

# Improving the Human Rights Dimension of the Fight against Corruption

## How UN Treaty Bodies address the issue of corruption?

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## List of abbreviations

CAT	Committee Against Torture
CED	Committee on Enforced Disappearances
CEDAW	Committee on the Elimination of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CMW	Committee on Migrant Workers
COBS	Concluding Observations
CRC	Committee on the Rights of the Child
CRPD	Committee on the Rights of People with Disabilities
HRCttee	Human Rights Committee
Recomm	Recommendations
SPT	Subcommittee for the Prevention of Torture
TB	Treaty Body

# 1. Introduction

Experts and practitioners alike widely recognize that corruption inhibits the enjoyment of civil, political, and socio-economic rights. Corruption continues to undermine justice and accountability reforms and remains both a driver of human rights abuse and a barrier to States' implementation of treaty-based human rights obligations.

Despite being widely recognized as connected to human rights, corruption is rarely directly addressed by UN Treaty Bodies.

The UN Human Rights Committee has historically linked corruption to judicial independence under the International Covenant on Civil and Political Rights art. 14. Other aspects are rarely addressed. Other Treaty Bodies also have a limited perspective.

The purpose of this article is to analyze the observations and recommendations (Concluding Observations) in States' reviews that relate to corruption between 2007 and 2017, in order to get a clear overview of the approach of the UN Treaty Bodies.

This research was conducted based on data collected from the Universal Human Rights Index (<http://uhri.ohchr.org/>) on 15 May 2018 and covers the period 2007-2017, unless in cases where the Treaty Bodies only became operational after 2007. For some Treaty Bodies, not all data of 2017 were already available. We searched for the word 'corruption' in the Concluding Observations of these mechanisms. No other terms were used.

## 2. Human Rights Committee - HRCttee

### 2.1 General statistics

The Human Rights Committee has **reviewed more than 180 States between 2007 and 2017. In those 182 reviews, 39 Concluding Observations mention corruption, or 21%**. Of those 39, 32 fall under article 14, corruption in the judiciary (82%). **27 countries receive a recommendation on corruption, or 15% of all reviews**. Of those, 21 are about corruption in the judiciary (77%).

It is remarkable that 36% of all the observations on corruption do not correspond to an accompanying recommendation. It is not clear why the Committee has not adopted recommendations for all countries where it is concerned about corruption.

**The countries in which the Committee is concerned about corruption, are spread over several regions.** The Committee raises most concerns in Asia (36%), Europe (31%) and Africa (23%). Yemen is the only Middle Eastern country in the list (2%), and Oceania did not receive any comment on corruption between 2007 and 2017. In the Americas, the Committee was concerned about corruption in 3 countries or 8%.

When we look at the periods in which the Committee is more concerned about this issue, the data do not tell us a lot. **There is no clear trend of corruption becoming more or less prevalent in the Concluding Observations:** in 2017, the Committee mentioned corruption 3 times (6%), 7 times in 2016 (15%), 6 times in 2015 (13%), 4 times in 2014 (8%), 7 times in 2013 (15%), 4 times in 2012 (8%), 5 times in 2011 (10%), 2 times in 2010 (4%), 8 times in 2009 (17%) and both once in 2008 and 2007 (2%).

### 2.2 Articles under which corruption issues are mentioned

Between 2007 and 2017, corruption is mentioned 47 times in 39 countries.

In the overwhelming majority of the cases, concerns about corruption are mentioned under **article 14**, the right to a fair trial (68%). This is mostly about **systemic corruption in the judiciary, the lack of independence of judges and the appointment, selection, dismissal and promotion procedure within the judiciary**. The Committee was concerned about this issue in **Turkmenistan** (2017 and 2012), **Moldova** (2016 and 2011), **Jamaica** (2016), **Burkina Faso**

(2016), **Kazakhstan** (2016 and 2011), **Benin** (2015), **Côte d'Ivoire** (2015), **Cambodia** (2015), **Kyrgyzstan** (2014), **Sierra Leone** (2014), **Chad** (2014 and 2009), **Tajikistan** (2013), **Indonesia** (2013), **Paraguay** (2013), **Bolivia** (2013), **Albania** (2013), **Angola** (2013), **Armenia** (2012), **Capo Verde** (2012), **Yemen** (2012), **Bulgaria** (2011), **Mongolia** (2011), **Azerbaijan** (2016 and 2009), **Russian Federation** (2009), **Rwanda** (2009) and **Georgia** (2007).

In these cases, article 14 is often the only legal basis, but sometimes it is combined with other articles of the Covenant. The wording of these recommendations is not systematic (see below), and there are no remarkable differences between the instances where article 14 is the only article or where it is combined.

**Article 2** is often combined with article 14 when it comes to corruption, but is sometimes also invoked on its own. This happened in **Macedonia** (2008) and **Chad** (2009) for example, where corruption in general was a problem. The Committee used the same formulation in both Concluding Observations: that corruption has a negative impact on the full enjoyment of the rights guaranteed in the Covenant. Article 2 was also invoked in the review of **China, Macao** in 2013: the Committee was then concerned about the mandate of the Commission against corruption.

When article 2 is combined with article 14, the Committee is concerned about similar issues than when only article 14 is used as a legal basis. Thus, it is not clear what article 2 adds to the analysis. This was the case in **Azerbaijan** (2016), **Kazakhstan** (2016 and 2012), **Benin** (2015), **Indonesia** (2013), **Paraguay** (2013), **Turkmenistan** (2012) and **Russian Federation** (2009).

The Committee also combines article 2 with other articles: with article 25 in **Bosnia and Herzegovina** (2017), with article 7, 9, 14 and 17 in **Georgia** (2014), with article 14 and 26 in **Yemen** (2012) and with article 7 and 9 in **Poland** (2010).

In the last ten years, article 2 in relation to corruption was mentioned in 34%, be it alone or in combination with other articles.

The **Committee is also regularly concerned about corruption within prison or penitentiary facilities**. It uses several articles of the Covenant as a legal basis for this issue: **article 7** (prohibition of torture), **9** (right to liberty and security) and **10** (humane treatment for persons deprived of their liberty). It is not clear according to which criteria the Committee chooses one of those articles in certain situations, and others in other situations. These articles are mentioned in the Concluding Observations of **Tajikistan** (2013), **Cambodia** (2015), **Poland** (2010), **Georgia** (2014), **Azerbaijan** (2016) and **Bulgaria** (2011).

