The negative impact of corruption on the enjoyment of human rights

Replies to the questionnaire submitted by the Secretariat of the Group of States against Corruption, Council of Europe

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**THE NEGATIVE IMPACT OF CORRUPTION ON THE ENJOYMENT OF HUMAN RIGHTS**

**QUESTIONNAIRE**

As part of the consultations undertaken by the Human Rights Council Advisory Committee with **International and Regional Organizations dealing with the issue of corruption (in particular the United Nations Office on Drugs and Crime, the International Anti-Corruption Academy, the Office of the High Commissioner for Human Rights and others) and academic institutions**, with a view to preparing a research-based report on the issue of the negative impact of corruption on the enjoyment of human rights, and to making recommendations on how the Council and its subsidiary bodies should consider this issue, pursuant to Council resolution 23/9.

**Background**

In its resolution 23/9, the Human Rights Council took note of the summary report of the Human Rights Council panel discussion on the negative impact of corruption on the enjoyment of human rights held during the 22nd session of the Human Rights Council (A/HRC/23/26). In the same resolution, the Council requested the Advisory Committee to submit to it a research-based report on the issue of the negative impact of corruption on the enjoyment of human rights and to make recommendations on how the Council and its subsidiary bodies should consider this issue.

At its eleventh session in August 2013, the Advisory Committee constituted a drafting group and prepared questionnaires for dissemination to Member States, relevant international and regional organizations dealing with the issue of corruption, in particular the United Nations Office on Drugs and Crime, the International Anti-Corruption Academy and the Office of the High Commissioner for Human Rights, as well as national human rights institutions, civil society and relevant academic institutions. The drafting group of the Advisory Committee is tasked with drafting a preliminary research-based report for the twelfth session of the Advisory Committee (February 2014).

**Question 1: From your experience, what are the human rights that are most affected by corruption?**

Answer: If one refers to the rights guaranteed by international treaties[[1]](#footnote-1), **the vast majority of rights are potentially affected by corruption in practice**, depending on factors such as the overall level of corruption in the country, the level of democracy and of adherence to the principle of the rule of law.

“State capture” or “kleptocracy” (where a political or social elite abuses of State institutions including the law-making power to its own benefit) is an extreme example of a phenomenon often referred to as having potential consequences for the effectiveness of all rights, including the most fundamental ones (e.g. equality, freedom and safety, the right to participate in government and free and fair elections, the peaceful enjoyment of property, etc.). Where such countries benefit from international support (for humanitarian or general development purposes), the phenomenon of **embezzlement of aid funds** was also observed, thus undermining the efforts of international/foreign donors to secure the effectiveness of minimum human rights standards (access to health, education, water etc.).

As far as individual rights are concerned, **equality of citizens deserves a special mention** since it is probably one of the rights most frequently and immediately affected in countries where bribes, kickbacks, gifts and other returning favours are widespread: those who cannot afford to pay such “extra fees” (for hospital treatment, obtaining a university degree, an administrative licence or permit, access to social housing…) may not obtain services they would normally be entitled to, unlike those who can afford to pay and who achieve a higher position and better chances in life.

GRECO has sometimes come across “pricelists” published by researchers concerning the most commonly paid bribes. For instance, in one such list for an EU country, the “prices” are as follows: about 30 € for speeding-up treatment in a public hospital and from 100 to 30 000 € for a medical procedure/surgery; from 100 to 20 000 € for “arranging” a tax audit; from 200 to 5 000 € to obtain a building permit contrary to law and regulations; from 40 to 500 € to obtain a driver’s licence.

It should perhaps be mentioned that in GRECO’s experience, a high level of corruption in a country is not necessarily synonymous with poverty; or, inversely, wealthy countries are not necessarily immune to certain forms of corruption, even widespread ones. Indeed, GRECO has come across situations in prosperous countries where it is widely assumed that businesses and entrepreneurs who do not support the leading political parties financially will simply be excluded from public tenders.

**Collective rights are equally at risk**. For instance, cases of bribery of union leaders, whether or not they were involved in concrete negotiations, have been reported.

