

Knowledge tools for academics
and professionals

Module Series on Anti-Corruption

Module 7
Corruption and Human Rights

Knowledge tools for academics and professionals

UNODC Module Series on Anti-Corruption

MODULE 7

CORRUPTION AND HUMAN RIGHTS

Background information

The UNODC Module Series on Anti-Corruption offers 14 Modules focusing on a range of core anti-corruption issues. This includes corruption's varied definitions and devastating effects, responses to corruption, and linkages between corruption and different topics such as good governance, comparative politics, whistle-blowing, justice systems, human rights, gender, education, citizen participation, peace and security.

The Modules are designed for use by both academic institutions and professional academies across the world. They are built to help lecturers and trainers deliver anti-corruption education, including those who are not dedicated anti-corruption lecturers and trainers but would like to incorporate these components into their courses. Lecturers are encouraged to customize the Modules before integrating them into their classes and courses. The Modules include discussions of relevant issues, suggestions for class activities and exercises, recommended class structures, student assessments, reading lists (with an emphasis on open access materials), PowerPoint slides, video materials and other teaching tools. Each Module provides an outline for a three-hour class, as well as includes guidelines on how to develop it into a full course.

The Modules focus on universal values and problems and can easily be adapted to different local and cultural contexts, including a variety of degree programmes as they are multi-disciplinary. The Modules seek to enhance trainees and students' ethical awareness and commitment to acting with integrity and equip them with the necessary skills to apply and spread these norms in life, work and society. To increase their effectiveness, the Modules cover both theoretical and practical perspectives, and use interactive teaching methods such as experiential learning and group-based work. These methods keep students and trainees engaged and help them develop critical thinking, problem solving, and communication skills, all of which are important for ethics education.

The topics of the Modules were chosen following consultations with academics who participated in a meeting of experts convened by UNODC, in Vienna in March 2017. The experts emphasized the need for increased anti-corruption education globally and advised on core areas to be addressed through the Modules. They considered it paramount that the Modules prepare university students and trainees for value driven effective action, keep students engaged, lend themselves to adaptation to different regional and disciplinary contexts, and allow lecturers to incorporate them as anti-corruption components within existing university courses and disciplines.

To achieve these objectives, the experts recommended that the Modules have a range of characteristics, ultimately being able to:

- | | |
|---|--|
| <ul style="list-style-type: none"> » Connect theory to practice » Emphasize the importance of integrity and ethics to everyday life » Encourage critical thinking » Stress not only the importance of making ethical decisions but also demonstrate how to implement the decisions » Use innovative interactive teaching methods » Balance general ethics with applied ethics | <ul style="list-style-type: none"> » Draw on good practices from practitioners » Link integrity and ethics to other global issues and the SDGs » Adopt a multi-disciplinary and multi-level approach » Focus on global ethics and universal values while leaving room for diverse regional and cultural perspectives » Employ non-technical and clear terminology » Be user-friendly |
|---|--|

Drawing on these recommendations, UNODC worked for over a year with more than 70+ academic experts from over 30 countries to develop the 14 University Modules on Anti-Corruption. Each Module was drafted by a core team of academics and UNODC experts, and then peer-reviewed by a larger group of academics from different disciplines and regions to ensure a multi-disciplinary and universal coverage. The Modules passed through a meticulous clearance process at the UNODC headquarters before finally being edited and published on its website as open-source materials. In addition, it was agreed that the content of the Modules would be regularly updated to ensure that they are in line with contemporary studies and correspond to current needs of educators.

The present knowledge tool has been developed by the UNODC Corruption and Economic Crime Branch (CEB), as part of the Education for Justice initiative under the Global Programme for the Implementation of the Doha Declaration.

Disclaimers

The contents of the UNODC Module Series on Anti-Corruption do not necessarily reflect the views or policies of the United Nations Office on Drugs and Crime (UNODC), Member States or contributory organizations, and neither do they imply any endorsement. The designations employed and the presentation of material in these modules do not imply the expression of any opinion whatsoever on the part of the UNODC concerning the legal or development status of any country, territory, city, or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries. UNODC encourages the use, reproduction, and dissemination of material in these modules. Except where otherwise indicated, content may be copied, downloaded, and printed for private study, research, and teaching purposes, or for use in non-commercial products or services, provided that appropriate acknowledgement of UNODC as the source and copyright holder is given and that UNODC endorsement of users' views, products or services is not implied in any way.

Materials provided in this document are provided "as is", without warranty of any kind, either express or implied, including, without limitation, warranties of merchantability, fitness for a particular purpose and non-infringement. UNODC specifically does not make any warranties or representations as to the accuracy or completeness of any such Materials. UNODC periodically adds, changes, improves or updates the Materials in the module without notice.

Under no circumstances shall UNODC be liable for any loss, damage, liability or expense incurred or suffered that is claimed to have resulted from the use of this module, including, without limitation, any fault, error, omission, interruption or delay with respect thereto. The use of this module is at the User's sole risk. Under no circumstances, including but not limited to negligence, shall UNODC be liable for any direct, indirect, incidental, special or consequential damages, even if UNODC has been advised of the possibility of such damages.

The User specifically acknowledges and agrees that UNODC is not liable for any conduct of any User.

Links to Internet sites contained in the present modules are provided for the convenience of the reader and are accurate at the time of issue. The United Nations takes no responsibility for their continued accuracy after issue or for the content of any external website.

Preservation of immunities

Nothing herein shall constitute or be considered to be a limitation upon or a waiver of the privileges and immunities of the United Nations, which are specifically reserved.

The United Nations reserves its exclusive right in its sole discretion to alter, limit or discontinue the Site or any Materials in any respect. The United Nations shall have no obligation to take the needs of any User into consideration in connection therewith.

The United Nations reserves the right to deny in its sole discretion any user access to this Site or any portion thereof without notice.

No waiver by the United Nations of any provision of these Terms and Conditions shall be binding except as set forth in writing and signed by its duly authorized representative.

These modules have not been formally edited.

Table of Contents

Introduction	07
Learning outcomes	07
Key issues	08
Brief background on the human rights system	09
Overview of the corruption-human rights nexus	10
Impact of corruption on specific human rights	14
Approaches to assessing the corruption-human rights nexus	19
Human rights-based approach	26
Conclusion	29
References	30
Exercises	34
Exercise 1: Reflection on corruption and human rights violations	34
Exercise 2: Human rights violations related to corruption in different sectors, countries and regions	35
Exercise 3: Case studies focusing on judicial corruption	35
Exercise 4: Treaty negotiations illicit enrichment	37
Possible class structure	38
Core reading	39
Advanced reading	40
Student assessment	42
Additional teaching tools	43
Video material	43
Case studies, news reports and blogs	43
Guidelines to develop a stand-alone course	45

Introduction

Corruption and human rights are closely associated with each other. Corruption is detrimental to all areas and aspects of human well-being, in particular the human rights held by all individuals. Thus, the effective protection and guarantee of human rights necessarily includes mitigating systemic problems such as corruption. The Module addresses the complex interplay between corruption and human rights. It stresses the value of making an explicit connection between corruption and human rights, which have commonly been considered separate fields. The Module explores various approaches to understanding the corruption–human rights nexus. It discusses examples of the ways in which corruption violates specific human rights and examines the debate on whether corruption should be recognized as a human rights violation. It also addresses the argument that anti-corruption measures can themselves pose human rights problems.

Learning outcomes

- Explain how corruption affects the protection and enjoyment of human rights
- Identify specific human rights that can be violated by corruption and explain how that happens
- Describe the different linkages between human rights and corruption, both conceptually and practically
- Understand and critically discuss the human rights-based approach to corruption
- Provide examples of ways in which the promotion of human rights and the fight against corruption are mutually reinforcing

Key issues

Corruption exists in all countries, irrespective of the regime type or economic situation. It has significant negative effects on all areas of human well-being and is perceived as one of the major problems jeopardizing economic development, the functioning and legitimacy of government institutions and processes, the rule of law, and the validity of the State itself. Corruption is a complex phenomenon, without a uniform definition. An overview of the different forms and definitions of corruption, as well as its harmful effects across the globe, is available in Module 1 of the UNODC Module Series on Anti-Corruption. For present purposes, it should be noted that the United Nations Convention against Corruption¹ (UNCAC) refrains from providing one overarching definition of "corruption". Rather, it defines various acts of corruption and classifies them as criminal offences, such as bribery and embezzlement (in both the public and private sectors); trading in influence; abuse of functions; and illicit enrichment (UNCAC arts. 15-22). With 189 States parties (as of November 2021), UNCAC has attracted nearly universal adherence, and the different acts of corruption as defined by the Convention can be considered internationally accepted. Module 4 and Module 5 of the UNODC Module Series on Anti-Corruption include more detailed discussions on how these various acts of corruption manifest in the public and private sectors, respectively.

The concept of human rights is equally complex. Human rights are generally grouped into three categories, also referred to as "generations" to reflect the order in which they were conceived and recognized. "First generation" rights are civil and political rights, such as the right to a fair trial and the right to participate in the political process. "Second generation" rights are economic, social and cultural rights, such as the right to health and the right to education. "Third generation" rights are collective or group rights, such as the right to self-determination and the right to development. The concept of human rights generations is helpful for understanding the impact of corruption on individuals and societies. The grouping of rights into categories or generations, however, does not imply that certain rights are prioritized over others. On the contrary, human rights are considered indivisible and do not have a hierarchical order. This is discussed in more detail on the website of the United Nations Office of the High Commissioner for Human Rights (OHCHR).²

The strong link between corruption and human rights violations is emphasized by numerous scholars, practitioners and institutions. Some scholars have studied the correlation between human rights abuses and the spread of corruption (Koechlin and Carmona, 2009, p. 310; Ngugi, 2010; Peters, 2018). This correlation is also echoed by United Nations Global Compact Africa Chief, Olajobi Makinwa: "When there is corruption, human rights disappear" (Transparency International, 2019). Addressing the United Nations Security Council in 2018, the Secretary-General of the United Nations, António Guterres, emphasized that corruption "deprives people of their rights, drives away foreign investment and despoils the environment. Corruption breeds disillusion with government and governance – and is often at the root of political dysfunction and social disunity."³ As a result, human rights bodies have been increasingly paying attention to the negative correlation that exists between corruption and the enjoyment of human rights, even if establishing a causal relationship between corruption and human rights violations requires a case-by-case, evidence-based analysis.

¹ Available from the corruption section of the United Nations Office on Drugs and Crime website (www.unodc.org).

² Available at www.ohchr.org/en/issues/pages/whatarehumanrights.aspx.

³ United Nations, "Remarks by H.E. Mr. António Guterres, United Nations Secretary-General, at the Security Council meeting on "Corruption and Conflict" (8346th meeting)", 10 September 2018.

The present Module explores a variety of contemporary approaches to understanding and explaining the relationship between corruption and human rights. It begins with a brief background on the human rights system, which will be helpful for exploring the relationship between corruption and human rights. It subsequently provides a general overview of the corruption–human rights nexus, emphasizing the detrimental effects that corruption has on the protection and enjoyment of human rights. The Module next examines in detail several examples of specific human rights that are violated by corruption. This is followed by a discussion of different approaches to assessing the relationship between corruption and human rights. Finally, the Module considers the value of a human rights-based approach to corruption. In this context, it asks whether corruption itself should be considered a violation of human rights, and sheds light on some of the benefits of integrating human rights perspectives with anti-corruption efforts.

➤ Brief background on the human rights system

The first two generations of rights are enumerated and defined in two international treaties: The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both Covenants were adopted by the United Nations in 1966 and entered into force in 1976. They draw on the 1948 Universal Declaration of Human Rights, turning many of its declaratory standards into binding obligations. Seven other 'core' human rights treaties have been concluded by States to address particular issues, such as the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the 1989 Convention on the Rights of the Child (CRC).⁴

Each of these treaties has established what is known as a human rights treaty body that monitors the implementation of the treaty provisions by States parties. For example, the United Nations Human Rights Committee monitors the implementation of the ICCPR and the United Nations Committee on Economic, Social and Cultural Rights (CESCR) monitors the implementation of the ICESCR. In addition to these human rights treaty bodies, other bodies within the United Nations system are mandated to promote human rights, such as the Office of the High Commissioner for Human Rights (OHCHR) and the Human Rights Council (formerly the Human Rights Commission). A description of all United Nations human rights bodies is available on the OHCHR website⁵.