**Article 8, which prohibits slavery, is mentioned twice:** in **Kazakhstan** (2016) and **Uzbekistan** (2015). The Committee was concerned about corruption linked to human trafficking in both cases.

In **Uzbekistan** (2015), the Committee referred to **article 6**, which guarantees the right to life. It was concerned about the lack of investigations in deaths occurring in forced labour situations. Article 6 was also mentioned in **Thailand** (2017) because the death penalty is legal in Thailand for corruption crimes, while that is not one of the most serious crimes according to the Committee.

The Committee referred to **article 12** in **Uzbekistan's** Concluding Observations in 2010: the corruption in the registration system (propiska) is a violation of the freedom of movement.

**Article 26** was only mentioned in combination with article 2 and 14, in **Yemen's** Concluding Observations in 2012. This referral was in relation to endemic corruption in the judiciary. The Committee does not clarify why this article, that describes the prohibition of discrimination, is referred to in that country situation.

The Committee referred to **article 25** in combination with article 2 in the Concluding Observations of **Bosnia and Herzegovina** (2017). According to the Committee, corruption among public officials leads to a violation of effective participation in public life.

Lastly, In **Georgia's** Concluding Observations from 2014, the Committee refers to **articles 2, 7, 9, 14 and 17** in its concerns about corruption. It was in particular concerned about illegal expropriations, providing an effective remedy to victims of human rights violations and impunity for crimes related to corruption.

### 2.3 Wording and formulation of the recommendations on corruption

**The Human Rights Committee does not have a fixed formulation of the recommendation on corruption that it uses systematically. Sometimes the recommendations are quite elaborate, and sometimes they only consist of one sentence that says 'combat corruption'.** Sometimes several articles are referred to, sometimes only one. It is not clear where the difference lies.

Over the years (2007-2017), we cannot discover a clear trend in the formulation of the recommendations or the cited articles, or even the number of times corruption is a concern to the Committee.

**However, several elements are repeated throughout the years in several recommendations on corruption in relation to the right to a fair trial.** The Committee recommends the State to combat, **fight or eradicate corruption, often without any specification as to how.** This was the case for **Burkina Faso** (2016), **Benin** (2015), **Côte d'Ivoire** (2015) and **Angola** (2013), all African countries. If there is a specification, the Committee focuses on investigations, prosecutions and punishments of the perpetrators<sup>1</sup>, including of complicit judges or judicial officers<sup>2</sup>. The fact that criminal sanctions should be given to the perpetrators, on top of disciplinary sanctions, came back twice: **Bolivia** (2013) and **Yemen** (2012). Only once did the Committee recommend that the subject fighting corruption should be included in the training curriculum for judges, and that was in **Azerbaijan** (2016).

**Recommendations about article 2 are also worded differently according to the situation:** in **Macedonia** (2008), the Committee recommended to 'continue efforts to combat corruption so that attitudes in society change and corruption is not perceived as unavoidable', while in **Chad** (2009), the Committee recommended to 'take all necessary and appropriate measures to combat effectively the misappropriation of public funds, extortion, measures to change societal patterns of behavior so that corruption will no longer be seen as inevitable'. The third instance was about the ombudsman's mandate of the Commission against Corruption in **China, Macao** (2013).

The Committee adopted 4 recommendations in the last 10 years about **corruption within penitentiary institutions**, all differently worded. In **Azerbaijan** (2016) and **Albania** (2013), the Committee remains quite vague and recommends the State to 'combat corruption'. In **Cambodia** (2015), the Committee recommends to 'ensure independent and prompt investigation, and the resultant prosecution, of State officials responsible for corruption in the penitentiary'. The recommendation to **Bulgaria** (2011) is similar, but includes also investigations and prosecutions of private actors responsible for corruption in the penitentiary. Moreover, the Committee uses articles 7, 9 and 10 as a legal basis for this issue, but it is not clear why and when which basis is chosen.

Both in **Uzbekistan** (2015) and **Kazakhstan** (2016), the Committee was concerned about corruption in relation to **human trafficking**. However, both recommendations have a different focus. The Committee recommended Uzbekistan to 'address corruption in the cotton

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<sup>1</sup> Turkmenistan 2017, Azerbaijan 2009, Bolivia 2013, Albania 2013, Armenia 2012, Yemen 2012, Bulgaria 2011, Mongolia 2011, Moldova 2009.

<sup>2</sup> Azerbaijan 2016, Kazakhstan 2016 and 2011, Indonesia 2013, Paraguay 2013, Capo Verde 2012, Turkmenistan 2012, Georgia 2007.

industry', while it recommended Kazakhstan to 'address corruption in law enforcement activities related to human trafficking'.

There was only one recommendation based on **article 25**, in **Bosnia and Herzegovina** (2017): 'Step up its efforts to combat corruption, particularly among government figures, to ensure effective participation in public life'.

## 2.4 Examples of recommendations of the Human Rights Committee on corruption

The Human Rights Committee does not have a systematic approach to corruption. As a result, the recommendations differ depending on the country, the year and the situation.

Sometimes, the recommendations are **very vague and short**:

### CCPR/C/AZE/CO/4 (CCPR, 2016)

23. The State party should (...) combat corruption within prison facilities and improve conditions of detention in accordance with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

### CCPR/C/BFA/CO/1 (CCPR, 2016)

32. The State party should: (a) guarantee the effective independence and impartiality of the justice system and step up the fight against corruption.

There are ample examples of this practice<sup>3</sup>.

However, sometimes the Committee gives **more concrete recommendations**, that are longer, but easier for the State to implement since the Committee already breaks the recommendations down into implementable parts:

### CCPR/C/TKM/CO/2 (CCPR, 2017)

31. (...) the State party should: (a) combat corruption in the judiciary, effectively and prosecute and punish perpetrators, including judges who may be complicit therein;

### CCPR/C/AZE/CO/4 (CCPR, 2016)

27. The Committee reiterates its previous recommendations (see CCPR/C/AZE/CO/3, para. 12). The State party should take all measures necessary to safeguard, in law and in practice, judicial independence. In particular, it should:

(a) Ensure that the Judicial-Legal Council is fully independent from the executive branch and

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### <sup>3</sup> CCPR/C/ALB/CO/2 (CCPR, 2013)

The State party should ensure full respect for article 9 of the Covenant, and to this end it should:

(a) (...)

