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## Corruption and Human Rights: Exploring the Relationships

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## Corruption and Human Rights: Exploring the Relationships

### Abstract

Corruption is a global phenomenon which every society faces though its degree of severity varies from country to country. Despite its long history, there is no single universally agreed upon definition of corruption. Moreover, its causes, forms and impacts are diverse and multi-faceted. Understanding corruption by itself is a complex undertaking. However, it is agreed that corruption is inimical to public administration, undermines democracy, degrades the moral fabrics of the society and violates human rights. The pain of corruption touches all the human family but it disproportionately affects the vulnerable sections of the society. It reinforces discrimination, exclusion and arbitrariness. Corruption is a universal problem undermining universal value- human rights. However, on the contrary, guarantying human rights in general and ensuring non-discrimination and participation in particular are useful preventive tools for corruption as they ultimately empower the society and create social accountability. The article explores the relationships between corruption and human rights. It is argued that, the struggle to promote human rights and the campaign against corruption share a great deal of common ground. Both are struggling for the orderly and decent life of humans rooted in dignity and equality. The article concludes the discussion by asserting that an integral approach is essential to overcome the problems of corruption and the violations of human rights.

### Keywords

Corruption, Human rights, Human dignity, Vulnerable sections of the society, Human rights activists, Anti-corruption activists

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## **Corruption and Human Rights: Exploring the Relationships**

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### Abstract

*Corruption is a global phenomenon which every society faces though its degree of severity varies from country to country. Despite its long history, there is no single universally agreed upon definition of corruption. Moreover, its causes, forms and impacts are diverse and multi-faceted. Understanding corruption by itself is a complex undertaking. However, it is agreed that corruption is inimical to public administration, undermines democracy, degrades the moral fabrics of the society and violates human rights. The pain of corruption touches all the human family but it disproportionately affects the vulnerable sections of the society. It reinforces discrimination, exclusion and arbitrariness. Corruption is a universal problem undermining universal value- human rights. However, on the contrary, guarantying human rights in general and ensuring non-discrimination and participation in particular are useful preventive tools for corruption as they ultimately empower the society and create social accountability. The article explores the relationships between corruption and human rights. It is argued that, the struggle to promote human rights and the campaign against corruption share a great deal of common ground. Both are struggling for the orderly and decent life of humans rooted in dignity and equality. The article concludes the discussion by asserting that an integral approach is essential to overcome the problems of corruption and the violations of human rights.*

**Key Words:** Corruption. Human rights, Human Dignity, Vulnerable Sections of the Society, Human Rights Activists, Anti-Corruption Activists

## Introduction

*Power tends to corrupt, and absolute power corrupts absolutely. There is no worse heresy than that the office sanctifies the holder of it.*<sup>1</sup>

*Lord Acton (1834-1902)*

Corruption has existed ever since antiquity as one of the worst and, at the same time, most widespread forms of behavior, which is inimical to the administration of public affairs.<sup>2</sup> Notwithstanding the long history and the apparent spread of the phenomenon of corruption in today's society, it seemed difficult to arrive at a common definition. However, it is a situation where money, arbitrariness and discrimination talks. People are judged not by what they are but what they have and from whom they belong. It is one of the greatest challenges of the contemporary world 'which undermines good government, fundamentally distorts public policy, leads to misallocation of resources, harms the private sector and private sector development, and particularly hurts the poor'.<sup>3</sup> It forces the private sector to engage in rent-seeking activities rather than competitive activities.<sup>4</sup> Above all, corruption hurts more the most vulnerable sections of the society, such as women, children, minorities, indigenous peoples, migrant workers, persons with disabilities, those with HIV/AIDS, refugees, prisoners and those who are poor.<sup>5</sup> Corruption is incompatible with the ideals of equality and justice. It diminishes human dignity and thereby prevents the realization of human rights and fundamental freedoms. Corruption is hampering the global movement for the realization of human rights.

This article first lays down the concept of corruption by discussing its definition, causes, forms and consequences. It then discusses the notion of human rights such as its definition, foundation (if any), nature and categories with a view to make a connection with corruption. The third section explores the relationship between corruption and human rights. Finally, the fourth section

concludes the discussion by asserting that an integral approach is essential to overcome the problems of corruption and the violations of human rights.

## 1. Corruption and its Complexities

*Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least a bit of the King's revenue. Just as fish under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out taking money.<sup>6</sup>*

*Kautilya, 300 B.C*

Corruption is more readily condemned than defined and explained. It is a subject of research by many scholars from various disciplines.<sup>7</sup> Nevertheless, disagreements persist not only about how to curb it, but even about its definition, causes, forms and consequences. Such a lack of consensus reflects the complexity of the problem. Defeated by the problems of defining corruption, Justice Potter Stewart asserted that 'I know it when I see it'.<sup>8</sup> Scholars approach corruption from anthropological and sociological to moral and economic point of view. Depending upon their perspectives, they attribute different meanings, causes, forms and consequences for corruption.<sup>9</sup>

But this article is not attempting to resolve all these complexities of corruption. Instead, it tries to put some conceptual notes about corruption with the objective of making it at the center of human rights discourse in the article's framework.

## 1.1 The Definition of Corruption

The term “corruption” comes from the Latin word *corruptio* which means “moral decay, wicked behavior, putridity or rottenness”.<sup>10</sup> Defining the concept corruption is not as easy as one recognizes its occurrence. It varies from region to region and remains largely contextual.<sup>11</sup> As the causes and effects of corruption are different depending on the context of the country, it is perhaps not surprising that it is difficult to formulate a single comprehensive definition that covers all the manifestations of corruption.

Literature unanimously recognizes that corruption is an ancient, wide and pervasive problem, that continues to be a factor in every-day live around the world, in both developed and underdeveloped countries.<sup>12</sup> It can be said that corruption is a universal problem without universal definition. Like human rights, the definition of corruption is culturally relative. For instance, one man’s bribe may be another man’s gift.<sup>13</sup>

Even though there is no single universally agreed definition of corruption, it is defined in various ways. Usually corruption is defined as ‘an illegal act that involves the abuse of a public trust or office for some private benefit’, or ‘the misuse of public office for private gain.’<sup>14</sup> Such definition has two limitations in the current understanding of corruption. It only deals with corruption in the public sector while excluding corruption in the private sector and only covers the recipients of proceeds of corruption while it also covers the act of giving.<sup>15</sup> Transparency International (TI) defines corruption as ‘misuse of entrusted power for private gain’<sup>16</sup>. The TI’s definition is similar with the usual definition except it includes private sector corruption. The World Bank (WB) defined corruption as ‘an abuse of public authority for the purpose of acquiring personal gain’.<sup>17</sup> Mc Mullan holds that a public official is corrupt:



*If he accepts money or money's worth for doing something that he is under a duty to do anyway, that he is under a duty not to do, or to exercise a legitimate discretion for improper reasons.*<sup>18</sup>

There is also a definition of corruption in the economics field; for example, Robert Klitgaard has defined corruption in terms of an equation: Corruption = Monopoly Power + Discretion – Accountability.<sup>19</sup> While United Nations Development Program (UNDP) equated as corruption= (Monopoly Power + Discretion) – (Accountability + Integrity + Transparency).<sup>20</sup>

In the legal field, the term corruption is usually used to group certain criminal acts which correspond to the general notion of an abuse of entrusted power. International conventions against corruption reflect this, since they do not define corruption but instead enumerate criminal acts that amount to corruption.<sup>21</sup>

Defining corruption is notoriously difficult to do.<sup>22</sup> But for the purpose of this article, corruption is defined as a misuse of entrusted power for private gain against the rights of others and giving officials undeserved benefit or advantage.