In addition to the universal human rights treaties, regional human rights treaties have been adopted by regional organizations in Africa, Europe and the Americas. These treaties are monitored and enforced by systems of regional human rights commissions and courts. While the European and American human rights treaties focus on the human rights of individuals, the African Charter on Human and Peoples' Rights (ACHPR⁶) goes beyond the first two generations of rights by defining and protecting third-generation collective rights such as the rights to self-determination, development, natural resources and a satisfactory environment. A brief overview of the regional human rights systems is available in the Universal Rights Group's A Rough Guide to the Regional Human Rights Systems⁷.

⁴ The texts of the aforementioned treaties are available at www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx.

⁵ Available at www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx.

⁶ Available at www.achpr.org/legalinstruments/detail?id=49.

⁷ Available at www.universal-rights.org/human-rights-rough-guides/a-rough-guide-to-the-regional-human-rights-systems/.

› Overview of the corruption–human rights nexus

The field of human rights began to emerge after World War II, whereas the field of anti-corruption developed following the end of the Cold War. In the 1990s, the international community recognized the need to address and limit corruption, which they viewed as a global impediment to economic development. Moreover, it became clear that corruption undermines the full realization and enjoyment of all three generations of human rights (see, e.g., Barkhouse, Hoyland, and Limon, 2018; Hemsley, 2015; Wolf, 2018). For example, as discussed in further detail below, corruption offences such as bribery and embezzlement can limit access to health care, education, clean water and political participation (Boersma, 2012; Figueiredo, 2017; Rothstein and Varrach, 2017).

Today, there is little disagreement that corruption has a detrimental impact on the protection and enjoyment of human rights, and on the equal access of all citizens to human rights-related goods and services⁸. Corruption not only leads to violations of specific human rights, but also represents a structural obstacle to the implementation and enjoyment of all human rights (UNHRC, 2015; Wouters, Ryngaert, and Cloots, 2013, p. 35). In some cases, corruption leads to the failure of government institutions, making it more difficult for countries to develop and implement human rights frameworks properly. Corruption also makes it very difficult for States to protect important rights that may not yet be guaranteed under international law, but which are guaranteed in many national constitutions and laws, such as the right to a clean environment. Thus, if a factory regularly pollutes the air in a certain region, but authorities take no action against it because they have been bribed not to act, then environmental rights (and possibly the right to health) are violated as a result of corruption. Corruption could also have a detrimental effect on peace and security (see Module 11 of the UNODC Module Series on Anti-Corruption), thereby fostering conditions in which the risk of human rights violations is heightened.

Corruption hampers the human rights of all individuals in a society, but members of vulnerable groups and groups exposed to marginalization and discrimination may suffer first and may suffer disproportionately from corruption. Groups of individuals who may collectively experience the negative impacts of corruption include women, children, the elderly, indigenous people, irregular migrants and other non-nationals, people with disabilities, prisoners, sexual minorities and people living in poverty. These groups are often more reliant on public goods and services, such as education and health care, and have limited means to look for alternative private services (UNHRC, 2015). They typically have fewer opportunities to participate in the design and implementation of public policies and programmes, and they lack the resources needed to defend themselves against such violations, to demand their rights, and to seek reparations. Corruption can have the effect of compounding the existing difficulties that are already experienced by members of such groups in accessing public goods and services as well as access to justice. Corruption, in other words, may further aggravate the existing human rights violations that are experienced by members of these groups.⁹

⁸ For a further discussion see www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/Corruption.aspx.

⁹ For a related discussion by the World Bank on how corruption affects vulnerable and impoverished communities, see www.worldbank.org/en/topic/governance/brief/anti-corruption.

Another group at heightened risk of corruption-related human rights violations consists of individuals involved in efforts to investigate, report, and prosecute corruption (UNHRC, 2019). Every State has an obligation to protect the human rights of people belonging to these groups within its territory and subject to its jurisdiction, and to guard them against human rights violations associated with corruption (UNHRC, 2015, p. 8).

United Nations statements on the corruption–human rights nexus

In light of its detrimental effects on society and human rights, it is clear that corruption cannot be analysed as a "harmless" economic crime or as a transaction affecting only those individuals directly involved (Barkhouse, Hoyland, and Limon, 2018). This notion is reflected in different UN documents and instruments, including the United Nations Convention against Corruption (UNCAC), the only legally binding universal anti-corruption instrument. In the foreword to this Convention, former UN Secretary-General Kofi Annan underscored the adverse impact of corruption on society and 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.

United Nations bodies have also emphasized the adverse effects of corruption on human rights. For example, the United Nations Human Rights Council (2015, 2016, 2019) issued a series of reports on the "negative impact of corruption on the enjoyment of human rights" which call on States to recognize and address this problem. The United Nations General Assembly (2015, preamble) has referred to the effects of corruption on human rights as "grave and devastating". The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment made a similar statement (A/HRC/40/59, para. 7). For an analysis of some of these statements see Peters, 2018, pp. 1252–1253. A United Nations document that provides interesting examples of the corruption–human rights nexus is General Comment No. 24¹⁰ issued in 2017 by the Committee on Economic, Social and Cultural Rights (CESCR), the body that monitors the implementation of the ICESCR. While the focus of this General Comment is States' human rights obligations in the context of business activities, it also includes more general statements about the impact of corruption on human rights. For example, in paragraph 20, CESCR General Comment No. 24 states that:

Corruption constitutes one of the major obstacles to the effective promotion and protection of human rights, particularly as regards the activities of businesses. It also undermines a State's ability to mobilize resources for the delivery of services essential for the realization of economic, social and cultural rights. It leads to discriminatory access to public services in favour of those able to influence authorities, including by offering bribes or resorting to political pressure. Therefore, whistle-blowers should be protected, and specialized mechanisms against corruption should be established, their independence should be guaranteed and they should be sufficiently well resourced.

¹⁰ Available at www.refworld.org/docid/5beaecba4.html.

The role of the private sector in the corruption–human rights nexus

As noted in the above-mentioned CESCR General Comment No. 24¹¹ (2017), the private sector, in particular businesses, are key actors in corruption offences that have negative effects on human rights. As defined in UNCAC (arts 15–22), acts of corruption necessarily involve the private sector, as they involve dealings between the private and public sectors (and in some instances transactions solely within the private sector). The General Comment, in paragraph 18, notes that the obligation of States to protect citizens from business activity can have a negative impact on human rights:

States would violate their duty to protect Covenant rights, for instance, by failing to prevent or to counter conduct by businesses that leads to such rights being abused, or that has the foreseeable effect of leading to such rights being abused, for instance through lowering the criteria for approving new medicines, by failing to incorporate a requirement linked to reasonable accommodation of persons with disabilities in public contracts, by granting exploration and exploitation permits for natural resources without giving due consideration to the potential adverse impacts of such activities on the individual and on communities' enjoyment of Covenant rights, by exempting certain projects or certain geographical areas from the application of laws that protect Covenant rights, or by failing to regulate the real estate market and the financial actors operating on [sic] that market so as to ensure access to affordable and adequate housing for all. Such violations are facilitated where insufficient safeguards exist to address corruption of public officials or private-to-private corruption, or where, as a result of corruption of judges, human rights abuses are left unremedied.

When corruption emerged as an issue in the context of the United Nations in the early to mid-1970s, developing countries favoured an especially broad conception of corruption that encompassed the improper influence of corporations on public institutions (Ngugi 2010, pp. 246–247; Gathii 2009). Many developing countries supported, in particular, the idea of adopting a Code of Conduct for Transnational Corporations, which was the subject of negotiations at the United Nations in the 1970s. The Code was proposed in the context of discussions about a New International Economic Order and was driven by developing countries' strong interest in mitigating the deleterious effects of international business activities (Gathii, 2009). However, owing to political and economic developments, negotiations concerning the Code of Conduct failed and the United Nations shifted from adopting a top-down code for international businesses to a more collaborative approach, inviting businesses to collaborate with the United Nations and each other, and promoting the common good. These efforts eventually gave rise to the establishment of the United Nations Global Compact¹², a voluntary and collaborative initiative between businesses and the United Nations that promotes responsible business practices that adhere to a number of principles concerning human rights and anti-corruption (Principles 1, 2, 10). Businesses that participate in the Global Compact commit to 'supporting and respecting the protection of internationally proclaimed human rights', and to ensuring that 'they are not complicit in human rights abuses' (Principles 1, 2). In addition, businesses commit to working 'against corruption in all its forms, including bribery and extortion' (Principle 10).

¹¹ Ibid.

¹² Available at www.unglobalcompact.org/.

In addition to this, UNGC has also established an Action Platform for Peace, Justice and Strong Institutions¹³ aiming to develop and promote global business standards in understanding and reporting on business engagement in the implementation of Sustainable Development Goal 16.

Another international effort to subject corporations to human rights standards is the 2011 United Nations Guiding Principles on Business and Human Rights¹⁴, which set out the human rights-related responsibilities of transnational corporations. While this is a "soft law" instrument that does not create binding obligations for States or corporations, it demonstrates an international shift towards developing norms that are geared towards bringing business activities into line with international human rights standards. While these principles focus on the role of the private sector in upholding human rights, they also set out the obligations of States to protect individuals from harmful business activities and to provide effective remedies for business-related human rights abuses. Each principle includes a short commentary. Some of the commentaries make a clear reference to corruption and its nexus with human rights (especially fair trial rights). For example, the commentary on Principle 25, which concerns "access to remedy", explains that "[p]rocedures for the provision of remedy [sic] should be impartial, protected from corruption and free from political or other attempts to influence the outcome". The commentary on Principle 26, which concerns "State-based judicial mechanisms", stresses that "States should ensure that ... the provision of justice is not prevented by corruption of the judicial process, that courts are independent of economic or political pressures from other State agents and from business actors". Thus, Principles 25 and 26 acknowledge that corruption and the right to a fair trial are inextricably linked. Respect for the right to a fair trial requires the prevention of corruption.

United Nations Agenda 2030 for Sustainable Development

Another relevant framework for examining the corruption-human rights nexus is the United Nations Agenda 2030 for Sustainable Development and its 17 Sustainable Development Goals¹⁵ (SDGs). While the Agenda is not explicitly based on human rights, its Goals are aligned with human rights. The SDGs focus on social, economic, political, cultural and environmental development through good governance, the rule of law, access to justice, personal security, and the fight against inequality. The realization of human rights, including the rights to health, an adequate standard of living, education, non-discrimination, gender equality, and development, are explicit objectives of the SDGs, derived from the Universal Declaration of Human Rights and the international human rights treaties. The human rights treaty bodies, in their official contribution¹⁶ to the Agenda 2030, have "identified mismanagement of resources and corruption as obstacles to the allocation of resources to promote equal rights". Indeed, the idea that corruption impedes sustainable development is explicitly recognized in Goal 16 of the SDGs, which asks all States to "substantially reduce corruption and bribery in all their forms" and to "strengthen the recovery and return" of government assets stolen through corruption by 2030. The website of Goal 16¹⁷ elaborates on the disastrous impact of corruption on development and the human condition:

¹³ For more information, see www.unglobalcompact.org/library/5640.

¹⁴ Available at www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf.

¹⁵ Available at www.un.org/sustainabledevelopment/development-agenda/.

¹⁶ Available at <https://sustainabledevelopment.un.org/index.php?page=view&type=30022&nr=201&menu=3170>.

¹⁷ Available at www.un.org/sustainabledevelopment/peace-justice/.

Corruption, bribery, theft and tax evasion cost some US \$1.26 trillion for developing countries per year; this amount of money could be used to lift those who are living on less than \$1.25 a day above \$1.25 for at least six years.

