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## Human Rights Council

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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development

## **Challenges faced and best practices applied by States in integrating human rights into their national strategies and policies to fight against corruption, including those addressing non-State actors, such as the private sector**

### **Report of the Office of the United Nations High Commissioner for Human Rights**

#### *Summary*

The present report is submitted pursuant to Human Rights Council resolution 41/9, in which the Council requested the Office of the United Nations High Commissioner for Human Rights to prepare a report on the challenges faced and best practices applied by States in integrating human rights into their national strategies and policies to fight against corruption, including those addressing non-State actors, such as the private sector, and to submit the report to the Council at its forty-fourth session.



## I. Introduction

1. In its resolution 41/9, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a report on the challenges faced and best practices applied by States in integrating human rights into their national strategies and policies to fight against corruption, including those addressing non-State actors, such as the private sector, and to submit the report to the Council at its forty-fourth session.
2. In follow-up to this request, OHCHR wrote to all Permanent Missions to the United Nations Office at Geneva, relevant international organizations, national human rights institutions and civil society organizations to solicit input for the preparation of the present report.
3. OHCHR received responses<sup>1</sup> from Austria, Azerbaijan, Ecuador, El Salvador, Georgia, Guatemala, Iraq, Italy, Jordan, Latvia, Mauritius, Morocco, North Macedonia, Paraguay, the Philippines, Portugal, Romania, the Russian Federation, Senegal and Serbia, as well as the State of Palestine. The European Union also provided a response. The following international organizations submitted contributions: OHCHR, the United Nations Assistance Mission in Afghanistan, the Economic and Social Commission for Asia and the Pacific and the United Nations Office on Drugs and Crime (UNODC). The following national institutions for the promotion and protection of human rights submitted contributions: the Danish Institute for Human Rights, the National Human Rights Commission of Mexico and the Slovak National Centre for Human Rights. The following civil society organizations submitted contributions: the Amman Center for Human Rights Studies, the Center of Analysis and Research in Human Rights jointly with the International Network of Human Rights, the Centre africain de recherche industrielle, Penal Reform International (PRI) and the Public Organization “Public Advocacy”.
4. The report takes into account recommendations from United Nations human rights mechanisms and the Implementation Review Group of the Conference of the States Parties to the United Nations Convention against Corruption. It complements the report of the United Nations High Commissioner for Human Rights on best practices to counter the negative impact of corruption on the enjoyment of all human rights (A/HRC/32/22).
5. The issue of the negative impact of corruption on the enjoyment of human rights has also been addressed by the Human Rights Council Advisory Committee (A/HRC/28/73). While that issue is not the focus of the present report, it was emphasized in several submissions, including that of Paraguay, in which it was pointed out that there was a lack of scientific research to measure the negative impact of corruption on the enjoyment of human rights.
6. Anti-corruption efforts can conflict with international human rights standards. Where relevant, these are indicated as challenges for integrating human rights into national anti-corruption strategies.
7. The present report is structured along the substantive pillars of the United Nations Convention against Corruption, namely those on preventive measures (chap. II), criminalization and law enforcement (chap. III), international cooperation (chap. IV) and asset recovery (chap. V). It focuses on the complementarity between anti-corruption measures and commitments made under international human rights instruments. Each section highlights the challenges faced and the best practices applied by States in integrating human rights into anti-corruption efforts. The four substantive sections are preceded by a section on general observations and a section on States’ duty to combat corruption as a corollary of their duty to make the maximum use of available resources to realize all human rights. The report ends with conclusions and recommendations for further mainstreaming the anti-corruption and human rights agendas.

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<sup>1</sup> All contributions are available at [www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/Challenges.aspx](http://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/Challenges.aspx).

## II. General observations

8. There is no internationally agreed legal definition of corruption. The most widely used general definition of corruption is the one used by Transparency International, according to which corruption is “the abuse of entrusted power for private gain”.<sup>2</sup> The United Nations Convention against Corruption contains a list of crimes that form the core of corruption offences, namely bribery, embezzlement, trading in influence, abuse of functions and illicit enrichment. Corruption crimes can be committed in both the public and the private sectors; by their very definition, however, they are undertaken in a private capacity and it is usually quite apparent that this is so.

9. Corruption offences can be committed in various ways, including through the promise, offering or giving or through the solicitation (which may imply an element of coercion) or acceptance of an undue advantage in exchange for action or inaction in the exercise of official duties. In extortion cases, the direct victim is easily identifiable. In other cases, the victim typically stands outside the corrupt relationship and may be society at large, particular groups of the population or of certain regions or sectors, unsuccessful bidders or the shareholders of a company.