## **1.2 The Causes of Corruption**

Available research reveals that the causes of corruption are diverse and depend on the different contextual environments. TI held that corruption is rearing its ugly head in more and more severe ways due to the weakening of social values, with the broader public interest and social responsibility being subordinated to the enhancement of material status in the personal ethics of many.<sup>23</sup> Besides, lack of transparency and accountability in the public integrity systems are contributing factors for corruption.<sup>24</sup> There is also a biblical explanation for the causes of corruption. After Adam broke the law and committed sin to his posterity, what follows upon this is, 'the corruption of nature derived unto them from him'; by which is meant, 'the general

depravity of mankind, of all the individuals of human nature, and of all the powers and faculties of the soul, and members of the body'.<sup>25</sup> As Human nature is imperfect, corruption will exist in all human endeavors. Selfishness and greed are the constituting elements of human imperfection which leads to corruption.

As noted by Ringera in a speech delivered at the Commonwealth lawyer's conference, the causes of corruption are economic, institutional, political or societal.<sup>26</sup> The economic causes of corruption are related to pecuniary considerations, representing corruption that is need-driven as opposed to greed driven. This assertion is further confirmed by TI in attributing poverty and low salary as causes of corruption.<sup>27</sup> Increase of wants and inability to maintain one's family lives forces officials to compromise public trust and honesty for some fringe benefits. Institutional causes of corruption include monopoly and wide discretionary powers for public officers, poor accountability, lack of effective and efficient enforcement of the law, absence of institutional mechanisms to deal with corruption, existence of a weak civil society, and the absence of press freedom.<sup>28</sup> Klitgaard shares the same view with Ringera by holding that corruption is prevalent when 'someone has monopoly power over a good or service, has the discretion to decide whether you receive it and how much you get, and is not accountable.'<sup>29</sup> The political causes of corruption arise from the structure and functions of political institutions, and the acquisition and exercise of political power. While societal causes refer to the attitudes and practices of the community. As the problem of corruption is multi-faceted, its causes are also diverse.

### 1.3 The Forms of Corruption

Corruption manifests itself in different ways in different circumstances. But there are some forms of corruption which recur in every system. These are grand corruption, petty corruption, active corruption, passive corruption, political corruption and systematic corruption.

Grand corruption occurs when a high level government official committed acts that distort policies or the central functioning of the state, enabling him/her to benefit at the expense of the public good.<sup>30</sup> It is a form of corruption which pervades the highest levels of a national government, leading to a broad erosion of confidence in good governance, rule of law and economic stability.<sup>31</sup> It distorts the functioning of the central government.

Petty corruption is an everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.<sup>32</sup> It is a situation where a public official demands or expects money for doing an act which he or she is ordinarily required by law to do, or when a bribe is paid to obtain services which the official is prohibited from providing.<sup>33</sup>

Bribery, embezzlement, theft, fraud, extortion, nepotism, favoritism, and Clientelism (classifications of corruption by the United Nations Office on Drug and Crime (UNODC))<sup>34</sup> can be grouped under either grand corruption or petty corruption depending upon the amount of money lost and the sector where it occurs.<sup>35</sup>

In discussions of transactional offences such as bribery; ‘active bribery’ usually refers to the offering or paying of the bribe, while ‘passive bribery’ refers to the receiving of the bribe.<sup>36</sup> This form of corruption describes the demand and supply side of corruption. Political corruption on the other hand is the manipulation of policies, institutions and rules of procedure in the allocation

of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.<sup>37</sup>

Systematic corruption occurs where corruption permeates the entire society to the point of being accepted as a means of conducting everyday transactions.<sup>38</sup> It is a situation in which the major institutions and processes of the state are routinely dominated and used by corrupt individuals and groups, and in which many people have few practical alternatives to dealing with corrupt officials.<sup>39</sup> It affects institutions and influences individual behavior at all levels of a political and socio-economic system. Such form of corruption is embodied in specific socio-cultural environments, and tends to be monopolistic, organized and difficult to avoid.<sup>40</sup>

#### **1.4 The Impacts of Corruption**

*Corruption deepens poverty, it debases human rights; it degrades the environment; it derails development, including private sector development; it can drive conflict in and between nations; and it destroys confidence in democracy and the legitimacy of governments. It debases human dignity and is universally condemned by the world's major faiths.*<sup>41</sup>

*The Durban Commitment to Effective Action Against Corruption, 1999*

Corruption is damaging for the simple reason that important decisions are determined by ulterior motives, with no concern for the consequences for the wider community. As Balogun describes it, “depending on its *form* and *gravity*, corruption is capable of rewarding indolence and penalizing hard work, undermining morale and *esprit de corps*, compromising a nation’s external security, threatening internal order and stability, and generally slowing down the pace of economic growth and sustainable development”.<sup>42</sup> Kumar also notes that corruption affects economic growth, discourages foreign investment, diverts resources for infrastructure

development, health and other public services, education, and anti-poverty programs.<sup>43</sup> He further adds that corruption poses serious challenges for governance, as States cannot achieve the goals of development without ensuring corruption-free governance.

Corruption lowers investment, which in turn adversely affects overall economic performance.<sup>44</sup> Perhaps more importantly, corruption undermines social welfare by redistributing a nation 'wealth in a manner that generates tensions or exasperates existing ones.<sup>45</sup> Keuleers notes that high levels of corruption significantly aggravate poverty.<sup>46</sup>

Above all, corruption affects the integrity of the political system and neither allows for the protection of human rights and the promotion of human freedoms nor for the development of democracy.<sup>47</sup> It implies discrimination and injustice and disrespect for human dignity.<sup>48</sup>

While corruption violates the rights of all those affected by it, it has a disproportionate impact on people that belong to groups that are exposed to particular risks; such as women, children, minorities, indigenous peoples, migrant workers, persons with disabilities, those with HIV/AIDS, refugees, prisoners and those who are poor.<sup>49</sup> In some cases, it is their vulnerability that makes certain groups easy victims of corruption. For instance, corrupt officials may extract money from migrant workers who lack a residence permit by threatening them with deportation in the knowledge that they cannot complain.<sup>50</sup>

Some would argue that corruption can have beneficial effects such as non-violent access to government affairs and administration, when political channels are clogged, or as a means of lessening the potentially crippling tension between the civil servant and the politician by linking them in an easily discerned network of self-interest.<sup>51</sup> However, counter-arguments are more acceptable. They focus on the fact that corruption leads to economic inefficiency and waste, because of its effect on the allocation of funds, on production, and on consumption. Gains

obtained through corruption are unlikely to be transferred to the investment sector as ill-gotten money is either used in conspicuous consumption or is transferred to foreign bank accounts.<sup>52</sup> Rose Ackerman further argues that corruption is able to feed on itself and thereby produce higher illegal payoffs that ultimately, outweigh economic growth.<sup>53</sup>

## **2. Human Rights**

As a concept, human rights have been constantly evolving throughout human history. They have been intricately tied to laws, customs and religions throughout the ages. Their standards change with time according to human needs and interests.<sup>54</sup> Any discussion about human rights should distinguish the philosophical, political and legal accounts. The philosophy of human rights explains the *raison d'être* of human rights while the politics tells us that which set of human rights are in need of immediate consideration, which set of human rights should we recognize and how can we judge the human rights behavior of the other. However, the law of human rights deals with a detail account of internationally agreed values, standards or rules regulating the conduct of States towards their own citizens and towards non-citizens.<sup>55</sup>

But a detail discussion of the philosophical, political and legal perspectives of human rights will not be made for the simple reason that it is out of the scope of the work. Instead, the most essential elements of the concept of human rights which give a bird's-eye view of the above perspectives will be made. By so doing the objective is to make a connection between human rights and corruption. With this view the following sections explores and discusses the definition (if any), the bases, nature and categories of human rights.

