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The impact of corruption
on the fulfilment of human rights in
Moldova:
*An analytical study with policy
recommendations*

Centre for Civil and Political Rights



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The study was elaborated by research team of the Centre for Civil and Political Rights.

Disclaimer

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Abstract

This study seeks to examine the impact of corruption on the enjoyment of universal human rights in Moldova. It does so by firstly developing a framework to screen for relevant cases, identifying a common causal nexus between individual acts and systematic corruption, and then assessing the resulting impact on human rights. Case research for this study has been carried out using publicly available data from relevant institutions, for the period 2017-2020.

Our findings demonstrate that corruption significantly depletes public resources, which in turn adversely impacts the enjoyment of all manner of rights outlined in the Universal Declaration of Human Rights. In assessing data on human rights violations, we found that the most frequently affected rights that share a causal relationship to corruption are the right to life, to legal representation and a fair trial, as well as to education, health, property, and social protection. Additionally, the most frequently identified victims are vulnerable and marginalized groups. We also identified that human rights violations may be driven by corruption on an individual basis, on a systemic level or a combination of the two.

Finally, this study proposes policy recommendations and interventions designed to limit the impact of corruption on the enjoyment of the human rights. These include proposing legislative amendments to include corruption as an aggravating factor in criminal proceedings and human rights litigation, introducing ex-ante and ex-post human rights corruption impact assessments, improving the transparency and integrity of administrative decisions, limiting administrative procedures which are based on the exercise of discretion, and establishing accountability mechanisms within Moldova's domestic framework.

Executive Summary

Purpose

The scope of this study, commissioned by UNDP Moldova, was to determine the extent to which corruption impacts the enjoyment of human rights in Moldova by identifying which human rights are violated most often, who is most vulnerable, and estimating the human and financial cost of corruption. The scope also included the development of indicators for local authorities to measure and monitor the impact of the corruption, and to propose policy recommendations to limit its impact.

Human rights violations and acts of corruption run contrary to moral principles and violate international law. While they are defined by separate norms, both are consistent in their aim to protect the public trust. Implementation wise, both corruption and human rights have economic, institutional, and social dimensions; most notably, the protection of human rights requires public resources, of which corruption typically has a direct impact. More broadly, the implementation of processes required to protect human rights requires complex institutional, financial, and human arrangements within state institutions. We found that that, systemic corruption works to undermine such frameworks while individual corrupt acts violate individual rights.

This study was also tasked with investigating the causal link between corruption and human rights violations from a legal normative or positive perspective. This required the development of an assessment framework for methodologically assessing cases: as such, study documents our proposed framework as well as relevant tools which may be used to investigate the impact corruption on public processes and individual outcomes. This framework was also used to assess the complex interplay of several actors (including duty-bearers, rights-holder(s), 3rd parties, intermediaries), possible actions (bribe giving/asking, obligations fulfilling/or not), and possible outcomes (direct and/or indirect violation of human rights).

For immediate actors, their actions are typically residing in institutions, financial resources, laws, and regulations. For instance, this study explores the following situations:

- 1) a police officer (duty-bearer) who does not fulfil their obligation towards a domestic violence victim (rights-holder) as they are bribed (directly or indirectly) by an aggressor; regulation provides for wide discretion in qualifying acts as an administrative or criminal offense, and overarching protection measures are subject to individual discretion.
- 2) a patient (rights-holder), legally entitled or not, requests (preferential) access to medical services and bribes medical service providers, resulting in a delay in others' right to access to medical services, aggravated by financial allocations which are limited, and lack of transparency in queuing.
- 3) a candidate for driving license (rights-holder) access to exam and passing of exams is subject of individual decisional discretion intermediated by private actors.

We identified that the challenge becomes distilling where corruption is responsible as a sole responsible factor for the human rights violations. Where other factors exist, how do we measure impact in a consistent and coherent manner? At what point do individual acts move

from stand-alone events to part of systemic corruption, and to what extent do systemic issues impact individuals? We attempt to answer these questions in this study.

On corruption impact on human rights fulfilment (ch. 1, 2)

Our assessment framework includes several stages and corresponding tools: 1) screening (selecting relevant cases/situations, applying causality and vulnerability tests), 2) scoping (types of rights, types of violations, individual or/and systemic analysis, rights analysis), 3) estimating impact (identify corruption and human rights costs, their monetization), and 4) policy recommendations.

We found that individual acts of corruption are a contributing factor for human rights violations in roughly one-third of cases and situations, while systemic corruption accounted for another third of cases. We built a double causality test to distinguish between the two, however it is important to note that other factors often play an important role, such as non-conformity of national law (such as the Constitution) with international standards, inadequate resource, or expertise to identify and comply with international obligations, as well as broader political corruption which are not reflected in this research. On this, we must note that given this study is concerned with selected rights, drivers and patterns of corruption in the context of human rights and is constrained to case data, we do not consider the broader political environment.

For our purposes, the case research approach is useful in identifying situations where corruption frequently impacts human rights, and we were able to ensure our conclusions were consistent across identified rights by deploying our assessment framework. As such, we found that corruption impacts human rights across three distinct scenarios: Type I relates to individual corrupt acts which violate human rights on an individual basis. Type II relates to recurring individual corrupt acts which are driven by systematic factors. Type III relates to systemic and systematic corruption which drive human rights violations.

On affected human rights and vulnerable groups (ch. 3)

In screening for frequently affected groups, we identified that corruption impacts the most vulnerable and marginalized, such as poor households, women, socially disadvantaged, elderly, and persons with disabilities. We identified five frequently impacted rights for these groups: the right to life, the right to legal counsel and to a fair trial (right to defence as in Constitution), the right to education, the right to health protection, and the right to private property. We also identified causality dynamics, such as discrimination, and used our analytical framework to assess the actions of the involved parties provoking indirect violation(s) or discriminatory treatment while no direct violation is found.

Broadly speaking, this study found several patterns where an individual corrupt act had a disproportionate impact on vulnerable groups, such as the dominance of the intermediary networks which create demand and supply, illegitimate claims of right or cancelling positive obligation with bribes, and the demand for bribes in an environment lacking resources.

On the impact on the fulfilment of human rights (ch. 3, 4)

In our analysis, we identified that corruption carries two separate costs: a corruption cost and a human rights cost. The former is legally recognized and refers to the bribe itself, funds lost due to non-payment of taxes and other dues, the fine imposed, and in some cases, the cost of administering justice. The latter refers to the consequences of the human rights violation,

the loss of the individual development opportunity, and damaged legitimacy of the public institution. This study pinpoints the relevant cost areas for each human right impacted, expands on relevant criteria, and attempts to estimate the costs of both an average individual case and broader environment.

Our analysis found that the estimated cost of corruption is around 20 million MDL in only 300 of the cases surveyed. In practice, the real cost is much larger: in the case of domestic violence where there is a risk to the right to life, we estimated the case-based cost alone to be at least 45 000 MDL, while the cost to society at large is some 60 times greater - 2.4 million MDL.

On recommendations (ch. 3, 4)

In this study, we propose policy recommendations which may limit the impact of corruption on human violations, empower rights-holders, and support duty-bearers to fulfil their obligations. Rights-specific conclusions and recommendations are expanded upon in chapter 3. Broadly speaking, we advocate for legislative amendments which would introduce corruption as an aggravating factor when determining liability for human rights violations, as this would trigger an additional line of investigation and/or introduce submissions from interested actors at the (pre)trial stage. We also propose a similar amendment for introducing the consideration of human rights abuse as an aggravating factor in determining liability for corruption.

Chapter 4 contains broader recommendations designed to limit the influence of corruption on human rights. These include to policy objectives/instruments and methods of policy implementation:

- improve *transparency* in *individual determinations* of human rights violations, including inaccessibility of the information on entitlement; increased disclosure and publication of the individual decisions;
- strengthen *transparency* in public documentation, including the formulation and adoption of *public policies* that affect human rights;
- reduce the use of administrative processes which involve the exercise of *discretion*, especially in individual decisions regarding right-holders,
- scrutinize the exercise of *discretion* where it is exercised to the detriment of rights-holders,
- implement *accountability* for the outcome of *individual decisions* on human rights, including justiciability (especially social, economic, and cultural rights) of human rights, availability, and ensuring accountability for an effective remedy where violations occur.

This study also develops a medium-term Theory of Change ('TOC') based on the current state of affairs in Moldova, including problems' analysis, objectives, action measures, expected results, assumptions, and preconditions.

Organization of the Study Report

This study is comprised of five chapters. Chapter 1 (Methodology) presents the methodology used in the research. This includes the full process for collecting data (drawn from individual decisions, the review of draft laws, court decisions), screening information, assessing information and evidence to arrive at the conclusions. If required, the full process for

formulating both right-specific and generic recommendations and adapted analytical tools can be found in Annex.

Chapter 2 (Screening, scoping, analysis) contains the application of our assessment framework in screening cases, analysis of the patterns of individual acts of corruption, and initial observation drawn.

Chapter 3 (Corruption impact on individual rights) contains the application of our assessment framework for selected five individual human rights. For each, we apply our model to understand the prevalent pattern and dynamic in order to distinguish between individual or systemic corruption, and assess each on this basis. For each right, we speculate the degree to which corruption impacts the enjoyment, the costs involved, and suggest targeted policy recommendations.

Chapter 4 (Conclusions, recommendations) outlines our observations on groups whose human rights are most affected by corruption, implications for the affected group and society at large, quantitative estimations, risk indicators and policy recommendations. We also address the original research questions: who is most affected by corruption, the quantitative impact, and specific policy recommendations that are likely to reduce the impact. The chapter also contains a roadmap based on the development of a Theory of Change.

Chapter 5 (Annexes) contains references to data collation files in Excel format for each source used and a word files with treatment of each case per agency. These databases contain our primary data, agency-specific screening information, detailed methodology, and references.

Abbreviations:

ANI – National Integrity Authority,

CESCR – UN Committee on Economic, Social and Cultural Rights

CHR – UN Committee on Human Rights,

CoE – Council of Europe,

CPT – Committee for Prevention of Torture (CoE)

CtteeEDAW - Committee on the Elimination of Discrimination Against Women,

DB – duty-bearer of human rights, state agent, public authority,

EC - Equality Council (Council for the prevention and combating discrimination),

ECHR – European Convention (or Court) on Human Rights,

DATI – Discretion, Accountability, Transparency, Integrity principles,

GRECO – Group of States Against Corruption,

ICCPR – International Covenant on Civil and Political Rights,

ICESCR – International Covenant on Economic, Social, Cultural Rights,

NAC – National Anticorruption Agency,

NPM – National Prevention Mechanism

RH – rights-holder, persons and groups exercising human rights,

ToC – Theory of Change,

Type I violation - corruption inflicted human rights violation, a manifestation of individual acts of corruption,

Type II violation - corruption inflicted human rights violation, a manifestation of systematic corruption,

Type III violation - corruption inflicted human rights violation, a manifestation of individual and systematic corruption,

UNCAC – United Nations Convention against Corruption,

UNDP – United Nations Development Program,

UN – United Nations.

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¹ Number indicates corresponding chapter and section in the study

1. Methodology

This chapter outlines our assessment framework developed to screen relevant cases, identify patterns of individual acts of corruption, review broader systemic issues, and detail how individual and systemic corruption interact. Through our research, we felt it necessary to develop a novel assessment framework to work through the complexity and frame our conclusions.