10. The United Nations Convention against Corruption is a comprehensive international instrument intended to combat the scourge of corruption around the world. States parties to the Convention must take effective measures to prevent corruption, criminalize corrupt acts, ensure effective law enforcement and cooperate with other States parties in enforcing anti-corruption laws and in returning assets obtained through corruption. Moreover, pursuant to article 5 of the Convention, States parties should: (a) develop and implement or maintain effective, coordinated anti-corruption policies; (b) establish and promote effective practices aimed at the prevention of corruption; and (c) periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

11. In the Kuala Lumpur statement on anti-corruption strategies, high-level representatives of anti-corruption authorities and national planning authorities from South, East and South-East Asia and anti-corruption experts from around the world noted that, while there was no simple formula for the proper design, content or implementation of anti-corruption strategies, the United Nations Convention against Corruption could be used as a framework.<sup>3</sup>

12. Furthermore, they recommended that anti-corruption strategies should be incorporated within broader national development initiatives currently in focus and should take into account international and regional obligations. Moreover, the strategies should take into account of and establish links with other relevant national strategies (e.g., those involving the judicial sector, public administration reform and open government) and should seek to form synergies with other agencies. Finally, they should be organized under an overarching/holistic approach while taking into account sector-specific needs.<sup>4</sup>

13. The Human Rights Council, in its resolution 41/9, recalled the obligation of States parties to the United Nations Convention against Corruption to implement policies in accordance with article 5 of the Convention and invited States to address the prevention and effect of corruption in the development of relevant national plans of action, including plans on business and human rights.

14. UNODC has highlighted some challenges for integrating human rights into national anti-corruption strategies. One challenge was that the United Nations Convention against Corruption was not a human rights treaty. States parties therefore focused on implementing the Convention but did not always see how their human rights obligations might be affected by corruption. One State did, however, identify the separate treatment of anti-corruption and human rights as a challenge and noted that further efforts were required to raise awareness on the interlinkages between the two. Another State reported that the lack of

<sup>2</sup> See [www.transparency.org/glossary/term/corruption](http://www.transparency.org/glossary/term/corruption).

<sup>3</sup> UNODC, *The United Nations Convention against Corruption: National Anti-Corruption Strategies – A Practical Guide for Development and Implementation* (New York, 2015), p. 55.

<sup>4</sup> Ibid.

specific tools to assess and link licit and illicit economies to human rights violations prevented the identification of linkages between corruption and human rights. UNODC highlighted that the main challenge to integrating a human rights perspective into anti-corruption strategies remained that of communication. It was therefore important to sensitize States parties on the extent to which specific human rights considerations may complement anti-corruption measures.

15. According to North Macedonia, one of the key challenges to integrating human rights into national anti-corruption strategies and policies was the inadequate provision of sufficient continuous capacity to develop and implement such strategies using a holistic and coordinated approach. Similarly, Morocco suggested that institutions capable of developing comprehensive and strongly articulated strategies had to effectively integrate the promotion and protection of human rights and the fight against corruption.

16. Several submissions highlighted the complementarity of efforts against corruption and for human rights. Mauritius, for example, underscored the importance of good governance, the rule of law, the right to information, the right to take part in the conduct of public affairs, the right to a fair trial, the creation of a safe environment for anti-corruption activities and whistle-blowing, the need for independent media and the need for an independent and impartial judiciary. The Russian Federation highlighted that its anti-corruption legislation was inextricably linked to the human rights protections contained in its Constitution. Romania highlighted that the human rights dimension had been integrated into its anti-corruption strategy, specifically in its basic principles and through the accumulation of objectives and actions that aimed at achieving, among other things, access to information, transparency in the political system and accountability.

17. Morocco stated that the fight against corruption and efforts to support human rights reflected the same standards and were guided by the same principles of equal participation, equitable access to rights, effective enforcement of laws for all, accountability, democracy and the empowerment and inclusion of marginalized populations. The anti-corruption and human rights movements used different terminology to reflect their respective approaches. Challenges might arise when States adopted anti-corruption measures that went beyond what was permissible under international human rights law.

18. The State of Palestine drew attention to the principles of transparency, equality, non-discrimination and accountability. Transparency and accountability were considered the main principles of a human rights-based approach to development and essential for the development of successful anti-corruption strategies.

### **III. States' duty to combat corruption as a corollary of their duty to take steps, to the maximum of their available resources, with a view to achieving progressively the full realization of economic, social and cultural rights**

19. As the Committee on Economic, Social and Cultural Rights has observed:

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.<sup>5</sup>

20. States have a duty to protect rights holders against human rights abuses, including those caused by corruption. Doing so requires taking appropriate steps to prevent, investigate, punish and provide redress for such abuses. In particular, States must ensure that those affected have access to an effective remedy, including reparations. By diverting public money, corruption clearly undermines the ability of Governments to make the maximum use of available resources to realize all human rights, including economic, social

<sup>5</sup> General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 20.

and cultural rights (E/2017/70, para. 39). While there is no human right to freedom from corruption in international human rights law, corruption is antithetical to human rights. It is notable that, in its submission, Guatemala reported that its Constitution referred to the right to a life free from corruption.

## IV. Preventive measures

### A. Preventive anti-corruption policies and practices (art. 5) and preventive anti-corruption body or bodies (art. 6)

21. In line with article 5 of the United Nations Convention against Corruption, all States parties should develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. Similarly, the World Conference on Human Rights recommended that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights.<sup>6</sup>

22. An efficient anti-corruption strategy must be informed by key human rights principles. An independent judiciary, freedom of the press, freedom of expression, access to information, transparency in the political system and accountability are essential both for developing successful anti-corruption strategies and for promoting the enjoyment of human rights. So too is a serious commitment to the progressive realization of economic and social rights.<sup>7</sup> Moreover, participation leads to better informed and more sustainable decision-making and to more effective, accountable and transparent institutions. This in turn enhances the legitimacy of States' decisions and their ownership by all members of society.<sup>8</sup> The inclusive nature of the processes for developing national anti-corruption strategies or policies, namely the engagement with a wide range of stakeholders, including civil society, has also been identified as a good practice by the secretariat of the Conference of the States Parties to the United Nations Convention against Corruption (CAC/COSP/2019/9, para. 12).