## 2.1 Definition of Human Rights

In the international sphere, where diverse cultures are involved, where positivist underpinnings are shaky, and where implementation mechanisms are fragile, definition of human rights is crucial.<sup>56</sup> Since one's understanding of the meaning of human rights will influence one's judgment on such issues as which rights are regarded as universal, which should be given priority, which can be overruled by other interests, which call for international pressures, which can demand programs for implementation, and for which one will fight.<sup>57</sup>

The question regarding what human rights are and how they should be defined has attracted a number of thinkers who advance a diverse array of theories on the nature of human rights.<sup>58</sup> However, Shestack notes that the definition of human rights is abstract and complex.<sup>59</sup> But the abstractness of human rights can arguably be seen as a virtue, signaling openness for further historic development of human rights discourse in light of future experiences and new demands.<sup>60</sup>

Despite the abstractness of human rights, there are some common definitions provided for human rights. Internet Encyclopedia of Philosophy defines human rights as basic moral guarantees that people in all countries and cultures allegedly have simply because they are people.<sup>61</sup> In other words, human rights are the rights a human being has simply because he is a human being. They are the basic entitlements or minimum standards to be met for humans to live with dignity. Amparo Tomas defined human rights as “universal legal guarantees that belong to all human beings and that protect individuals and/or groups from actions and omissions of the State and some non-State actors that affect fundamental human dignity”.<sup>62</sup> But his definition is narrow in the sense that it is limited to those human rights recognized under international and regional human rights

instruments. While moral claims which are necessary to lead a decent and minimally good life worthy of dignity also constitutes human rights.<sup>63</sup>

Rosenbum Alan defined human rights as “the legitimate basis for a universal human community”.<sup>64</sup> By human community he refers that an ideal association of human persons conceived for the individual and collective benefit of its members. He further states that such association rooted in democracy is most befitting with humanity. This definition of human rights affirms the complementarity of democratic values and human rights.

When people today think or talk about human rights, they usually have in mind the sorts of rights found in the Universal Declaration of Human Rights (UDHR) and subsequent treaties. While they are right in holding this, however, human rights are also rights which automatically belong to a human person as a minimum guarantee for worthy human living though these rights are not recognized under positive law.

## **2.2 Basis of Human Rights**

Many people tend to take the validity of human rights for granted. Certainly, for many non-philosophers human rights may all too obviously appear to rest upon self-evidential truth and universal valid moral principles.<sup>65</sup> However, philosophers did not enjoy such license for epistemological complacency. There are two major schools of thought regarding the philosophical foundations of human rights. These are the foundationalist and the anti-foundationalist schools of thought.<sup>66</sup>

The foundationalist argues that there are philosophical foundations for human rights. They base their argument on moral philosophy, religion and natural law. For foundationalist, interest and will theory are the grounds which give rise to a moral basis for human rights. Advocates of interest theory argue that the principal function of human rights is to protect and promote certain



essential human interests.<sup>67</sup> According to this approach, human rights are based on the conception of human nature as human nature is expressed in human needs. But this conception is criticized in the sense that human needs are diverse. The will theory on the other hand attempts to establish the philosophical foundations of human rights upon a single human attribute: the capacity for freedom.<sup>68</sup> For the will theorists every human has a will and freedom to execute his will no matter how his/her will is bad or good. They argue that what is distinctive about human agency is the capacity for freedom and that this ought to constitute the core of any account of rights. Will theorists view human rights as originating in, or reducible to a single constitute right. But natural law theorists held that the theory of natural law led to natural rights which are most closely related to modern human rights.<sup>69</sup> While others held that the bases for human rights is religion.<sup>70</sup> Especially the concept of human dignity and equality which is enshrined in the world's major religions is used as bases for human rights.<sup>71</sup> The aspiration to protect the human dignity of all human beings is at the core of the concept of human rights.<sup>72</sup> The idea that humans are free and equal is also used as a ground for the conception of human rights.

The anti-foundationalists on the other hand argue that human rights are contingent historical facts without philosophical foundation.<sup>73</sup> Contemporary ideas like democracy and justice gives rise to the bases for human rights. They argue that human rights are responses to the gross atrocities happened to mankind.

But despite these philosophical battles in search of foundation for human rights, we have a corpus of human rights law regime. The existing international human rights law regime basis it's foundation on human dignity and equality.<sup>74</sup> Mention is also made to the effect that disregards of dignity and equality resulted in barbarous acts which outraged the conscience of mankind.<sup>75</sup> It can be argued that the existing international human rights law regime seems to accommodate

both schools of thought by recognizing human dignity and equality as foundations for human rights and also by referring to the impacts of gross human atrocities on the conscience of mankind.

### **2.3 Nature of Human Rights**

*All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.<sup>76</sup>*

*Vienna Declaration and Program of Action, 1993*

Human rights do not have to be given, bought, earned, or inherited; they belong to humans simply because they are human.<sup>77</sup> They are inherent to each individual. They exist in spite of the fact that one has the will or capacity to exercise them. Besides, human rights exist independently of the will of either an individual human being or a group of people.<sup>78</sup>

Human rights are applicable to all people everywhere at all times regardless of race, sex, religion, ethnicity, political or other opinion, national or social origin.<sup>79</sup> They are the birth rights of all human beings and thereby universal. However, there are arguments against the universality of human rights. Opponents of universality argue that human rights are culturally relative.<sup>80</sup>

Human rights are inalienable in the sense that they cannot be taken away; no one has the right to deprive another person of them for any reason.<sup>81</sup> People still have human rights even when the laws of their countries do not recognize them.

Human rights are indivisible, interdependent and interrelated that they are equal in importance and equally essential for the respect and dignity of each person. Human beings need them all to live a minimal good life. In other words, the violation or lack of a single human right affects the whole set of rights and thereby undermine the human quest of living a dignified life.

## **2.4 Categories of Human Rights**

Human rights either for philosophical account or for simplicity categorized in different ways depending upon different parameters. One of such classifications is grouping rights in to negative, active and positive rights. A negative right is a right not to be subject to interference by others. These constitute the classical liberal rights as articulated in the philosophy of John Lock.<sup>82</sup> Active human rights imply the right to participate in the political process as outlined by Jean-Jacques Rousseau.<sup>83</sup> Positive rights on the other hand impose duties on the part of the duty bearer to do positive actions. These are economic, social and cultural rights for which one find basis in the philosophy of Karl Marx.<sup>84</sup> The classification of rights into negative, active and positive is based on the duty they impose on the duty bearer.

Karel Vasak<sup>85</sup> on his part developed the notion of generation of rights. According to him there are three generation of human rights. The first generation includes civil and political rights; the second generation includes economic, social and cultural rights; and the third generation includes the right to development, peace and environment. The basis for such division is the time of evolution of human rights. The generational division of human rights by itself led to the

emergence of the idea of another category;<sup>86</sup> i.e., liberty rights (civil and political rights), equality rights (economic, social and cultural rights), and solidarity rights (right to development, peace and environment). For the purpose of this article the category of civil and political rights; economic, social and cultural rights; and environmental and developmental rights is adopted in discussing the impacts of corruption on human rights for the sake of simplicity.