1.1 Approach

From a normative legal perspective, international human rights norms are codified in international treaties, such as the International Covenant on Civil and Political Rights (ICCPR²) and the International Covenant on Economic, Social and Cultural Rights (ICESCR³). These treaties are incorporated in the Moldova Constitution and guide the interpretation of other relevant rights set out in the document. Anti-corruption and integrity norms are also codified prominently in the UN Convention against Corruption (UNCAC)^{4,5}. Dedicated international human rights treaties and UNCAC converge on their coverage of several norms: for instance, on the protection of freedom of expression, UNCAC contains two specific references to freedom of expression and information⁶ of whistle-blowers and their protection⁷ (art. 34, art.33) which are also generally reflected in the ICCPR (art.19).

Human rights norms place the individual at the centre of the analysis and aim to create conditions conducive to human dignity, peace, wellbeing and development. The international human rights framework requires that states respect, protect, and fulfil human rights, with a view to ensuring their immediate enjoyment or, where applicable, progressive realisation⁸. Human rights law also requires that perpetrators of abuses be held accountable, whether they are officials within public institutions, or private persons. UNCAC approaches this subject from a governance and integrity perspective, and also places obligations on states and private actors to respect, protect and fulfil relevant human rights.⁹ Similarly, the anti-corruption regime holds the same actors accountable for any acts of corruption. Anti-corruption does not explicitly feature within the broader international human rights

² [OHCHR | International Covenant on Civil and Political Rights](#)

³ [OHCHR | International Covenant on Economic, Social and Cultural Rights](#)

⁴ [Convention against Corruption \(unodc.org\)](#)

⁵ Ratified by Moldova in 2007

<https://www.unodc.org/documents/treaties/UNCAC/COSP/session4/V1186007e.pdf>

⁶1st Moldovan case decided by ECHR (Busuioc v. Moldova, no. 61513/00) exposed corruption in public sector exemplifying exercise of freedom of expression and access to information.

⁷ Article 33. Protection of reporting persons Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

⁸ Ph. Alston, G. Quinn, The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights, *Human Rights Quarterly*, Vol. 9, No. 2 (May, 1987), pp. 156-229 (74 pages)

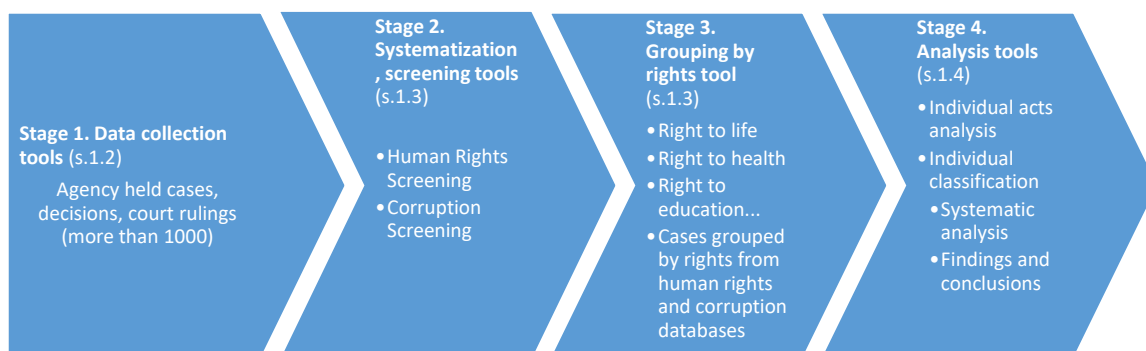
⁹ Improving the Human Rights Dimension of the fight against corruption: How do UN Treaty Bodies address the issue of corruption? CCPR, 2018, [https://ccprcentre.org/files/media/Final_report_\(EN\).pdf](https://ccprcentre.org/files/media/Final_report_(EN).pdf)

framework however, as this study identifies, it may contribute to the ineffectiveness of states in respecting, protecting, and fulfilling human rights at the national level.

- *Assessment framework*

The assessment framework developed and deployed in our study is presented in the graph 1.1.1. It comprises of four stages: from data collection, to data categorisation, screening for relevant information, grouping information by rights and finally applying our analysis tools. Data collection drew on various publicly available sources as is explained in section 1.2. Categorisation of data into database form and later screening for relevant case information is explained in the section 1.3. Initially, there were approximately 1000 cases and situations, while the screened subset of cases and situations left with around two-thirds of them. Cases and situations were grouped in accordance with the Constitution.

Graph 1.1.1 Tools used to collect, systemize, screen, analyze



Limitations: Given the limited time and resources for research, we employed qualitative methods of research to investigate the relationship between human rights and corruption. A future option would be to conduct quantitative and statistical analyses, given the reasonable number of entries (hypothesis testing and correlations). These and other methods could be carried out to corroborate our findings.

1.2 Data Collection and Organization

The data collection stage included identifying all relevant sources of information across the 2017-2020 period. Available data from the state institutions, classified as human rights (Ombudsman, EC) and anti-corruption (NAC, ANI) formed the bulk of our primary data. Other international sources, such as reports of United Nations or Council of Europe expert bodies have been used for the same period¹⁰. Our study also reviewed media reports, expert groups on cases, as well as other secondary sources to complement our analysis.

¹⁰ ECHR rulings against Moldova or results of regional adjudication procedures have been considered as one source. Not though that these judgments refer to the facts of the time period well outside of the research period thus the policy context in the situations had changed. This source of information holds substantial potential for future research.

Sources of information on human rights¹¹:

- Ombudsman examined cases (150 cases reviewed out of an initial 240)¹², containing individual complaints and some administrative decisions (non-adversarial procedure, not enforceable).
- Ombudsman submissions to Constitutional Court and subsequent Court decisions based on Ombudsman petitions (9 cases).
- Equality Council decisions on non-discrimination cases (67 cases reviewed out of 150 initially included)¹³ (adversarial procedure, partially enforceable).
- UN/CoE Human Rights Advisory, Expert bodies conclusions, and recommendations regarding human rights and corruption (15 recommendations).
- Mass-media and NGOs (5 cases).

Sources of information on corruption:

- National Anti-corruption Centre (NAC) cases (250 cases reviewed from an initial list of 750)¹⁴.
- National Anti-corruption Centre (NAC) commentary on draft laws (REA), (76 drafts reviewed out of 340 initially included)¹⁵.
- Integrity Agency decisions (167 relevant cases out of 250 initially included)¹⁶.
- UN/CoE Anti-corruption Expert bodies conclusions and recommendations regarding corruption situations (10 recommendations).
- Mass-media and NGOs (10 cases).

Naturally, empirical data and information collected is assessed in terms of hierarchy of usefulness in our research. We found that the most useful data points were sourced from adversarial cases and situations, followed by the expert-reviews and evaluations based on the thorough criteria and methodology. Complaints, administrative examination, and decisions as well as expert conclusions and recommendations have been relevant for the analysis as well. We have also supported our analysis of individual rights with secondary sources including surveys, reports, media, and other types of information mentioned in the corresponding chapter.

Cost calculation and impact monetization has been done in Moldovan lei (MDL). The exchange rate used is a conventional one of 20 MDL for 1 euro.

Limitations to data collection, organization

Collection of available data was carried out during the period of August - October 2020. The categorisation process was undertaken in November 2020. The analysis of data and work processes were conducted remotely as a result of the COVID-19 pandemic, thus some

¹¹Each case/situation is represented by a string that has the following fields: 1) case code, 2) occurrence dates, 3) summary description, 4) victim data or prosecuted data, 5) perpetrator data, 6) conclusions/decision. Screening and analyzing data led to the creation of the additional fields: 7) preliminary evaluation, 8) human rights involved, 9) summary conclusions.

¹² Excel file DB3 Ombudsman - contains systemized information based on complaints and decisions registered in the Ombudsman platform

¹³ Excel file DB4_EC - contains systemized information based on Equality Council (EC) decisions found on EC website

¹⁴ Excel file DB2_CNA - contains systemized information based on NAC initiated corruption related court decisions

¹⁵ Excel file DB6_CNA - contains systemized information based on NAC draft laws reviews

¹⁶ Excel file DB5_ANI - contains systemized information based on ANI individual decisions

processes took longer than originally planned. Further, some secondary sources were not reviewed to prioritize primary data.

1.3 Categorisation and Screening

Stage 2 included categorising data and screening for relevance. This process was composed a causation test and 5-step filtering. As previously, we developed separate analysis for human rights and corruption, and built relevant databases for each, including relevant data treatment steps¹⁷.

For human rights cases, we first enquired whether (i.) a violation occurred, (ii.) whether corruption was a factor, and (iii.) made an assessment of whether corruption was the primary cause¹⁸. For corruption cases, we identified (i.) the rights affected and (ii.) identified the corruption factors.

Table 1.3.1 Filtering cases

<i>Human rights cases</i>	<i>Corruption cases</i>
<ul style="list-style-type: none"> • Step HR1. Is there a human rights claim? • Step HR2. Is claim covered by the Constitution? • Step HR3. Are there corruption-related vulnerability risks/factors? • Step HR4. What are non-corruption related causes of the violation? • Step HR5. What are the possible corruption related causes? 	<ul style="list-style-type: none"> • Step C1. Form of corruption and legitimacy of right/entitlement; • Step C2. Constitutional relevance and coverage of the possible right/entitlement; • Step C3. Classification of implied right in terms of accessibility, affordability; • Step C4. Corruption vulnerability risk/factors presence; • Step C5. Type of violation of Constitutional rights.

We were particularly interested comparable or similar cases/situations that were approached from both a human rights and a corruption angle¹⁹. One could argue that the filtering steps for the human rights approach represent the reverse of the screening process for the corruption approach, and vice versa.

Cases were considered relevant where they included a causal link between corruption and human rights, either by way of “*law-in-fact causation*” or “*proximate causation*”²⁰. The *cause-in-fact test* applied to individual corrupt actions and refers to a necessary (sole factor) or a substantial (dominant co-factor) factor for harm, or a plausible increase in chance (most probably) in respect of direct victim (rights-holder) or indirect victim (rights of others)²¹. The

¹⁷Human Rights Impact Assessment by World Bank (2013) follows similar approach in 1) screening relevant cases, 2) scoping identifying qualitative pattern of violation, 3) collecting additional relevant evidence, 4) making preliminary evaluation, systematization and finally analysis of information.

¹⁸Corruption and Human Rights: Making the Connection, International Council of Human Rights and Transparency International, on p. 28-29, propose a somewhat generalized approach for human rights cases of screening and evaluating impact and possible measures. However, it lacks practicality and corruption factors dimension incorporated.

¹⁹To anticipate: study has found 3 comparable and similar cases/situations containing in independently in human rights and corruption databases: i) physical domestic abuse (under the right to life), ii) access to medical services (under the right to health protection) and iii) effective investigation (right to defence).

²⁰ Following criminal and tort law causality approach, for instance see Causation in the Law, Stanford Encyclopedia of Philosophy, 2019,

²¹A.Peters, Corruption as a Violation of International Human Rights, p.1253, 1267; EJIL (2018), v.29, n.4, 1251-87

proximate cause test inspects the influence of surrounding circumstances leading *substantially* to human rights violations for a direct or indirect victim. A further, more remote type of possible causation (for instance, where the two variables exist but do not coincide) has not been considered in this research.