› Impact of corruption on specific human rights

As the SDG 16 website indicates, corruption related crimes cost developing countries about \$1.26 trillion annually. This waste and diversion of public funds leaves governments with fewer resources to fulfil their human rights obligations, to deliver services and to improve the standard of living of their citizens. The following discusses some of the ways in which corruption enables the violation of specific human rights. While the discussion revolves around the violation of individual (first and second generation) rights addressed by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁸, in some cases such violations also impede the attainment of collective rights (third-generation). For example, when corruption violates economic and social rights, such as the right to an adequate standard of living (ICESCR art. 11), this could also hamper the attainment of the collective right to development. Another example is when corruption leads to pollution (see the Module's discussion on the right to health), and thus violates the collective right to a clean environment. The discussion below provides several examples of ways in which corruption relates to the violation of specific human rights. The first examples relate to civil and political rights, while the subsequent ones relate to economic, social and cultural rights.

The impact of corruption is often considered to be especially pronounced regarding economic, social and cultural rights, although this is not, in fact, always the case. Economic, social and cultural rights are typically perceived as requiring a greater investment of public resources compared to civil and political rights, which are typically perceived as merely requiring States to refrain from interfering with individual freedoms. However, the realization of all categories of human rights may, in fact, require the allocation of substantial public resources. In recognition of the fact that States with resource constraints may need more time to realize economic, social and cultural rights, the ICESCR allows for a "progressive realization" of economic, social and cultural rights. This means that while States are required to take immediate measures to realize these rights, they may do so to the extent possible in light of available resources. As explained in the relevant OHCHR fact sheet¹⁹:

[A] lack of resources cannot justify inaction or indefinite postponement of measures to implement these rights. States must demonstrate that they are making every effort to improve the enjoyment of economic, social and cultural rights, even when resources are scarce. For example, irrespective of the resources available to it, a State should, as a matter of priority, seek to ensure that everyone has access to, at the very least, minimum levels of rights, and target programmes to protect the poor, the marginalized and the disadvantaged.

¹⁸ See note 4.

¹⁹ Available at www.ohchr.org/Documents/Publications/FactSheet33en.pdf.

At the same time, the realization of civil and political rights can also require considerable resources. For example, large amounts of funds are needed to maintain the judicial, law enforcement and prison systems and to ensure free and fair elections. The realization of civil and political rights can, therefore, also suffer greatly as a result of the misuse or misallocation of public funds. In addition, as the following discussion illustrates, there are other ways in which civil and political rights can be adversely affected by corruption.

Rights to equality and non-discrimination (civil and political rights)

The right to equality is referred to in all major human rights treaties (see e.g. ICCPR art. 2(1)). Every individual has the right to be treated equally and without discrimination by the State. The Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights, defines the term discrimination as:

Any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms (Human Rights Committee General Comment No. 18, para. 7²⁰).

According to this definition, corrupt acts are discriminatory in certain situations because they i) intrinsically distinguish, exclude, restrict or prefer; and ii) have the purpose or effect of nullifying or impairing the equal recognition, enjoyment or exercise of human rights (ICHRP, 2009, p. 32).

The right to be treated equally is violated, for example, when someone is requested to pay a bribe to obtain a public service. In this situation, those who were not asked for a bribe received better treatment, and the right to equality of the person who was asked to pay a bribe has been violated. The harm from such a violation is particularly grave when the targeted person comes from a vulnerable or marginalized group, such as social minorities, indigenous groups, irregular migrants, sexual minorities, etc. These individuals suffer disproportionately from this type of human rights violation because their position in society makes them easy targets for corruption, and they are often unable to afford the cost of the bribe (Boersma, 2012; Figueiredo, 2017; ICHR, 2009).

The discriminatory outcomes of corrupt practices also commonly violate other human rights, such as the right to education, health and adequate housing. The rights to equality and non-discrimination are also violated when non-monetary acts of abuse of power have taken place, such as when sex or the human body is used as the "currency" of the corrupt act. Such cases of sexual corruption (sometimes associated with sextortion) are further discussed in Module 8 of the UNODC Module Series on Anti-Corruption. Another relevant topic addressed in Module 8 is the nexus between corruption and gender-based discrimination, the various ways in which gender may influence the occurrence of corruption, and how corruption can have gendered impacts by affecting men and women differently. Module 8 also addresses the role that gender mainstreaming and diversity, more generally, can play in mitigating corruption.

²⁰ Available at www.refworld.org/docid/453883fa8.html.

Rights to a fair trial and an effective remedy (civil and political rights)

The right to a fair trial is a fundamental human right which is essential for safeguarding the rule of law (ICCPR arts. 14-15). It incorporates the principle of equality, which underpins the administration of justice. The right to a fair trial encompasses an extensive series of procedural rights, including an independent and impartial tribunal, equality of arms, access to a court, and the presumption of innocence. The right to a fair trial is closely related to the right to an effective remedy, because no remedy is effective without equality before the law and fair judicial procedures (ICCPR art. 3).

Corruption in the judicial sector damages the right to a fair trial, as corruption erodes the independence, impartiality, and integrity of the judiciary. The lack of independence of judges, prosecutors and lawyers directly harms the right to a fair trial. It limits the effective and efficient administration of justice as well as the credibility of the entire justice system (see related discussion and references in Module 14 of the UNODC Module Series on Crime Prevention and Criminal Justice). When corruption interferes with the appointment of judges and in court proceedings, for example, it violates the impartiality of the judiciary and the fair trial rights of defendants (ICHR, 2009, pp. 37–38). Individuals are also deprived of equal access to justice when public officials demand bribes as a condition for accessing the judicial system or to speed up a court service (Boersma, 2012, p. 208).

The impact of corruption in the judiciary can extend beyond individual cases, by undermining other rights, fostering impunity among corrupt actors, and diminishing trust in the justice system (which in turn can lead to more corruption, see Figueiredo, 2017). One of the core functions of the justice system is to promote and protect the human rights of all individuals in society. If human rights have been violated, the justice system can play a critical role in identifying those violations and protecting individuals' human rights. However, this can only be accomplished when the justice system functions properly and is transparent, accountable and free of corruption. In societies that have high levels of corruption, a justice system that upholds the right to a fair trial may be critical for safeguarding the host of human rights that are adversely affected by corruption in society.²¹

Rights of political participation (civil and political rights)

Political participation has been described as the "hallmark of democracy" (UNHRC, 2015, para. 4). Rights to political participation include the right to participate in public affairs and exercise political power, and formulate policy at all levels of the State; the right to vote and be elected; and the right to equal access to public service positions (see e.g. ICCPR art. 25). States have the obligation to adopt positive measures to ensure the full, effective and equal enjoyment of these rights. States must also protect the related freedoms of expression, information, assembly, and association. Corrupt practices can have a detrimental effect on all aspects of political participation. For example, vote-buying is a violation of the right to vote, because it restricts the free choice of citizens and affects the electoral process by undermining its legitimacy (Pearson, 2013, p. 55). Another example, related to the right to be elected, is when electoral commissioners prevent someone from registering as a candidate for office, because of a bribe they received, or because they are trading in influence, i.e. abusing their influence to ensure that another person is elected with the expectation of receiving an undue advantage from that person.

²¹ Resources on corruption and integrity in the judiciary are available on the website of the UNODC Global Judicial Integrity Network (www.unodc.org/ji/en/resdb/).

A third example relates to the right to equal access to public service positions. This right can be violated whenever positions in the public service are obtained through corrupt means, such as bribing the person in charge of hiring or through nepotism (Bacio-Terracino, 2008, p. 18). The right to have equal access to public service positions implies that admission to public jobs should respect equality and general principles of merit.

Rights to an adequate standard of living, food, housing and health (economic, social and cultural rights)

Article 11 of the ICESCR²² provides for the right to an adequate standard of living, which includes the rights to "adequate food, clothing and housing, and to the continuous improvement of living conditions". Article 12 provides for the right to "the highest attainable standard of physical and mental health". In addition, article 27 of the CRC²³ includes the rights to food, housing and health.

There is ample evidence about the impact of corruption on the right to food. The 2001 report²⁴ of the Special Rapporteur on the Right to Food identifies seven essential obstacles that limit or prevent the realization of the right to food, among them the problem of corruption. The Rome Declaration on World Food Security²⁵ also recognized that corruption contributes significantly to food insecurity. Corruption can violate the right to food by diverting funds from social spending (ICHRP, 2009). The embezzlement of funds that are intended for food aid, for example, is a violation of the State's obligation to provide food for those who do not have access via their own means. The right to food security is also threatened when food products of inadequate quality are on the market because of corrupt practices, such as where a government official ignores a requirement to obtain a licence to produce a food product or to carry out inspection procedures, in exchange for the receipt of a bribe (ICHRP, 2009, p. 44).

Corruption can also violate several aspects of the right to health (see the 2012 Report²⁶ to the General Assembly), such as the "management of financial resources", the "distribution of medical supplies", and the "relationship of health workers with patients" (ICHRP, 2009, p. 53). As with other economic, social and cultural rights, the embezzlement of funds intended for the health sector violates the right to health of the entire society (Boersma, 2012, p. 264). Corruption associated with public contracts can violate the right to health by threatening the quality of the construction of health facilities or the supply of health goods (ICHRP, 2009, p. 53). The right to health and its accessibility is violated when someone has to pay bribes to have access to health-care services, such as medicines, medical treatment, and anaesthesia. Corrupt practices can cause widespread violations of the right to health, such as when the pharmaceutical industry sells unsafe medicines. Corruption may also impact the right to health when public officials allow companies to pollute the environment (Boersma, 2012, pp. 261–262). The violation of the right to health is related to the violation of environmental rights, because violations of environmental rights – which cause unhealthy, harmful environments – can stand in the way of the right to health.

²² See note 4.

²³ Ibid.

²⁴ Available at <https://undocs.org/E/CN.4/2001/53>.

²⁵ Available at www.fao.org/3/w3613e/w3613e00.htm.

²⁶ Available at www.ohchr.org/EN/Issues/Health/Pages/AnnualReports.aspx.

The right to housing can be affected by corruption when, for example, public officials demand bribes as a condition for supporting a public housing programme. More generally, the right to housing and other rights related to living standards cannot be realized in places where corruption causes poverty. Thus, the poverty brought about by corruption is especially detrimental to the enjoyment of human rights²⁷.

Right to education (economic, social and cultural rights)

The right to education is an essential "human right in itself and an indispensable means of realizing other human rights". Education is crucial for a person's self-fulfilment and the development of society as a whole (Coomans, 2010, p. 281), since it is a vehicle for empowering the disadvantaged and improving social and economic standards. The right to education is contained in several human rights treaties and incorporates the right to receive an education (social dimension) and the right to choose educational institutions that reflect the individual's personal beliefs (freedom dimension) (ICESCR art. 13). Individuals should have access to education that is non-discriminatory, free, and compulsory in the case of primary education (Coomans, 2010, pp. 284–288). Additionally, education must have a holistic approach that promotes human rights values and the preservation of multicultural diversity (see, e.g., the 2014 Report of the Special Rapporteur on the Right to Education²⁸). According to the CESCR General Comment No. 13²⁹, States are under an obligation to provide education that is (i) available and has functioning educational institutions in sufficient numbers; (ii) physically and economically accessible to everyone; (iii) of good quality and culturally acceptable; and (iv) adaptable to cultural and social contexts.

Corrupt practices can, in particular, undermine access to education and the quality of educational services, limit the social and economic development of society as a whole, and especially of vulnerable and marginalized groups (ICHRP, 2009, p. 57). Corrupt practices can, for example, endanger the right to equal and free access to primary and secondary education when the payment of a bribe is required as a condition of admission or to receive books that are supposed to be free of charge (Boersma, 2012). In addition, sexual corruption is widespread in the educational sector in some countries – for example, when teachers ask for sexual favours in exchange for better grades (see related discussions in Module 8 and Module 9 of the UNODC Module Series on Anti-Corruption). Because of its long-term consequences on all societal levels, corruption in the educational sector is particularly serious (Figueiredo, 2017). For a more detailed discussion on corruption in education, see Module 9 of the UNODC Module Series on Anti-Corruption.

²⁷ For a discussion on corruption and poverty, see Cheryna Rusli, "Corruption and Poverty", 29 November 2018.

Available at www.youtube.com/watch?v=8X9yFk8_GYQ.

²⁸ Available at www.ohchr.org/EN/Issues/Education/SREducation/Pages/AnnualReports.aspx.