### **3. Corruption and Human Rights**

There is a linkage between corruption and human rights. But a large part of the prevailing discourse on corruption tends to emphasize on its economic consequences, ignoring one of its most negative effects-the impact it has on human rights. Literature is scant that directly establishes the relationship between corruption and human rights. However, a number of authors mention the serious economic, social and political adversity it causes to a nation and its population, which directly results in violation of fundamental rights and freedoms.<sup>87</sup> International anti-corruption laws further emphasizes on the economic and political impact of corruption than the human rights impact.<sup>88</sup>

Under the human rights jurisprudence, it is States which are the principal duty bearers for human rights. Human rights obligations apply to all branches of government (executive, legislative and judicial) at all levels (national, regional and local). According to human rights jurisprudence, an act (or omission) is attributable to the State when committed, instigated, incited, encouraged or acquiesced in by any public authority or any other person acting in an official capacity.<sup>89</sup>

It is now commonly understood that States have tripartite obligation in relation to human rights: the obligations “to respect”, “to protect” and “to fulfill”. The obligation to respect requires the State to refrain from any measure that may deprive individuals of the enjoyment of their rights or

their ability to satisfy those rights by their efforts.<sup>90</sup> The obligation to protect requires the State to prevent violations of human rights by third parties. The obligation to protect is normally taken to be a central function of States, which have to prevent irreparable harm from being inflicted upon members of society.<sup>91</sup> This requires States: (a) to prevent violations of rights by individuals or other non-State actors; (b) to avoid and eliminate incentives to violate rights by third parties; and (c) to provide access to legal remedies when violations have occurred, in order to prevent further deprivations.<sup>92</sup> The obligation to fulfill requires the State to take measures to ensure that people under its jurisdiction can enjoy human rights that they cannot secure by their own efforts.

Corruption is committed by persons who work on either the public sector or the private sector. The existence of corruption in a State *per se* shows the failure of the State towards its human rights obligations. It means that the State is not willing or unable to enforce its human rights obligations to persons living in its jurisdiction. Both are violations of State obligations towards human rights.

Corruption affects the very nature of equality, human dignity and the quest for free personhood. It affects the very foundations of human rights. The violations of various human rights are the natural consequence of the attack of the foundation of human rights by the acts of corruption. The 11<sup>th</sup> International Conference on Corruption underscored this by not only declaring that large scale corruption should be designated as a crime against humanity, and that all human beings have a basic human right to live in a corruption-free society, but also condemned corruption as immoral, unjust and repugnant to the ideals of humanity enshrined in the UDHR.<sup>93</sup> In addition to this, the African Union Convention on Preventing and Combating Corruption, the Council of Europe Criminal Law and Civil Law Conventions on Corruption makes a linkage

between corruption and human rights by saying that ‘corruption represents a major threat to human rights’.<sup>94</sup>

Corruption has a negative impact on human dignity for the simple reason that it hinders the proper fulfillment of human rights.<sup>95</sup> Strengthening the enforcement of the international human rights law regime will have a supportive role for reducing corruption. Whenever human rights are guaranteed, there will be social empowerment and social accountability.<sup>96</sup> If weak human rights protection may create opportunities for corruption, policies that promote human rights may prevent corruption. The human rights discourse has something to do with the anti-corruption campaign by rectifying the weaknesses of the existing anti-corruption mechanisms especially international and regional anti-corruption conventions.

The discussion is based on the assumption that corruption is a universal problem which every society faces and human rights are universal values which every society pledges to protect. The objective here is to conceptually analyze the linkage between corruption and human rights with a view to search for an approach to solve the problem.

In examining the relationship between corruption and human rights, the article focuses only on the impacts of corruption on corruption victims. It neither deals with the human rights of those prosecuting and investigating corruption nor alleged corruption criminals.<sup>97</sup>

### **3.1 Corruption as a Violation of Human Rights**

United Nations (UN) treaty bodies and special procedures have concluded that, where corruption is widespread, States cannot comply with their human rights obligations.<sup>98</sup> Whenever there is widespread corruption, it can be said that, there will be a violation of human rights. There are three causal links between corruption and violation of human rights. These are, when corruption is a direct, indirect or remote cause for the violations of human rights.<sup>99</sup>

Corruption may be directly linked to a violation of human rights when a corrupt act is deliberately used as a means to violate a right. For example, a bribe offered to a judge directly affects the independence and impartiality of that judge and hence violate the right to a fair trial.

Corruption may also directly violate a human right when a State (or somebody acting in an official capacity) acts or fails to act in a way that prevents individuals from having access to that right.<sup>100</sup> For instance, when an individual bribe a doctor to obtain a medical treatment or bribe a school master to obtain a place for his/her child at school, the right to health and education respectively are directly violated by the acts of corruption.

Corruption can be an indirect cause for the violation of human rights when it is a necessary condition for the violation of the right.<sup>101</sup> In this case, corruption will be an essential factor contributing to a chain of events that eventually leads to violation of human rights. Hence, the right is violated by an act that derives from a corrupt act and the act of corruption is a *sine qua non* for the violation. This situation will arise, for example, if public officials allow the illegal importation of toxic waste from other countries in return for a bribe, and that waste is placed, or close to, a residential area.<sup>102</sup> If the toxic waste affects the health of persons living in that area, the right to life and health of the residents would be violated indirectly as a result of the bribery. However, these rights are not directly violated by the bribe, but the bribe was an essential factor without which the violation would not have occurred.

There are times when corruption plays a remote role for the violation of human rights. It is a situation where corruption is one factor among others for the violation of human rights.<sup>103</sup> When corruption during an electoral process raises concerns about the accuracy of the final result, social unrest and protests may occur.<sup>104</sup> In such a case, the right to political participation may be violated directly, and repression of the social protests may also cause serious violation of human

rights. Nonetheless, the electoral corruption would not necessarily be the only or determining causes of such riots or their repression. Many other factors might contribute and, to that extent, the corruption has a remote role to the violations after the social unrest and protests.

But the article is limited to those situations of human rights violations by the direct causes of corruption. That is corruption *per se* as a violation of human rights. The forth coming sections discuss corruption as a violation of different set of human rights as recognized by international and regional human rights instruments. The impacts of corruption on some rights will be discussed by taking into account the indivisibility and interdependence of human rights.

### **3.1.1 Civil and Political Rights**

In this section, corruption as a violation of human rights can be analyzed through the right to equality and non-discrimination, the right to fair trial, the right to effective remedy and the right to political participation.

The principle of equality and non-discrimination are fundamental principles in human rights. The principle that every individual is equal before the law and has the right to be protected by law on an equal basis is affirmed in all the main human rights treaties.<sup>105</sup> Every individual is entitled to be treated equally by public officials; and if a person bribes a public official, that person acquires a privileged status in relation to other similarly placed individuals who have not partaken in bribery.<sup>106</sup> Similarly, when a person is asked for a bribe in order to obtain a service to which that person is entitled without payment, that person suffers discrimination in relation to other individuals in the same situation.<sup>107</sup> There is a violation of the right in both examples because similar cases are treated in a different manner and the difference in treatment results from corruption which is not an objective or reasonable justification for discrimination.<sup>108</sup> In general,



corrupt practices commonly produce unequal and discriminatory outcomes with regard to human rights.

The right to fair trial is found in many human rights treaties.<sup>109</sup> It is composed of a broad range of standards that provide for the fair, effective and efficient administration of justice.<sup>110</sup> In the context of the judicial system, corruption may be defined as acts or omissions that constitute the use of public authority for the private benefit of court personnel, and result in the improper and unfair delivery of judicial decisions. Such acts and omissions include bribery, extortion, intimidation, influence and the abuse of court procedures for personal gain.<sup>111</sup> This covers a wide range of acts carried out by actors at different points in the judicial system (the judiciary, the police and prosecutors). For example a judge may be paid a bribe to exclude evidence that would otherwise lead to the conviction of a criminal. A court official may be paid a bribe to allocate a case to a sympathetic judge, to lose a case file, or to speed up the hearing of a case. Police can be bribed to tamper with criminal evidence. Prosecutors can be paid to avoid bringing a case forward or to assess the evidence in an unfair manner. All these acts violate the right to fair trial and the administration of justice.