In establishing a causal correlation between corruption and negative human rights impacts, we first examined the nature of corruption (individual or systemic). We then determined the extent to which corruption contributed to the violation, noting that in some instances, this connection was remote²².

As a final step, the relevant cases and situations were sorted by the human right that was impacted, and linked to rights protected under the national Constitution.

²²One source Topics of Anti-Corruption Law: What Does Kosovo Teach Us About Using Human Rights Law to Prosecute Corruption Offences? M. Bryane, SSE, p.13-15, tries to deconstruct the causal link from the economics perspective, yet lacking the practicality of qualitative determination of the link as the author confirms in the paper

1.4 Corruption Impact Analysis Framework

As part of our wider research, we identified several approaches to explaining the mechanics of individual acts of corruption using a positivist paradigm²³. One author argues for the classification of causality, drawing on a hypothetical relationship between corruption and human rights: the working hypothesis being that individual corrupt actions typically result in private gain, draining state resources and impact the enjoyment of human rights. Similarly, it was generally accepted that systemic corruption has an impact on human rights, however no coherent analysis model was proposed. More broadly, it was also recognized that systemic corruption at the political level affects human rights through a different mechanism than individual corrupt actions.

Protecting and respecting human rights requires both financial resources and policy structure to dictate the approaches of relevant institutions. Without the right structure, financial resources may be subject to individual corrupt actions or harmed by inefficient policy. We identified that one author provided a comprehensive estimation of the resources and social benefits needed for the protection of certain rights²⁴.

Stage four is where we applied the following assessments: individual corrupt act impact, individual corrupt act pattern identification, and systemic corruption impact. Interaction between individual actors and individual corrupt acts is complex. Graph 1.4.1 explains all three levels of corruption: micro- (individual), meso-, macro-levels, and outlines how these 3 levels contribute (on a causality basis) towards the violation of human rights.

- *Impact assessment of individual corrupt acts*

Human rights violations and corruption violations relate to different events but typically share actors. The core actors involved are the duty-bearer (such as the state agent) (DB) and rights-holder(s) (RH). From human rights perspective, duty-bearer (DB) has positive or negative obligation towards rights-holder (RH). Violation of human rights may occur as a result of DB actions towards RH or by inaction against 3rd party actions towards RH. 3rd party may be a private or state agent. Human rights perspective does not examine the causes of state agent failure to exercise obligation.

From corruption perspective, the relationship between duty-bearer (DB) obligation towards rights-holder (RH) is seen through the optic of the bribe giving (RH) or bribe asking (DB). The bribe act may be intermediated. In order to examine the corruption and human rights interrelation we have to bring all actors involved and all actions in one place.

Corruption may involve the offering of a bribe directly or via intermediary for a beneficiary to obtain preferential access to a right, or even a claim without entitlement and thus in later case producing a negative effect on rights holders (RH). Corruption may also involve the request for a bribe from a duty-bearer (DB) directly or via intermediary to fulfil a particular obligation. To fulfil human rights, the duty bearer has both positive and negative obligations, which may result in a violation if they are not fulfilled. A human rights violation may also take

²³The approach defines direct (bribe is the cause), indirect (bribe essential condition for violation) and remote (corruption triggers public reaction of demonstration and violence) violations with a recipe to treat the relevant corruption related cases only, ICHRP & TI, *Corrupting and Human Rights: Making the Connection* (2009), p.27-29

This and other approach imply discrimination as a separate situation of a preferable treatment that is unjustified or potentially treating the rest differently. Also in A.Peters and M.Bryane.

²⁴S. Holmes et al, *The Cost of Rights. Why Liberty Depends on Taxes*, 1999.

place where a third-party acts against the rights-holder (RH) and the duty-bearer (DB) fails to intervene. Broadly speaking, causes for the human rights violation may be: 1) individual corrupt acts, 2) political corruption, 3) inconsistency in national law, 4) the exercise of discretion outside of the limits of the margin of appreciation, 5) inadequate resources of the duty-bearer.

- *Patterns of individual acts of corruption*

This description of the human rights and corruption variables interdependency is reflective of our qualitative assessment. In practice, variations of these two variables can manifest in a number of possible scenarios, which when mapped out assist us in predicting the interactions. Cases in our human rights databases features both cases where a rights-holder (RH) is denied access to the right; and where the duty-bearer (DB) fails to fulfil their obligation. Therefore, we can identify that these two variables represent our first level variation. In our corruption databases, the rights-holder (RH) and duty-bearer (DB) perspectives vary correspondingly: (not) offering bribe and (not) asking for a bribe, representing another level of variation for example.

We identified that variations of these independent variables result in 16 possible situations. We used these to *forecast potential elements or manifestations within the corruption environment and predict potential violations even when minimal details of the situation are known.*

- *The impact of systemic corruption on human rights*

A settled approach towards assessing the systematic impact of corruption has not yet been agreed upon in the literature. Some propose simply conducting a regulatory impact assessment in order to predict changes to the political environment, while others suggest industry/sector relevant analysis is required. In the context of human rights, policy objectives are determined by leadership through political processes and policies: such as the right to health, right to social protection, right to property, etc. Politicians naturally employ a level of political discretion, however, the Constitution and international human rights law binds states to human rights norms, improvements, and progressive realization where relevant²⁵. International principles of implementation for particular economic, social, economic, and cultural rights require progressiveness, non-regression, and the maximum use of available resources. Therefore, we argue that corruption in the political environment should be seen as a priority at the policy objective level. Potential mechanisms for identifying the diversion of public resources towards other objectives or draining out of the public system resources could take several forms, including establishing principles of participation, accountability, transparency, and access to information^{26,27}:

²⁵ P.36, L.A.Cardona, H.Ortiz, D.Vazquez, Corruption and Human Rights: Possible Relations, Human Rights Quarterly, v.40, n.2, 2018, pp.317-341

²⁶ P.61-62 IACHR and OAS, Corruption and Human Rights in the Americas: Inter-American Standards, 2019

²⁷ Another type of example may come from the corruption prevention and persecution itself, namely by the absence of the prescription or extremely mild sanctions for bribes. On a systemic or grand level, opinion exists that the absence of the anticorruption policy in certain conditions may be conceptualized as a violation of concrete related human rights due to the lack of efforts to contribute to the highest attainable standard. Most likely, it is not the absence of the dedicated corruption prevention or combating policy concerning the concrete right but the quality and coherence of the concrete human rights policy design and implementation. P.1276, A.Peters, Corruption as a Violation of International Human Rights, EJIL (2018), v.29, n.4, 1251-87

- i) (policy objectives) grand-corruption depletes state budgets, therefore affecting budget allocations for social security, health, housing, education, pension, etc;
- ii) (policy instruments, particularly fiscal/tax) exercise of political power is developed to collect (fiscal/tax, excise, etc) resources and make them available for progressive realisation;
- iii) (policy instruments, particularly regulatory and institutional) establishing a public service/social program to give effect to rights by private resources where public resources have been diverted (illicit siphoning off huge sums);
- iv) (policy objectives and policy instruments) avoiding the design of policies in a manner to deliberately make them contradictory, weak to deliver and susceptible to private party exploitation;
- v) (policy instruments) the capture of certain institutions by private interests linked to the funding needed to realize human rights (ESCR).

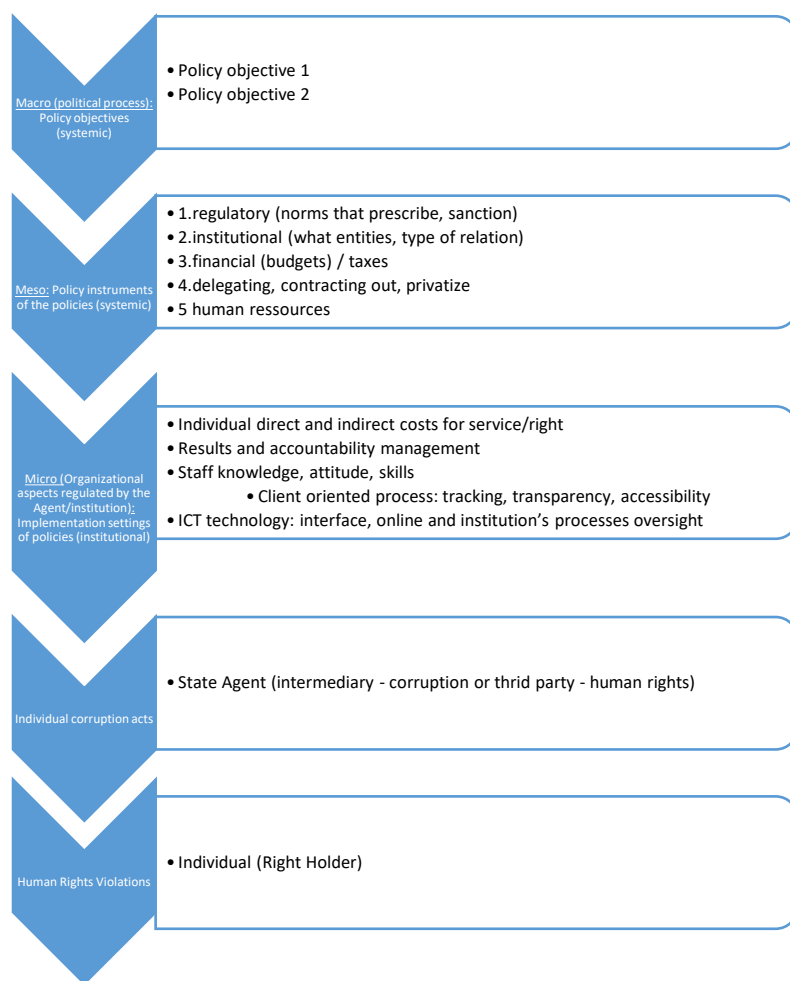
This study expands on the above discussion points and proposes an integrated individual and systemic analysis of corruption's influence on human rights, taking a policy design, management and implementation approach²⁸. The development of a systemic framework is required to inspect several areas: political level of corruption (not captured by individual bureaucrat act), proximate causation, contextual understanding of corruption (beyond individual acts), systematic manifestation of corruption. Documenting these factors provides us with the potential for nuanced predictions.

The proposed integrated model of analysis also includes micro-, meso- and macro-levels as outlined in graph 1.4.3. This is relevant for identifying where individuals prioritize private interests and is particularly useful when assessing whether resources are depleted without proper justification. As mentioned, this impacts progressive realisation with international standards, as well as the underlying rights at hand. At the state level, proper implementation is the result of a (human rights) policy in place at the macro-level, supported by policy objective(s) at a meso- level and fine-tuned at the micro-level, as detailed in the graph 1.4.1. Policy objectives are determined by politicians and decision-makers through the political process.

Policy implementation settings including the use of available resources are decided by the principle (in Principle-Agent model) and by the Agent in their relevant organization. Once the policy objective(s) is established at the macro level, they are deployed by policy instruments at the meso- level. Instruments are typically adopted by Parliament's laws and Cabinet of the Minister's regulations. The micro-level refers to settings such as managerial organization, case-management of individual situations and the core of the DB-RH individual relationship.