**What specific negative impact can corruption have on the enjoyment of human rights by vulnerable groups such as women, children, elderly, persons with disabilities, indigenous people and others?**

Answer: These groups tend to be vulnerable everywhere - and notably in societies where their social status is rather low - not just to the consequences of corruption but also to other types of criminal activity, economic and financial upheavals, greed, etc. Obviously, the greater the level of corruption in a country, the more the enjoyment of their fundamental rights can be jeopardised.

These categories of persons, because of their vulnerability, require particular attention and support by public services/organisations and the law. If the institutions that are meant to protect them – social services, public guardianship mechanisms usually involving the judiciary, other collective or State solidarity mechanisms, the police – are affected by corruption and legal remedies are ineffective, this state of affairs can have a **snowball effect on different rights**. For instance where an elderly person placed under guardianship is the victim of an organised plundering of his/her assets by a guardian, potentially with the complicity of members of judicial institutions, this bears serious consequences for property rights, the right to a fair trial and to effective legal remedies, the person’s dignity and so on.

**Question 2: Do you have any experience in integrating a human rights perspective in combating corruption? What are the best practices and what are the challenges in this respect?**

Answer: The Council of Europe’s Civil Law Convention on Corruption (ETS No. 174) of 1999 was drafted with some human rights concerns in mind. In particular, article 3 provides that Parties shall provide in their internal law for “*persons who have suffered damage as a result of corruption to have the right to initiate an action in order to obtain full compensation for such damage*”. This provision can be seen as mirroring the right to effective remedy (guaranteed under article 13 of the European Convention on Human Rights). The rationale of this provision is also that together with whistleblowers (article 9 of the 1999 Convention protects them against unfair retaliation within the employing institution), victims of corruption can play an important role in the uncovering of corrupt practices.

More recently, in 2011, GRECO invited the then Council of Europe’s Commissioner for Human Rights to share his views on the possible impact of corruption for the effectiveness of human rights, especially in relation with the functioning of institutions (which is a core component of GRECO’s current monitoring agenda). Mr Hammarberg prepared an article in which he resumes as follows: “*During my service as Commissioner for Human Rights I have visited all 47 member states of the Council of Europe – and repeatedly witnessed the devastating effect that corruption has on human rights. I have often heard complaints on how corruption has affected key components of the justice system: the judiciary, the police and prisons.”* For the full text and concrete examples, such as prisoners being denied visits from their relatives where the latter cannot afford to make payments to the prison employees and management, see [GRECO’s annual activity report for the year 2011](http://www.coe.int/t/dghl/monitoring/greco/documents/2012/Greco(2012)1_GenActReport2011_EN.pdf), page 16, and the CPT compilation of extracts of relevant reports appended to the present questionnaire.

Moreover, in response to a call by the Committee of Ministers to all Council of Europe bodies to integrate a gender perspective and to mainstream gender equality in their activities, GRECO initiated a process to examine possible links between gender and corruption.  A paper was prepared on the basis of a questionnaire sent to countries as well as open sources analysing the current state of research and statistical data available. Moreover, an additional questionnaire was circulated recently in an attempt to collect gender disaggregated data relevant to GRECO’s Fourth Round focusing on “Corruption prevention in respect of members of Parliament, judges and prosecutors”. The preliminary findings will be presented at a conference on “Gender dimension of corruption” to be held on 13 December 2013 in Prague, organised jointly with the authorities of the Czech Republic. For further information on this project, see [GRECO’s annual activity report for the year 2012](http://www.coe.int/t/dghl/monitoring/greco/documents/2013/Greco(2013)1_Gen.Act.Report2012_EN.pdf), page 19.

GRECO and its Secretariat also keep abreast of the activities of other Council of Europe bodies. The European Court of Human Rights deals with cases which sometimes contain facts and information that can be relevant for GRECO’s monitoring work. Likewise, a number of Council of Europe activities with a human rights focus have partnerships with developed networks of human rights watchdogs and activists: these activities can be valuable sources of information on the reality and importance of certain problems with a corruption element.