The right to an effective remedy is guaranteed by most international human rights instruments.<sup>112</sup> It asserts that, when a human rights violation occurs, a State has a duty to provide victims with an effective remedy. Failure to do so can create a climate of impunity, particularly when States intentionally or regularly deny remedies.<sup>113</sup> States are under an obligation to provide accessible, effective and enforceable remedies to uphold civil and political rights.<sup>114</sup> A person claiming a remedy is entitled to have his or her claim determined and enforced by a competent domestic authority, and States must ensure that this can occur. If there is corruption in the justice system, it

is probable that some of these standards will not be respected. This may create the situation of impunity in addition to the violation of the right to an effective remedy.

The right to participation affirms that all citizens should be entitled to engage in decision-making processes that affect them. The major political expressions of the right to participation are the freedom to vote and stand for elections, the right to equal access to public services, and the freedoms of association and assembly. These rights are enshrined in several human rights treaties.<sup>115</sup> It is a plain fact that bribing voters to persuade them to vote or refrain from voting interferes with the integrity of an election and therefore violates the right to vote. In other cases, people may engage in acts, such as bribery, that are recognized to be corrupt, to obtain public service employment. This violates the right to equal access to public services which is one of the expressions of the right to participation. Above all, the right to participation presupposes the equality of participants; but corruption undermines equality and employs exclusion. All these are violations of the right of political participation by the incidents of corruption.

### **3.1.2 Economic, Social and Cultural Rights**

Under the International Covenant on Economic, Social and Cultural Rights (ICESCR) States are obligated to:

*take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*<sup>116</sup>

States are under obligation to allocate the ever increasing resource to the progressive realization of rights recognized under the covenant, prohibited from taking deliberately retrogressive

measures and provide public service such as food, education, health, water and house by taking into account the principles of availability, accessibility, acceptability and adoptability.<sup>117</sup>

Corruption implies that the State is not taking steps in the right direction. When funds are stolen by corrupt officials, or when access to healthcare, education and housing is dependent on bribes, a state's resources are clearly not being used maximally to realize economic, social and cultural rights.<sup>118</sup> In the paragraphs below, corruption as a violation of the right to food, housing and health will be discussed with a view to analyzing the impacts of corruption on the enjoyment of socio-economic and cultural rights.

The right to food also referred to as the right of every one to be free from hunger, is a component part of the more general right to an adequate standard of living.<sup>119</sup> The core contents of the right to food are explained by the Committee on Economic, Social and Cultural Rights in its General Comment No.12.<sup>120</sup> Corruption can compromise the realization of this right. Corruption is identified as one of the seven major economic obstacles that hinder the realization of the right.<sup>121</sup> In 1996, the Declaration of the World Food Summit expressly mentioned corruption as the causes of food insecurity as it diverts resources allocated for food to private uses.<sup>122</sup> Hence, when resources allocated for food are diverted to private uses, the right to food will be violated by the acts of corruption.

The right to adequate housing like that of the right to food is one of the component elements of the right to an adequate standard of living.<sup>123</sup> It focuses on the obligation to ensure that every one has housing that is safe, healthy and adequate.<sup>124</sup> In addition, the right forbids discrimination in the field of housing, as well as forced or arbitrary evictions or acts of unjust dispossession.<sup>125</sup> Corruption may violate this right by restricting one or more of its elements. Besides, as discrimination is inherent in acts of corruption, it will violate the right to adequate housing.

Article 12 of the ICESCR is allotted for the right to the highest attainable physical and mental health. It is explained as the right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.<sup>126</sup> Corruption affects the enjoyment of this right. Corruption in the health sector occurs in three main forms:<sup>127</sup> in management of financial resources (budget allocation); in the distribution of medical supplies (purchasing and marketing); and in the relationships of health workers with patients. In all its faces, corruption will violate the right to the highest attainable physical and mental health as it diverts the budget to individual accounts and discriminates between individuals.

### **3.1.3 Environmental and Developmental Rights**

All peoples have the right of self-determination, the right to freely dispose of their natural wealth and resources and thereby freely pursue their economic, social and cultural development.<sup>128</sup> At the same time they have a right to live in a clean environment.<sup>129</sup> A government that tolerates or actively engages in the corrupt transfer of ownership of national wealth to the benefit of some nationals, who occupy positions of power or influence in the society operates to deny the people, individually and collectively, their right to freely use, exploit and dispose of their natural wealth in a manner that advances their development. The facts and the decision in the Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria<sup>130</sup> case are illustrative of how corruption by the Nigerian military government negatively impacted on the rights of the people of Ogoni land to inter alia, freely dispose of their wealth and natural resources, and to live in a satisfactory environment favorable to their development.<sup>131</sup>

## **3.2 Human Rights as a Preventive Tool for Corruption**

As argued above, all forms of corruption tend either directly, indirectly or remotely to violate human rights. Conversely, wherever human rights are not protected, corruption is likely to flourish. In the absence of human rights like freedom of expression and assembly – or where access to information and education is restricted – it is extremely difficult to hold government officials to account, which allows corruption more room to spread freely.<sup>132</sup> Besides, where corruption is prevalent, it is hard to promote human rights. The discussion is based on the assumption that protection and promotion of human rights will enhance the effectiveness of anti-corruption measures.

### **3.2.1 Guarantying Human Rights**

Implementation of human rights can contribute for the prevention of corruption because human rights address abuses of power, and corruption is essentially an abuse of power.<sup>133</sup> A human rights analysis throws light on the power relations in a society because it pays particular attention to discrimination, equity and the removal of economic, legal and political obstacles that prevent marginalized groups from enjoying their rights.<sup>134</sup> As a result, a human rights analysis can contribute directly to the design and implementation of anti-corruption policies. If basic human rights are guaranteed, especially the rights to the basic necessities of life, then the incidence of corruption and related offences would be reduced.<sup>135</sup>

As the problem of corruption is multi-faceted, there is no one size fit all principle to deal with it. There are preventive and curative approaches for combating corruption as stated by Ofoosu-Amaah, Soopramanien and Uprety;

*From a domestic point of view, there are two separate, but complementary, aspects of the fight against corruption. The first consists of upstream rules and norms of good behavior*

*(codes of conduct, manifestos, and declarations) conducive to a corruption free society (preventive approach). The second aspect consists of anti-corruption laws proper (general or specific legislative enactments), whose purpose is to provide appropriate remedies, including criminal sanctions and penalties, procedural rules, and institutional mechanisms as needed, to combat acts of corruption that have already occurred (curative approach). The first aspect deals with corruption ex ante while the second aspect deals with corruption ex post.*<sup>136</sup>

Ensuring the effective enforcement of human rights as norms of good behavior will have a preventive role in fighting corruption. For example, the right to freedom of expression, assembly and association are vital to fight corruption.<sup>137</sup> Where governments permit information to flow freely, it should become easier to identify and denounce cases of corruption. Persons will not commit corruption at least with impunity due to fear of public scrutiny.

### **3.2.2 Ensuring Non-Discrimination and Participation**

Giving due effect to the enforcement of human rights in general no doubt will reduce the problem of corruption. But there are also some norms and principles of human rights which the anti-corruption campaign shares.<sup>138</sup> Guarantying these norms and principles will prevent the incidence of corruption. These norms and principles are non-discrimination and participation.

