

Corruption is a complex phenomenon that is encountered worldwide; it is present in both developed and developing countries.<sup>1</sup> There is no universally authoritative definition of corruption but it has been broadly understood as ‘the dishonest misuse or abuse of a position of power to secure undue personal gain or advantage, or to secure undue gain or advantage for a third party’.<sup>2</sup> Corruption includes acts as bribery, money-laundering, embezzlement, trading in influence, abuse of function, illicit enrichment and obstruction of justice.<sup>3</sup> Corruption may be direct or indirect, through acts or omissions, pecuniary (bribery) or non-pecuniary (favours), all underpinned by the threat of violence.

### LINKAGES & CAUSES

Torture and other ill-treatment and corruption must be recognized as inextricably linked; more instances of torture and ill-treatment are usually found where there are higher levels of corruption. Corruption prevails in non-custodial settings as well as in the context of deprivation of liberty, as documented in the literature and by international monitoring bodies, such as the CPT and SPT.

The UN Special Rapporteur on Torture has also illustrated a number of manifestations, such as being forced to ‘engage in a sexual act in return for the performance of an official duty’, where acts or threat of torture are instrumentalized as a ‘tool to extort money and other valuables from victims, their families or friends’, conversely undue advantage may be deliberately offered to induce acts of torture or prevent accountability.<sup>6</sup>

### POLICING & POLICE CUSTODY

Most analyses of police violence and police corruption point to fragile institutional frameworks and impunity coupled with low pay and low prestige in policing.<sup>7</sup> In countries where state agents may not receive proper or adequate pay, there will be a greater temptation to resort to corruption, abuse of power and incomes. During police custody and the early phases of pre-trial detention suspects may be forced to pay the investigating officer(s) money to avoid being subjected to torture or other forms of ill-treatment, such as extraction of confessions or information. While policing poor urban neighbourhoods, the police and other public authorities may use force and threats thereof to extort money – or services, such as sexual services – from vulnerable groups living on the margins of society and on the fringes of the law, incl. juveniles in conflict with the law, sex workers, slum dwellers and street vendors.

### DETENTION

During detention, prison officials may resort to extortion of money from prisoners in return for granting them access to basic needs (such as access to medical care, family visits) and to certain privileges, services of benefits (e.g. being placed in a cell instead of a dormitory, liberty to move around more freely within the prison). Corruption may cause or contribute to lack of resources to provide for basic needs.<sup>8</sup> In understaffed institutions, a system based on the use of trusted inmates is more likely to be in place, and the trusted inmates themselves may take advantage of their privileged position to extort money or favours from other, more vulnerable inmates.<sup>9</sup>

### JUDICIAL PROCESS

Similarly, corrupt practices during the judicial process also engender conditions of torture and ill-treatment.<sup>10</sup> Conversely, torture or its threat may also be used to influence judicial processes whether in terms of obtaining favourable outcomes in ordinary criminal trials or interfering with accountability for corrupt practices themselves. For instance, the difference between whether a detainee is brought before a judge or not is in some jurisdictions dependent on bribes. The detainee who is not able to pay can conceivably languish in arbitrary detention and poor conditions.

### IMPACTS & SOLUTIONS

Corruption ‘facilitates, perpetuates and institutionalizes’ violations of human rights.<sup>4</sup> According to the Human Rights Council, it is ‘difficult to find a human right that could not be violated by corruption’.<sup>5</sup> Corruption disproportionately aggravates and compounds existing disadvantage, the most vulnerable.

Efforts to improve institutional transparency and accountability should be complemented by understandings of the complex relational and contextual realities pertaining to pre-conditions, causes and consequences.<sup>11</sup> It is relevant to focus more specifically on the negative impact of corruption concerning prevention, reporting and accountability as areas where existing measures or identified areas of concern may be overlapping and mutually reinforcing. This is the case concerning e.g. legal and procedural safeguards, education and information in training of law enforcement personnel, and cooperation between preventive bodies/authorities. Conversely, limitations with respect to conventional approaches, such as prosecution and documentation, need to be accepted. The ‘under-perceived’ experiences and needs of the urban poor must be featured.<sup>12</sup>