23. In this respect, Austria highlighted its national anti-corruption strategy, in which it had adopted a holistic approach to preventing and combating corruption. Not only was the strategy the result of cooperation between the federal ministries, the regions, civil society and other relevant institutions and stakeholders but, above all, its structure and goals were grounded in the protection and the furtherance of human rights. Georgia too drew attention to its national anti-corruption strategy and action plan, adding that civil society actively participated in the policy planning, monitoring and evaluation processes overseen by the State Interagency Coordination Council and that the reforms devised within the anti-corruption policy framework corresponded to the objective of the national human rights strategy. Romania highlighted that its national anti-corruption strategy, which integrated human rights principles such as transparency and accountability, had been developed in consultation with some 90 civil society organizations, public institutions and companies. The Centre of Analysis and Research in Human Rights and the International Network of Human Rights recommended the active participation of national human rights institutions in the development and adoption of public policies for tackling corruption.

24. In line with article 6 of the United Nations Convention against Corruption, all States parties should ensure the existence of bodies to prevent corruption. As their counterparts, national human rights institutions play an important role in the promotion and protection of human rights.<sup>9</sup> The Human Rights Council, in its resolution 41/9, encouraged national anti-

<sup>6</sup> See Vienna Declaration and Programme of Action, part II, para. 71 (A/CONF.157/23).

<sup>7</sup> OHCHR, "The human rights case against corruption" (Geneva, 2013), p. 6.

<sup>8</sup> See the guidelines for States on the effective implementation of the right to participate in public affairs, p. 3.

<sup>9</sup> The principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) are the international standard for national human rights institutions. For

corruption authorities and national human rights institutions, where they existed, to cooperate through the exchange of information, where appropriate, and the development of joint strategies and plans of action to fight corruption and its negative impact on the enjoyment of human rights. Austria reported that its Federal Bureau of Anti-Corruption attempted to tackle corruption in a holistic way and that respect for human rights was part of the Bureau's institutional identity and was reflected in its mission statement. Through preventive measures, it also contributed to countering the negative impact of corruption on the enjoyment of human rights. The State of Palestine referred to the weak link between human rights institutions and the Palestinian Anti-Corruption Commission, adding that human rights organizations did not contribute to studies and workshops undertaken by the Commission, nor did they refer allegations of corruption in the context of human rights violations to it. This is an area that would benefit from further study and the sharing of practical experiences.

## **B. Public sector (art. 7), codes of conduct for public officials (art. 8) and measures relating to the judiciary and prosecution services (art. 11)**

25. Article 7 of the United Nations Convention against Corruption addresses the public sector, including conditions of employment, the selection and training of individuals for public positions, criteria concerning candidature for and election to public office and transparency on the funding of candidatures for public office and political parties. PRI reported on the impact of corruption on criminal justice systems, highlighting that there was growing recognition of the problem of corruption within penitentiary settings and of the impact of corruption on the human rights of detainees. PRI emphasized a number of factors that facilitated or exacerbated corruption in penitentiary systems, such as poor detention standards, inadequate pay and understaffing. Corruption affected detainees and prisoners, as well as women and juveniles, disproportionately. PRI highlighted three main causes of corruption in prison staff, namely poor remuneration, a poor working environment and poor public perception of their position. It therefore recommended that prison administrations increase transparency, accountability and oversight; establish clear procedures for the taking and record-keeping of decisions; and improve the recruitment and training of prison staff. One positive example was the creation of the Counter Corruption Unit in the United Kingdom of Great Britain and Northern Ireland. Another was the creation of a database, accessible through the use of a personal electronic key, of prisoners containing complete information about their previous penalties. Yet another good practice was the provision of specialized training, including on human rights.

26. In line with article 8 of the United Nations Convention against Corruption, States parties should apply codes or standards of conduct for the correct, honourable and proper performance of public functions. Moreover, States parties should establish measures and systems requiring public officials to make declarations regarding their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result. States parties should take disciplinary or other measures against public officials who violate codes or standards of conduct.

27. Several submissions drew attention to codes of conduct and ethics and included information on asset declaration systems. For example, all employees of the Mauritius Revenue Authority are required to file, on a regular basis, a declaration of assets that is subject to verification.

28. A fundamental pillar of the rule of law is an impartial and independent judiciary. The integrity of the judiciary and prosecution services are important elements of a fair trial and essential for combating corruption.<sup>10</sup> Supporting the integrity of the justice system is therefore a good way to combat corruption. In 2018, UNODC established the Global Judicial Integrity Network with the aim of promoting opportunities for judges and other members of judiciaries to share experiences and knowledge, providing access to resources,

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an initiative to elaborate similar standards for anti-corruption bodies, see the Jakarta Statement on Principles for Anti-Corruption Agencies.