²⁹ Available at www.right-to-education.org/resource/cescr-general-comment-13-right-education-article-13.

› Approaches to assessing the corruption–human rights nexus

Correlation versus causation

Although corrupt acts can have short- and long-term detrimental effects on human rights, it would be inaccurate to conclude that all acts of corruption always cause identifiable human rights violations (Davis, 2019; ICHR, 2009, p. 24). In fact, the work of development economists does not necessarily demonstrate that corruption causes human rights violations, but instead generally shows that corruption is negatively correlated with government expenditure on education and health care (Mauro 1998). Moreover, even if a negative correlation between corruption and human rights generally exists, such a correlation does not necessarily exist in every society (Peirone, 2019) and may depend on factors such as the economic environment, the independence of the judiciary, and the country's regime type and history (see Module 3 of the UNODC Module Series on Anti-Corruption). For example, referring to a case of embezzlement of oil revenues, Rose (2016, pp. 415–416) questions the causal link between specific acts of corruption and the violation of a State's human rights obligation:

If a government has failed, in the first place, to allocate oil revenues towards social programmes, then the embezzlement of these funds arguably constitutes only one of a number of factors that may contribute to the State's failure to progressively realize social, economic, and cultural rights. Budgetary decision-making may be a far more significant factor. Even where oil revenues remain in the public coffers, safe from would-be embezzlers, they still may not go towards social programmes, as has been the case in so many natural resource-rich States. In other words, embezzlement may not be the factor, but for which oil revenues would go towards progressively realizing the rights to health care or education.

Davis (2019, p. 1291) advances a similar critique:

Assume that the national health care system is so underfunded that the State has clearly failed to satisfy its obligation to fulfil the right to health. This does not necessarily mean that corruption is the cause of the human rights violation. For instance, it is possible that, if the funds had not been diverted, they would have been allocated to the military or to higher education. In this case, it cannot be said that the corruption has caused the failure to realize the right. In general, corrupt diversion of funds has indeterminate effects on enjoyment of human rights. The only exceptions are when the funds have already been allocated, or almost certainly would have been allocated, to compliance with human rights obligations.

Therefore, the causal relationship between corruption and human rights must be carefully assessed on a case-by-case basis and in a context-specific manner. Such assessments could be the basis for a legal claim or political action, and they can also help us gain a more concrete understanding of the ways in which corruption enables or causes the violation of human rights. Some of these approaches are discussed in the following paragraphs.

The causal link approach of the International Council on Human Rights Policies

In 2009, the ICHRP published a paper proposing an operational framework that establishes when corrupt acts violate or lead to a violation of human rights. The purpose of the publication was "to provide a technique for analyzing corruption in human rights terms" and to serve as "an analytical tool that should assist in determining when and how violations of human rights and acts of corruption can be connected" (ICHRP, 2009, pp. 24 and 30). The proposed framework focuses on the causal chain of events leading from the corrupt act to the human rights violation. It distinguishes between (a) direct violations, (b) indirect violations, and (c) remote violations.

Direct violations take place when the corrupt act can be directly linked to the human rights violation, including when corruption is "deliberately used as a means to violate a right". For example, when judges, prosecutors and lawyers are bribed, the right to a fair trial is directly violated. A direct violation may also occur when a human rights violation was foreseeable, but the State did not act with due diligence to prevent it.

Indirect violations occur when corruption is a significant factor that contributes to a chain of events that eventually leads to a violation of human rights. The bribery of public officials to allow the illegal importation of toxic waste, which is then deposited near a residential area, is one example of an indirect human rights violation. In this example, the right to health and the right to a clean environment of the people living near the waste was not the target of corruption, but corruption allowed these human rights violations to occur. Another example of indirect violation, related to the right to food, is provided by Bacio-Terracino (2008, p. 20):

Particular acts of corruption are known to have taken place where a food producer obtains a food production license by bribing the relevant food safety agency. This can result in unsafe food supply for a considerable amount of people. Hence, when bribery at the level of food regulation opens the door for tainted food to be placed in the market for general consumption, the food safety and dietary needs recognized in the right to food are not respected. In this case, corruption may be blamed for indirectly violating the right to food.

Remote violations take place when corrupt acts are one of several factors that lead to a human rights violation. For instance, corruption in the electoral process can cause doubts about the accuracy and fairness of election results and can lead to protests that are violently repressed by the State. Therefore, corruption can spark a sequence of events that leads to violent repression of protests by police forces – an eventual, remote human rights violation (Figueiredo, 2017).

Boersma (2012, p. 196) has criticized the operational framework of the ICHRP and argued that the terminology – i.e. direct, indirect and remote – is legally imprecise and leads to conceptual confusions and uncertainty in legal terms. She claims that some indirect violations are in fact direct violations, and gives the following example:

It was argued [by the ICHRP] that there is an indirect violation of the right to health when bribery of a public official leads to the dumping of toxic waste in a residential area. Yet, under the right to health, there is a State obligation 'to protect' individuals against infringements by third parties. Hence, by allowing the waste to be dumped, the State breaches its obligation to protect, which constitutes a direct violation of the right to health ...

While the ICHRP's framework focuses on the character of the relationship between an act of corruption and the human rights impact (i.e., direct, indirect, remote), Boersma's analysis highlights the fact that in legal terms, a violation of human rights either has or has not taken place. In other words, international human rights law does not conceive of "direct" or "indirect" human rights violations. Boersma developed an alternative framework for analysing the linkages between corruption and human rights, which is discussed further below.

Three levels of human rights obligations: Respect, protect and fulfil

One way to assess the impact of corruption on human rights is to consider the impact at the three different levels of a State's obligations regarding human rights, namely the obligations to (i) respect, (ii) protect, and (iii) fulfil human rights. While these three levels are not explicitly mentioned in the human rights treaties, they are widely used by the human rights treaty bodies when assessing States' compliance with human rights obligations (see, e.g., CESCR General Comment No. 12³⁰, para. 15; CESCR General Comment No. 13³¹, para. 46; CESCR General Comment No. 14³², para. 33; CESCR General Comment No. 24³³, paras. 10–24). The obligation to respect is essentially an obligation of the State to refrain from interfering with the enjoyment of human rights. It is accordingly considered a "negative" obligation. In contrast, the obligation to fulfil is considered a "positive" obligation, as it requires the State to proactively facilitate and provide human rights by adopting appropriate legal, institutional, budgetary and other measures that ensure the full realization of human rights. The third "level" entails the obligation to protect, which refers primarily to the protection of individuals from acts of other individuals or entities that interfere with the enjoyment of human rights. This requires the State to take appropriate measures to prevent, investigate, punish and redress abuses by third parties.

The obligation to protect is particularly relevant for this discussion of the corruption–human rights nexus, as it requires the State not only to protect individuals from the abusive acts of other private persons or entities, but also to reduce structural human rights risks in which State officials are involved. As explained by Peters (2019, p. 1260), this can be illustrated through the example of police violence that appears to violate human rights. In such cases, the European Court of Human Rights (ECtHR) requires States to investigate and prosecute such incidents. Systemic corruption, however, could constitute a structural impediment to such investigations and prosecutions. Therefore, in cases involving the complete inaction of the State or evidently deficient anti-corruption measures, the State might be deemed to have failed to prevent abuses and could therefore be held responsible under international law for violating its obligation to protect human rights. In other words, anti-corruption measures can enable States' compliance with their obligation to protect human rights. In addition, the obligation to protect requires States to protect their citizens from abuses by all kinds of private entities, including transnational corporations. Of relevance here are the above-mentioned UN Guiding Principles on Business and Human Rights³⁴, which set out the obligations of States to protect individuals from harmful business activities and to provide effective remedies for business-related human rights abuses (see discussion above).

³⁰ Available at www.refworld.org/docid/4538838c11.html.

³¹ See note 37.

³² Available at www.refworld.org/pdfid/4538838d0.pdf.

³³ See note 16.

³⁴ See note 21.

A case that concerns the State's obligation to protect human rights from harm by businesses is the Oganiland case³⁵ (Social and Economic Rights Action Center & Center for Economic and Social Rights v. Nigeria, African Commission on Human and Peoples' Rights, 2001). In this case, the African Commission on Human and Peoples' Rights found that Nigeria violated several provisions of the African Charter on Human and Peoples' Rights by allowing oil companies to operate in Ogoniland in a manner that contaminated the environment and had devastating effects on the health and well-being of the Ogonis. CESCR General Comment No. 24 (2017) discusses in detail the State's obligation to protect human rights in the context of corporate abuses (para. 18), as well as more generally (para. 20).

The positive obligation to protect does not impose a duty on States to produce certain outcomes, but rather requires them to implement all necessary measures to produce a desired outcome (see, e.g., X and Y v. Netherlands³⁶, ECtHR, 1985; Velàsquez Rodríguez Case³⁷, Inter-American Court of Human Rights, 1988). This is, in other words, an obligation of conduct rather than an obligation of result. With respect to corruption, a State would meet its human rights obligations if it takes all reasonable measures to fight corrupt practices that have a negative impact on human rights, even if corruption was not fully eradicated (see, e.g., Budayeva and Others v. Russia³⁸, ECtHR, 2008; Öneryıldız v. Turkey³⁹, ECtHR, 2004).

In principle, protective obligations are imposed on all three branches of government. They obligate the legislative branch to enact effective laws; the executive branch to undertake effective administrative measures; and the judicial branch to engage in effective legal prosecution. If any of these actions are impeded by corruption, then the resulting inaction can amount to a violation of the right to due process and the right to a remedy. Arguably, it can also be construed as a violation of the primary right (i.e., the particular human right) that was supposed to be protected by the legal, judicial or administrative process (although the human rights case law is not clear on this issue – see Peters, 2016, pp. 267–269).

Below are several examples of how corruption can affect a State's compliance with human rights obligations at each of the three levels:

1) Obligation to respect (the right of peaceful assembly): A political party informed the local authority that it wished to organize a peaceful assembly in a public square to criticize a draft bill that would allow the sale of a state-owned telephone company to a private company. Because the private company feared that parliament would not pass the draft bill if public criticism grew, it bribed the police to prevent the protest. On the relevant day, police forces closed the square where the demonstration was supposed to take place and asked the protesters to leave. In this example, the State violated its obligation to respect (i.e. refrain from interfering with) the right to a peaceful assembly, and this was caused by corruption.

³⁵ Available at <http://hrlibrary.umn.edu/africa/comcases/155-96b.html>.

³⁶ Available at www.coe.int/t/dg2/equality/domesticviolencecampaign/resources/x_and_y_v_the_netherlands_EN.asp.

³⁷ Available at www.corteidh.or.cr/docs/casos/articulos/seriec_07_ing.pdf.

³⁸ Available at <https://hudoc.echr.coe.int/eng?i=001-85436>.

³⁹ Available at <https://hudoc.echr.coe.int/eng?i=001-67614>.

2) Obligation to fulfil (the right to education): The Ministry of Education provided public funds to a local municipality for the express purpose of building a new school. However, local officials embezzled these funds and, as a result, the school was not built. In this example, corruption caused the breach of the State's obligation to fulfil the right to education.

3) Obligation to protect (right to health). An investigative journalist revealed that a private chemical company ignored environmental regulations and diverted toxic waste into the nearby river, contaminating the biggest clean water supply in the region. She also showed that the Ministry of Health was aware of the hazard and yet refrained from taking action because of bribes received from the chemical company. In this example, corruption caused the breach of the State's obligation to protect the right to health (i.e. to protect individuals from harm to their health as a consequence of abuses by private persons or entities). A further violation of this obligation would have occurred if remedies were not made possible. For example, if a person who had fallen ill because of the contaminated water filed a complaint and the prosecutor refrained from initiating an investigation because of a bribe received from the chemical company, this would have constituted an additional violation.