(b) Ensure immediate access to a lawyer following arrest, and combat corruption.

### CCPR/C/AGO/CO/1 (CCPR, 2013)

The State party should strengthen the independence of the judiciary and effectively combat corruption. (...).

### CCPR/C/MKD/CO/2 (CCPR, 2008)

r) continue efforts to combat corruption so that attitudes in society change and corruption is not perceived as unavoidable.

(Etc.)

operates with full transparency and, to that end, ensure that decisions affecting the personal independence of judges are not influenced by political considerations;

(b) Ensure that decisions related to the selection, disciplining, evaluation and permanent appointment of judges after probation are based on objective criteria explicitly provided for by law;

(c) Step up efforts to effectively prosecute and punish perpetrators of corruption, and ensure that the subject of fighting corruption is part of the training curriculum for judges;

(d) Ensure that an independent body is responsible for judicial discipline and that sufficient safeguards are in place to prevent disciplinary actions being taken against judges for minor infractions or for a controversial interpretation of the law.

### **CCPR/C/BOL/CO/3 (CCPR, 2013)**

The State party should redouble its efforts to provide legal and practical guarantees of judicial independence and pursue its efforts to establish, as a matter of urgency, a system of judicial appointments and judicial service based on objective, transparent criteria that do not conflict with the right to a defence, together with an independent disciplinary regime for the judiciary and the Public Prosecution Service. It should also step up its efforts to combat corruption, particularly in the police force and among officials responsible for the administration of justice, by undertaking prompt, thorough, independent and impartial investigations into all cases of corruption and imposing not only disciplinary sanctions but also criminal penalties on the persons found to be responsible. The State party should also develop, as a matter of priority, a national policy for reducing the backlog of court cases, increasing the number of courts and appointing more judges and public defenders, in particular in rural areas. (...)

### **CCPR/C/IDN/CO/1 (CCPR, 2013)**

The State party should take effective measures to eradicate corruption in the administration of justice, including in the provision of legal aid. The State party should strengthen its efforts to ensure prompt, thorough and independent investigations into allegations of corruption in the judiciary and in the provision of legal aid, and prosecute and punish perpetrators, including judges who may be complicit.

### **CCPR/C/CMR/CO/5 (CCPR, 2017)**

Anti-corruption efforts

9. While acknowledging the measures taken by the State party to combat corruption (Operation Épervier), the Committee notes with concern that corruption is endemic in the State party. Also troubling are reports that public authorities, including those in the police, judicial, tax, education and health sectors, often extort money from individuals as a condition for providing services. The Committee takes note of the State party's anti-corruption measures, but is still concerned at allegations that these measures are exploited and misused in order to target certain prominent individuals, including political figures (arts. 2, 14, 25 and 26).

10. The State party should: (a) step up its efforts to combat corruption and to ensure that it does not go unpunished; (b) ensure that all cases of corruption are independently and impartially investigated and, where applicable, that appropriate judicial penalties are imposed on perpetrators; and (c) establish strict standards for public officials and ensure that those responsible for acts of corruption are subjected to disciplinary action and are prosecuted in court.

## **2.5 Conclusion**

- When the Human Rights Committee is concerned about corruption, it is mostly about **corruption within the judiciary**.
- Sometimes the Committee refers to **several articles** of the Covenant, sometimes it only refers to **one article**, and it is not clear why such approach is adopted.
- The Committee does **not adopt a recommendation** on corruption for about one third of the observations.
- The **wording of the recommendations differs** in the various countries.
- Most of the recommendations are **vague** ('combat corruption')

## 2.6 Update

The HRCttee's approach to corruption was analyzed in February 2018<sup>4</sup>.

Since then, the Committee has adopted 3 other recommendations on corruption, all in 2017, all corresponding to a concern.

- **Romania:** corruption in government, in the judiciary and harassment of human rights defenders (article 2 and 14). The recommendation is very vague: "The State party should strengthen its efforts to combat corruption in all branches of Government and provide the necessary protection to officials involved in anti-corruption efforts."<sup>5</sup>
- **Dominican Republic:** corruption in government, impunity, access to basic services (article 25). The Committee recommends to investigate and to take into account the UNCAC recommendations. This is unique and has not been recommended before.
- **Cameroon:** corruption in the judiciary (article 2, 14, 25, 26). The recommendation is very detailed<sup>6</sup> and can serve as an example for other TBs. Hopefully this is the start of a systematic approach to corruption, with a concrete recommendation corresponding to the concerns.

## 3 Committee on Economic, Social and Cultural Rights - CESCR

The CESCR reviewed 139 State reports between 2007 and 2017, in which corruption is mentioned 78 times over 63 countries (**45,3%**). 5 of those 78 are positive aspects. The number of concerns nearly match the number of recommendations.

Of those 63 countries, 25 are located in Africa (40%), 19 in Asia (30%), 13 in Europe (20%) and 6 in Latin America (10%).

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[http://ccprcentre.org/files/media/Improving\\_the\\_Human\\_Rights\\_Dimension\\_of\\_the\\_Fight\\_against\\_Corruption2.pdf](http://ccprcentre.org/files/media/Improving_the_Human_Rights_Dimension_of_the_Fight_against_Corruption2.pdf)

<sup>5</sup> Romania, 2017, CCPR/C/ROU/CO/5.