<sup>10</sup> See article 11 of the United Nations Convention against Corruption and article 14 of the International Covenant on Civil and Political Rights.

addressing existing and emerging judicial integrity-related challenges and facilitating the identification of technical assistance needs. The ultimate purpose of the Network is to strengthen judicial integrity and prevent opportunities for corruption in the justice system. The Network has addressed several issues that might affect the integrity of the judiciary, such as the use of social media by judges, gender-related judicial integrity issues, codes of judicial conduct and the role of judicial immunities in safeguarding judicial integrity. The Network has also developed a comprehensive training package on judicial conduct and ethics. Specialized training can be a useful means of addressing potential challenges posed to human rights by anti-corruption efforts. Such challenges may occur, for example, during searches and when resorting to special investigative techniques, such as wiretapping and other means of intercepting communication, which may affect the right to privacy.

29. Several submissions contained information on reforms undertaken with a view to increasing transparency and accessibility. North Macedonia, for example, reported on reform measures taken to combat corruption in the judiciary, for example by specifying the criteria to be used for the appointment, selection, promotion and dismissal of judges and prosecutors, improving the codes of conduct and revising the method used to distribute court cases. The Slovak National Centre for Human Rights expressed concern about the decrease in human resources in the prosecutor's office dedicated to corruption cases. OHCHR-Cambodia reported on the technical support it had provided to help the Government of Cambodia to roll out a criminal case management system. OHCHR-Cambodia also advocated for the publication of judgments in order to enhance access to justice, transparency and accountability and for the publication of a study on integrity in the judiciary.

### **C. Public procurement and management of public finances (art. 9)**

30. Article 9 of the United Nations Convention against Corruption highlights the importance of transparency and accountability in public procurement and the management of public finances. These principles have also been highlighted by human rights mechanisms in the context of public budgets. The Committee on the Right of the Child, for example, has found that corruption and mismanagement of public resources in State revenue mobilization, allocation and spending represent a failure by the State to comply with its obligation to use the maximum of available resources.<sup>11</sup> The Committee has therefore recommended that States parties should develop and maintain public financial management systems and practices that are open to scrutiny and that information on public resources should be freely available in a timely manner.<sup>12</sup> It has observed that transparency contributes to efficiency and combats corruption and mismanagement of public budgets and that it is a prerequisite for enabling meaningful participation of the executive, legislatures and civil society, including children, in the budget process.<sup>13</sup>

31. Mauritius reported that, since 2015, it had adopted a corruption risk mapping tool developed by the World Customs Organization to develop targeted and preventive measures against corruption. Furthermore, the Mauritius Revenue Authority regularly conducted surveys to assess the perception of integrity in the revenue collection departments.

### **D. Public reporting (art. 10) and participation of society (art. 13)**

32. Transparency is a fundamental principle of good governance and important to both anti-corruption and human rights. Access to information emanates from this principle. The right to freedom of expression (as enshrined, for example, in article 19 of the International Covenant on Civil and Political Rights) includes the freedom to seek, receive and impart information. It also constitutes a measure to prevent corruption (article 13 (1) of the United Nations Convention against Corruption). Promoting the right of the public to access information is therefore a good practice for upholding human rights while fighting

<sup>11</sup> General comment No. 19 (2016) on public budgeting for the realization of children's rights, para. 34.

<sup>12</sup> *Ibid.*, para. 62.

<sup>13</sup> *Ibid.*

corruption. Media freedom is another area where efforts in favour of human rights and against corruption complement each other.

33. Several submissions included information on reforms made or new laws adopted to improve access to information. In the submissions several measures were highlighted, such as limiting clearly the exception to access, making access to information free of charge, entrusting an independent body to review the implementation of the law and adopting a proactive approach to sharing information.

34. Electronic tools are important for increasing access to information. Examples included various e-governance tools such as online procurement systems, budget monitoring tools and online asset declaration systems.

35. Guatemala reported on the Presidential Commission on Open and Electronic Government, which had been established with the aim of supporting the ministries and institutions of the Executive Branch to implement, in a coordinated manner, measures deriving from international instruments in the areas of open government, transparency, e-governance and anti-corruption. Institutional actions to foster open government had been developed to guarantee human rights and thereby strengthen the democratic political system. Guatemala highlighted the importance of coordination with civil society organizations in that regard. Guatemala also highlighted the importance of monitoring and transparency in a variety of areas, and of disaggregated data.

36. Other positive examples mentioned were educational and training activities combining anti-corruption education with human rights education. UNODC shared information on its Education for Justice initiative, which underscores the linkages that exist between corruption and human rights. Education on rule of law issues encompasses education on rights related to and affected by crime, including corruption. The Centre of Analysis and Research in Human Rights and the International Network of Human Rights recommended that human rights-based awareness campaigns and educational programmes be developed, including on the negative impact of corruption on the enjoyment of human rights.

37. Public awareness-raising efforts and studies on corruption and human rights too were identified as good practices. For instance, UNODC was working with the Corruption Eradication Commission of Indonesia on a study of corruption in the logging industry. Illegal logging, which is sometimes fuelled by corruption, disrupts livelihoods and violates human rights. The study will inform policies addressing the issue of illegal logging. Another example provided by UNODC relates to its awareness-raising activities in South-East Asian countries on corruption and trafficking in persons. A regional event conducted in 2018 resulted in a mapping of where corruption occurs throughout the human trafficking chain and informed policymakers on possible solutions at the policy and law enforcement levels.