The principle of non-discrimination is fundamental to human rights. Both the international human rights instruments and general comments of the treaty bodies affirmed that the principle of non-discrimination is the basic principle of human rights and thereby States parties are required to implement it without any condition.<sup>139</sup> Corruption is associated with discrimination for two simple reasons.<sup>140</sup> Firstly, this is because corruption distorts the allocation of public resources, which causes the administration of public services to become discriminatory and

arbitrary. Individuals or groups of people are left without access to a service, for example, because they cannot or refuse to pay a bribe or do not belong to a given client network. Second, corruption is often associated with discrimination based on race, color, sex, language, religion, political opinion, national or social origin or sexual orientation. In Europe, for example, it appears that Roma people are disproportionately asked to pay bribes when they seek access to health and education services.<sup>141</sup> Corruption has a disproportionate impact on people who are victims of discrimination. Under a human rights framework, the principle of non-discrimination requires States to take affirmative action to ensure that disempowered groups and those suffering from structural discrimination such as indigenous peoples, migrant workers, persons with disabilities, persons with HIV/AIDS, refugees, prisoners, the poor, women and children have fair access to services and resources. However, corruption reinforces exclusion and discrimination and tends to magnify and exacerbate pre-existing human rights problems.

Participation is also at the heart of human rights discourse. It is constructed out of several key rights.<sup>142</sup> To participate effectively, people need to organize themselves freely (freedom of association), to communicate their opinions frankly (freedom of expression) and to inform themselves (right to access to information). Citizen's participation contributes in an essential way to political decision-making and the implementation of public policies. Where strong control mechanisms are lacking, the oversight that citizens and civil society organizations can exercise becomes particularly important to prevent abuse of power and to detect and denounce corruption.<sup>143</sup> Citizen participation additionally empowers vulnerable groups to demand and exercise their rights. Corruption reproduces itself when elites are able to perpetuate their privileges while disadvantaged groups have no means to defend their interests.<sup>144</sup> Citizen

participation breaks that circle and in the long run can help to redistribute power and resources while reducing opportunities for corruption.

### **3.2.3 Social Empowerment**

Whenever human rights are guaranteed, the society will be empowered. This is because the ever increasing resources and alternatives are open to ordinary citizens.<sup>145</sup> In its classic postulation, social empowerment entails strengthening civil society in order to enhance its political and economic vitality, providing more orderly paths of access and rules of interaction between State and society, and balancing economic and political opportunities.<sup>146</sup> Where it is successful, social empowerment will not totally eradicate corruption. It can, however, provide necessary support for institutional reforms, weaken the combinations of monopoly, discretion, and lack of accountability that make for systemic corruption, and help institutionalize reform for the long term by linking it to lasting interests contending in active political and social processes.<sup>147</sup>

### **Conclusion**

Corruption is a universal problem offending a universal value -human rights. Corruption *per se* is a violation of human rights. Preventing corruption plays a great role for the realization of human rights. At the same time, guarantying human rights in general and ensuring non-discrimination and participation in particular will reduce the incidents of corruption. Whenever these are done, there will be social empowerment which creates social accountability. The anti-corruption campaign and the human rights movement have something to share in common. Both are struggling for the orderly and decent life of humans rooted in dignity and equality. Thus, it is important to note that an integrated approach is required if it is said the interests of the society are respected. This is made by acknowledging that human rights can play a preventive role for



corruption; and reducing the incidents of corruption will be a great step forward for the enforcement of human rights. Such understanding opens the door to the existing human rights mechanisms on which to base further action against corruption, since corruption is a violation of human rights. Human rights monitoring mechanisms such as international and regional human rights commissions and courts, UN complaint mechanisms or national human rights systems will be useful to remedy corrupt practices. This brings the anti-corruption and human rights activists together for the fight against corruption and violations of human rights.

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<sup>69</sup> J. Shestack, 'The Philosophic Foundation of Human Rights' *op.cit.*, 207.

<sup>70</sup> *ibid.*, 204.

<sup>71</sup> For a detail account of human dignity as a bases for human rights see M. Penninga, 'A Judeo-Christian Account of Human Dignity in Canadian Law and Public Policy', (MA thesis, Political Science, University of Lethbridge, LETHBRIDGE, ALBERTA, CANADA, 2008); J. Ramus, 'Human Dignity in Indian Secularism and in Christianity', (PHD thesis, Radbound University Nijmegen, Indea, clariten publications, 2007); MI. Goolam, 'Human Dignity - Our Supreme Constitutional Value', 4 *Potchefstroom Elec. L.J.* 1, 2001; A. Gewirth, *Human Dignity as the Basis of Rights*, (Chicago university press, 1996)

<sup>72</sup> W. Benedek (ed), *Understanding human rights, manual on human rights education, European Training and research center for human rights and democracy (ETC)*, Graz, 2006) 23.

<sup>73</sup> M. Freeman, 'The Philosophical Foundations of Human Rights', *op.cit.*

<sup>74</sup> See for example, *Universal Declaration of Human Rights*, adopted and proclaimed by the General Assembly Resolution 217 A (III) of 10 December 1948, Preamble Para 1; *International Covenant on Civil and Political Rights*, adopted by the General Assembly on 16 December 1966

and entered into force on 23 March 1976, Preamble Para 2; and *International Covenant on Economic, Social and Cultural Rights*, adopted by the General Assembly on 16 December and entered into force on 3 January 1976, Preamble Para 2.

<sup>75</sup> See UDHR, preamble Para 2.

<sup>76</sup> *Vienna Declaration and Program of Action*, adopted by the World Conference on Human Rights held in Vienna on 25 June 1993, available at, <<http://www2.ohchr.org/english/law/pdf/vienna.pdf>> (accessed 4 April 2012), I(5).

<sup>77</sup> Action Professionals' for the People (APAP) (2001), '*Baseline survey report on APAP's Intervention in Areas of Human Rights*', Addis Ababa, available at, <<http://www.apapeth.org/Docs/Baseline%20Survey.pdf>> (accessed on 4 April 2012).

<sup>78</sup> M. Piechowiak, 'What are Human Rights? The Concept of Human Rights and their Extra-legal Justification,' in R. Hanski and S. Markku (eds), *An Introduction to the International Protection of Human Rights: A Text Book*. (2nd Rev ed). (Turku/Abo: Institute of Human Rights, Abo Akademi University, 1999) 3, as quoted by T. Regassa, '*Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia*', *op.cit.*, 290

<sup>79</sup> *ibid.*

<sup>80</sup> For universalism versus cultural relativism see for example E. Reichert, '*Human Rights: An Examination of Universalism and Cultural Relativism*', *Journal of Comparative Social welfare*, Vol. 22, No. 1, 2006, 23-36.

<sup>81</sup> *What are human rights? The nature and sources of human rights*, available at, <<http://www.siiionline.org/?...human-rights-the-nature-sources-human-rights>> (accessed 10 March 2012).

<sup>82</sup> *Human Rights: Progress and Pitfalls, the European Evolution of Human Rights*, International Relations and Security Network (ISN), available at, <<http://www.isn.ethz.ch/isn/Current-Affairs/ISN-Insights/Detail?lng=en&ots627=fce62fe0-528d-4884-9cdf283c282cf0b2&id=123881&tabid=123885&contextid734=123881&contextid735=123885>> (accessed 25 April 2012).

<sup>83</sup> *ibid.*

<sup>84</sup> *ibid.*

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<sup>85</sup> K. Vasak, *Human Rights: A Thirty Year Struggle- the Sustained Efforts to give force to the Universal Declaration of Human Rights*, (UNSECO, Courier 30:11, Paris, UNSECO, 1977) as quoted by T. Regassa, ‘*Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia*’, *op.cit.*, 294.

<sup>86</sup> T. Regassa, ‘*Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia*’, *op.cit.*, 294.

<sup>87</sup> J. Wei (1999), ‘*Policy Research Working Paper*’, in World Bank (ed), *Corruption in Economic Development: Beneficial grease, minor annoyance, or major obstacle*, pp. 1 – 30, quoted by Action Professionals’ Association for the People (APAP) (2001), ‘*An Overview of Corruption in Relation to the Ethiopian Legal System*’, available at, <<http://www.telecom.net.et/~apap/pdf/An%20Overview%20of%20Corruption.pdf>> (accessed 11 March 2012).