The four "As": Availability, accessibility, acceptability and adaptability

Another analytical framework that can be used to concretely demonstrate the impact of corruption on human rights is the "four As", a standard developed by the Committee on Economic, Social and Cultural Rights. The four As stand for availability, accessibility, acceptability and adaptability, and they are meant to help clarify the extent of a State's obligations to guarantee access to social services and goods. According to CESCR General Comment No. 13⁴⁰ on the Right to Education, availability refers to the obligation of the State to make a social service or good available in a sufficient quantity within its jurisdiction. Accessibility refers to the obligation to make goods or services physically and economically accessible to every individual within its jurisdiction, without discrimination. Acceptability entails that the service or good must be of good quality, and respect minimum standards. Adaptability means that the State must adapt to the needs of its communities and respond to the complex and diverse social and cultural settings of all groups in the society (De Schutter, 2018). Analysing how corruption interferes with any one of these dimensions helps to shed light on the corruption–human rights link and the ways in which corruption leads to the violation of human rights.

Human Rights Council classifications

In 2013, the United Nations Human Rights Council asked its Advisory Committee for a report about human rights violations caused by corruption and recommendations on how the Council and other United Nations bodies should address the problem. Two years later, the Advisory Committee submitted its final report⁴¹ on the negative impact of corruption on the enjoyment of human rights to the Council. The report briefly categorizes the possible violations of human rights as having "individual", "collective" and "general" negative impacts, according to the "different obligations imposed on states" (Wouters, Ryngaert and Cloots, 2013, p. 35):

⁴⁰ See note 37.

⁴¹ Available at www.refworld.org/docid/550fef884.html.

- The individual negative impact relates to corruption that directly or indirectly affects the rights of individuals. An example is when a teacher asks a student for sexual favours in exchange for better grades (see discussion above on sexual corruption).
- The collective negative impact refers to corruption that affects specific groups such as minority groups. An example is when public officials demand bribes for delivering public services, and they set an amount that certain vulnerable or marginalized groups cannot afford, with the consequence that these groups are therefore excluded from accessing the service.
- The general negative impact refers to the effect of corruption on society at large, both at the national and international levels. Examples are the reduction of financial and economic resources caused by corrupt practices such as embezzlement, and the destabilization of democratic institutions and the rule of law caused, for example, by systemic corruption or corruption at the highest levels of government (i.e. the head of the government or the head of State).

The categorization of human rights violations as having individual, collective and general negative impacts highlights how detrimental and extensive the impact of corruption on human rights can be. The report of the Human Rights Council Advisory Committee provides useful recommendations that can guide the Council and other human rights bodies on addressing corruption. It calls, in particular, for a greater integration of human rights perspectives and anti-corruption strategies.

The Human Rights Council Advisory Committee seems to have endorsed the above-mentioned distinction between "direct" and "indirect" violations that was developed earlier by the International Council of Human Rights Policy (ICHRP). However, the Advisory Committee does not focus on identifying the causal link between corruption and human rights violations. Rather, it enhances our understanding of the different connections between corruption and human rights by classifying them based on the type and extent of the harm suffered by the victims.

Boersma's five dimensions

While Boersma does not offer a systematic method to describe and analyse the links between corrupt acts and human rights violations, she sheds light on the different ways in which corruption relates to human rights. Boersma thus contributes to the recognition and conceptualization of a broader spectrum of connections between corruption and human rights, which goes beyond examining corruption as a cause of human rights violations. In particular, Boersma (2012, p. 199) identifies the following five dimensions of the corruption–human rights nexus:

- The first and broadest dimension is the "shared environment of corruption and human rights violations", which means that both corruption and the violation of human rights are consequences of the same deficient behaviour in the practice and politics of States. A strong correlation may exist between high levels of corruption and poor human rights protections, and both phenomena can have the same root cause (e.g. armed conflict, weak democratic institutions, etc.).
- The second dimension concerns the "human rights necessary to fight corruption" and emphasizes that certain human rights are crucial for the fight against corruption, such as the right to freedom of expression, the right of information, the right to assembly and the right to freedom of association (see also UNHRC, 2019).

- The third dimension concerns the "human rights of persons accused of corruption" and involves the observation that anti-corruption measures may violate the human rights of those accused of corruption – even though international law requires that anti-corruption measures be consistent with human rights. This point is further discussed below.
- The fourth dimension refers to "anti-corruption reforms negatively impacting upon the human rights of vulnerable groups". This dimension relates to the fact that anti-corruption reforms usually prioritize economic development and the rights of foreign investors, leaving the rights of vulnerable and marginalized groups unaddressed.
- The fifth and last dimension concerns "corruption as a violation of human rights" and entails that corruption is itself a human rights violation, whether its effect on human rights is direct, indirect or remote (see also Gebeye, 2012; Rose, 2016, p. 457; Rothstein and Varrach, 2017; Spalding, 2019). This point is further discussed below.

Possible tension between anti-corruption and human rights

Anti-corruption measures may themselves violate the human rights of those accused of corruption. In certain circumstances, anti-corruption prosecutions may, for instance, threaten the fair trial rights of the accused, such as the right to the presumption of innocence and the right not to self-incriminate. The crime of illicit enrichment is a prominent example of a corruption offence that many States view as raising such human rights concerns. UNCAC article 20 requires States to consider adopting the crime of illicit enrichment, which is defined as "a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income". Because UNCAC article 20 only requires States parties to consider adopting the crime of illicit enrichment, States parties are not obliged to do so, and in fact many UNCAC States parties have opted not to criminalize this act of corruption. The prosecution of illicit enrichment does not necessarily violate the right to a fair trial, but certain procedural safeguards must be in place to ensure that fair trial rights are respected. For example, the prosecution can be required to make a *prima facie* showing (e.g. demonstrate a significant discrepancy between the government official's legal income and actual assets) before the burden of proof may be shifted to the defendant, who must then explain the lawful origins of the assets (see 2012 report⁴² on illicit enrichment by the UNODC/World Bank Stolen Asset Recovery (StAR) Initiative). In addition, to these concerns about fair trial rights, the recovery by States of such unexplained assets interferes with the right to property, which is set out, for example, in a Protocol to the European Convention on Human Rights (Protocol No. 1⁴³, article 1). Where the right to property is infringed, the seizure of such assets must be justified by the State, which has to demonstrate that the anti-corruption measure is lawful, serves a legitimate, public interest, and is proportionate (Ivory 2014, 2019).

The United Nations Office on Drugs and Crime (UNODC), as the guardian of UNCAC, is working with States to promote the global fight against corruption, while also bearing in mind their human rights obligations. In addition, several UNCAC articles directly promote human rights, such as those relating to the protection of witnesses and the strengthening of the judiciary, as well as those on asset recovery that have a reparatory nature (UNCAC arts. 11, 32, 51-59).

⁴² Available at https://star.worldbank.org/sites/star/files/on_the_take_-criminalizing_illicit_enrichment_to_fight_corruption.pdf.

⁴³ Available at www.coe.int/en/web/echr-toolkit/protocole-1.

More information on the UNODC approach to protecting and promoting human rights is available in the UNODC Human Rights Position Paper⁴⁴ (2012). At the same time, the reality is that anti-corruption campaigns can in some cases be used as a means of repression. For a related discussion, see Module 3 of the UNODC Modules Series on Anti-Corruption, and the joint report of the International Council on Human Rights Policy and Transparency International⁴⁵.

› Human rights-based approach

The different linkages between corruption and human rights, and especially the realization that corruption undermines the enjoyment of human rights, have led scholars and practitioners to advocate a human rights-based approach to corruption. This approach seeks to emphasize the centrality of individuals as "rights-holders" and the role of States as "duty-bearers" (Peters, 2018; UNHRC, 2019). The human rights-based approach complements the criminal justice approach to corruption. Anti-corruption norms are commonly enforced through criminal justice frameworks, i.e. by criminalizing certain conduct in domestic legislation and by prosecuting and punishing perpetrators. This criminal justice approach is reflected in UNCAC and other treaties, as well as in domestic laws around the world (see relevant discussions in Module 4, Module 5, Module 6, Module 12 and Module 13 of the UNODC Module Series on Anti-Corruption). The human rights-based approach and the criminal justice approach complement each other because they emphasize different harms and responsibilities. The criminal justice approach assumes that the State (and the public it represents) has been harmed by acts of corruption committed by individuals, such as a government official who has accepted a bribe or embezzled public funds. The human rights-based approach focuses attention on how the State has breached its obligations towards the public by failing to protect it from corruption, and on the need for the provision of remedies by the State. The following paragraphs discuss the advantages and criticisms of the human rights-based approach to corruption.

Advantages of the human rights-based approach

Scholars and practitioners have advanced several arguments in favour of adopting a human rights-based approach to corruption. Some of these are summarized below (for a further discussion, see Hemsley, 2015; Merkle, 2018; Peters, 2018):

- **Victim-focused.** A human rights-based approach to corruption can add a perspective that moves the victim to the centre of the fight against corruption. It does so by emphasizing the negative impacts that corruption has on an individual, on groups of individuals typically affected by corruption (which are very often vulnerable or marginalized groups), and on society overall (UNHRC, 2015). According to Rothstein and Varrach (2017, p. 60), addressing corruption through a human rights discourse allows for a focus on the victims and the human cost that is at stake. Such a holistic approach focuses not only on the economic and criminal consequences of corruption, but also on the victims, especially those belonging to vulnerable or marginalized groups, and may help to empower the individuals affected by corruption and to transform them into actors in the fight against this problem.

⁴⁴ Available at www.unodc.org/documents/justice-and-prison-reform/UNODC_Human_rights_position_paper_2012.pdf.

⁴⁵ Available at https://assets.publishing.service.gov.uk/media/57a08b34e5274a27b2000a0f/integrating-humrights_.pdf.

A human rights-based approach to corruption can further draw attention to the cumulative damages of corruption, oppression and inequality (Peters, 2018).

- **Increasing transparency and participation.** Transparency and participation allow for scrutiny and monitoring of governmental decision-making processes, thereby increasing the probability that corruption may be detected and that human rights may be addressed, promoted and protected. Transparency refers to the public availability of information about decision-making processes that can easily be verified. Transparency is associated with the right of the public to know about governmental processes and actions. Transparency plays a role in facilitating the participation of stakeholders, such as civil society, in government decision-making processes. Transparency and participation are principles of anti-corruption law that are set out in UNCAC (UNCAC arts. 5, 13).
- **Strengthening accountability.** With higher levels of participation and transparency, citizens are able to more effectively monitor power-holders and public policies and to hold them accountable and reduce corruption. UNCAC requires States to establish various mechanisms that enhance accountability, such as (i) participatory policy in budget formulation and analysis; (ii) public expenditure tracking which implies that citizens track how the government uses funds; and (iii) participatory performance monitoring and evaluation (UNCAC arts. 9, 10). The availability of such information about budget formation and public expenditure can provide the basis for recourse to the accountability mechanisms that exist within the human rights field. The individual complaints procedures associated with the human rights treaty bodies, for example, provide a potential mechanism through which individual victims of corruption may seek redress. For a discussion on accountability in the context of anti-corruption, see Module 3 of the UNODC Module Series on Anti-Corruption.
- **Remedies to victims.** If done carefully, bringing claims and cases related to corruption before international and regional human rights adjudicators and monitoring mechanisms could help to address corruption by providing remedies for the victims. It should be noted that UNODC itself does not adjudicate or provide reparations to victims. Instead, it works with States on strengthening their anti-corruption legal and institutional frameworks and capacities, and assists them in implementing the United Nations Convention against Corruption.
- **More actors fighting corruption.** Recognizing corruption as a human rights violation could complement existing anti-corruption efforts by enabling human rights courts and commissions, as well as constitutional courts, to hear cases concerning the rights of individuals that have been violated by corrupt acts (although this also entails risks, as discussed below). Beyond the international and regional human rights courts and commissions, there are additional relevant actors in the human rights field, such as special rapporteurs, national agencies and non-governmental organizations. As Davis (2019) explains, these different actors have fact-finding powers and capacities that can help to gather information about corruption. However, Davis (2019, pp. 1294–1295) also cautions that such fact-finding, to be helpful, must be complementary to and coordinated with the investigative efforts of anti-corruption actors:

The human rights regime has considerable capacity for fact-finding, keeping in mind that it encompasses not only international commissions and tribunals but also special

rapporteurs, national agencies and non-governmental organizations. Some of these engage in regular monitoring of particular public entities or topics, while others operate on an ad hoc basis. These actors have varying capacity, expertise and claims to legitimacy, but, collectively, they can bring impressive resources to bear. There is a caveat here; more fact-finding is not necessarily better. If human rights fact-finders tend to collect the same information as anti-corruption organizations, and tend to disseminate it through the same channels, then human rights analysis will add little value to the process. Even in this scenario, however, the human rights actors might be playing a useful role in checking information gathered from other sources.