38. Participation is another fundamental good governance principle, a right enshrined in article 25 of the International Covenant on Civil and Political Rights and a State duty under article 13 (1) of the United Nations Convention against Corruption. Good practices in this regard include the provision of technical assistance to States parties to the Convention, civil society organizations and other non-State actors to actively take part in anti-corruption efforts and policymaking. UNODC, together with the Association for the Implementation of the United Nations Convention against Corruption (UNCAC Coalition), trained, in April 2019, 27 civil society representatives and 26 government representatives from 15 African countries on implementing the Convention. In another example of a multi-stakeholder capacity-building effort, UNODC has lent its support to the Fiji Council of Social Services, an umbrella body of civil society organizations that organized a dialogue on addressing corruption and strengthening the accountability, transparency and legitimacy of the civil society sector to ensure efficient and effective advocacy work.

39. The European Union and its member States called for more effective civil society involvement in the second review cycle of the United Nations Convention against Corruption. In their view, constructive dialogue between States parties and civil society will improve the impact and implementation of the Convention.

## E. Private sector (art. 12)

40. Several provisions of United Nations Convention against Corruption aim at preventing and suppressing corruption in the private sector (e.g. art. 12). The Guiding Principles on Business and Human Rights provide the internationally accepted standard for preventing and addressing the risk of adverse impacts on human rights linked to business activities. States have the duty to protect against human rights abuse by business enterprises (principle 1).

41. The Committee for Economic, Social and Cultural Rights, for example, has stated that 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.<sup>14</sup> Business enterprises should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved (principle 11). Of particular importance in this context is the duty to carry out human rights due diligence, i.e. to assess actual and potential human rights impacts that business enterprises may cause or contribute to through their own activities or that may be directly linked to their operations, products or services by their business relationships (principle 17), and to integrate the findings from their impact assessments and take appropriate action (principle 19). Given the negative impact of corruption on the enjoyment of human rights, adopting anti-corruption compliance procedures can be seen to be part of human rights due diligence. Linking anti-corruption compliance with human rights due diligence can improve the effectiveness of both methods.

42. Ecuador drew attention to an agreement concluded between the Anti-Corruption Secretariat of the Presidency of the Republic and the coordinating body of public enterprises with a view to prevent and detect corruption through anti-corruption and transparency administrative committees and the implementation of the anti-bribery management system standard (ISO 37001).

43. Sweden drew attention to anti-corruption policies, codes of conduct, corruption risk assessments and evaluations of anti-corruption management systems as part of due diligence processes, as well as training, sharing of best practices and whistle-blower protection. As an example, it mentioned the codes of conduct adhered to by its Export Credit Agency and its Export Credit Corporation, which reflected zero tolerance for corruption. All the employees of these institutions had an obligation to follow the codes of conduct and to report any actual or suspected breach or non-fulfilment of the obligations against corruption. They were also bound by the Code on Gifts, Rewards and other Benefits in Business of the Swedish Anti-Corruption Institute. The Export Credit Agency and the Export Credit Corporation also supported the 10 principles of the United Nations Global Compact, which includes standards governing corruption, human rights, labour and the environment.

44. Portugal noted that it was necessary for companies to ensure that their practices and services did not contribute to human rights violations. The anti-corruption campaign of the Portuguese Association of Business Ethics and Global Compact Network Portugal promoted the spread of the values of integrity, probity, transparency and responsibility. The campaign was carried out in the framework of the United Nations Global Compact.

45. The Centre of Analysis and Research in Human Rights and the International Network of Human Rights recommended the establishment of a coordination mechanism between the private sector and civil society, composed of actors from both sectors, to enhance cooperation in promoting and protecting human rights in a common strategy to combat corruption. They also recommended the development of national action plans on business and human rights with the aim of ensuring respect for human rights and freedom from corruption.

46. The National Human Rights Commission of Mexico highlighted the importance of the Guiding Principles on Business and Human Rights. It highlighted a number of challenges, such as lack of transparency in public procurement; the lack of clarity in

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<sup>14</sup> General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 18.

contracts, making it difficult to investigate related human rights violations; and negative or evasive responses to requests for information. It recommended, in particular, the adoption of specific clauses obliging businesses to respect human rights in all public contracts and imposing penalties in cases of breach of contract. Moreover, companies should be required to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address the adverse impact of their activities on human rights.

47. Under article 12 (2) (c) of the United Nations Convention against Corruption, States parties have undertaken to take measures to promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities. Sweden shared information on its Companies Registration Office, which handles several company and association registers containing information on the board members of a company or association, among other information. The trade register, for instance, contains information about company members who are either legal or natural persons. The register of beneficial owners, on the other hand, contains information about the beneficial owners of Swedish legal entities, foreign legal entities operating in Sweden and natural persons who are resident in Sweden and who manage trusts or similar legal constructions. Both registers are public.