<sup>6</sup> Cameroon, CCPR/C/CMR/CO/5: Independence of the judiciary and administration of justice 37. The Committee remains concerned about persistent allegations of corruption and interference by the executive branch with the judiciary. Of particular concern is the fact that the independence of the judiciary is not sufficiently guaranteed in law and in practice, especially with regard to: (a) procedures for the selection of judges; (b) disciplinary measures against judges; and (c) the retention of section 64 of the Code of Criminal Procedure, which allows for intervention by the Ministry of Justice or the Attorney General to terminate criminal proceedings in certain instances. It is also concerned about: (a) reports of violations of the right to a fair trial, which have been substantiated by the opinions adopted by the Working Group on Arbitrary Detention in the cases of Paul Kingue, Christophe Désiré Bengono and Marafa Hamidou Yaya; and (b) the continued jurisdiction of military courts to try civilians, which was extended by Act No. 2017/12 of 12 July 2017 on the Code of Military Justice (para. 14). 38. The State party should take all necessary measures to safeguard the independence of the judiciary in law and in practice and, in particular, to: (a) eliminate all forms of interference by the executive branch in the judiciary and effectively investigate allegations of such acts; (b) intensify its efforts to combat corruption in the judicial system and to prosecute and punish perpetrators, including judges who may be complicit therein; (c) consider reviewing the composition and functioning of the Judicial Service Commission to ensure the impartiality of the justice system; and (d) reform its legislative framework to ensure that civilians cannot be tried by military courts.



There is **no clear trend** on the number of recommendations on corruption per year. In general, the CESCR seems aware of the issue, since it is the most concerned on corruption of all TBs.

Of those 78 times that corruption is mentioned in the State reports, 5 are positive aspects: this refers to the ratification by the State of UNCAC, the establishment of a national action plan to tackle corruption or of a national authority, and the adoption of a law or amendments to existing laws related to corruption. The great majority of the concerns (52) of the CESCR refer to **article 2 or article 2.1**. This concern is a general one, pointing out that corruption is widespread in the State party, and that corruption has an impact on the enjoyment of Economic, Social and Cultural Rights, much like the CRC does. Other concerns were corruption related to access to health care or the payment of non-official fees for health care services (article 12, 6 cases), corruption related to access to food, housing or land allocation (article 11, 6 cases), corruption in the justice system (6 cases), and corruption in the social security system (article 9, 2 cases). 1 concern is about the stigmatization of Human Rights Defenders that denounce corruption.

In general, the CESCR adopts **long recommendations** on corruption. It often gives general recommendations that correspond to general concerns. Those recommendations contain several elements: ensure transparency, adopt laws to strengthen the legal framework, ensure the strict application of those laws, raise awareness among judges, police officers, and public servants, investigate allegations of corruption, address the root causes of corruption, protect whistle-blowers and victims of corruption, etc. This goes in the **direction of a systematic approach to corruption**, containing several essential elements to improve the situation, and is a step in the good direction.

However, not all countries where a general concern is expressed, get a recommendation containing all of the measures mentioned. Often, some of these actions are recommended, but it is not clear why certain States are urged to take more actions than other States.

Of all those measures, **raising awareness** is recommended most often (31 times), followed by ensuring transparency (27) and the strict application of laws (25). CESCR also regularly urges States to investigate and prosecute allegations of corruption (19), to protect whistle-blowers and victims (13), to address the root causes of corruption (10) and to adopt anti-corruption laws (9). Less popular measures are the establishment of a monitoring mechanism (6), the increase of resources (5), the independence of the national anti-corruption authority (5), the evaluation of measures taken (3), the increase of salaries (2), the adoption of a national action plan against corruption (2), the adoption of guidelines (2), the collection of statistics (2), capacity-building (1), the help of international organisations (1), and the establishment of a charter (1) (see above).

Moreover, even though several aspects of the problem are addressed in these general recommendations, they still **remain vague**. It is possible to be more concrete when recommending a State to ensure transparency or to address the root causes of corruption.

Moreover, the recommendations that do not correspond to a general concern, but to a specific concern (for example, corruption in health care, or related to housing), are very vague<sup>7</sup> (14 cases).

The CESCR is the only Committee that sometimes recommends to **evaluate the measures taken to eradicate corruption**<sup>8</sup>. This should appear more often, also in other TBs. It is always

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<sup>7</sup> Yemen, E/C.12/YEM/CO/2 (CESCR, 2011): The Committee recommends that the State party strengthen efforts and use available resources to increase the budgetary allocations for the social security system, including social assistance benefits, with a view to ensuring an adequate standard of living for the recipients. The Committee also recommends that the State party step up its efforts to combat corruption and misappropriation of State funds in the area of social security, including social insurance benefits, and prosecute those responsible;

Montenegro, E/C.12/MNE/CO/1 (CESCR, 2014): The Committee recommends that the State party: (a) Increase its budgetary allocations to the health sector to improve the quality of public health-care services, and take effective measures to counter corruption in the health-care sector;

<sup>8</sup> Montenegro, E/C.12/MNE/CO/1 (CESCR, 2014)

recommended to evaluate whether certain measures are worth the budget allocated to them, and to check whether they are effective. If not, measures should be adapted.

The CESCR also sometimes recommends to seek the **help of International Organisations** who have expertise on eradicating corruption<sup>9</sup>. This recommendation could be more useful to State parties if it were more concrete (which organisations are competent for which actions, in which region etc.).

The CESCR refers once to the **Corruption Index of Transparency International** in one recommendation<sup>10</sup>. This is a unique reference in the TB system.

One recommendation of the CESCR is very concrete, addressed to Tunisia in 2016<sup>11</sup>, an example of a recommendation that is easier to implement: "The Committee (...) recommends that, in order to fight corruption in the health-care system, patients be informed of their rights through a "charter of patients' rights" that would explain the avenues available for filing a complaint if they witness attempted corruption." Hopefully this wording will be used more frequently in the future.

Some recommendations of the CESCR can be used as an **example for other TBs**:

- Tunisia, 2016 (see above)
- Uzbekistan, 2014: "The Committee recommends that the State party set up a comprehensive policy and mechanism to combat and prevent petty and systemic corruption, including by:
  - (a) Streamlining the adoption of the draft anti-corruption law, national programme and action plans, as well as codes of conduct for public institutions;
  - (b) Fostering transparent corruption monitoring, especially in the areas of health care, education and residence registration, and ensuring adequate investigation into corruption cases and prompt punishment of perpetrators with commensurate sanctions;
  - (c) Ensuring safe, accessible and visible channels for reporting corruption, in particular in the areas of health care, education and residence registration, as well as effective

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The State party should, as a matter of priority, address the root causes of corruption, and adopt all necessary legislative and policy measures to effectively combat corruption and the related impunity, including investigation and prosecution of high-level corruption cases. The Committee recommends that the State party regularly evaluate the impact of measures taken to combat corruption, and provide detailed information in its next periodic report. The State party should also ensure that individuals who investigate and report on organized crime are protected effectively from any form of intimidation or violence.

