake reform to narrowly define the discretionary element in decision-making.
- l. Re-design, if not discontinue, the mass of rules, regulations, procedures and formalities for the conduct of public administration.
- m. Demystify government by rendering the decision-making processes transparent by requiring, for example, every government agency to publish regularly a statement of its operations, including a description of its structure, functions, and policy documents. The latter would include interpretations, rules and guidelines, and any statements of policy, practice or precedents issued to its officers.
- n. Formulate principles of administrative law and provide for the judicial review of administrative action.
- o. Enact an access to information law to enable the citizen to obtain information in the possession of the state. Access to information is a powerful mechanism of accountability. To the extent that shrouds are lifted off government and the

- decision-making process made visible, to that extent are opportunities for corruption minimized and the abuse of power lessened.
- p. Establish improved, readily available and transparent public procurement procedures.
 - q. Establish the constitutionally protected, independent office of Auditor-General with responsibility for auditing government income and expenditure, and reporting to the legislature thereon.
 - r. Provide statutory protection for ‘whistleblowers’ to encourage people to raise concerns about malpractice in the workplace, as well as to ensure that institutions respond by addressing the message rather than the messenger.
 - s. Formulate citizens’ charters in respect of public services such as health and education.
 - t. Establish the constitutionally protected office of ‘Ombudsman’ (or commissioner for administrative grievances) to receive, investigate and report on allegations of maladministration.

The Judiciary

- u. Revisit the UN Basic Principles on the Independence of the Judiciary to make them more relevant in the context of the phenomenon of judicial corruption.
- v. Formulate and operate a code of judicial conduct consistent with international standards.
- w. Formulate and enforce a code of conduct for judicial employees.
- x. Institute training programmes for judges on a regular basis, with emphasis on such areas as international law, international human rights law, humanitarian law, environmental law and legal philosophy.
- y. Formulate a court users’ charter.
- z. Establish an independent prosecuting agency.

The Media

- aa. Provide training in investigative journalism.
- bb. Repeal laws that constitute legal impediments to investigative journalism, such as the offence of criminal defamation.

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Notes

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