48. Under article 12 (3) of the United Nations Convention against Corruption, States parties have committed themselves to taking measures regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards. Sweden highlighted the importance of the private sector adhering to auditing standards and drew attention to the International Standards on Auditing and the European Union accounting directives. Sweden also provided information on the sustainability reports prepared by entities of a certain size; the reports included information on the consequences of operations, including with regard to human rights and anti-corruption issues.

49. Under article 13 of the United Nations Convention against Corruption, States parties have undertaken to promote the active participation of society in the prevention of and the fight against corruption. Mauritius highlighted the importance of the participation of society, vulnerable groups and victims of corruption. The Amman Center for Human Rights Studies highlighted the importance of protecting human rights defenders who advocated for anti-corruption measures. It expressed the view that many States cracked down on human rights activists and intentionally weakened civil society so that corruption could persist within the government. It was therefore vital that States provide space in which civil society could operate and where freedom of information and speech were allowed. Citizens and civil society organizations provided oversight where accountability was lacking within governing bodies. The Amman Center was particularly concerned about the criminalization of defamation of the State, threats against journalists, the blocking of foreign and domestic websites and the pressure put on civil society organizations, including through controls of their internal affairs. The Slovak National Centre for Human Rights reported on the Fund for Transparent Slovakia, a private sector initiative with more than 20 members that had raised funds for watchdog organizations to tackle corruption. Serbia provided information on an agreement on cooperation and measures for raising the level of safety of journalists.

## **F. Measures to prevent money-laundering (art. 14)**

50. Under article 14 of the United Nations Convention against Corruption, States parties have undertaken to take measures to prevent money-laundering. El Salvador highlighted the efforts it had made to adopt a new special law for the prevention, control and penalization of asset laundering with a view to adapting the existing legal framework to the latest international standards and current criminal activities. The European Union drew attention to the reforms of its rules against money-laundering, the setting up of beneficial ownership registries of bank account information, the enhancement of supervisory cooperation and the broadening of the criteria for listing high-risk third countries.

51. The Philippines had conducted a national risk assessment to evaluate its overall exposure to money-laundering and related predicate offences, including graft and corruption, and to analyse the money-laundering and financing of terrorism risks in different public sectors and entities. Guatemala also highlighted the importance of carrying out corruption risk assessments.

## V. Criminalization and law enforcement

52. UNODC drew attention to challenges to human rights in the sentencing practices of some countries, where those convicted of certain corruption offences may face the death penalty. In line with article 30 (1) of the United Nations Convention against Corruption, States parties should make the commission of corruption offences liable to sanctions that take into account the gravity of the offence. Although article 65 (2) of the Convention allows States parties to adopt more strict or severe measures than those provided for by the Convention, such sanctions should not affect the right to life and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The Human Rights Committee has explained, in its general comment No. 36 (2018) on the right to life, that the term “the most serious crimes”, for which the International Covenant on Civil and Political Rights accepts the possibility of imposing the death penalty, must be read restrictively and appertain only to crimes of extreme gravity, involving intentional killing. The Committee has also asserted that economic and political crimes such as corruption, although grave in nature, can never, within the framework of article 6 of the Covenant, provide the basis for the death penalty. Abolishing the death penalty for corruption offences or at least imposing a moratorium on such sentences is therefore a good practice.

53. Several submissions included information on reforms of penal codes and criminal procedures codes. Several countries also shared information on the number of criminal cases pending and concluded. The Slovak National Centre for Human Rights highlighted that the absence of sanctions against high-profile perpetrators and the consequent impunity was a major challenge in the fight against corruption.

54. Under article 30 (2) of the United Nations Convention against Corruption States parties have undertaken to take measures to establish or maintain an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility of effectively investigating, prosecuting and adjudicating corruption offences. The Centre of Analysis and Research in Human Rights and the International Network of Human Rights recommended in this regard the abolishment of parliamentary immunity in cases of corruption and the possibility of summoning the President.

55. Transparency manifests itself also in the protection of witnesses, experts, victims and those reporting facts concerning offences established in accordance with the United Nations Convention against Corruption (arts. 32–33). Several submissions contained information on the applicable laws and regulations aimed at protecting whistle-blowers against reprisals. The European Union, for example, shared information on the directive on protecting whistle-blowers. That directive and its implementing regulations guaranteed a high level of protection for whistle-blowers reporting breaches of European Union law. It established safe channels for reporting both to an organization and to public authorities and protected whistle-blowers, in the public and the private sectors, against retaliation, broadly defined. Georgia reported having amended its laws to strengthen the protection of whistle-blowers. Moreover, its Civil Service Bureau had carried out an extensive programme to raise awareness among civil servants of the whistle-blower regulations and their rights. Additionally, a software programme called “red button” had been developed to allow for confidential reporting of alleged misconduct.

56. The Slovak National Centre for Human Rights referred to a new law (Act No. 54/2019), which transferred the burden of proof to the employer, expanded the legal definition of whistle-blower and established an office for the protection of persons reporting on antisocial activities.