The right to freedom from corruption

The main argument associated with the human rights-based approach to corruption is that recognizing corruption as a human rights violation would entail better enforcement and remedies (Peters, 2018). Individual victims of corruption can, for example, make use of the complaints procedures associated with the human rights treaty bodies to pursue some form of accountability. Some scholars, such as Spalding and Murray (2015), have taken this to an extreme, arguing that the freedom from corruption should be recognized as a "fundamental and inalienable human right". In other words, some scholars have argued that the right to a corruption-free society is, or should be, a free-standing human right. Spalding (2019, p. 3) emphasizes that reframing the freedom from corruption as a human right implies that (i) corruption is neither cultural nor dependent on human nature; (ii) that the State might violate that right but cannot take it away; and that (iii) the vigorous enforcement of anti-corruption measures is not only possible, but essential. A similar position is shared by Gebeye (2012, p. 18), who argues that "human beings have a basic human right to live in a corruption-free society". At present, the concept of a right to freedom from corruption remains aspirational.

Criticism of the human rights-based approach

The human rights-based approach to corruption has been subject to criticism for several reasons. One major criticism is that human rights bodies lack the expertise to assist States in dealing with the complex phenomenon of corruption and may therefore prescribe recommendations that do not properly address the various aspects and causes of corruption. The risk here, as stressed by Rose (2016, p. 419), is that "with different treaty bodies, UN agencies, and international organizations all prescribing various anti-corruption measures, these repeated and overlapping messages could begin to ring hollow, or lose their meaning". Rose (2016, p. 417) has also criticized the human rights bodies, particularly the Committee on Economic, Social and Cultural Rights, for lacking conceptual clarity about how exactly corrupt conduct violates human rights and thereby risking increased scepticism towards the role of human rights in the fight against corruption (see also Peters, 2018, p. 1251). Put simply, describing too many corruption issues as human rights issues can result in both human rights and anti-corruption norms being taken less seriously. In the same vein, Rose-Sender and Goodwin (2010, pp. 1–3) have argued that attempts to link the human rights and corruption discourses have been "either so straightforward as to be prosaic or else incoherent when taken as suggesting a more profound connection". They further claim that these attempts are arguably part of a wider trend within development and, more broadly, international law to integrate once-separate areas of international concern with human rights.

The tendency to link human rights with other areas of international law is sometimes called "human rightism", which can strengthen human rights by mainstreaming it into other areas of international law, but can also result in scepticism towards human rights and a lack of professional treatment of human rights issues (for an interesting critique of human rightism, see Pronto, 2007). It is important to note that, as the Module clarifies, not all acts of corruption violate human rights, and causal relationships between corruption and human rights violations are not always easy to establish. The classic example for this, as discussed above, is that embezzled public funds would not necessarily have been allocated to fulfil human rights (Davis, 2019, pp. 1290–1291; Rose, 2016, pp. 415–416). Therefore, not all acts of corruption would violate human rights. However, where an individual can demonstrate a nexus between his or her deprivation of a protected right and a specific act of corruption, it is possible to argue that corruption has violated the human rights of an individual. In this case, the human rights-based approach to corruption provides a complementary mechanism to address this phenomenon along with the conventional criminal anti-corruption approach.

> Conclusion

By addressing corruption through a human rights framework "the social impact of corruption is made visible; this generates awareness in society about the consequences of this scourge and creates new alliances in the fight against corruption" (UNHRC, 2015, p. 10). Thus, determining whether the consequences of corruption include human rights violations could contribute to a better understanding of the effects of corruption – notably, its human dimension and social implications – and can be an essential step towards making corruption a public issue. In addition, a human rights approach has the potential to result in remedies provided to individual victims, as explained by the United Nations Human Rights Council (2015, p. 10):

[C]riminal prosecution is not ... an effective tool for remedying the negative consequences of corruption for the individual, for specific groups or for society in general, since from a human rights perspective, States are required not only to prosecute such crimes but also to take measures to address the negative impact of corruption ... In that sense, a human rights perspective to combating corruption and its effects is complementary to the criminal justice.

As with other criminal offences (e.g. torture and unlawful detention), a human rights-based approach along with the criminal justice approach can be mutually reinforcing in the case of corruption. At the same time, some of the risks discussed in this Module must be reduced by ensuring a coordinated approach where anti-corruption and human rights bodies – at the national, international, civil society and private sector level – cooperate effectively to mitigate the harmful impact of corruption on human rights (UNHRC, 2019). Indeed, while recognizing the risks of the human rights-based approach to corruption, it can be argued that these risks are outweighed by the practical benefits of the human rights-based approach to corruption. Peters (2018, p. 1278), for example, makes this argument, explaining that "[o]verall, the infusion of international human rights law into efforts to combat corruption seems apt to complement or bolster the criminalization of corruption and, to that extent, has benign effects" (see also Peters, 2018, p. 1251). Still, the human rights movement and the anti-corruption movement are quite separate, and there has been little dialogue and cooperation between the two to address violations of human rights by corruption.

› References

African Commission on Human Rights (2001). Case of the Social and Economic rights Action Center for Economic and Social Rights v. Nigeria.

» Available from <http://hrlibrary.umn.edu/africa/comcases/155-96b.html>.

Andersen, Morten Koch (2018). Why Corruption Matters in Human Rights. *Journal of Human Rights Practice*, vol. 10, issue 1.

Barkhouse, Angela, Hugo Hoyland and Marc Limon (2018). Corruption: a human rights impact assessment. Universal Rights Group and Kroll.

» Available from www.universal-rights.org/urg-policy-reports/corruption-human-rights-impact-assessment/.

Boersma, Martine (2012). Corruption: A Violation of Human Rights and a Crime under International Law? *School of Human Rights Research Series*, vol. 56. Cambridge, UK: Intersentia.

» Available from https://intersentia.com/en/pdf/viewer/download/id/9781780681054_0/.

Coomans, Fons (2010). Education and Work. In *International Human Rights Law*, Daniel Moeckli, Sangeeta Shah, and Sandesh Sivakumaran, eds. Oxford University Press.

Davis, Kevin E. (2019). Corruption as a Violation of International Human Rights: A Reply to Anne Peters. *European Journal of International Law*, vol. 29, issue 4 (November), pp. 1289–1296.

» Available from <https://academic.oup.com/ejil/article/29/4/1289/5320173>.

De Schutter, Olivier (2018). *International Human Rights Law*. Cambridge University Press.

European Court of Human Rights (1985). Case of X and Y v. The Netherlands. Judgment of 26 March.

» Available from www.coe.int/t/dg2/equality/domesticviolencecampaign/resources/x_and_y_v_the_netherlands_EN.asp.

Figueiredo, André T.D. (2017). *Corruption and Human Rights – Beyond the Link*. Wolf Legal Publishers.

Gathii, James Thuo (2009). Defining the Relationship between Human Rights and Corruption. *Journal of International Law*, vol. 31, no. 1, pp. 125-202.

» Available from <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1116&context=jil>.

Gebeye, Berihun Adugna (2012). Corruption and Human Rights: Exploring the Relationships. *Human Rights & Human Welfare Working Paper Series*, no. 70. University of Denver.

Hemsley, Ralph (2015). Human Rights & Corruption States' Human Rights Obligation to fight Corruption. *Journal of Transnational Legal Issues*, vol. 2, issue 1, pp. 1-24.

» Available from www.unilu.ch/fileadmin/fakultaeten/rf/morawa/dok/JTLI_Vol_2_Issue_1_Hemsley.pdf.

Inter-American Court of Human Rights (1989). Case of Velásquez-Rodríguez v. Honduras. Judgment of 21 July.

» Available from www.corteidh.or.cr/docs/casos/articulos/seriec_07_ing.pdf.

International Council on Human Rights Policy (ICHR) (2009). *Corruption and Human Rights: Making the Connection*. Geneva, Switzerland.

Ivory, Radha (2019). Beyond transnational criminal law: anti-corruption as global new governance. *London Review of International Law*, vol. 6, issue 3 (March), pp. 413-442.

Ivory, Radha (2014) *Corruption, Asset Recovery, and the Protection of Property in Public International Law: The Human Rights of Bad Guys*. Cambridge University Press.

Jensen, Steffen, and Morten Koch Andersen eds. (2017). *Corruption and Torture: Violent Exchanges and the Policing of the Urban Poor*. Aalborg University Press.

Koechlin, Lucy, and Magdalena Sepúlveda Carmona (2009). *Corruption and Human Rights: Exploring the Connection*. In *Corruption, Global Security, and World Order*, Robert I. Rotberg, ed. Washington, DC: Brookings Institution.

Merkle, Ortrun (2018). Mainstreaming gender and human rights in anti-corruption programming. Bergen, Norway: U4 Anti-Corruption Resource Center, Chr. Michelsen Institute.

» Available from www.u4.no/publications/mainstreaming-gender-and-human-rights-in-anti-corruption-programming.

Ngugi, Joel M. (2010). Making the Link Between Corruption and Human Rights: Promises and Perils. *Proceedings of the Annual Meeting (American Society of International Law)*, vol. 4, pp. 246-250.

Pearson, Zoe (2013). An International Human Rights Approach to Corruption. In *Corruption and Anti-Corruption*, Peter Larmour, and Nick Wolanin, eds. Asia Pacific Press.

Peirone, Franco (2018). Corruption as a Violation of International Human Rights: A Reply to Anne Peters. *European Journal of International Law* 29 (4), pp. 1297-1302.

» Available from <https://academic.oup.com/ejil/article/29/4/1297/5320157>.

Peters, Anne (2015). *Corruption and Human Rights*. Basel Institute on Governance.

» Available from: www.mpil.de/files/pdf4/Peters_Corruption_and_Human_Rights20151.pdf.

Peters, Anne (2016). *Beyond Human Rights: The Legal Status of the Individual in International Law*. Cambridge University Press.

Peters, Anne (2018). Corruption as a Violation of International Human Rights. *European Journal of International Law*, vol. 29, issue 4 (November), pp. 1251–1287.

» Available from <https://academic.oup.com/ejil/article/29/4/1251/5320164>.

Pronto, Arnold N. (2007). 'Human-Rightism' and the Development of General International Law. *Essays in Honour of Prof. John Dugard*, Leiden Journal of International Law, vol. 20, issue 4 (special edition), pp. 753-765.

Rajagopal, Balakrishnan (1999). Corruption, Legitimacy and Human Rights: The Dialectic of the Relationship. *Journal of International Law*, vol. 14, no. 2, pp. 1-19.

Risse, Thomas, Stephen C. Ropp and Kathryn Sikkink, eds. (2009). *The Power of Human Rights*. Cambridge University Press.

Rose, Cecily (2016). The limitations of a human rights approach to corruption. International and Comparative Law Quarterly, vol. 65, issue 2 (April), pp. 405-438.

» Available from www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/limitations-of-a-human-rights-approach-to-corruption/5DAFE247541373DC79D2AFB31B2A2A42.

Rose-Sender, Sarah K., and Morag Goodwin (2010). Linking Corruption and Human Rights: An Unwelcome Addition to the Development Discourse. Tilburg Law School Research Paper, no. 012/2010. Tilburg University.

» Available from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1623225.

Rothstein, Bo, and Aiysha Varrach (2017). Making Sense of Corruption. Cambridge University Press.

Spalding, Andrew B. (2014). Corruption, Corporations, and the New Human Right. Washington University Law Review, vol. 91, issue 6, pp. 1365-1428.

» Available from https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=6100&context=law_lawreview.

Spalding, Andrew B. (2019). Anti-Corruption: Recaptured and Reframed. In The Cambridge Handbook on New Human Rights: Recognition, Novelty, Rhetoric, Andreas von Arnauld, and others, eds. Cambridge University Press, forthcoming.

Spalding, Andrew B., and Matthew Murray (2015). Freedom from Official Corruption as a Human Right. Washington, DC: The Brookings Institution.