²⁸ W.Dunn, *Public Policy Analysis: An Introduction*, 3rd edition, Pearson (2003), D.Weimer, A.Vining, *Policy Analysis: Concepts and Practice*, 4th edition, Pearson, (2012).

Graph 1.4.1 Integrated micro-, meso-, macro levels of corruption influence on human rights



- *Taxonomy of human rights violations determined by corruption*

Categorisation of the type of human rights violations is the final step in assessing the relationship. We felt that the proposed taxonomy is useful for framing the violations and contemplating improvements and remediation steps.

Firstly, Individual corrupt acts are typically isolated and most often, the responsibility of individual bureaucrats. These types of violations could be mitigating by improving implementation settings at the institutional level and by conducting assurance processes such as integrity audits. We refer to this type of violation as Type I in the Table 1.4.4 below.

Table 1.4.2 Type of corruption determined human rights violations

Locus of corruption/type of violation	Type I violations	Type II violations (systematic)	Type III violations (systemic and systematic)
Individual corrupt acts (only)	only individual corruption cases (not systematic)	Abundance of individual cases and the deficiencies in the implementation settings of the entities responsible	
Implementation settings			

Policy instruments			Policy-makers, decision-makers determined corruption
Policy objectives			

Non-isolated human rights violations were the result of individual corrupt acts combined with deficiencies in implementation settings. We refer to these as type II human rights violations where responsibility is placed with the entity management and its relevant frameworks. Implementation settings improvements along the DATI logic were the primary method of remedy identified for type II violations.

Type III human rights violations were caused by flaws and deficiencies in the policy objectives and policy instruments (one or several). These causes are political in nature and are scale across the political environment, resulting in systemic and systematic patterns of human rights violations. In practice, these types of the violations are complex and could involve Type II presenting simultaneously.

In sum, we identified the following three types of human rights violations.

- a) human rights violation resulting from an individual corrupt act, not yet evidence of a systematic pattern - type I human rights violations;
- b) human rights violation resulting from individual corrupt acts and faulty implementation settings - type II human rights violations;
- c) human rights violations resulting from deficiencies and flaws in policy objectives and policy instruments – type III human rights violations.

2. Scoping and Screening Analysis

This chapter contains the results of the application of the scoping and screening parts of the methodology. Practice-oriented impact assessment sources (human rights or corruption assessments)²⁹ suggest a staged assessment of the human rights impact. Staging implies a combination of the preliminary assessment of the most vulnerable areas (scoping) and the depth of the risk using intelligence tools, followed by the proper evaluation with comprehensive evidence collected in the selected rights areas.

The result of the screening is presented in section 2.1. Section 2.2 contains the classification of cases and situations: their types, population, relationship to concrete rights, and rights vulnerable to corruption. Section 2.2 includes a scoping exercise in order to understand the individual rights, which is developed by way of comprehensive analysis in the following chapter. Section 2.3 develops preliminary conclusions and recommendations.

2.1 Screening results

This section discusses the results of screening instruments developed in the section 1.3, namely human rights and corruption relevant cases selection steps as outlined in graph 1.3.1. We do not provide a deconstruction of the screening tools given limited space and the scope of the exercise, however details on their application are presented in the Annex.

Table 2.1.1 presents a tabled summary of all relevant cases from different databases, organized following individual rights. Most of the Constitutional rights are covered, however not to the same extent. Of around 1000 cases and situations included in the application of the screening process, approximately a third contain direct corruption *effect on human rights violations*. Another third contains circumstances where corruption does not cause a direct violation, but the rights of others are violated (indirect violations). We shall use these cases as the foundation for further analysis to determine the impact of corruption.

Databases from NAC, EC, and ANI present decisions of the adjudication value together with case facts, findings of the violations of human rights, the degree of compliance with the obligations of authorities, and the possible lines of causes. Other databases contain opinion-dominated conclusions where the adversarial nature of confrontation of positions and facts are not presented.

²⁹Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development, The World Bank, PCS, 2013; Corruption Impact Assessment Guidelines, Asia-Pacific Economic Cooperation, 2013; Handbook for the Corruption Impact Assessment, Anti-corruption & Civil Rights Commission, 2017; A Guide for Anti-Corruption Risk Assessment, The Global Compact, 2013;

Table 2.1.1 Systematization of cases after screening: possible direct and indirect violations

Rights as per Constitution/source of information	Corruption perspective					Human rights perspective					
	NAC: 2017-20 (cases)	NAC: 2017-20 (draft laws)	ANI: 2018-20 (cases)	UN/CoE expert bodies (recs)	Media, NGOs (cases)	EC: 2018-20 (cases)	Ombudsman: 2018-20: (cases)	Ombudsman: 2015-20: (Constitutional court cases)	UN/CoE Expert bodies (recs)	Media, NGOs (cases)	
1. right to life, physical and psychological integrity (art.24)	4	0	2	0	0	6	29	0	0	0	41
2. right to individual liberty and security (art.25)	8	2	0	0	0	1	1	0	0	0	12
3. right to defence (including fair trial) (art.26)	52	3	1	5	0	35	27	0	4	0	127
4. right to liberty of movement (incl. person with disability (art.27, 51))	22	2	0	0	0	1	3	0	0	0	26
5. right to privacy, family (art.28)	0	2	0	0	0	1	20	0	0	0	23
6. right to liberty of conscience (art.31)	0	1	0	0	0	4					5
7. right to liberty of opinion, expression (art.32)	0	0	0	0	0	2	0	0	0	0	2
8. right to culture, creation (art.33)	0	0	12	0	0	0	0	0	0	0	12
9. right to information (art.34)	0	2	0	0	0	3	2	0	0	0	7
10. right to education (art.35)	10	2	29	0	0		6	3	1	0	44
11. right to health protection (art.36)	40	10	3	0	0	6	16	0	2	0	77
12. right to protection of the environment (art.37)	0	1		0	0	0	0	0	0	0	1
13. right to be elected (art.38)	2	1		0	0	0	0	0	0	0	3
14. right to participation in public administration (art.39)	0	2	39	0	0	0	2	0	0	0	43
15. interdiction of forced labour (art.44)	48	0	0	0	0	0	0	0	0	0	48
16. right to strike (art.45)	0	1	0	0	0	0	0	1	0	0	2
17. right to property (art.46)	48	11	0	0	0	0	15	0	3	0	77
18. right to assistance, social protection (art.47, 51)	0	10	7	0	0	8	12	5	1	0	43
19. others	60	0	14	0	0	0	2	0	0	0	76
total	294	50	107	5		67	135	9	11		678

Legend: bodies that generate adjudicative decisions (EC, ANI) and court judgments (NAC) provide a primary source of analysis. The rest of the data and information fill in the context of the examined situations.

The rights that were most significantly affected in the cases considered are the right to legal counsel and the right to a fair trial (right to defence) (art.26) with more than 100 relevant cases in all databases. The right to health protection (art.34) was involved in 59 cases in all databases; right to property (art.46) with 59 relevant cases in almost all databases, right to education (art.35) with 44 relevant cases and almost all databases, right to social assistance, social protection including for persons with disabilities (art.47, 51) with 30 relevant cases in almost all databases. In this analysis, we identified the absence of the right to inviolability of house (art.29), right to the confidentiality of correspondence (art.30), freedom of public assembly (art.40), freedom political liberty (art.41), trade union association (art.42), right to labour and protection (art.43). The lack of presence of a relevant case, however, does not imply that the human rights and corruption interdependence does not exist for those rights.

Findings and conclusions drawn from the agency databases are presented below.

Equality Council (EC):

- We identified a number of cases where there was an impact on the following rights in the context of corruption:
 - a. the right to life,
 - b. right to a fair trial and the availability of defence,
 - c. right to liberty/security of person,
 - d. freedom of movement,
 - e. rights to privacy and family,
 - f. freedom of conscience,
 - g. freedom of expression, right to information,
 - h. right to health,
 - i. right to social protection;

Integrity Agency (ANI):

- As with the Equality Council, we identified a range of cases containing impacts on human rights caused by non-integrity (corruption): right to life (24), right to defence (26), right to culture (33), right to education (35), right to health (36), right to public participation (39), right to property (46), right to social protection (47);
- In assessing the data from the Integrity Agency, we are able to identify relevant lines or argumentation however as the cases do not contain assessments of the impact or the causal nexus of corruption, they have not been as useful in framing our understanding of impact. The data was however useful in complementing our understanding of wider context of corruption and vulnerability factors;
- As part of this broader understanding, we identified the following contexts which may indicate heightened risk:
 - The allocation of financial resources in contexts where integrity-related processes are not enforced, for example, in the collation of public tenders, contracting out to firms with conflicting interests, and the allocation of public licenses to affiliated firms. This context may have implications for the realization of the right to life, right to education, right to participate in the public administration and right to social protection;

- Access to public services in a competitive and in some cases discriminatory manner may have implications for the realization of the right to life, right to culture, right to education, right to health protection, right to participate in public administration, right to social protection;
- Persons appointed to public positions in situations where they have conflicting interests may have implications for the realization of the right to life, right to culture, right to education, right to health protection, right to participate in public administration, right to social protection.

National Anti-corruption Center (NAC):

- The NAC provided us with individual judicial decisions from a prosecutorial or enforcement perspective. Helpfully, these cases and their supporting processes offer important clarity to support our understanding of the qualitative relationship between corruption and human rights. However, as the database relates to prosecutions, the data includes a limited range of relevant rights.
- The NAC contained assessments of the following rights: the right to life (24), right to defence (26), right to liberty/security of person (25), right to defence (26), right to the movement (27), right to privacy and family (28), right to conscience (31), right to freedom of expression (32), right to information (34), right to health (36), right to social protection (47).

Ombudsman:

- Data obtained from the Ombudsman included complaints lodged and in some cases Ombudsman responses. As initial complaints data was less presented in judicial form, this information has been used to understand the range of perspectives involved as well as different corruption factors and risks;
- Complaints raised and responses provided related to the following rights: the right to life (24), right to defence (26), right to liberty/security of person (25), right to defence (26), right to the movement (27), right to privacy and family (28), right to conscience (31), right to freedom of expression (32), right to information (34), right to education (35), right to health (36), right to public administration (39), right to social protection (47); right to the family (48).

The above observations refer to the quantitative evaluations of the case population regarding individual human rights. As noticed earlier, the most valuable information is contained in the cases and situations codified through the adjudication procedures from *both corruption and human rights perspectives*, therefore, we focused on the below rights to best explore the human rights and corruption relationship:

- right to life (art.24) with NAC cases and EC cases; complementing with ANI cases and other relevant information;
- right to defence (art.26) with NAC cases and EC cases; complementing with ANI cases and other relevant information;
- right to education (art.35) with NAC cases and EC cases; complementing with ANI cases and other relevant information;
- right to health (art.36) with NAC cases and EC cases; complementing with ANI cases and other relevant information;

- right to property (art.46) with NAC cases and EC cases; complementing with ANI cases and other relevant information.