Other solutions include adoption of legislation to criminalize corruption and preventing persons in vulnerable situations at particular high risk of becoming victims of torture and corruption. Strengthening independent monitoring and reporting, transnational efforts, and synergies within United Nations bodies are significant.<sup>13</sup>

## REFERENCES

<sup>1</sup> UN Subcommittee for Prevention of Torture, Seventh Annual Report, CAT/C/52/2, 24 February 2014, (hereafter 'SPT Report'), para. 73; UN Special Rapporteur on Torture, Report to the Human Rights Council, A/HRC/40/59, 16 January 2019, (hereafter 'SRT Report'), para. 12. Historically, torture and corruption have been addressed in separate normative, policy and research domains. Corruption has been dealt with in the context of governance, whereas torture and other forms of ill-treatment have been addressed as human rights violations. Both phenomena are governed by an international legal framework, notably the UNCAT and UNCAC, that seeks to prevent and eradicate torture and corruption respectively. While the existing frameworks are arguably sufficient on a normative level, there remains a need to increase understanding on how to prevent corruption as a decisive factor increasing the risk of torture or ill-treatment.

<sup>2</sup> SPT Report, para. 73: "the acts that it includes can be derived from the prohibitions included in various international and national texts, including *United Nations Convention against Corruption*, the *African Union Convention on Preventing and Combating Corruption*, the *Inter-American Convention against Corruption* and the *Criminal Law Convention on Corruption of the Council of Europe*".

*The African Union Convention on Preventing and Combating Corruption*: Art. 1 of the Convention defines corruption as "acts and practices including related offences proscribed in this convention." Counting bribery art. 15-16 and art. 21, Embezzlement, misappropriation or other diversion of property by a public official art. 17, trading in influence 18, abuse of functions art. 19, illicit enrichment art. 20, Embezzlement of property in the private sector art. 22, Obstruction of justice art. 25, and so forth.

*The Inter-American Convention*: There is no definition but several acts that constitute corruption are listed. 1. This Convention is applicable to the following acts of corruption: (a) The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions; (b) The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions; (c) Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party; (d) The fraudulent use or concealment of property derived from any of the acts referred to in this article; and (e) Participation as a principal, coprincipal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article. Transnational Bribery Article VIII, and Illicit Enrichment article IX.

*The Criminal Law Convention on Corruption of the Council of Europe*: There is no exact definition but it is enhanced that measurers must be taken against certain acts such as: Bribery article 2-11, Trading in influence article 12, Money laundering of proceeds from corruption offences article 13, Account offences article 14, Participatory acts article 15.

<sup>3</sup> *United Nations Convention against Corruption*: Some offences are bribery, art. 14-15 and art. 21, embezzlement, misappropriation or other diversion of property by a public official art. 17, trading in influence art. 18, abuse of functions art. 19, illicit enrichment art. 20, abuse of function, laundering of proceeds of crime art. 23. obstruction of justice art. 25

<sup>4</sup> SPT Report, para. 76.

<sup>5</sup> Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights, A/HRC/28/73, 5 January 2011, para. 17.

<sup>6</sup> See UN Special Rapporteur on Torture, Report to the Human Rights Council, A/HRC/40/59, 16 January 2019 (SRT Report).

<sup>7</sup> Steffen Jensen and Morten Koch Andersen, *Corruption and Torture: Violent Exchange and the Policing of the Poor* (Aalborg University Press, 2017), p. 40.

<sup>8</sup> SRT Report, para. 40.

<sup>9</sup> SRT Report, paras. 34-35.

<sup>10</sup> SRT Report, para. 24; SPT Report, para. 82.

<sup>11</sup> HRC 'Analysing the link between corruption and impairment of the enjoyment of human rights may contribute to a better understanding of the effects of corruption – notably its human dimension and social implications – can be an important step towards making corruption a public issue'-

<sup>12</sup> Steffen Jensen, Tobias Kelly, Morten Koch Andersen, Catrine Christiansen, Jeevan Raj Sharma, 'Torture and Ill-Treatment Under Perceived: Human Rights Documentation and the Poor', *Human Rights Quarterly*, Volume 39, Number 2, May 2017, 393-415.

<sup>13</sup> See SRT Report, paras. 69-76.