<sup>9</sup> Sri Lanka, E/C.12/LKA/CO/2-4 (CESCR, 2010): r) take all necessary measures to combat corruption and impunity associated with it r) train the police and other law enforcement officers, as well as prosecutors and judges in the strict application of anti-corruption laws, to require the public authorities, in law and in practice, to operate in a transparent manner, and to ensure that prosecution cases are brought to justice r) seek the cooperation of international organizations with special expertise in the field of combating corruption and requests the State party to provide detailed information in its next periodic report about progress made in combating corruption and impunity

<sup>10</sup> Tajikistan, E/C.12/TJK/CO/2-3 (CESCR, 2015): Corruption: The Committee remains concerned that, despite numerous measures undertaken by the State party, corruption in the public sector is pervasive and systematic in the country, which is illustrated by the 152nd place occupied by the State party among 175 countries listed on the 2014 Corruption Perceptions Index by Transparency International. It is also concerned about the ineffectiveness of preventive measures and the limited scope of prosecuted cases of corruption, particularly concerning those persons at higher levels of the administration (art. 2, para. 1).

<sup>11</sup> Tunisia, E/C.12/TUN/CO/3 (CESCR, 2016): 49. The Committee requests the State party to monitor on a regular basis the implementation of the national health strategy and the effectiveness of the systems put in place to improve access to health care in rural areas experiencing a shortage of medical professionals, to measure the impact of the systems on the enjoyment of the right to health and to take remedial action where necessary. It recommends that, in order to fight corruption in the health-care system, patients be informed of their rights through a "charter of patients' rights" that would explain the avenues available for filing a complaint if they witness attempted corruption. The State party should guarantee that everyone, without discrimination, has access to affordable medication.

protection of anti-corruption activists and human rights defenders involved;

(d) Training politicians, lawmakers, judges, law enforcement officers, civil servants and public service personnel, especially in the areas of education, health-care and residence registration, on ethics and the economic and social costs of corruption;

(e) Conducting awareness-raising campaigns."

- Afghanistan, 2010: "The Committee recommends that the State party:
  - (a) adopt a legal framework to combat corruption and impunity, in conformity with the international standards;
  - (b) train lawmakers, national and local civil servants and law enforcement officers on the economic and social costs of corruption;
  - (c) take measures to prosecute cases of corruption;
  - (e) ensure the transparency of the conduct of public authorities, in law and in practice, and establish an independent monitoring mechanism to this end;
  - (f) elaborate, in cooperation with relevant organizations and institutions, guidelines and a code of ethics; and
  - (g) conduct awareness-raising campaigns. The Committee requests the State party to provide detailed information in its next periodic report about the progress made in combating corruption and impunity and any obstacles encountered."

## 4 Committee Against Torture - CAT

The CAT has reviewed 169 State reports between 2007 and 2017, of which 30 mention corruption (**17,8%**). 21 State reviews contain both a recommendation and a concern, 11 have a concern but no corresponding recommendation, and 4 have a recommendation but no corresponding concern. This makes a total of 36 times that corruption is mentioned in the CAT reviews. This lack of correspondence between concerns and recommendations is remarkable, but is present in the majority of the TBs.

Of those 30 countries, 12 are located in Africa (40%), 10 in Asia (33%), 5 in Europe (17%) and 3 in Latin America (10%).

Of the 36 times corruption is mentioned, the number of recommendations about corruption per year remains **approximately the same**. In 2008 and 2009 there were 4 instances where corruption was mentioned, while in 2010 there were only 2. In 2011 suddenly there were 7 (of which 3 were positive aspects). In 2012, 2 reviews mentioned corruption and in 2013 there were 3. CAT was concerned about corruption in 6 countries in 2014, and in 2015 and 2016 2 countries per year. Last year, 4 States received a recommendation on corruption.

Just like the Human Rights Committee, **corruption in the judiciary** is the most frequent concern (14). The CAT also often refers to corruption in the framework of detention (11) and among law enforcement officials (9). On 3 occasions it was concerned about the Body in charge of combating corruption (a Commission or Authority against Corruption), its mandate or resources. Several other issues were mentioned only once: corruption among Security Forces, human trafficking, enforced disappearances, a national strategy against corruption, the ratification of UNCAC and the adoption of anti-corruption laws.

The majority of the CAT's recommendations are too vague, but it is the only body that sometimes asks for **data on this issue**<sup>12</sup> (although not always). In 2012, Armenia received a long recommendation on the detention conditions, but corruption is only mentioned in the last sentence: "(The State) should take measures to eliminate corruption in prisons"<sup>13</sup>. This

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<sup>12</sup> Kazakhstan, CAT/C/KAZ/CO/3 (CAT, 2014): The State party should: (f) Provide the Committee with comprehensive disaggregated data on the number of investigations, prosecutions and sentences handed down for human trafficking, on the provision of redress to the victims and on measures taken to combat alleged corruption among law enforcement officials.

<sup>13</sup> Armenia, CAT/C/ARM/CO/3 (CAT, 2012): The State party should continue to take effective measures to improve conditions in places of detention and to reduce overcrowding in such places. The

does not give much guidance to the State and does not tell them how to take action to achieve this.

However, some of the recommendations are detailed and describe extensively the actions the State can take. For example, Cambodia received in 2011 very good recommendations that make it easier for the State to implement<sup>14</sup>:

- a) take immediate and urgent measures to eradicate corruption throughout the country which is one of the most serious impediments to the rule of law and the implementation of the Convention
- b) such measures should include effective implementation of the anti-corruption legislation and the expeditious operationalization of the Anti-Corruption Unit, which should consist of independent members
- c) increase its capacity to investigate and prosecute cases of corruption
- d) establish a programme of witness and whistle-blower protection to assist in ensuring confidentiality and to protect those who lodge allegations of corruption, and ensure that sufficient funding be allocated for its effective functioning
- e) undertake training and capacity-building programmes for the police and other law enforcement officers, prosecutors and judges, on the strict application of anti-corruption legislation as well as on relevant professional codes of ethics, and adopt effective mechanisms to ensure transparency in the conduct of public officials, in law and in practice
- f) report back on progress achieved, and the difficulties encountered, in combating corruption
- g) provide information on the number of officials, including senior officials that have been prosecuted and punished on account of corruption charges
- h) intensify its efforts to establish and ensure a fully independent and professional judiciary in conformity with international standards and ensure that it is free from political interference
- i) provide information on provisions of the Anti-Corruption Law that address the independence of the judiciary

## 5 Committee on the Elimination of Racial Discrimination - CERD

The CERD issued **6 concerns** about corruption between 2007 and 2017, and 4 of those have a corresponding recommendation. This is on a total of 203 State reviews in those ten years (3%). The Committee mentions a positive aspect in one of the countries (Chad, 2013): the adoption of an act on the elimination of corruption<sup>15</sup>.