The **protection of victims of corruption, as well as persons who report suspicions of corruption** (as mentioned above in relation to the Civil Law Convention of 1999), should be seen as important tools to promote both human rights and ethical behaviour in any sector of public or business activity. The ECHR judgement *Heinisch vs Germany* (21/07/2011) constitutes an interesting illustration of the importance of whistleblowers for the protection of vulnerable persons’ interests[[2]](#footnote-2).

It would therefore appear that **exchanges of views between human rights specialists and anti-corruption specialists**, and sharing of information, can help to better identify, understand and assess phenomena which might be a source of mutual concern.

**Questions 3 and 4:**

**What measures can be taken by the Human Rights Council and its subsidiary bodies or by States to combat corruption with specific consideration of the negative impact of corruption on the enjoyment of human rights?**

**How can the United Nations human rights mechanisms be utilized for anti-corruption efforts? What other institutional mechanisms could be used to integrate a human rights-based approach in combating corruption or vice-versa at both, the international and national level?**

Answer:

Back in 2002 and in the context of the drafting of the UN Convention against Corruption, the International Group for Anticorruption Coordination - IGAC was established under the aegis of the UNODC on the initiative of the then UN deputy Secretary General, Ms Louise Fréchette. Originally, the system was meant to bring together all the UN agencies in order for them to share experience, to develop synergies and coordinate their activities having an anti-corruption component. A dozen meetings were held, a website was created including a secured access database compiling i.a. all the relevant UN activities ([www.igac.net](http://www.igac.net) – which seems inactive now). **Some UN agencies have already incorporated significant anti-corruption and integrity-related components** in their regular activities. One good example we are aware of is the UNESCO[[3]](#footnote-3).

As far as the Council of Europe is concerned, following the 1994 conference of Ministers of Justice of member States, there was a political agreement to develop ambitious anti-corruption policies and standards under the aegis of this Organisation. A mandate was thus given to the Council of Europe in this respect, which eventually materialised in a programme of action against corruption – “PAC”, adopted by the Committee of ministers in 1996. The PAC is a document which 1) analyses the situation of corruption and issues connected thereto, in Europe; 2) identifies policy-making lines of action; 3) categorises these possible actions according to high, medium and lower level importance. This was followed by a set of complementary activities in the areas of 1) standard setting (which resulted in various conventions and recommendations for action to member States) ; 2) sharing of experience and technical cooperation (organisation of periodic meetings of anti-corruption specialists, introduction of programmes to finance seminars and study visits for practitioners meant to provide training opportunities and analysis of domestic situations, including identification of desirable reforms); 3) monitoring.

We believe that with this **progressive step by step approach** (identifying problems and possible solutions with the involvement of specialists from different areas – including human rights specialists and anti-corruption experts in the present case, devising complementary activities on the medium/long term etc.) the Council of Europe has followed an ambitious and wise approach which has contributed to the **credibility** of the Council of Europe’s action in this area. This has in turn facilitated the acceptance of anti-corruption efforts by the vast majority of member States. **This approach could inspire the Human Rights Council and UN human rights mechanisms, as well as national authorities and administrations** **concerned** (i.a. those dealing with health and social security, education, gender issues, development etc.). In its country evaluation reports, GRECO has often recommended to countries engaging in anti-corruption policies to analyse the phenomenon of domestic corruption, to elaborate strategies for reform with a multifaceted/multidisciplinary approach, to follow-up on the implementation of such reforms and to ensure the effectiveness of new measures (training, awareness-raising etc.).

**International Human Rights bodies could support the full adherence of member States to anti-corruption standards** by a) encouraging rapid accession of all States to the relevant anti-corruption instruments: for instance, some countries have still not ratified the Council of Europe’s Civil Law Convention on Corruption (ETS No. 174); b) supporting and contributing to the effective implementation of those standards at domestic level (including support to action recommended in international anti-corruption evaluations).

Finally, international Human Rights bodies and their partners such as human rights and civil society organisations could **bring more systematically to the attention of anti-corruption monitoring bodies like GRECO, corrupt practices** that they become aware of in the course of their activities.