Screening findings indicated that the most reliable conclusions were able to be drawn from cases which provide first-hand data from both corruption and human rights perspectives. This detail was evident when reviewing cases and situations focused on a particular right, and we often observed their fragmentation, e.g. in considering the right to education, there are several elements to consider: i) academic performance grading, ii) graduation exams, iii) access to school/kindergarten, etc. This provides us with the information necessary to inspect the interaction between corruption and human rights at different stages in the process, and also provide possible patterns that can be extrapolated to other rights which do not yet have broad enough case coverage. For clarity, we do not content that corruption does not influence the fulfilment of other human rights not presented in the table.

In summary, throughout the screen process we arrived at the following conclusions:

- more than a third of cases screened contained circumstances where corruption directly influenced human rights fulfilment, and a third where corruption influences the rights of others (we refer to influenced as individual acts and the broader contextual vulnerability of rights holders may be either directly or indirectly impacted by corruption as main or concurring factor);
- cases from the databases which contain both corruption and human rights perspectives direct from the adjudication procedures provided the most valuable bases for our analysis.

2.2 Scoping results

This section contains the application of our corruption and human rights interdependency model and details of the relationship's patterns. The key outlining type of relationship between corruption and human rights, are explained.

The added value of the model developed is that we are able to predict how certain dynamics will impact potential cases of corruption. Generally speaking, only part of the scene is captured by anti-corruption or human rights investigative agencies, however our model can help to view the wider causation chain, and identify which elements may be missing and where improvements can be made.

Findings from the situation when the authorities do not fulfil their obligations causing the individual direct violation of human rights:

- **Group 1 (total of cases: 254 cases): civil servant asks for a bribe and which is refused by the beneficiary of service (NAC (114 cases), EC (8 cases), ANI (132 cases)).** These cases involve the non-fulfilment of a state obligation (DB) towards a rights-holder (RH). The fact that corruption and human rights databases capture this situation proves that the problem is seen from both perspectives. Based on our table we can see that in reality, these cases are part of a wider phenomenon. In many cases, the rights-holders are compelled to offer bribes in order to access to particular services which most likely results in the violations of the rights of others. Both Group 1 and Group 2 points to evidence of a systemic issue.

- **Group 2 (total of cases: 68 cases): civil servant asks for a bribe which was provided by the beneficiary of service (NAC (68 cases)).** These cases again feature the non-fulfilment of the state obligation and combined acts of corruption: performed by both the duty-bearer (DB) and rights-holder (RH). NAC database depicts complementary on investigating such incidents from several angles, including the duty-bearer (or rights-holder) and any intermediaries, and finds all parties responsible for the corruption and resulting impact. Group 2 is largely about the attempt of the rights-holders to obtain preferential access or treatment to a rights-based benefit of limited availability. This results in indirect violations of the rights of others. Therefore, analysis of these cases should be complemented with the evaluation of the rights of others in order to understand the full impact.

Findings where the authorities fulfil their obligations and there is no direct violation of human rights, yet indirect violations of human rights occur:

- **Group 3 (96 cases): rights-holder offer bribe to get preferential access (NAC (96 cases)).** These cases involve civil servants' fulfilling their state obligations (DB); however the rights-holder (RH) initiates the offer of a bribe, resulting in the civil servant providing preferential access. This preferential access results in the realisation of the rights of others being delayed, and in some cases violated. In particular, these cases informed our understanding of vulnerable groups as we were able to identify who was delayed in receiving treatment or access. Plotting out each scenario, we were able to identify situations and predict behaviors: including where the duty-bearer is involved in the organisation of the bribe but does not request it.

Findings from other groupings of cases:

These are cases when the impact on individual human rights can be explained by systemic corruption, which can refer to the political environment or external influences.

The table 2.2.2 presents the results of our scoping exercise organised by right and by grouping of corruption type outlined above. The first 3 columns contain violations based on systemic corruption. The grey columns contain cases and situations where the rights holder is involved in the corruption, and as such, contain both direct and/or indirect violations of human rights.

This analysis shows that all manner of rights can be affected by corruption. In some situations, there is evidence that the same situations can occur but be driven by entirely different drivers.

Table 2.2.2 Constitution's rights and corruption impact on human rights

	No RH violation, no individual but political corruption	No RH violation, others' rights violation, no individual but political corruption	No RH violation, others' rights violation, RH corruption+ DB pay	RH violation, RH corruption	RH violation, DB corruption	RH violation, other rights violation, DB corruption
1. right to life, physical, integrity (art.24)	1(EC)+ 1(ANI)	2(NAC)			4(NAC)+ 5(EC)+ 1(ANI)	
2. right to liberty and security of person (art.25)		6 (NAC)	14(NAC)		8(NAC)	
3. right to defence (art.26)	32(EC)	36(NAC)	14(NAC)		52(NAC)+ 2(EC)	

4. right to freedom of movement (art.27)		14(NAC)	52(NAC)		22(NAC)	
5. right to family (art.28) detainee place service						
6. right to liberty of conscience (art.31)				4(EC)		
7. right to culture and creation (art.33)					12(ANI)	
8. Right to information in Russian (art. 34)	1(EC)					
9. right to education (art.35)	2(ANI)	88(NAC)	0(NAC)		10(NAC)+ 22(ANI)	
10. right to health protection (art.36)	1(EC)	88(NAC)	0(NAC)		8(NAC)+ 1(EC)+ 3(ANI)	36(NAC)
11. right to participate in public administration (art.39)					70(ANI)	
12. right to private property and its protection (art.46)		58(NAC)	16(NAC)		10(NAC)+ 5(ANI)	32(NAC)
13. right to assistance, social protection (art.47, 51)	5(EC)+ 2(ANI)				5(ANI)	
14. rights related to local administration					14(ANI)	
15. obligation to public payments (art.58)	NAC					

Table 2.2.2 shows that for the same right, the impact of corruption concerns direct violations and also indirect violations of the rights of others. This will be explored in detail in the next chapter.

At this stage we can identify that the following seven human rights are most frequently violated: 1) the right to life (24), 2) the right to private property (46), 3) the right to health protection (36), 4) the right to education (35), 5) the right to defence/fair trial (98 cases), 6) the right to liberty and security of person (25), 7) the right to freedom of movement (27).

The cases contain sufficient information to allow for a proper analysis of the following rights: the right to life, right to defence, right to education, right to health, right to private property. The available data and information also show that for the rights listed above, the number of violations multiplies where there are also violations of the rights of others. We will expand on this in chapter three.

2.3 Conclusions and Recommendations based on Screening and Analysis

Distinguishing between individual corrupt act and systemic corruption, as well as identifying the micro-, meso- and macro-levels of the transactions provides a good framework for the understanding of the corruption phenomenon impact on human rights. Through this process, we arrived at the following conclusions:

- at least a third of cases or situations feature a direct impact on human rights, and another third feature an indirect impact.

- all human rights (civil, political and social, economic) are adversely influenced by individual and systemic corruption.
- in some situations, individual corrupt acts are not responsible for the direct RH human rights violations yet provoke an indirect violation of the rights of others (indirect violation).
- victims of the direct and indirect violations of human rights are typically the most vulnerable in society.
- The seven most frequently violated rights are: 1) the right to life (24), 2) the right to private property (46), 3) the right to health protection (36), 4) the right to education (35), 5) the right to defence/fair trial (98 cases), 6) the right to liberty and security of person (25), 7) the right to freedom of movement (27).

Conclusions concerning human rights cost of corruption:

- individual corrupt acts produce identifiable and quantifiable costs to society;
- corrupt acts also have an indirect effect with similarly identifiable and quantifiable costs to society.
- individual corrupt acts deplete public resources (e.g. free-rider problem) which can be measured as identifiable and quantifiable cost.
- individual acts of corruption and political systemic corruption erodes the legitimacy and reputation of public authorities and represent an identifiable and quantifiable cost to society.
- individual acts of corruption and political systemic corruption contribute to the shadow economy to the benefit of private actors, decision-makers and private networks representing an identifiable and quantifiable cost to society.

Generic policy recommendations identified during the screening process for the prevention of *individual corruption* are formulated at the micro-level as per graph 1.3.3, and are consistent with other findings³⁰ as follows:

- 1) improve *transparency* for *individual decisions* taken on human rights, such as making information on the entitlement publicly available; improving the disclosure and publication of individual decisions.
- 2) strengthen *transparency* on the development and adoption of *public policies* that affect human rights.
- 3) reduce the use of *discretion* for individual bureaucrats in the adoption of the individual decisions which have a human rights impact.
- 4) scrutinize *discretion* exercised within the framework of certain public institutions.
- 5) consolidate adequate *accountability* for the *individual decisions* regarding human rights, including justiciability (especially social, economic, and cultural rights), availability, and effectiveness of remedy.

Impact on human rights driven by corruption at the political (macro) and systemic (meso) levels, as per graph 1.3.3, require a separate assessment to that of individual corrupt acts. Unfortunately, the only available information on the impact of systemic and political corruption is NAC REA expertise of draft laws (NAC REA), which focus specifically on the laws. They do not describe the phenomenon in practice. The scope of the analysis is also limited to

³⁰P.50, pp.97-98, Corruption and Human Rights in the Americas: Inter-American Standards, IACHR and OAS, 2019

one regulatory instrument. As such, while the REA does not analyze related policies but rather the legal context of the policy.

3. Assessment of the Impact of Corruption on Human Rights

3.1 Explanation

In the same manner as above, we assessed the impact of corruption on particular human rights after identifying the specific aspects of each right³¹. The selection of the rights to examine was based on our scoping and screening work, as well as whether sufficient information was available.

3.2 Right to life, physical and psychological integrity (art.24)

For the right to life and to physical and psychological integrity, we inspected the following areas: 1) effectiveness of investigation into domestic violence³², 2) conditions of detention, 3) death resulting from medical treatment (this area is also examined in the health rights section).

According to our analysis in graph 1.4.3, individual cases are classified into 2 groups: DB corruption and RH violation (H1B1) – 10 cases (4 (NAC), 5 (EC), 1 (ANI)) and no RH violation, no DB corruption but political/systemic corruption with rights of others affected – 4 cases (1(EC), 1(ANI), 2(NAC)). There is one type of corruption that causes a violation of the rights-holder rights, where a duty-bearer requests a bribe. The rest of the cases refer to no violation of rights-holder rights, however the likelihood of the violation of rights of others is clear.

Table 3.2.1 Right to life: Types of individual acts of corruption impacting human rights

1. right to life, physical, integrity (art.24)	No RH violation, no individual but political corruption	No RH violation, others' rights violation , no individual but political corruption	RH violation , DB corruption
	1(EC)+ 1(ANI)	2(NAC)	4(NAC)+ 5(EC)+ 1(ANI)

Cases of DB corruption and RH violation require the application of our individual corruption analysis. However, cases with no RH violation and no DB corruption with systemic corruption and rights of others affected require a systemic assessment. Cases classified as DB corruption and RH violation (H1B1), as explained in section 1.4, signify only part of the phenomenon of direct or intermediated individual acts of corruption. These cases indicate the existence of RH+DB corruption, and ultimately a violation of rights of others. Corruption related to cases of domestic violence are not captured by the state institutions at all, which indicates the systematic character issue. These cases also required a systemic assessment in order to determine the existence of policy instruments and policy objectives flaws.