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Committee recommends that the State party increase its efforts to remedy prison overcrowding, including through the application of alternative measures to imprisonment in line with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and to provide the Committee with information on any probation service to be established in charge of alternative punishment, conditional release and rehabilitation. The State party should take necessary measures to eliminate any form of violence or discrimination against detainees based on sexual orientation or nationality, including all abusive and discriminatory actions taken by prison inmates against other detainees. It should establish a confidential system for receiving and processing complaints regarding torture or ill-treatment and ensure that the system is established in all places of deprivation of liberty. The State party should further ensure that all complaints received are promptly, impartially and effectively investigated, and the perpetrators punished with appropriate penalties. The State party should ensure that the Police Monitoring Group has access to all police stations, including the ability to conduct unannounced visits. It should also take effective measures to keep under systematic review all places of detention, including the existing and available health services therein, and should take measures to eliminate corruption in prisons.

<sup>14</sup> Cambodia, CAT/C/KHM/CO/2 (CAT, 2011)

<sup>15</sup> Chad, CERD/C/TCD/CO/16-18 (CERD, 2013): B. Positive aspects: 4. The Committee notes with interest those legislative and institutional developments in the State party since the submission of its last periodic report that should help to combat discrimination, and notably: (c) Ordinance No. 011/PR/2012 repealing Act No. 004 and on the elimination of corruption, illegal enrichment and related offences;

Of those 6, 2 are addressed to Asian countries, 2 are addressed to African countries (Chad, both in 2013 and in 2009), and 2 in Europe.

Over the years, the Committee has adopted **less and less** recommendations on corruption: there were 3 in 2009, 1 in 2010, 1 in 2013, 1 in 2016. This goes in the wrong direction. However, the recommendations themselves are quite detailed, and not too vague. For example, the Committee recommended Cambodia in 2010 to ensure that the judiciary is free from political control, and to increase its capacity to investigate cases of corruption<sup>16</sup>.

5 out of 6 concerns are about **corruption in the judiciary** (articles 2 and 6 of the Convention). The last one was about the implementation of a national strategy against corruption<sup>17</sup>.

## 6 Committee on the Elimination of Discrimination Against Women - CEDAW

The CEDAW issued 278 State reviews between 2007 and 2017, of which 17 mention corruption. There are **21 concerns adopted over 17 countries**, and 11 of those have a corresponding recommendation.

Most concerns/recommendations are addressed to **African countries** (6 out of 17), followed by Asian countries (5), Latin American countries (4) and lastly, Europe (2).

Over the years, the CEDAW did not make a lot of recommendations on corruption: 1 concern was expressed in 2008, 1 in 2010 and 1 in 2012 (out of 21). In 2013, the Committee mentioned corruption 5 times. In 2014, 2015 and 2016, the Committee expressed its concern about corruption 2 times per year. However, **in 2017 the Committee suddenly issued 7 concerns** on this issue (of which 3 in one country: Ukraine). Hopefully this trend continues over the next years.

Most concerns are about **access to remedies or access to justice** (9). Corruption related to human trafficking and violence against women was each the subject of 3 concerns. 2 concerns were on corruption in general. Several issues were the subject of one concern: corruption related to help programmes of indigenous communities, the national commission for human rights, employment and recruitment for public services and health care personnel. Two times a positive aspect was mentioned: the ratification of UNCAC<sup>18</sup> and the adoption of a National Action Plan<sup>19</sup>.

The CEDAW **does not issue concrete recommendations**. Most of them urge the State to investigate cases of corruption<sup>20</sup>. Some of them recommend the State to strengthen the measures against corruption, which also remains vague<sup>21</sup>. There is a lot of room for improvement on the wording of the recommendations.

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<sup>16</sup> Cambodia, CERD/C/KHM/CO/8-13 (CERD, 2010): The Committee recommends that the State party continue and increase its efforts to strengthen and guarantee the independence of the judiciary and ensure that it is free from political control and interference through the early adoption of all relevant laws of reform. The Committee further recommends that the State Party take steps to increase its capacity to investigate and take disciplinary action in cases of incompetence and corruption.

<sup>17</sup> Azerbaijan, 2009.

<sup>18</sup> Afghanistan, 2013.

<sup>19</sup> Ecuador, 2008.

<sup>20</sup> For example, Cambodia, CEDAW/C/KHM/CO/4-5 (CEDAW, 2013): 13. The Committee urges the State party: c) To continue to investigate and prosecute allegations of corruption in the administration of justice and, where applicable, punish the perpetrators.

<sup>21</sup> For example, Gabon, CEDAW/C/GAB/CO/6 (CEDAW, 2015): 17. The Committee recommends that the State party: (b) Strengthen anti-corruption measures.

## 7 Committee on the Rights of Children - CRC

The CRC has adopted 214 reviews of State reports between 2007 and 2017. In those, **corruption is mentioned 85 times**, as a concern (72), in a positive trend (2) and in recommendations (71). These are spread over 66 countries (30,8% of 214), of which 24 are in Africa (37% of 66), 22 in Asia (33%), 10 in Europe (15%) and 10 in Latin America (15%).

Over the years, the CRC seems **quite aware** about the issue of corruption. From 1 recommendation on corruption in 2007 and 3 in 2008, they go to 6 concerns in 2009 and 11 in 2010. Then we have 9 concerns in 2011, 19 in 2012 (of which 4 are addressed to Liberia, and 4 to Azerbaijan) and 5 in 2013. In 2014, corruption is mentioned on 7 occasions, and in 2015 on 10 occasions. In 2016 the CRC mentions corruption 12 times, and last year twice.