<sup>88</sup> See the United Nations Convention Against Corruption, Inter-American Convention Against Corruption, African Union Convention on Preventing and Combating Corruption and the Council of Europe’s Anti-corruption Instruments.

<sup>89</sup> Transparency International, ‘*Corruption and Human Rights: Making the Connection*’, *op.cit.*, 24.

<sup>90</sup> J. Bacio Terracino (2008), ‘*Corruption and Human Rights-Corruption as a Violation of Human Rights*’, working paper, International Council on Human Rights Policy, available at, <[http://www.ichrp.org/files/papers/150/131\\_terracino\\_en\\_2008.pdf](http://www.ichrp.org/files/papers/150/131_terracino_en_2008.pdf)> (accessed 11 April 2012).

<sup>91</sup> *ibid.*, see also Transparency International, ‘*Corruption and Human Rights : Making the Connection*’, *op.cit.*, 25.

<sup>92</sup> *ibid.*

<sup>93</sup> See the findings of the 11<sup>th</sup> International Anti-Corruption Conference, *op.cit.*

<sup>94</sup> See the Preambles of the *African Union Convention on Preventing and Combating Corruption*; Adopted in Maputo, Mozambique on 11 July 2003, in United Nations Office in Drugs and Crime, *Compendium of International Legal Instruments on Corruption*, 2<sup>nd</sup> ed, (United Nations, New York, 2005) 116-130; Council of Europe Criminal Law Convention on Corruption; Adopted at Strasbourg in 1999, in United Nations Office in Drugs and Crime,



*op.cit.*, pp.139-154; and the Council of Europe Civil Law Convention on Corruption; Adopted at Strasbourg in 1999, in United Nations Office in Drugs and Crime, *op.cit.*, 131-138.

<sup>95</sup> CR. Kumar, ‘*Corruption and Human Rights: Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India*’, *op.cit.*, 52.

<sup>96</sup> M. Johnston, ‘*The Search for Definitions: The Vitality of Politics and the Issue of Corruption*’, (149

*International Social Science Journal, 1996*) 321 – 325 quoted in M. Johnston (1998), ‘*Fighting Systemic Corruption: Social Foundations for Institutional Reform*’, in M. Robinson (ed), *Corruption and Development*, (Frank Cass, London, 1998) 89.

<sup>97</sup> For such aspects See T. Gathii, ‘*Defining the Relationship Between Human Rights and Corruption*’, 31 *U. Pa. J. Int’l L.*, 2009-2010, 125.

<sup>98</sup> See, for example, Statements by the Committee on Economic, Social and Cultural Rights that “states face serious problems of corruption, which have negative effects on the full exercise of rights covered by the Covenant (ICESCR)” E/C.12/1/ADD.91 (CESCR, 2003, Para.12); and by the Committee on the Rights of the Child that it “remains concerned at the negative impact corruption may have on the allocation of already limited resources to effectively improve the promotion and protection of children’s rights, including their right to education and health” CRC/C/COG/CO/1 Para.14. See also the statement by the UN Special Rapporteur on independence of judges and lawyers in E/CN.4/2006/52/Add.4. Para.96.

<sup>99</sup> K. Anukansai, ‘*Corruption: The Catalyst for the Violation of Human Rights*’, *op.cit.*, see also Transparency International, ‘*Corruption and Human Rights: Making the Connection*’, *op.cit.*, 27-28.

<sup>100</sup> *ibid.*

<sup>101</sup> *ibid.*

<sup>102</sup> *ibid.*

<sup>103</sup> *ibid.*

<sup>104</sup> *ibid.*

<sup>105</sup> See for example, the *United Nations Charter* signed on 26 June 1945 in San Francisco and came into force on 24 October 1945, art. 1(3), 13(1) (b), 55(c), and 76; the *Universal Declaration of Human Rights(UDHR)*, adopted by the General Assembly Resolution

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A/RES/217/ A (III) of 10 December 1948, in Council of Europe (2009), *Human Rights in International Law*, 3<sup>rd</sup> ed, Universal Law Publishing Co., pp.11-16, art. 2 and 7; the *International Covenant on Civil and Political Rights (ICCPR)*, adopted by the General Assembly Resolution A/RES/2200A (XXI) of 16 December 1966 and entered in to force on 23 March 1976, in Council of Europe, *op.cit.*, pp.33-50, art. 2(1) and 26; the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, adopted by General Assembly Resolution A/RES/2200A/ (XXI) of 16 December 1966 and entered in to force on 3 January 1976, in Council of Europe, *op.cit.*, pp. 59-67, art. 2(2), and the *Convention on the Rights of the Child (CRC)*, adopted by General Assembly resolution A/RES/44/25/ of 20 November 1989 and entered in to force on 2 September 1990, in Council of Europe, *op.cit.*, pp.117-136, art. 2. Some instruments prohibit discrimination on specific grounds; for example the *International Convention on the Elimination of all forms of Racial Discrimination (CERD)*, adopted by General Assembly Resolution A/RES/2106/ (XX) of 21 December 1965 and entered in to force on 4 January 1969, in Council of Europe, *op.cit.*, pp.21-32 and the *Convention on the Elimination of all forms of Discrimination against Women (CEDAW)*, adopted by General Assembly Resolution A/RES/34/180 of 18 December 1979 and entered in to force on 3 September 1981, in Council of Europe, *op.cit.*, pp.69-80. Others prohibit discrimination in the exercise of various rights: for example the *International Labor Organization's Convention 111 on Discrimination (employment and occupation)*, adopted on 25 June 1958 in Geneva and entered in to force on 15 June 1960, in Council of Europe, *op.cit.*, pp.235-238, addresses the right to work, and a United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention addresses discrimination in education. See also regional instruments, including the *American Declaration on Human Rights*, adopted by the ninth international conference of American states, Bogota, Columbia in 1948, in Council of Europe, *op.cit.*, pp.633-640, art. 2; the *American Convention on Human Rights (ACHR)*, adopted on 22 November 1969 in San Jose, Costa Rica and entered in to force on 18 July 1978, in Council of Europe, *op.cit.*, pp.643-666, art. 24; the *African Charter on Human and Peoples' Rights (ACHPR)*, adopted on 27 June 1981 in Nairobi and entered in to force on 21 October 1986, in Council of Europe, *op.cit.*, pp.579-594, art. 2 and 3; and the *European Convention on Human Rights and Fundamental Freedoms (ECHR)*, adopted on 4 November 1950 in Rome and entered in to force

on 3 September 1953, in Council of Europe, *op.cit.*, pp.309-334, which establish freestanding rights to equality.

<sup>106</sup> Transparency International, '*Corruption and Human Rights: Making the Connection*', *op.cit.*, 33; see also P. Eigen (2004), '*Corruption is a Human Rights Issue*', Business and Human Rights seminar, London, available at, <[http://www.bhrseminar.org/2004%20Documents/Peter\\_Eigen\\_09.12.04.doc](http://www.bhrseminar.org/2004%20Documents/Peter_Eigen_09.12.04.doc)> (accessed 11 March 2012).

<sup>107</sup> *ibid.*

<sup>108</sup> *ibid.*

<sup>109</sup> See, for example, art. 14 of the ICCPR; art. 6 and 7 of the EHCR; art. 8 and 9 of ACHR and art. 7 of the ACHPR.

<sup>110</sup> Besides the human rights treaties there are also standards though not binding which are essential for fair trial and the administration of justice like the Judicial Group on Strengthening Judicial Integrity and the Bangalore Principles of Judicial Conduct, available at, <<http://www.gtz.de/de/dokumente/gtz-en-bangalore-principles-indien-2007.pdf>> (accessed 11 March 2012).