**Question 5: Are there any other observations or suggestions you wish to provide regarding the topic?**

Answer: Until the 1990s, corruption-related expenditure (e.g. bribes and kickbacks paid to officials by business entities) was tax deductible in a majority of countries, i.e. indirectly legitimised by the State. It is clear that reversing such practices and rooting out corruption from human societies cannot be a short term objective or action. The more actors are involved, the greater the chances of success: governments, parliaments, sectorial administrations, local and regional authorities, civil society organisations, unions, media, the business community and last but not least, the international community both regionally and globally. Experience shows that **concerted efforts towards similar clear objectives are needed to trigger change**; if multiple actors deliver contradictory or inconsistent diagnoses and recommendations for improvement to the countries and their institutions, the impact is inevitably much lower and ultimately, it affects the credibility of anti-corruption policies. This is all the more important in respect of sectors or countries strongly affected by corruption.

At the same time, other factors are to be borne in mind, in particular **questionnaire/monitoring fatigue of national institutions dealing with anti-corruption policies** has become a reality in some parts of the world[[4]](#footnote-4), and shrinking resources -including for international organisations (which calls for an unprecedented rationalisation of action and expenditure).

International organisations such as the UNODC, Council of Europe, OECD, World Bank etc. have already issued a large number of country evaluation reports. There are also more and more surveys based on increasingly accurate research, including on personal experiences with bribery in certain sectors. The result is a **wealth** **of reference material on which human rights bodies could build upon** and to which they could connect their own concerns. This would add support to reforms already initiated or where the response of countries remains insufficient and it would help to render such reforms more efficient.

**Human rights-oriented organisations are also exposed to risks of corruption and misuse**. There have been numerous cases where managers of charities, non-profit making organisations, religious and other institutions dealing with aid were involved in bribery schemes or embezzlement of assets. Furthermore, non-profit organisations (NPOs) can be (mis)used for purposes other than those stated officially[[5]](#footnote-5). It should also be mentioned that in practice, domestic laws do not necessarily allow to deal with criminal activities involving non-profit organisations the way they do for cases involving public officials or business entities. In particular, one needs to bear in mind that international anti-corruption instruments require the introduction of liability mechanisms for public and sometimes for private (i.e. business) sector corruption, but not for corruption involving the non-profit sector. Against the above background, the various actors involved in human rights activities (international organisations, donors, NPOs, beneficiary institutions and countries) review as necessary the existing cooperation arrangements and their internal policies to limit those reputational, financial, legal and other risks.

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1. Such as the Universal Declaration of Human Rights, the UN Human rights Covenants of 1966 on civil and political rights, and on economic, social and cultural rights, or regionally by the European Convention on Human Rights and Fundamental Freedoms, and the European Social Charter, to name just a few. [↑](#footnote-ref-1)
2. <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"itemid":["002-446"]}>: the applicant was a nurse employed in a geriatric institution majority-owned by a public entity; she had been dismissed after filing a criminal complaint against her employer for not delivering the geriatric services expected; the ECHR considered that the applicant’s dismissal without notice had therefore been disproportionate and the domestic courts had failed to strike a fair balance between the need to protect the employer’s reputation and the need to protect the applicant’s right to freedom of expression. [↑](#footnote-ref-2)
3. <http://www.iiep.unesco.org/en/information-services/publications/search-iiep-publications/ethics-and-corruption.html> [↑](#footnote-ref-3)
4. This is at least the case in Europe where countries are regularly subject to different types of monitoring by several of the following actors: Council of Europe, European union, IMF, OECD, UNODC, World Bank not to mention sub-regional mechanisms (such as for south-eastern Europe specifically) as well as domestic watchdogs (for instance NGOs like Transparency International). [↑](#footnote-ref-4)
5. As regards risks of terrorist financing and money laundering in particular, the Financial Action Task Force (FATF) has issued specific international standards and guidance documents. See Special Recommendation 8 and the accompanying guidance documents such as the best practice paper on this subject <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/bpp-npo-2013.html> [↑](#footnote-ref-5)