When the CRC is concerned about corruption regarding several issues in one State, often the Committee **only issues one recommendation**. However, the measures taken to eradicate corruption can differ according to the sector in which it is widespread. For example, in 2012 the CRC was concerned about corruption in education and regarding human trafficking in Liberia, but only one recommendation was issued<sup>22</sup>.

The subject of most concerns is the **allocation of resources to children or children-related departments** (health care, education, social services) (40). The CRC is often concerned about corruption in general and its impact on children's rights (14). Corruption in education is a concern for the CRC on 6 occasions, and corruption in relation to human trafficking comes up in 5 reviews. 3 concerns relate to corruption in the issuance of birth certificates and another 3 to adoption. The CRC is concerned about corruption in health care in 3 countries. 2 concerns are about the judiciary (of which one on the juvenile justice system), and 2 about gender-based violence and the lack of investigation due to corruption. Several issues are mentioned only once: the right to life of children, the anti-corruption authority, corruption among the inspectors of child labour and among government and law enforcement officials, or in the public sector in general, the age of minority, the adoption of an anti-corruption law and sexual exploitation.

It is regrettable that all of the CRC's recommendations on corruption are **too vague**. The most frequent recommendation on the allocation of resources to children-related matters, is: "Strengthen measures to combat corruption, including with regard to the institutional capacity to detect, investigate and prosecute corruption effectively." Often the CRC urges the State to take or strengthen the measures or to combat corruption. Some average recommendations go a bit more into detail, mentioning the set-up of a hotline<sup>23</sup>, or awareness-raising campaigns<sup>24</sup>, but even in these cases the CRC could be more concrete.

The CRC mentions 2 **positive aspects** on corruption between 2007 and 2017: once in Liberia in 2012 regarding the adoption of an anti-corruption law, and in 2011 for Cambodia, when the State ratified the UNCAC.

## 8 Committee on the Rights of People with Disabilities - CRPD

The CRPD has issued **one observation and a corresponding recommendation** to China, in 2012, on a total of 63 State reviews between 2009 and 2017 (1,6%). It is the only TB where the number of concerns exactly adds up to the number of recommendations. The subject of the concern is corruption related to access to health care, and the Committee recommends to

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<sup>22</sup> Liberia, CRC/C/LBR/CO/2-4 (CRC, 2012): The Committee urges the State party to take immediate measures to combat corruption and strengthen institutional capacities, including trained investigators and prosecutors and the Anti-Corruption Commission, to effectively detect, investigate and prosecute corruption.

<sup>23</sup> Uzbekistan, 2013

<sup>24</sup> Myanmar 2012

develop a system to prevent corruption, but remains quite vague. It also mentions a positive aspect, namely the establishment of a Commission against Corruption.

## 9 Committee on Migrant Workers - CMW

The CMW has been concerned about corruption in **16 countries** between 2007 and 2017, and adopted recommendations for 12 of those. There are also 2 countries where the Committee recommends action, but was not concerned. This comes down to a total of 18 countries where the Committee was either concerned or gave a recommendation, or both, on a total of 58 State reviews between 2007 and 2017 (31%).

Most concerns/recommendations are given to **Latin American countries** (7 out of 18), but the Committee is also concerned about Asian countries (6). Africa receives 3 concerns and Europe 2.

The number of concerns/recommendations on corruption has **slowly been rising** over the years. We go from 1 concern in 2010, to 2 in 2011, 1 in 2012, 2 in 2013, to 4 in 2014, 2 in 2015, 3 in 2016 and 3 in 2017, resulting in a total of 18.

The **subjects** of the concerns/recommendations on corruption **vary**: most of them are about trafficking (6), some of them are about corruption in general (4) and about corruption among officials (4), 3 of them are about access to remedy and one is about non-discrimination, on a total of 18.

The CMW often recommends to **investigate cases of corruption** (8 out of 14). In 5 countries, the Committee adopted quite a general recommendation, that is not too vague. For example, in Mauritania's recommendations adopted in 2016<sup>25</sup>, the Committee recommends the State to investigate, to impose sanctions, to conduct information campaigns about filing complaints, and to raise awareness about the services that are available to migrant workers and their families for free. 1 recommendation is about monitoring the implementation of the Trafficking in Persons Act with respect to corruption<sup>26</sup>, remaining very vague. To conclude, the vagueness of the recommendations is not too bad: the Committee often recommends to investigate and enumerates several actions the State should take. They could be more concrete, but tell the State what it needs to do to improve the situation.

## 10 Committee on Enforced Disappearances - CED

The CED has **not adopted any recommendation** related to corruption between 2013 and 2017, over a total of 23 State reviews.

## 11 Subcommittee on the Prevention of Torture - SPT

The SPT issued 4 concerns on corruption in the prison system of Paraguay in 2011. It adopted 8 recommendations over 4 countries. The SPT issues more recommendations than concerns, the opposite of what we see in the Treaty Bodies. The total number of reviews done between 2007 and 2017 is unknown and confidential. 3 out of the 4 countries are in Latin America

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<sup>25</sup> Mauritania, CMW/C/MRT/CO/1 (CMW, 2016): 25. The Committee encourages the State party to continue to address any instances of corruption. The Committee also recommends that the State party thoroughly investigate any cases that appear to involve officials working in areas related to the implementation of the Convention and impose the appropriate sanctions, as necessary. The Committee further recommends that the State party conduct information campaigns with a view to encouraging migrant workers and members of their families who claim to be victims of corruption to file complaints and that the State party seek to raise awareness among migrant workers and members of their families about the services that are available to them free of charge.

<sup>26</sup> Belize, CMW/C/BLZ/CO/1 (CMW, 2014): The Committee recommends that the State party strengthen its efforts to combat trafficking in persons, in particular women and children, and that it: (f) Carry out an assessment of the effectiveness, and monitor the implementation, of the Trafficking in Persons (Prohibition) Act (2013), in particular with respect to corruption and complicity of public officials with trafficking, capacity-building for prosecutors, magistrates and judges dealing with cases of trafficking, and include relevant statistical data in its next periodic report;

(Paraguay, Honduras, Mexico), the 4<sup>th</sup> one is African (Benin). All concerns and recommendations date from 2010 and 2011. The subject of the concerns is **corruption in detention or prison systems**. The recommendations are **elaborate**, specific, detailed and concrete.