³¹ P.328, L.A.Cardona, H.Ortiz, D.Vazquez, Corruption and Human Rights: Possible Relations, Human Rights Quarterly, v.40,n.2, 2018, pp.317-341

³² <http://antiviolenza.gov.md/>

3.2.1 Assessment

1) Effectiveness of investigation of domestic violence

The available data refers to only two forms of domestic violence – physical and sexual. The other forms of domestic violence, i.e., psychological, are not discussed.

- *Human Rights standards on domestic violence*

International human rights standards related to domestic violence include relevant protections and remedies such as conducting an effective investigation and taking protective measures regarding domestic violence³³. This is provided by ECHR (art.3³⁴), CEDAW (GR.19)³⁵, ICCPR (art.7), CoE recommendation,³⁶ and art. 24 of Constitution (along with art.201-1 of Penal Code). Increasingly, the international community is beginning to recognize domestic violence as a form of torture, or other cruel, inhuman or degrading treatment, and therefore prohibited by the UN Convention Against Torture.

In a case relating to a different country, the Committee on the Elimination of Discrimination Against Women (CteeEDAW) stated that “failure to prosecute and convict the perpetrator was an indication that the state condoned the violence”³⁷. For our purposes, the European Court of Human Rights has found violations of art.3 of the European Convention in cases against Moldova on the basis of procedural ineffectiveness investigations into allegations of domestic violence³⁸. The European Court stated that Article 3 “gives rise to a positive obligation to conduct an official investigation” and that under Article 8, the Court may assess the effectiveness of such an investigation. This conveys a positive obligation for duty bearers.

- *Available cases*

The NAC (cases) database returned 2 cases on condemnation (passive (DB) corruption) of 2 police agents (DB1- superior, having direct obligation, and DB2-subordinate) for not investigating domestic violence. In both cases, DB1 and DB2 received a bribe from the aggressor which resulted in absence of an investigation.

The EC database returned 2 cases. The first related to instances of discrimination when a RH complained about the lack of progress and ultimate refusal to investigate alleged domestic violence, and the second involved a lack of protection from perpetrators. NAC and EC cases do not involve the same parties, however, we identified that both mirror the same problems from both a human rights and corruption perspective.

³³R.McQuigg, [Domestic Violence as a Human Rights Issue, EJIL, v.26, n.4, 2016, L.Hasselbacher, State Obligation regarding domestic violence, NWJIHR, v.8, i.2, 2010](#)
https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf

³⁴ List of relevant judgements - <https://www.coe.int/en/web/istanbul-convention/echr-case-law>,
https://www.echr.coe.int/Documents/FS_Domestic_violence_ENG.pdf,
https://www.echr.coe.int/Documents/FS_Violence_Woman_ENG.pdf

³⁵

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/GEC/3731&Lang=en

³⁶ <https://www.coe.int/en/web/genderequality/recommendation-rec-2002-5-and-other-tools-of-the-council-of-europe-concerning-violence-against-women>

³⁷ Case 12.051, Maria da Penha Maia Fernandes v. Brazil, Report No. 54/01 (2001).

³⁸ T.M and C.M vs Moldova (2014), Mudric vs Moldova, Eremia et al vs Moldova, B vs Moldova (2013), R.L. vs Moldova

Through a human rights lens, the positive obligation on state authorities to investigate and prosecute perpetrators is set out in Law on prevention and combating of families (45/2007). The law places an obligation on police to prevent domestic violence, (art.8, along with art.21 (n), 13-1) of Law on police, 320/2012) and investigate complaints (art.20(a) law on Police). These two cases demonstrate a failure on the part of state authorities to carry out an effective investigation into domestic violence, documenting medical evidence and assisting the Prosecutor in pursuing an investigation. Secondary sources also corroborate issues with the efficiency and effectiveness of domestic violence investigations in Moldova³⁹.

Analysis of individual acts of corruption

Our analysis of *individual acts of corruption* is presented in graph 3.2.2 below. We identified that the individual act of corruption (sourced from the NAC database) involved a state agent requesting a bribe via an intermediary, and receiving the bribe from the perpetrator of domestic violence. The casefile does not mention the victim of the human rights violation, even as a witness, and only refers to the art.201-1⁴⁰ of Penal Code (domestic violence). In the case, the state agent, the intermediary as well as the perpetrator are condemned for corruption.

From the human rights perspective (EC database), the above graph demonstrates the aggressor or “drittwirkung” effect in documenting human rights abuse. For instance, while there are complaints on behalf of the victims against state agents (police) for not investigating or refusing to investigate cases of domestic violence, the cases themselves do not identify the aggressor (3rd party) or intermediary. The Equality Council similarly found discrimination of victims on the part of state agents where they do not conduct a full and complete investigation.

We identified at least seven human rights cost categories resulting from domestic violence: i) Medical care (GP and hospitals); ii) Psychosocial care (victim, family and dependent persons (child, elderly, etc); iii) Employment/lost productivity (sick leave); iv) Social security (benefit payments/rent rebate); v) Legal aid (state-guaranteed) and legal services (private costs); vi) Criminal justice (trials and protection ordinances) and law enforcement (criminal justice sector and police) support (protection ordinances); vii) decreased labor productivity.

Our financial estimation ranged from 19 to 27⁴¹ euro/per capita and we identified that 1 euro invested in prevention renders 87 (30 direct) euro in saved losses. Research in Moldova⁴² puts the average price tag per victim/household at 150 euro (3000 MDL, 2 800 in hospital and 3400 MDL at home) covering health, while legal fees are estimated to be an additional 450 euro (9 000 MDL, ranging 15 euro and 1000 euro), the rest of the services being covered by public services. *We note at this stage that there are no estimations of the human rights*

39

<http://cdf.md/files/resources/116/Ghidul%20practic%20privind%20interven%C8%9Bia%20eficient%C4%83%20a%20poli%C8%9Bie%20C3%AEEn%20cazurile%20de%20violen%C8%9B%C4%83%20C3%AEEn%20familie.pdf>

⁴⁰Articolul 201¹.Violența în familie (1) Acțiunea sau inacțiunea intenționată comisă de un membru al familiei în privința altui membru al familiei, manifestată prin:a) maltratare, alte acțiuni violente, soldate cu vătămare ușoară a integrității corporale sau a sănătății; b) izolare, intimidare în scop de impunere a voinței sau a controlului personal asupra victimei; c) privarea de mijloace economice, inclusiv lipsirea de mijloace de existență primară, neglijare, dacă au provocat victimei vătămare ușoară a integrității corporale sau a sănătății, https://www.legis.md/cautare/getResults?doc_id=109495&lang=ro

⁴¹ In Finland

⁴² <http://cdf.md/files/resources/102/Raport%20UN%20RO.pdf>

costs of the violation when the case is not prosecuted. Where this occurs, some categories become irrelevant as (v) Legal aid (state-guaranteed) and legal services (private costs), (vi) Criminal justice and law enforcement support, *while other categories may rise*, such as (i) Medical care, (ii) Psychosocial care, (iii) Employment/lost productivity). The social (including human rights) costs resulting from corruption has not been the subject of the research and analysis. Qualitatively, we must point out that the respective categories are likely to overlap, From a corruption perspective, the aggressor is not entitled to enjoy immunity however does so as the result of illicit payments being made. The immediate conclusion that can be drawn is that the *implementation settings of the policy to protect victims from domestic violence* are not adequately tuned and therefore *a lack of public integrity contribute to the occurrence of corruption*:

- inadequate accountability within public systems: as cases are not reviewed externally; the internal method of tracking cases and actions undertaken is insufficient; cooperation with other relevant authorities on the case to reduce institutional unaccountability; tracking by GPS individual presence of police-cars;
- integrity regime inadequacies: internal procedures do not exclude sharing confidential investigation information; the presence of the non-police officers in the car.

Systemic corruption analysis

As identified earlier, this analysis assesses policy objectives, the quality of policy instruments, and some elements of the implementation settings. The domestic law on the prevention of domestic violence⁴³ was adopted in 2007 and amended in 2018. The legislation defines domestic violence and outlines the right to be free from the physical, sexual, psychological, economic forms of violence. The law together with art.201-1 of Penal Code adopted in 2002⁴⁴ places a positive obligation on police to protect persons in Moldova from (physical, sexual) forms of violence, leaving other forms (psychological, economic) of violence without a specific tether to a state institution to be settled via adjudication proceedings. In late 2013, the Code of Administrative Offences was amended to introduce the procedural responsibility for the aggressor of domestic violence⁴⁵ via modification of art. 78⁴⁶ thus introducing a wide

⁴³ Law 45/2007 on prevention and combating of domestic

violence https://www.legis.md/cautare/getResults?doc_id=110200&lang=ro

⁴⁴ <https://juridicemoldova.md/9255/interpretarea-sintagmei-alte-actiuni-violente-in-cadrul-infractiunii-de-violenta-in-familie-art-2011-lit-a-din-codul-penal-al-republicii-moldova-nr-985-2002.html>

⁴⁵

https://ibn.idsi.md/sites/default/files/imag_file/Articolul%202011%20%E2%80%9Eviolenta%20in%20familie%20%E2%80%9D%20din%20codul%20penal%20sufera%20de%20grave.pdf

⁴⁶ In Romanian (original) Articolul 78. Vătămarea intenționată ușoară a integrității corporale (1) Vătămarea intenționată a integrității corporale se sancționează cu amendă de la 10 la 40 de unități convenționale sau cu muncă neremunerată în folosul comunității de la 40 la 60 de ore, sau cu arest contravențional de la 5 la 10 zile (2) Vătămarea intenționată ușoară a integrității corporale, maltratarea, aplicarea de lovituri, alte acțiuni violente care au provocat dureri fizice se sancționează cu amendă de la 25 la 50 de unități convenționale sau cu muncă neremunerată în folosul comunității de la 20 la 40 de ore, sau cu arest contravențional de la 5 la 10 zile (3) Vătămarea intenționată ușoară a integrității corporale care a provocat o dereglare de scurtă durată a sănătății sau o pierdere neînsemnată, dar stabilă, a capacității de muncă se sancționează cu amendă de la 50 la 75 de unități convenționale sau cu muncă neremunerată în folosul comunității de la 40 la 60 de ore, sau cu arest contravențional de la 10 la 15 zile https://www.legis.md/cautare/getResults?doc_id=6798&lang=ro

margin of discretion to police in administering penal and administrative responsibility for the acts of physical domestic violence.

Two legal norms in the Penal Code and Administrative Offences code offer discretion to police in administering justice. Firstly, we examined the requalification of the alleged complaint from the Penal Code (art.200-1) to Administrative Fines Code (78). Administrative data is reproduced in graph 3.2.3 below^{47, 48, 49} when viewed over a period of multiple years, we can identify the substantial reallocation of domestic violence cases from penal to administrative justice. We observed two tendencies: 1) an overall decrease of cases and 2) substantial reallocation of penal responsibility. As per graph 3.2.3 below, the number of penal and administrative offenses peaked in 2012 with administrative cases occurring at four times the rate of penal cases. From the period of 2013 to 2016, the number of penal cases was 4 times that of fines administered, while in 2017 administrative cases surged to represent more than double the penal cases, with this trend continuing through to 2019. Overall, while prevalence of domestic violence remained roughly the same (around 2,4 thousand cases (2/3 of cases take place in the rural area)⁵⁰ and the number of protective ordinances remaining constant around 800-900 per year, neither official nor secondary sources are able to provide an explanation for the shift in type of case pursued. This is with the exception that in some cases, penal responsibility is applied after repeated administrative fines are issued.