57. Under article 36 of the United Nations Convention against Corruption, States parties have committed themselves to ensuring the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Latvia shared information on the work done by its Corruption Prevention and Combating Bureau. It highlighted that the Bureau was tasked with monitoring the compliance of political organizations (parties) and related associations with financial regulations and with inspecting compliance with specific restrictions. The Bureau also ensured compliance with general principles of law, human rights, public participation and access to information on administrative, policy and legislative initiatives. In order to ensure the involvement of civil society, the Director of the

Bureau had established a public consultative council in which 20 civil society organizations were represented.

## VI. International cooperation

58. Challenges to integrating human rights into anti-corruption efforts may also arise in the context of international cooperation. Human rights safeguards must be upheld in extradition (article 44 of the United Nations Convention against Corruption) and mutual legal assistance (article 46 of the Convention) requests. In particular, the principle of non-refoulement must be guaranteed.<sup>15</sup> It prohibits States from extraditing a person to another State where there are substantial grounds for believing that he or she would be at risk of irreparable harm, including persecution, torture and other cruel, inhuman or degrading treatment, flagrant denial of the right to a fair trial or the death penalty.

59. Challenges can also arise in the context of article 50 of the United Nations Convention against Corruption, which deals with special investigative techniques such as the use of controlled delivery, electronic or other forms of surveillance and undercover operations. The Conference of the States Parties to the Convention, in its resolution 8/2, approved the set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the Convention. Among the good practices identified was the wide use and application of special investigative techniques in corruption cases both domestically and internationally, in accordance with the protection of fundamental rights (CAC/COSP/2019/3).

60. Several submissions included information on bilateral and multilateral cooperation agreements on countering corruption. Ecuador, for example, referred to a memorandum of understanding it had signed with Chile. Moreover, Ecuador had established a commission of international experts against corruption.

61. El Salvador said it had signed an agreement of cooperation with the Organization of American States on an advance mission for the establishment of an international commission against impunity in El Salvador. The commission, once established, would support, strengthen and collaborate with the institutions of El Salvador charged with preventing and investigating acts of corruption and other related crimes and for punishing those responsible.

62. Several submissions referred to cooperation with international organizations and the ratification of international instruments against corruption, such as the United Nations Convention against Corruption, the United Nations Convention against Transnational Organized Crime, the African Union Convention on Preventing and Combating Corruption, the Economic Community of West African States Protocol on the Fight against Corruption, the Council of Europe Criminal Law Convention on Corruption and its Additional Protocol, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Inter-American Convention against Corruption. Submissions also highlighted the importance of implementing the recommendations of implementation review mechanisms such as the Group of States against Corruption, the Working Group on Bribery in International Business Transactions of the Organization for Economic Cooperation and Development (OECD) and the Implementation Review Group of the Conference of the States Parties to the United Nations Convention against Corruption. El Salvador, for example, highlighted that the proposals for reforming its Penal Code, its Criminal Procedure Code and the law on the criminal responsibility of legal entities for the commission of crimes had been made in follow-up to its reviews of chapters III and IV of the United Nations Convention against Corruption. Others drew attention to the importance of technical assistance from and cooperation with specialized organizations such as UNODC. The European Union reported on the establishment of a European public prosecutor's office charged with investigating and prosecuting for crimes such as fraud, corruption and money-laundering affecting the European Union budget in the 22 participating member States. The European Union also referred to its anti-corruption experience-sharing programme, which offered anti-corruption practitioners a forum to seek

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<sup>15</sup> See, for example, article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

inspiration from legislative, institutional and policy reforms in other member States. Guatemala reported on its bilateral cooperation with Honduras and mentioned that it had invited the Honduras Revenue Administration Service to share information with the objective of learning from its administrative and technical practices.

63. Sweden underscored the importance of multilateral efforts and the strong political commitments to support anti-corruption initiatives they produced. In that regard, Sweden highlighted the 2030 Agenda for Sustainable Development, especially Sustainable Development Goal 16, on stronger institutions, and Goal 10, on reducing inequality among countries. It also mentioned the Addis Ababa Action Agenda, the United Nations Convention against Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Group of 20 Anti-Corruption Working Group, the Council of Europe Criminal Law Convention on Corruption and the Council of Europe Civil Law Convention on Corruption. Sweden highlighted the role of the private sector in the implementation of the 2030 Agenda. Moreover, it supported partner countries to combat corruption by strengthening institutions such as tax and audit authorities. Sweden also supported the efforts of the Financial Action Task Force's Training and Research Institute to assist civil servants in developing countries in devising anti-money-laundering systems. The Open Government Partnership and the Extractive Industries Transparency Initiative, among others, were also mentioned.

64. The Centre of Analysis and Research in Human Rights and the International Network of Human Rights recommended international cooperation to combat corruption, including by prioritizing the protection of human rights. They also recommended making use of human rights mechanisms and procedures such as the universal periodic review, promoting technical assistance and reporting on the negative impact of corruption on the enjoyment of human rights.

65. In Colombia, OHCHR collaborated with an international gold-mining firm to identify and address human rights challenges at the local level. Through a multi-year partnership, OHCHR and the firm had developed a comprehensive diagnostic of the human rights situation in the municipality of El Bagre, leading to increased awareness of the urgent need to improve access to education and health services. By working together to establish mechanisms for community participation in municipal-level policymaking, OHCHR and the firm had shed light on the negative impacts of corruption on human rights, reinforced transparency and accountability in public decision-making and strengthened the role of civil society in the allocation of public resources.