» Available from www.brookings.edu/research/freedom-from-official-corruption-as-a-human-right/.

Transparency International (2019). When there is corruption, human rights disappear – Olajobi Makinwa. Statement on Twitter, 6 May.

» Available from <https://twitter.com/anticorruption/status/1125322625352372224>.

United Nations General Assembly (2015). Preventing and combating corrupt practices and the transfer of proceeds of corruption, facilitating asset recovery and returning such assets to legitimate owners, in particular to countries of origin, in accordance with the United Nations Convention against Corruption. 5 February. A/RES/69/199.

» Available from <https://digitallibrary.un.org/record/859420>

United Nations Human Rights Council (UNHRC) (2015). Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights. 5 January. A/HRC/28/73.

» Available from www.refworld.org/docid/550fef884.html.

United Nations Human Rights Council (UNHRC) (2016). Best practices to counter the negative impact of corruption on the enjoyment of all human rights. 15 April. A/HRC/32/22.

» Available from <https://digitallibrary.un.org/record/841796>.

United Nations Human Rights Council (UNHRC) (2019). The negative impact of corruption on the enjoyment of human rights. 9 July. A/HRC/41/L.11.

» Available from https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/41/L.11.

United Nations Secretary-General's remarks to the Security Council on Corruption in Conflict [as delivered], 10 September 2018.

» Available from www.un.org/sg/en/content/sg/statement/2018-09-10/secretary-generals-remarks-security-council-corruption-conflict.

United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Thematic report on corruption and torture or other ill-treatment (2019) A/HRC/40/59.

» Available from <https://undocs.org/A/HRC/40/59>.

Wolf, Mark L. (2018). The World Needs an International Anti-Corruption Court. *Daedalus*, vol. 147, issue 3, pp. 144-156.

Wouters, Jan, Cedric Ryngaert and Ann Sofie Cloots (2013). The Fight Against Corruption in International Law. Leuven Centre for Global Governance Studies Working Paper, no. 94. Leuven, Belgium: Katholieke Universiteit Leuven.

» Available from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2274775&rec=1&srcabs=2274653&alg=1&pos=2.

Exercises

This section contains suggestions for in-class and pre-class educational exercises, while a post-class assignment for assessing student understanding of the Module is suggested in a separate section.

The exercises in this section are most appropriate for classes of up to 50 students, where students can be easily organized into small groups in which they discuss cases or conduct activities, after which group representatives provide feedback to the entire class. Although it is possible to create the same small-group structure in large classes comprising a few hundred students, this will be more challenging, and the lecturer may need to adapt facilitation techniques to ensure enough time for group discussions and for providing feedback to the entire class. The easiest way to deal with the requirement for small group discussions in a large class is to ask students to discuss the issues with the four or five students sitting closest to them. Given the time limitations, not all groups will be able to provide feedback during each exercise. It is recommended that the lecturer makes random selections and tries to ensure that all groups can provide feedback at least once during the session. If time permits, the lecturer can facilitate a discussion in plenary after each group has provided feedback.

All exercises in this section are appropriate for both graduate and undergraduate students. However, as students' prior knowledge and exposure to these issues may vary widely, decisions about appropriateness of exercises should be based on their educational and social context. The lecturer is encouraged to relate and connect each exercise to the Key issues of the Module.

› **Exercise 1: Reflections on corruption and human rights violations**

At the start of the exercise, distribute two cards to each student. Then, ask the students to write down a definition of corruption on the first card and a human right which could be violated by corrupt activities on the second. After giving the students a few minutes to write down their answers, ask them to present their cards to the rest of the group and facilitate a group discussion on their answers. At the end of the discussion, write down the most common answers on a board or flip chart. At the end of the class, and if time allows, ask the students to elaborate on their answers.

Lecturer guidelines:

This exercise is appropriate for the beginning of a class, as it shows to what extent the students are familiar with the terms "corruption" and "human rights", and it enhances an understanding of the connection between the two terms. The lecturer should encourage the students to write down whatever answer comes to their mind.

> Exercise 2: Human rights violations related to corruption in different sectors, countries and regions

Ask the students – before coming to class – to research online a recent example of human rights violations caused by corruption. Ask each student to explain how the concrete corruption act has in practice led to human rights violations.

Lecturer guidelines:

The point of this exercise is to assist students to understand how the various acts of corruption affect different human rights, such as environmental rights, in specific cases and contexts. Students may be asked to present examples from different sectors, countries and regions. The lecturer could stimulate the students by providing some well-known examples from their regions.

> Exercise 3: Case studies focusing on judicial corruption

Depending on the available time, select one (or more) of the following case studies and ask students to review the relevant material before coming to class:

Case Study 1

Illegal tape-recording in North Macedonia

In 2015, the opposition leader in North Macedonia published the contents of illegally wired conversations that were reported by whistle-blowers from the intelligence services. The main revelations concerned corruption in the justice system, including the judiciary, prosecution and police. The disclosed tape recordings and resulting information regarding corruption led to the formation of a Special Prosecution Office, with a specific mandate to prosecute the crimes uncovered in the illegally taped conversations. Several former highly ranked politicians were indicted, while a few cases were completed via legally valid and enforceable adjudications⁴⁶.

Case Study 2

Illegal tape recordings in Peru

In 2018, a set of secretly recorded phone conversations between High Court officials, revealing widespread corruption in the top ranks of the judicial system, was published. The disclosures sparked a series of resignations. For example, in one of the recordings a Supreme Court justice offered to adjust the sentence for a person charged with raping an eleven-year-old girl. "Yes, I'm going to look at the file," he said, speaking to an unnamed person. "What is it they want: To get the sentence lowered or to be declared innocent?" It is unclear whether the suspect in the case was convicted. There was a total of 47 recordings⁴⁷.

⁴⁶ For more information, see www.rferl.org/a/macedonia-special-prosecutor-janeva-charge-94-illegal-wiretapping-scandal-abuse-of-power-gruevski-zaev/28587330.html

⁴⁷ For more information, see www.france24.com/en/20180720-peru-judiciary-rodriguez-hinostroza-resigns-vizcarra-protest-corruption-scandal.

Case Study 3

"Kids for cash"

In 2008, a large corruption scandal dubbed "Kids for cash" was uncovered in the United States. Judges in the Court of Luzerne County in Wilkes-Barre, Pennsylvania, had received cash payments from private juvenile prisons and in return had sent many young offenders to these institutions. The United States Attorney opened an investigation and alleged that two judges had accepted nearly \$2.6 million to send children to two private, for-profit juvenile facilities. The judges were charged with committing federal crimes. The repercussions of the judges' corrupt actions for juveniles, their families and their communities were significant. From 2003 to 2008, the respective judges altered the lives of more than 2,500 children, involving 6,000 cases. Over 50 per cent of the children who appeared before one of the judges lacked legal representation to challenge the court orders, and 60 per cent of the children were removed from their homes and sent to the respective facilities⁴⁸.

Students are also encouraged to watch the 14-minute documentary on the "Kids for crash" scandal⁴⁹.

Lecturer guidelines:

The lecturer divides the students into small groups (ideally groups of about four students) and asks each group to discuss one of the following questions for about five to ten minutes. Then the lecturer asks one person from each group to share their answers with the whole class, and the lecturer facilitates a discussion about the answers.

- Which human rights, individual or collective, were breached and by whom in the presented case?
- How can human rights challenges be addressed better by criminal justice practitioners during the investigation and prosecution of corruption-related offences?
- How can criminal justice practitioners avoid interfering with human rights guarantees when attempting to uncover corruption-related crime?
- Are there any differences between the three case studies in terms of the level of corruption and its impact on human rights? (This is an optional question if the lecturer presents more than one case study.)

The lecturer may wish to present other case studies that are more relevant to specific regional or cultural contexts, and could be more interesting and relatable for the students. The lecturer may also ask the students to identify similar case studies from their country or region as a pre-class activity.

⁴⁸ For more information, see <https://jlc.org/luzerne-kids-cash-scandal>.

⁴⁹ Available at www.youtube.com/watch?v=2zB8i6ftPU0.

› Exercise 4: Treaty negotiations concerning illicit enrichment

Ask the students – before coming to class – to familiarize themselves with the debate surrounding illicit enrichment (UNCAC art. 20), in particular how states may investigate and prosecute government officials for illicit enrichment while at the same time guaranteeing fair trial rights (e.g. the presumption of innocence). Ask the students to engage in a role play that takes the form of treaty negotiations that have reached an impasse due to a disagreement among negotiators about the inclusion of a provision on the crime of illicit enrichment. The current draft treaty includes language that is the same as article 20 of UNCAC. Divide them into groups consisting of: (1) states that oppose the criminalization of illicit enrichment due to concerns about fair trial rights; (2) states that support the criminalization of illicit enrichment as an important tool in the fight against corruption; and (3) states that are seeking a middle ground by suggesting compromises. The lecturer acts as the chair of the negotiations.

Lecturer guidelines:

The students can be divided into the three groups of negotiators either before or during class, depending on how much time is available for this exercise during class. If time permits, the students may be given an opportunity during class to discuss their negotiating position, but this may also be done independently by the students before class. As the chair of the negotiations, the lecturer should facilitate discussions with respect to the following issues:

- How could the current treaty language be amended to ensure that the investigation and prosecution of illicit enrichment does not conflict with human rights guarantees, in particular:
 - The presumption of innocence and the burden of proof;
 - The right to remain silent;
 - The principle of legality.
- Should illicit enrichment be omitted from the treaty altogether because of disagreements about whether it conflicts with human rights? Or is preferable to include a provision on illicit enrichment but to make it semi-mandatory (i.e., states must consider criminalizing illicit enrichment, but are not obliged to do so)?

Possible class structure

This section contains recommendations for a teaching sequence and timing intended to achieve learning outcomes by way of a three-hour class. The lecturer may wish to disregard or shorten some of the segments below to give more time to other elements, such as introduction, icebreakers, conclusion or short breaks. The structure could also be adapted for shorter or longer classes, given that the class durations vary across countries.

Introduction (30 minutes)

- Conduct Exercise 1 (20 minutes).
- Introduce students to the key issues addressed in the Module (10 minutes).

Overview of the corruption–human rights nexus (30 minutes)

- Start with showing the short video Corruption and Human Rights⁵⁰ created by the Council of Europe.
- Based on the relevant sections of the key issues, discuss the following questions: What do human rights mean? What does corruption mean? What are the links between the two?

Conduct Exercise 2 or 3 (20 minutes)

- Conduct Exercise 2 or Exercise 3.

The impact of corruption on human rights (60 minutes)

- Discuss how corruption affects the different groups of human rights and the various approaches that help us understand the ways in which corruption enables or causes the violation of human rights.
- Present the human rights-based approach to corruption and its pros and cons.
- Discuss the issue of corruption as a free-standing human rights violation and the added value of integrating human rights and anti-corruption strategies.

Conduct Exercise 4 (30 minutes)

Conclusion (10 minutes)

- Human rights and corruption are intimately connected; review this notion with your students and have them state the connections.

⁵⁰ Available at www.youtube.com/watch?v=cosajEDukfA



Core reading

This section provides a list of (mostly) open access materials that the lecturer could ask the students to read before taking a class based on this Module.

Ackerman, John M. (2014). Rethinking the International Anti-Corruption Agenda: Civil Society, Human Rights and Democracy. *American University International Law Review*, vol. 29, no. 2, pp. 293-333.

» Available from <https://digitalcommons.wcl.american.edu/auilr/vol29/iss2/2/>.

Aftab, Barkat, and Ahmed Usman Khalid (2013). Role of Corruption in Human Rights Violation. *Scholarly Research Journal for Humanity Science & English Language*, vol. 1, issue 4, pp. 643-657.

» Available from www.academia.edu/10390206/ROLE_OF_CORRUPTION_IN_HUMAN_RIGHTS_VIOLATION.

Andersen, Morten Koch (2018). Why Corruption Matters in Human Rights. *Journal of Human Rights Practice*, vol. 10, issue 1, pp. 179-190.

» Available from <https://academic.oup.com/jhrp/article-abstract/10/1/179/4937879>.