With some 800 cases per year requalified from criminal offences into administrative fines (roughly one case per community across the countryside) and considering that administrative offences can be much more susceptible to bribery, the corruption cost is staggering.

Extrapolating the figures, Court decisions indicate that individual bribes of 3000 MDL may result in some 2.4 million MDL total funds paid to authorities for the requalification of the facts of the case alone. In these cases, the profile of the domestic violence victim⁵¹ is typically a woman in a rural area (2/3 of cases) and also typically from less-educated segments of society (including women of pre-pensioning and pensioning age and young girls).

⁴⁷ Starea infracționalității contra vieții și sănătății persoanei, precum și celor comise în sfera relațiilor familiale, [M. CEBOTARU \(politia.md\)](http://politia.md)

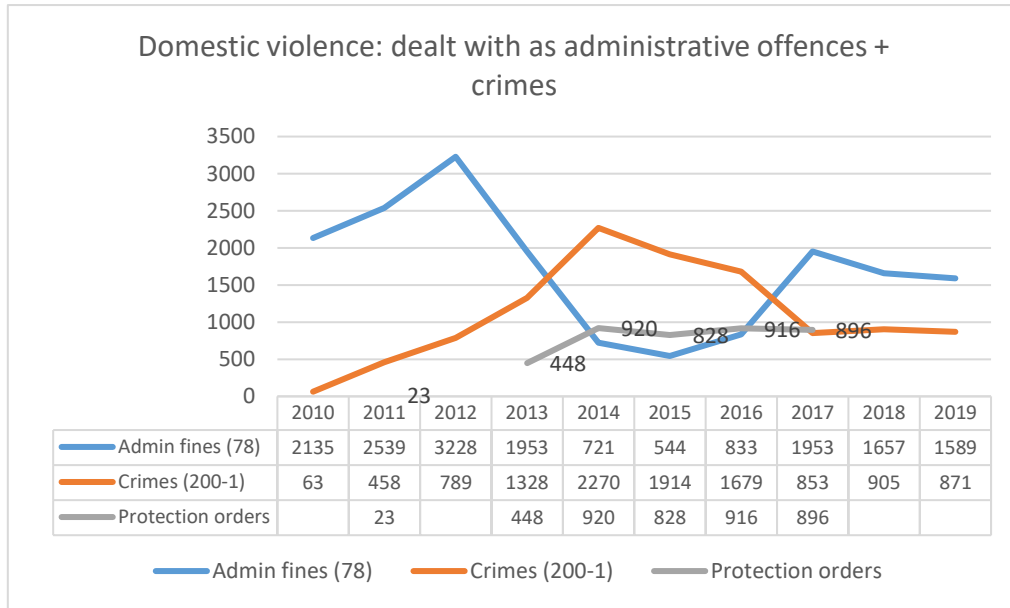
⁴⁸ https://msmps.gov.md/sites/default/files/raport_vf_2018_pdf.pdf

⁴⁹ <http://antiviolența.gov.md/wp-content/uploads/2020/08/Raportul-pentru-anul-2019-cu-privire-la-violența-n-familie-.pdf>

⁵⁰ NGOs sources point to a larger number of cases of domestic violence, including those that get officially registered.

⁵¹ https://statistica.gov.md/public/files/Cooperare_internationala/PNUD/10_tablouri_femei_RM/prof_7_victime.pdf

Graph 3.2.2 Domestic violence statistics



Legend: elaborated by the authors based on administrative statistics

The National Strategy for the prevention and curbing of domestic violence (2018/23) recognizes existing systemic deficiencies⁵²: inadequate financing of medical services for victims, inadequate cooperation among relevant authorities in managing cases, flaws in the application of protective ordinances. However, none referred to corruption risks and vulnerabilities.

⁵² https://www.legis.md/cautare/getResults?doc_id=101802&lang=ro, https://gov.md/sites/default/files/document/attachments/intr26_49.pdf

Graph 3.2.3 Domestic violence: systemic analysis of state agents' obligations vs victims' rights



Evaluation of systemic corruption evaluation in the graph 3.2.3 below explains deficiencies and flaws within policy instruments and their related implementation settings:

- 1) The regulatory instrument within the policy allows wide discretion to the police to qualify and apply either 201-1 CP (penal) or 78 CAO (admin),
- 2) The institutional policy does not explicitly require intervention cooperation between agencies, thus reinforcing police discretion in the qualification of actions,
- 3) Financial resource allocations have not been assessed with a view to curbing domestic violence (e.g. metrics such as the number of police officers involved) and the financial indicators for the success of cases including protection and prosecution are not found in the institutional practice of police,

- 4) No system exists for the tracking of cases within agencies – therefore there is no visibility of police discretion exercised in categorising the case as administrative or penal. We also could not identify any guidance or methodological support for case qualification, nor any guidance on the application of the relevant penal and administrative norms⁵³. In our research we also found that more work needs to be done to improve police attitudes and allocation of skills applied towards this issue⁵⁴.

Looking at the issue through a systemic corruption analysis lens, we identified deficiencies in the design and implementation of domestic violence policies which may contribute to the occurrence of corruption:

- *wide margin of discretion* in policy instruments⁵⁵: personal discretion of the police officers in the juridical qualification of the alleged facts as penal or administrative fine; lack of comprehensive of investigation before the qualification decision is made (including a victim or other related parties); administrative guidelines for the investigation are absent;
- inadequate internal (police), horizontal (protection community), and external (victim) accountability systems for the cooperation and coordination of relevant institutions and absence of ICT platforms.

From a policy implementation perspective, we identified that institutions responsible for policing corruption and those responsible for the promotion of human rights have limited connection at both the investigation and prosecution stage (pre-trial and trial). Improving this connectivity is important as analysis consistently shows that police presence and understanding of fundamental human rights are two of the most important factors for the protection of victims, and for the carrying out of effective investigations into allegations of domestic violence.

In practice, social and medical services are only involved if the victim and police refer this case for the provision of the respective assistance. Further, if the case is qualified as an administrative one, the victims are not entitled to legal aid^{56, 57} while in criminal cases, there is an additional burden to benefit from legal aid limit the right of defence of the victims⁵⁸. Primary and qualified legal assistance is also provided by specialised NGOs.

From a process perspective, the NAC investigates allegations of corruption related to potential bribes being offered to police agents, and feed evidence to the anticorruption prosecutor to run the case. Unhelpfully, the human rights abuse and corruption abuse investigations are entirely separate at the pre-trial stage as according to legislation, no connection (nor aggravating factors linkages) can be drawn between charges relating to corruption and human rights. The same is true for situations where judgements relating to human rights abuses are used as evidence for providing corruption, and vice-versa.

⁵³One source Ghid Practic privind interventia a politiei in cazurile de violenta in familie (2015) has been useful, yet too broad and partially covers necessary aspects.

⁵⁴<http://cdf.md/files/resources/122/Raport%20Violenta%20complet%20RO.pdf>

⁵⁵Instrucțiunea metodică privind intervenția organelor afacerilor interne în prevenirea și combaterea cazurilor de violență în familie, 2012 MAI, [CDF-Instructiuni-VIF-Politie.pdf \(gov.md\)](http://cdf.md/files/resources/122/Raport%20Violenta%20complet%20RO.pdf)

⁵⁶ https://www.legis.md/cautare/getResults?doc_id=24283&lang=ro

⁵⁷ Art. 11(5) https://www.legis.md/cautare/getResults?doc_id=110200&lang=ro

⁵⁸ http://ombudsman.md/wp-content/uploads/2018/10/cazuistica_manifestarilorde_violenta_domestica2014.pdf

Moreover, measures designed to prevent domestic violence do not yet consider anti-corruption as a mitigating control. Broadly speaking, we argue that the victim vulnerability driven by corruption can be reduced by improving institutional integrity⁵⁹ and implementing a number of relevant measures directly aimed at curbing corruption. In the present case, prevention of domestic violence is carried out by police and social services based on the law for the prevention and combating of domestic violence⁶⁰ which does not yet consider the impact of corruption. Complaints relating to the failure of police to enforce protection are investigated by the specialised unit of the prosecutor, which also fail to take the impact of corruption into consideration.

Conclusion: Individual corrupt acts committed within the context of domestic violence are driven by individuals acting in an environment conducive to corruption, and enabled in a systematic manner by systemic deficiencies. This results in the violation of the rights of domestic violence victims.

2) Conditions of detention

- *Human Rights standards on conditions of detention*

International human rights law places positive obligations upon the State under article 3 (ECHR)⁶¹, articles 7 and 10 (ICCPR)⁶² and article 3 of the UNCAT to provide humane conditions of detention. In the context of detention, these obligations relate to conditions directly and do not cover the length of detention.

- *Available cases*

Our database returned 1 case from Equality Council and 2 cases from ANI, as well as at least 10 complaints from the Ombudsman platform as well as monitoring reports⁶³. There were no NAC cases in this respect and therefore our analysis comes strictly from the human rights perspective.

The ANI cases contained instances of discrimination in the exercise of the right to adequate conditions of detention, whereby the detainees claimed discrimination in the application of existing legal norms governing incarceration time where inhumane conditions of detention are present. The detainees complained of inconsistencies in the calculation of pretrial detention, where the rule provided in the law requires a different calculation where inhumane detention conditions are present⁶⁴. Further, the law itself does not provide for

⁵⁹ https://www.legis.md/cautare/getResults?doc_id=94552&lang=ro

⁶⁰ https://www.legis.md/cautare/getResults?doc_id=110200&lang=ro

⁶¹ https://www.echr.coe.int/Documents/Guide_Prisoners_rights_ENG.pdf

⁶² <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁶³ CPT, HUDOC-CPT (coe.int), National Preventive Mechanism, <http://ombudsman.md/consiliul-pentru-prevenirea-torturii>

⁶⁴ Modification of CPP (272/2019) Articolul 473². Plîngerea împotriva administrației instituției penitenciare referitoare la condițiile de detenție care afectează grav drepturile condamnatului sau ale prevenitului. ... (3) Condamnații care au fost deținuți cel puțin 10 zile în condiții contrare prevederilor art. 3 din Convenția pentru apărarea drepturilor omului și a libertăților fundamentale, drepturi care reies din obligația statului de a asigura condițiile de detenție, pot solicita, cu titlu de despăgubiri, reducerea pedepsei. (4) În cazul în care partea neexecutată din pedeapsă nu permite deducerea integrală a reducerii pedepsei sau perioada încălcării condițiilor de detenție este mai mică de 10 zile, în privința perioadei rămase condamnatul poate solicita despăgubire în valoare bănească. (5) Plîngerea referitoare la condițiile de detenție care afectează grav

discretion in its application. We identified that this issue is relevant in considering the adequate allocation of the financial resources for humane conditions in detention and inconsistencies are a sign of a possible political or systemic corruption.

Numerous reports from CPT, NPM, and other credible sources argue that conditions of detention are inadequate, in some cases inhumane, and do not meet international standards due to the insufficient allocation of financial resources to places of detention. Indicators of mismanagement of public resources in penitentiary institutions have also been identified and circulated publicly⁶⁵ and have been subject to several complaints registered by the Ombudsman.