## VII. Asset recovery

66. Access to an effective remedy is a fundamental principle under both human rights law (see, e.g., article 2 (3) of the International Covenant on Civil and Political Rights, principle 25 of the Guiding Principles on Business and Human Rights and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law) and the United Nations Convention against Corruption (see, e.g., arts. 32, 34–35, 53 (b) and 57 (3) (c)).

67. As mentioned in section II above on general observations, apart from the case of extortion, it can be difficult to identify the direct victims of corruption. UNODC has highlighted that the identification of victims and of parameters for their compensation varies significantly between States parties to the United Nations Convention against Corruption, as do the perceptions of States parties with regard to the link between human rights violations and cases of corruption. In a recent note on best practices for the identification and compensation of all different types of victims in accordance with the Convention, and third-party challenges and their impact on asset recovery under chapter V, it was emphasized that the possibility of seeking compensation should be available to States as well as legal and natural persons (CAC/COSP/WG.2/2019/5, para. 3). It was also pointed out that corruption may victimize people directly, but may also negatively affect society as a whole and, in this context, that the concept of social damage existed in some jurisdictions and allowed compensation for damages to the public interest (*ibid.*, para. 9).

68. Challenges may arise with regard to the offence of illicit enrichment (article 20 of the United Nations Convention against Corruption), as well as the possibility, in confiscation proceedings, of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable for confiscation (art. 31 (8)), as well as non-conviction-based asset forfeiture (art. 54 (1) (c)), which may be in conflict, without sufficient procedural safeguards, with the principle of *nulla poena sine culpa*, the presumption of innocence, the right against self-incrimination and the right to property. UNODC highlights in this regard the necessity of preserving resources for restoring them to the rightful owners or to compensate victims, while ensuring, through the adequate management of assets, that innocent suspects can regain access to their assets in line with the principle of *restitutio ad integrum*.

69. The European Union drew attention to a new directive facilitating the access and exchange of financial and other information and improving the cooperation between law enforcement authorities and financial intelligence units and among such units. The directive was intended to speed up financial investigations on serious and organized crime and to enable asset recovery offices and other competent authorities to have direct access to the national centralized bank account registries or data retrieval systems that all States members of the European Union were required to establish.

## VIII. Conclusions and recommendations

70. **The negative impact of corruption on the enjoyment of human rights is now widely recognized and corruption is increasingly raised with United Nations human rights mechanisms as an obstacle to the realization of human rights and as a potential cause of human rights violations and abuses.**

71. **As part of their duty to make the maximum use of available resources so as to realize all human rights, including economic, social and cultural rights, States have an obligation to combat corruption. This requires taking appropriate steps to prevent, suppress and provide redress for such abuses.**

72. **Human rights mechanisms increasingly include the topic of corruption in the lists of issues used in their interactive dialogues with the States parties to various international human rights treaties. They regularly adopt conclusions and recommendations to States under review on the need to address corruption and include in them specific measures States should take in that regard.**

73. **States request advice from OHCHR on issues relating to corruption, including on the implementation of recommendations from human rights mechanisms. OHCHR is building its capacity to support States in their efforts to combat corruption from a human rights perspective and has identified corruption as a “frontier issue” in its 2018–2021 management plan.<sup>16</sup>**

74. **While national strategies to combat corruption and uphold human rights are generally developed on separate tracks, there is a growing momentum recognizing the potential of considering both in a holistic manner.**

75. **Anti-corruption efforts and efforts to promote and protect human rights complement and reinforce each other. They should be pursued in a mutually reinforcing manner that leverages their comparative strengths and minimizes their respective limitations. Both should contribute to a broader strategy for the promotion of good governance. States are called upon to fight corruption and protect human rights at the same time by upholding core good governance principles, such as participation, inclusion, transparency, accountability, integrity, probity and the rule of law.**

76. **Independent human rights mechanisms and anti-corruption institutions should consider analysing the linkages between corruption and human rights in their respective work.**

<sup>16</sup> OHCHR, “United Nations Human Rights Management Plan 2018–2021” (Geneva, 2018), pp. 44–45.

77. The Human Rights Council Advisory Committee (A/HRC/28/73, paras. 52–54) and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/40/59, para. 76) have recommended that the Council consider establishing a thematic special procedure mandate on corruption and human rights and expressly integrating an examination of corruption and human rights into both the universal periodic review and the Council’s complaints procedure.

78. The Human Rights Council may wish to consider undertaking studies on specific questions arising from a holistic examination of corruption and human rights, such as a study on the role of national human rights institutions in the fight against corruption.

79. The Secretary-General has established a global task force on corruption in order to develop a common United Nations position on corruption. Given the mutually reinforcing nature of anti-corruption efforts and efforts to protect human rights, it is essential that human rights be firmly embedded within such a common position.

80. The General Assembly has decided to hold a special session on challenges and measures to prevent and combat corruption and strengthen international cooperation during the first half of 2021 (resolution 73/191, para. 1). Member States are called upon to ensure policy coherence between the intergovernmental processes in Vienna, Geneva and New York and to ensure that the political declaration resulting from the special session is firmly anchored in human rights.

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