Boersma, Martine (2012). Corruption: A Violation of Human Rights and a Crime under International Law? *School of Human Rights Research Series*, vol. 56. Cambridge, UK: Intersentia.

» Available from https://intersentia.com/en/pdf/viewer/download/id/9781780681054_0/.

International Council on Human Rights Policy and Transparency International (2009). *Corruption and Human Rights: Making the Connection*. Geneva, Switzerland.

» Available from <https://assets.publishing.service.gov.uk/media/57a08b6540f0b64974000b10/humanrights-corruption.pdf>.

Merkle, Ortrun (2018). Mainstreaming gender and human rights in anti-corruption programming. Bergen, Norway: U4 Anti-Corruption Resource Center, Chr. Michelsen Institute.

» Available from www.u4.no/publications/mainstreaming-gender-and-human-rights-in-anti-corruption-programming.

Peters, Anne (2018). Corruption as a Violation of International Human Rights. *European Journal of International Law*, vol. 29, issue 4 (November), pp. 1251-1287.

» Available from <https://academic.oup.com/ejil/article/29/4/1251/5320164>.

Rose, Cecily (2016). The limitations of a human rights approach to corruption. *International and Comparative Law Quarterly*, vol. 65, issue 2 (April), pp. 405-438.

» Available from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2722408.

United Nations High Commissioner for Human Rights (1997). *International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for the Police*.

» Available from www.ohchr.org/Documents/Publications/training5Add1en.pdf.

Advanced reading

The following readings are recommended for students interested in exploring the topics of this Module in more detail, and for lecturers teaching the Module:

Abdelsalam, Mohamed R. (2017). Applying Civil Law to Curb Corruption: A tool for Civil Society and Individuals. Paper presented at the 2017 OECD Global Anti-Corruption & Integrity Forum. Paris, March.

» Available from www.oecd.org/cleangovbiz/Integrity-Forum-2017-Abdelsalam-Civil-Law.pdf.

Barkhouse, Angela, Hugo Hoyland, and Marc Limon (2018). Corruption: A human rights impact assessment. Universal Rights Group and Kroll Policy Brief.

» Available from www.universal-rights.org/wp-content/uploads/2018/04/Policy_report_corruption_LR_spread.pdf.

De Beco, Gauthier, Monitoring corruption from a human rights perspective, The International Journal of Human Rights, Vol. 15, No. 7, October 2011, pp. 1107–1124

Figueiredo, André T. D. (2017). Corruption and Human Rights: Beyond the Link. Wolf Legal Publishers.

Ivory, Radha (2019). Beyond Transnational Criminal Law: Anti-Corruption as Global New Governance. London Review of International Law, vol. 6, issue 3 (March), pp. 413-442.

Kuhner, Tim (2013). The Democracy to Which We are Entitled: Human Rights and the Problem of Money in Politics. Harvard Human Rights Journal, vol. 26, no. 1.

» Available from <https://harvardhrj.com/wp-content/uploads/sites/14/2013/05/V26-Kuhner.pdf>.

Peters, Anne (2015). Corruption and Human Rights. Basel Institute on Governance.

» Available from www.mpil.de/files/pdf4/Peters_Corruption_and_Human_Rights20151.pdf.

Rothstein, Bo, and Aiyysha Varraich (2017). Making Sense of Corruption. Cambridge University Press.

Spalding, Andrew B. (2014). Corruption, Corporations, and the New Human Right. Washington University Law Review, vol. 91, issue 6, pp.1365-1428.

» Available from https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=6100&context=law_lawreview.

United Nations, General Assembly (1948). Universal Declaration of Human Rights, 10 December. A/RES/217A.

» Available from www.un.org/en/universal-declaration-human-rights/.

United Nations, General Assembly (1985). Basic Principles on the Independence of the Judiciary. 29 November. A/RES/40/32.

» Available from www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx.

United Nations, General Assembly (2013). Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, 19 June. A/HRC/RES/23/6.

» Available from www.right-docs.org/doc/a-hrc-res-23-6/.

United Nations Human Rights Office of the High Commissioner (2019). The price is rights: The violation of the right to an adequate standard of living in the Democratic People's Republic of Korea. Geneva.

» Available from www.ohchr.org/Documents/Countries/KP/ThePriceIsRights_EN.pdf.

Voight, Stefan, and Jerg Gutmann (2015). On the Wrong Side of the Law – Causes and Consequences of a Corrupt Judiciary. International Review of Law and Economics, vol. 43, pp. 156-166.

» Available from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2214728.

Warren, Mark E. (2004). What Does Corruption Mean in a Democracy? American Journal of Political Science, vol. 48, no. 2 (April), pp. 328-343.

You, Jong-Sung, and Sanjeev Khagram (2005). A Comparative Study of Inequality and Corruption. American Sociological Review, vol. 70, issue 1 (February), p.p. 136-157.

Student assessment

This section provides a suggestion for a post-class assignment for the purpose of assessing student understanding of the Module. Suggestions for pre-class or in-class assignments are provided in the Exercises section.

Ask the students to write a research essay (max. 1,500 words) addressing a real-world example of a human rights violation caused by corruption. The essay should document the behaviour that the corrupt conduct entailed, describe the effects that the corrupt conduct has had or is likely to have, discuss which human rights were violated in the case, and analyse the anti-corruption efforts in place and whether they were considered through a human rights perspective. The students may choose a major scandal or a lesser-known case. The point is for them to apply what Module 7 teaches in terms of the nexus between corruption and human rights, and the different approaches to understanding it. This assessment may be accomplished by way of an in-class presentation, which would then replace some of the class activities suggested above. The assessment can also be combined with Exercise 4.

An alternative method of student assessment may include assigning students to record a TED Talk-style video in which they discuss issues presented by the lecturer during class:

- Why do we need to integrate human rights and anti-corruption efforts?
- Corruption as a free-standing human rights violation.
- Criticizing the human rights-based approach to corruption.
- Governments should prioritize either human rights or anti-corruption, not both. Which one should it be?
- In the case of both human rights and anti-corruption, the reality is that violations cannot be eradicated in some places, and we should just accept that.

Additional teaching tools

This section includes links to relevant teaching aides such as PowerPoint slides and video material that may help the lecturer to teach the issues covered by the Module. Lecturers may wish to adapt the slides and other resources to their needs.

› Video material

Corruption and poverty (2018). Cheryna Rusly (3:02 minutes). An explanatory video about the relationship between corruption and poverty. This video directly supports the related discussion in the Key issues section, and it also addresses the violation of economic and social rights.

» Available from www.youtube.com/watch?v=8X9yFk8_GYQ.

How judges can show respect (2016). Victoria Pratt, TED New York (15:56 minutes). In this TED Talk, Judge Victoria Pratt elaborates on the importance of treating individuals respectfully in judicial procedures, and how this motivates individuals to obey the law rather than break it. It is an insightful video which links the effectiveness and efficiency of justice with the level of corruption in a certain jurisdiction.

» Available from www.youtube.com/watch?v=mGbMwP8MDjg.

The impact of corruption on human rights (2017). FIFDH Genéve (2:28 minutes). In this film, which was promoted at the International Film Festival and Forum on Human Rights in Geneva, experts explain how corruption brings about the violation of human rights in India, the African continent, and Malaysia.

» Available from www.youtube.com/watch?v=gZ7VFj5-Q8E.

› Case studies, news reports and blogs

BBC (2019). North Korea: UN report says people 'trapped in cycle of corruption', 28 May.

» Available from www.bbc.com/news/world-asia-48432690.

Global Anticorruption Blog: Law, Social Science, and Policy.

» Available from <https://globalanticorruptionblog.com/>.

Nigeria v. SERAP (2010) The Registered Trustees of the Socio-economic and Accountability Project (SERAP) v. Nigeria & UBEC. ECW/CCJ/JUD/07/10.

» Available from www.worldcourts.com/ecowasccj/eng/decisions/2010.11.30_SERAP_v_Nigeria.htm.

Mehigan, James (2016). Legal aid cuts prevent the police from being held accountable for their actions. The Conversation, 17 May.

» Available from <http://theconversation.com/legal-aid-cuts-prevent-the-police-from-being-held-accountable-for-their-actions-58966>.

Ochab, Ewelina (2020). What Has Corruption Got To Do With Human Rights Abuses? Forbes, 12 April.

» Available from www.forbes.com/sites/ewelinaochab/2020/04/12/what-has-corruption-got-to-do-with-human-rights-abuses/?sh=36434ea26e70.

Raymond, Jameela (2017). Corruption and Human Rights – Bridging the Gap. Transparency International UK, 27 October.

» Available from www.transparency.org.uk/corruption-and-human-rights-bridging-the-gap/.

Andersen, Morten Koch (2015). Torture and Corruption Practical Twins. Global Policy.

» Available from www.globalpolicyjournal.com/blog/18/09/2015/torture-and-corruption-practical-twins#.VfwN_L4W3F8.facebook.

Guidelines to develop a stand-alone course

This Module provides an outline for a three-hour class, but there is potential to develop its various aspects further into a stand-alone course. The scope and structure of such a course will be determined by the specific needs of each context, but a possible structure is presented here as a suggestion.

Session	Topic	Brief description
Introduction	1. What is corruption, and why should we care?	Students learn what corruption is, the different crimes that fall under it, and the difference between petty, grand, and systemic corruption. They learn what causes corruption, from an economic and social perspective. These introductory points can be based on Module 1.
Different analytical approaches	2. The human rights-based approach	To understand the complex relationship between corruption and human rights, students learn more about the human rights-based approaches, and their historical development and main characteristics. Students also partake in critical reflection.
	3. Description of different approaches to the corruption–human rights link and critical reflection I	Students learn about the three levels of state obligations (respect, protect and fulfil) and the “causal link approach” of the International Council of Human Rights.
	4. Description of different approaches to the corruption– human rights link and critical reflection II	Students learn about Boersma’s “dimensions” approach and the classification used by the Human Rights Council Advisory Committee.
	5. How are human rights violations and corruption related?	Students contemplate a summary and comparison of the approaches; and identify similarities and differences, as well as benefits and limitations.
Specific human rights violations	6. Which and how can human rights can be violated by corruption?	Civil and political rights, as well as economic, social and cultural rights, are described and the link to corruption is explained.
	7. Corruption as a violation of civil and political rights	Corruption is discussed as a violation of civil and political rights, in particular the rights to equality and non-discrimination; the rights to a fair trial and to an effective remedy; and the rights of political participation. Students find and discuss specific examples based on case studies.

Session	Topic	Brief description
	8. Corruption in the judiciary	This class provides an overview of corruption in the justice system. Students discuss the role of corruption in the judiciary, with a special focus on the right to a fair trial. If even one participant in the justice system is corrupt, that role player, as a representative of the justice system, results in the failure of the entire system to function properly. Students review cases of justice system corruption and discuss the effects of corruption. (Relevant resources and training material are available on the website of UNODC's Global Judicial Integrity Network ⁵¹).
	9. Corruption as a violation of economic, social and cultural rights	Corruption is discussed as a violation of economic, social and cultural rights, in particular the right to an adequate standard of living (rights to food, housing, health and education). Students find and discuss specific examples based on case studies.
	10. Case study: Corruption and the violation of the right to education	This class discusses the connection between corruption and human rights by examining a case study that directly impacts students – that of the violation of the right to education. Students together look for specific cases, describe and analyse the situation, and discuss potential solutions to protect the right to education.
	11. Is corruption itself a human rights violation?	The class summarizes the examples of human rights violations under discussion and provides arguments why corruption should, or should not, be considered a human rights violation. The associated implications are considered.
The added value and implications of integrating a human rights and anti-corruption agenda	12. The benefits of combining the human rights and anti-corruption agenda	The class describes and discusses the added value of integrating human rights' principles into anti-corruption strategies and/or policies.
Conclusion	13. Conclusion	Students review course concepts, identify current challenges and suggest strategies for improvement. Emphasis is placed on the fundamental nature of human rights and the degree to which their violation by corruption damages individuals and society.

⁵¹ Available at www.unodc.org/ji/



UNODC

United Nations Office on Drugs and Crime

Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria
Tel.: +43-1-26060-0, Fax: +43-1-26060-5866, www.unodc.org