## 12 Overall conclusion

- **None of the TBs have a systematic approach to corruption.** In certain countries, they are concerned about issues that are also present in other State parties, where they are not mentioned as a concern. Also, none of them have a systematic wording in their recommendations. For the same issue in different countries, the recommendation can be completely different. However, CESCR comes close with their general recommendation tackling several aspects of corruption.
- Of all the TBs, **CESCR and CRC are most concerned about corruption.** CED is not concerned at all. CESCR is an example for the other TBs concerning the almost systematic approach in the recommendations, because this approach allows for the recommendation to be adapted to each State party and its particular situation. CRC gives the vaguest recommendations. The HRCttee and CAT are also quite concerned about corruption, and some of their recommendations are examples to be followed
- Overall, corruption is mentioned in 251 reviews on a total of 1329 State reviews conducted between 2007 and 2017 (excluding SPT). This is **18,9%**. However, there are big differences between the different TBs:
  - o HRCttee: 22,2%
  - o CESCR: 45,3%
  - o CAT: 17,8%
  - o CERD: 3%
  - o CED: 0%
  - o CMW: 31%
  - o SPT: unknown
  - o CRPD: 1,6%
  - o CEDAW: 6,1%
  - o CRC: 30,8%
- **Vagueness:** SPT has the most specific and useful recommendations. CRC is the vaguest. CESCR gives general recommendations on corruption, containing several elements that tackle different aspects of the issue. This approach is quite systematic, but can still become more concrete.
- Most TBs do not show a trend of giving **more or less recommendations** on corruption over the years. CMW slowly increases the number of concerns on corruption, but CERD slowly decreases.
- **Subjects:**
  - o CRPD is mainly concerned about corruption related to health care
  - o CMW is mainly concerned about corruption related to trafficking
  - o CERD is mainly concerned about corruption related to the judiciary
  - o CEDAW is mainly concerned about corruption related to access to remedies
  - o CAT is mainly concerned about corruption related to the judiciary, detention and law enforcement officials
  - o CRC is mainly concerned about corruption related to the allocation of resources, and about corruption in general
  - o CESCR is concerned about corruption in general
  - o HRCttee is mainly concerned about corruption related to the judiciary and detention
  - o SPT is mainly concerned about corruption related to detention
  - o CED is not concerned about corruption
- **Examples of good recommendations:**
  - o CESCR:
    - Uzbekistan, 2014: "The Committee recommends that the State party set up a comprehensive policy and mechanism to combat and prevent petty and systemic corruption, including by:



- (a) Streamlining the adoption of the draft anti-corruption law, national programme and action plans, as well as codes of conduct for public institutions;
  - (b) Fostering transparent corruption monitoring, especially in the areas of health care, education and residence registration, and ensuring adequate investigation into corruption cases and prompt punishment of perpetrators with commensurate sanctions;
  - (c) Ensuring safe, accessible and visible channels for reporting corruption, in particular in the areas of health care, education and residence registration, as well as effective protection of anti-corruption activists and human rights defenders involved;
  - (d) Training politicians, lawmakers, judges, law enforcement officers, civil servants and public service personnel, especially in the areas of education, health-care and residence registration, on ethics and the economic and social costs of corruption;
  - (e) Conducting awareness-raising campaigns."
- HRCtee:
    - Cameroon, 2017<sup>27</sup>: Independence of the judiciary and administration of justice 37. The Committee remains concerned about persistent allegations of corruption and interference by the executive branch with the judiciary. Of particular concern is the fact that the independence of the judiciary is not sufficiently guaranteed in law and in practice, especially with regard to: (a) procedures for the selection of judges; (b) disciplinary measures against judges; and (c) the retention of section 64 of the Code of Criminal Procedure, which allows for intervention by the Ministry of Justice or the Attorney General to terminate criminal proceedings in certain instances. It is also concerned about: (a) reports of violations of the right to a fair trial, which have been substantiated by the opinions adopted by the Working Group on Arbitrary Detention in the cases of Paul Kingue, Christophe Désiré Bengono and Marafa Hamidou Yaya; and (b) the continued jurisdiction of military courts to try civilians, which was extended by Act No. 2017/12 of 12 July 2017 on the Code of Military Justice (para. 14). 38. The State party should take all necessary measures to safeguard the independence of the judiciary in law and in practice and, in particular, to:
      - (a) eliminate all forms of interference by the executive branch in the judiciary and effectively investigate allegations of such acts;
      - (b) intensify its efforts to combat corruption in the judicial system and to prosecute and punish perpetrators, including judges who may be complicit therein;
      - (c) consider reviewing the composition and functioning of the Judicial Service Commission to ensure the impartiality of the justice system; and
      - (d) reform its legislative framework to ensure that civilians cannot be tried by military courts.
  - SPT:
    - Paraguay, 2011<sup>28</sup>: The Subcommittee deeply deplores these actions, which it condemns energetically and categorically. The Subcommittee recommends that an investigation of these actions be undertaken without delay and that the inmates and staff members involved be tried and, if found guilty, punished. The Subcommittee reiterates its earlier recommendations and, in addition, recommends that the State party:
      - (a) Undertake an independent audit without delay, starting with Tacumbú National Prison but including all prisons in the country, to investigate the corruption existing in this sector, identify corruption risks

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<sup>27</sup> CCPR/C/CMR/CO/5

<sup>28</sup> Paraguay, CAT/OP/PRY/2 (SPT, 2011)

and develop recommendations for internal and external oversight. This audit should be followed up with regular inspections to ascertain the extent of compliance with the initial recommendations;

- (b) Carry out a campaign to sensitize staff and the general public to the need to combat corruption in the prison system and to make them aware of the adverse consequences of corruption;
- (c) Draft, approve and then distribute a code of conduct to prison staff;
- (d) Promote transparency in the administration of the prison system's resources by, inter alia, making public each prison's budget, budgetary decisions and the names of the responsible officials;
- (e) Increase the wages of prison staff in order to ensure that their pay levels are fair and adequate and raise the professional standards and status of prison workers by creating a correctional studies curriculum;
- (f) Investigate allegations of corruption and, in cases where it is suspected that a crime has been committed, provide the relevant information to the Office of the Public Prosecutor.