<sup>111</sup> See Transparency International, *Global Corruption report 2007-Corruption in Judicial systems*, (Cambridge University press, Cambridge, 2007)

<sup>112</sup> See, for example, ICCPR, art. 2(3); CEDAW, art. 2 and 3; CERD, art. 6; ICESCR, art. 2 and 3; CRC, art. 12, 13 and 37(d)).

<sup>113</sup> J. Bacio Terracino, '*Corruption and Human Rights-Corruption as a Violation of Human Rights*', *op.cit.*, 10-11; see also Transparency International, '*Corruption and Human rights: making the Connection*', *op.cit.*, 35-42.

<sup>114</sup> *ibid.*

<sup>115</sup> See, for example, ICCPR, art. 25; CEDAW, art. 7; ECHR, art. 3 of the First Protocol; ACHR, art. 23; and ACHPR, art. 13.

<sup>116</sup> See, ICESCR, art. 2(1).

<sup>117</sup> See United Nations Committee on Economic, Social and Cultural Rights (CESCR) (1990), '*General Comment No. 3: The Nature of States Parties' Obligation, Article 2, Para. 1 of the ICESCR*'; Para.9, pp.15-18; United Nations Committee on Economic, Social and Cultural Rights

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(CESCR) (1991), ‘*General Comment No. 4: The Right to Adequate Housing, Article 11(1) of the ICESCR*’; Para. 8 and 11, pp.19-24, in United Nations International Human Rights Instruments (2004), *Compilations of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/Gen/1/Rev.7.

<sup>118</sup> See, for example, The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2006/48, Para. 40. And the notes of the UN Committee on the rights of the Child, CRC/C/15/Add.136, Para. 5; CRC/C/15/Add.160, Para. 9; and CRC/C/15/Add.124, Para.’s 18 and 19.

<sup>119</sup> See, ICESCR, art. 11(2).

<sup>120</sup> See United Nations Committee on Economic, Social and Cultural Rights (CESCR) (1999), ‘*General Comment No. 12: The Right to Adequate Food, Article 11 of the ICESCR*’, in United Nations Human Rights Instruments, *op.cit.*, 63-71.

<sup>121</sup> See UN Special Rapporteur on the right to food, E/CN.4/2001/53, Para. 69.

<sup>122</sup> Transparency International, ‘*Corruption and Human Rights: Making the Connection*’, *op.cit.*, 50; see also J. Bacio Terracino, *Corruption and Human Rights-Corruption as a Violation of Human Rights*’, *op.cit.*, 18-19.

<sup>123</sup> See, ICESCR, art. 11(1).

<sup>124</sup> See United Nations Committee on Economic, Social and Cultural Rights, ‘*General Comment No. 4*’, *op.cit.*; and United Nations Committee on Economic, Social and Cultural Rights (CESCR) (1997), ‘*General Comment No. 7: The Right to Adequate Housing, Article 11(1) of the ICESCR: Forced Evictions*’; in United Nations Human Rights Instruments, *op.cit.*, 46-51.

<sup>125</sup> *ibid.*

<sup>126</sup> See United Nations Committee on Economic, Social and Cultural Rights (CESCR) (2000), ‘*General Comment No. 14: The Right to the Highest Attainable Standard of Health, Article 12 of the ICESCR*’, in United Nations Human Rights Instruments, *op.cit.*, 86-106.

<sup>127</sup> Transparency International, ‘*Corruption and Human Rights: Making the Connection*’, *op.cit.*, p. 53; see also J. Bacio Terracino, ‘*Corruption and Human Rights-Corruption as a Violation of Human Rights*’, *op.cit.*, 20-23.

<sup>128</sup> See, common article 1 of the ICCPR and ICECSR, article 20-22 of the ACHPR and the Declaration on the Right to Development adopted by the United Nations General Assembly Res. 41/128(1986).

<sup>129</sup> See for example, ACHPR, art. 24.

<sup>130</sup> Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria (2001) AHRLR 60(ACHPR 2001); this complaint concerned the consequences of environmental degradation in Ogoni land caused by Shell Corporation in collusion with the Nigerian government.

<sup>131</sup> O. Ogundoku, 'A Human Rights Approach to Combating Corruption in Africa: Appraising the AU convention using Nigeria and South Africa', (LLM thesis, Center for Human Rights, Faculty of Law, University of Pretoria, 2005) 14-15.

<sup>132</sup> Transparency International, '*Integrating Human Rights in the Anti-Corruption Agenda: Challenges, opportunities and possibilities*', (council on human rights policy, 2010) 2.

<sup>133</sup> *ibid.*, 3

<sup>134</sup> *ibid.*, 5

<sup>135</sup> *ibid.*, 7

<sup>136</sup> WP. Ofosu-Amaah, R. Soopramanien and K. Uprety (1999), '*Combating Corruption: A Comparative Review of Selected Legal Aspects of State and Major International Initiatives*', in CN. Ojukwu, '*Legal and Institutional Mechanisms Combating Corruption in Nigeria*, Paper presented at 15<sup>th</sup> International Conference of the International Society for the Reform of Criminal Law, Australia, 26-30 August 2001, available at <<http://www.isrcl.org/Papers/Ojukwu.pdf>> (accessed 11 March 2012).

<sup>137</sup> Transparency International, '*Corruption and Human Rights: Making the Connection*', *op.cit.*, 11.

<sup>138</sup> *ibid.*, 6.

<sup>139</sup> See art. 2 and 3 of the ICESCR; art. 2, 3, 14, 24, 26, and 27 of the ICCPR; CEDAW (the entire provisions), and CERD (the entire provisions) and see also United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 3, op.cit.*; United Nations Committee on Human Rights (HRC) (1989), '*General Comment No. 18: Non-Discrimination*', in United Nations Human Rights Instruments, *op.cit.*, pp.146-148; United Nations Committee on Human Rights (HRC) (2000), '*General Comment No. 28: The Equality of Rights Between Men*

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*and Women, Article 3 of the ICCPR*’, in United Nations Human Rights Instruments, *op.cit.*, pp.178-184; United Nations Committee on Economic, Social and Cultural Rights (CESCR) (2005), ‘*General Comment No. 16: The Equal Rights of Men and Women to the Enjoyment of Economic, Social and Cultural Rights, Article 3 of the ICESCR*’.

<sup>140</sup> Transparency International, ‘*Corruption and Human Rights: Making the Connection*’, *op.cit.*

<sup>141</sup> See the analysis of the UN Special Rapporteur on the sale of children, child prostitution and child pornography, U.N. Doc. E/CN.4/2006/67/Add.2, Para. 47.

<sup>142</sup> The right to participation in human rights standards is constructed of art. 19 (to hold opinions), art. 21 (peaceful assembly), art. 22 (freedom of association), art. 25 (the right to take part in the conduct of public affairs, the right to elect and be elected) of the ICCPR; art. 15 (the right to take part in cultural life) of the ICESCR, art. 7 and 8 (women participation in politics and public life) of CEDAW, art. 12 (the right to be heard), art. 13 (freedom to seek, receive and impart information), art. 15 (freedom of association and peaceful assembly), art. 31 (guarantying the right to participate in cultural life and the arts) of the CRC and art. 29 and 30 (participation in political, public life, cultural life, leisure, recreation and sports) of the CRPD.

<sup>143</sup> Transparency International, ‘*Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Opportunities and Possibilities*’, *op.cit.*

<sup>144</sup> *ibid.*

<sup>145</sup> M. Johnston, ‘*The Search for Definitions: The Vitality of Politics and the Issue of Corruption*’, *op.cit.*

<sup>146</sup> *ibid.*

<sup>147</sup> *ibid.*, 85.