ANI examined two cases which involved the redistribution of public funds from the Penitentiary Departments, and potential conflict of interests in hiring relatives in the Penitentiary Department. In one case, a particular firm was contracted using public funds from the penitentiary system by a Penitentiary Authority deputy. This raised two concerns: firstly, the integrity of the decision to divert funding from a resource which works to fulfil detainees' rights. Given the existence of both individual and systemic risk factors, there is significant possibility for the right to humane conditions of detention to be negatively affected. Another ANI case referred to the lack of transparency of public institutions, including processes which would ensure accountability. As this public function is charged with protecting the human rights of the detainees, it is reasonably foreseeable that this lack of transparency would result in poor human rights outcomes.

Conclusion. Conditions exist within penitentiary facilities that contribute to the failure to fulfil a positive obligation to provide humane conditions of detention. We identified that due to the lack of transparency and accountability, the risk for systemic corruption to affect the realisation of these rights is extremely high. This is exacerbated by a failure to properly allocate resources to detainees⁶⁶.

3.2.2 Recommendations

Based on our assessment of the above two situations, we propose the following recommendations:

- With regard to *domestic violence*:
 - a. Introduce amendments to relevant legislation including penal codes to remove ambiguity in their application, in particular, of art.202-1 (Penal Code) and art.78 (CAO) in prosecuting physical domestic violence cases.
 - b. Develop investigations methodology guidelines for police to guide their interpretation of facts and processes in domestic abuse situations.
 - c. Involve social services actors (social assistant) and health professionals (medical doctor) immediately in cases of domestic abuse, and facilitate their expert input into the development of the facts of the case.

drepturile condamnatului sau ale prevenitului se depune pe parcursul detenției în condiții contrare prevederilor art. 3 din Convenția pentru apărarea drepturilor omului și a libertăților fundamentale sau în termen de 6 luni de la data când nu mai sînt deținuți în astfel de condiții, dar nu mai tîrziu de 4 luni de la eliberarea lor din locul de detenție.

⁶⁵ <https://anticoruptie.md/ro/sesizari/din-nou-despre-nejustia-din-penitenciare>

⁶⁶ <http://www.cnp.md/ro/sedinte-de-guvern/item/1823-opinia-cnp-vizavi-de-subiectele-pe-agenda-cabinetului-de-ministri> (October 2013)

- d. Build internal accountability mechanisms for the oversight of decisions, involve more entities in police investigations to increase visibility and improve horizontal accountability, and introduce internal case tracking with independent scrutiny of police actions,
 - e. Include corruption dimensions (legal changes, methodological guidelines, etc) in investigations into allegations of police and other service provider corruption (social, medical, etc), including where these factors result in a failure of preventive and protective measures or remedies,
 - f. Develop an action plan for institutional integrity evaluations of law enforcement in the context of human rights violations.
- With regard to *humane conditions of detention*:
- a. The Ministry of Justice and Penitentiary Department financial allocations should be reviewed with a view to ensuring the effective allocation of the costs per detainee. A comprehensive assessment of all detention institutions to be carried out to relocate detainees from places of detention that do not meet international standards,
 - b. Consider incorporating institutional integrity evaluations and systemic corruption vulnerability evaluations in thematic reports dedicated to human rights, examinations (human rights institutions) and investigations (prosecutor institutions).

3.3 Right to defence (art.26)

- *Available cases*

The cases examined from NAC (cases) data base dealt with the aspects of the right to defence (right to legal counsel and right to fair trial) covered the following subject matter:

- 1) influencing decisions of officers in criminal proceedings, including prosecutors directly or via an intermediary (79 cases);
- 2) influencing judges in criminal and civil procedures prosecutors directly or through an intermediary (36 cases), and
- 3) influencing decisions of administrative bodies in the penitentiary and psychiatric institutions (4 cases).

Cases examined from the EC database referred to the right to complain to police authorities and issues of police discrimination in investigating the facts presented (2 cases). The Ombudsman complaints platform further contains 27 entries on the issue, with nine referring to incorrect judicial decisions, five to the absence of fair trial guarantees, and six to requests for free legal aid, and others. The ANI database included one concerning an individual holding the position of the Superior Council of Magistrates and Magistrates' Training Institute simultaneously.

NAC (draft laws) cover multiple situations: a) A draft law that proposes to allow lawyers and aspiring lawyers to administer personal data (nr.4/2020), which would positively impact the right to a defence as it provides lawyers and aspiring lawyers with additional rights to administer personal data; b) A draft law that refers to the creation of a specialised Anti-

Corruption Court (nr.5/2020) which would examine anticorruption cases, however there are several ambiguities in the setup procedures, the selection of judges and management of the court; c) A draft law that proposes to regulate the courts appeal against Superior Council of Magistrates decisions (nr.58/2018), which again contains ambiguities in the procedures, factors of corruption and the grounds for review of the Council decisions.

Comparing the two databases, we found that the only subject matter overlap is the effective investigation of law enforcement officials, and the rest of the cases refer to different situations. Of the cases we studied, we only identified one where a DB requests a bribe (type H1B1). In the other cases, we could not establish that corruption directly results in the violation of human rights, or of others by way of indirect violation.

Table 3.3.1 Right to defence: types of individual corruptions impacting human rights

right to defence (legal counsel or fait trial) (art.26)	No RH violation, no individual but political corruption	No RH violation, others' rights violation, no individual but political corruption	No RH violation, others' rights violation, RH corruption+ DB pay	RH violation, DB corruption
	32(EC)	36(NAC)	14(NAC)	52(NAC)+ 2(EC)

For our assessment, we examined two dimensions of the right to defence: 1) The influencing of prosecutors' decisions, and 2) Improper investigation by the police. Broadly speaking, we are examining the right to a fair trial, and to procedural guarantees in criminal proceedings. Criminal proceedings can also involve a variety of substantial rights (right to life, right to property, right to health, etc), which are reflected in the analysis in conjunction with the right to defence. In such cases, we found that individual corrupt acts impact not only the right to defence but also the enjoyment of the aforementioned substantive rights. Depending on which party is involved in the bribe, it is the victims whose rights are violated on top of the violation of the right to defence.

3.3.1 Assessment

- *Human rights standards*

International human rights standards require effective prosecution and punishment where violations of human rights occur. This includes effective criminal investigations for the perpetrators of ill-treatment⁶⁷, violations of the right to life⁶⁸, the right to a fair trial, the right to family, and the right to privacy. In practice, the rights of the accused and the rights of the victims must be realized simultaneously in criminal investigations, and therefore both parties involved could be negatively affected by individual corrupt actions⁶⁹.

⁶⁷ Effective Investigation of ill-treatment: Guidelines of European Standards, CoE/EU, [16806f11a3 \(coe.int\)](https://www.coe.int/t/e/treaties/16806f11a3)

⁶⁸ Guide on Right to life and effective investigation, 2020 [Guide on Article 2 - Right to life \(coe.int\)](https://www.coe.int/t/e/treaties/16806f11a3)

⁶⁹ [The-legal-basis-for-the-duty-to-investigate-2_AS.pdf \(publiclawproject.org.uk\)](https://www.publiclawproject.org.uk/)

<p><i>Victim's rights that could be affected by individual and systemic corruption causes⁷⁰ has the following sub-rights:</i></p>	<p>Accused rights that could be affected by individual and systemic corruption causes, has the following sub-rights⁷¹:</p>
<ul style="list-style-type: none"> - right to know standards for granting a person a victim status, - right to know the essence of the case, to what extent victim shall enjoy the right to know the case materials, grounds for limitations, stages; - right to make copy of case files, exceptions, stages; - right to receive the compensation and the role of prosecutor with this regard; - right to file the motion against the decision of the prosecutor; - right to appeal court decisions; - right to know and express opinion on considering a victim's position while conclusion of plea bargain and the application of discretionary power by the prosecutor. 	<ul style="list-style-type: none"> - right to a public hearing, - right to be tried within a reasonable time, - right to be presumed innocent, - right to be informed of the accusation, - right to have adequate time and facilities, to defend oneself, - right to have the assistance of counsel, - right to test witness evidence, - right to have the free assistance of an interpreter, - right to privilege against self-incrimination.

Duty-bearers have a number of obligations which could be affected by the individual and systemic corruption acts. Apart from the requirement to conduct an effective investigation, with respect to the right to life these include investigating state agent responsible for the death, responsibility to investigate death caused by 3rd party; for the right to freedom from ill-treatment these include investigating torture, conditions of detention, disciplinary actions; with respect to the right to privacy these include acts of state party or private actors. The Constitutional right to defence under art. 26 also includes procedural guarantees for the rights of the accused where they are accused of violation any of the rights listed above.

Influencing decisions of public officials

There are 3 types of NAC cases: 1) RH violation through passive corruption, 2) RH violation includes a bribe to have priority access with no adverse effect on the rights of others and 3) no RH violation while the rights of others are adversely impacted. We demonstrate the relationship below. The below graph contains all 3 situations in one:

- (passive corruption) DB does not fulfil their obligation towards a RH, conditioning fulfilment on payment of a bribe;
- (trade-in influence) DB offers preferential treatment to the RH however no impact to others is identified (such as potential procedural issues);
- (active corruption) RH offers a bribe in order to avoid prosecution or investigation, or to obtain preferential treatment in the investigation with an adverse effect on the rights of others; the rights of others involved are the right to movement, right to physical integrity.

In these cases, we identified that the right to defence is negatively affected by both the passive and active actions of the state agent and the rights-holder. This is because the

⁷⁰J.McBride, The case-law of the ECHR on Victim's rights in criminal proceedings, CoE/EU, [16807823c4 \(coe.int\)](#)

⁷¹ [Article 6 Echr in Criminal Proceedings Recent Developments \(sagepub.com\)](#)

realisation of their rights are subject to the state agent complying with their positive obligations in carrying out the investigation.

Table 3.3.1 outlines the prevalence of individual corrupt acts in the scenario where duty-bearers ask for a bribe both directly and via an intermediary. We identified more than 52 cases in the NAC database and 2 cases in Equality Council findings of discriminatory practices exercised during police investigations. We also identified that when the duty bearer demands a bribe, the rights holder is more likely than not to make an illicit payment in order to facilitate the transaction or cease an investigation.

Systematic manifestation of patterns of corruption are generally indicative of failures at the policy implementation level. While the systemic framework is relevant, in the case of the right to defence we elected not to deploy it as the complexity of the institutional settings are too great – as an assessment needs to also account for the accountability, transparency and independence of the investigating police, prosecutor and judges. These aspects have been discussed elsewhere⁷².

However, from a quantitative perspective, we estimate that the overall amount of funds involved in bribery regarding the right to defence in the database to be around 4.5 million MDL, with the average bribe around 3-5 thousand euro.

As outlined earlier, cooperation between human rights and anti-corruption institutions and related procedures remains limited. From a human rights perspective, current details available are insufficient to draw conclusions on which substantive or procedural rights are affected most frequently by corruption. In order to evaluate the procedural aspects, transparency concerning the complaints made during the appeals procedure is needed, as well as access to independent reports on the fair trial guarantees enjoyed as part of the process. Potential violations of procedural rights at the pre-trial and trial stage are subject to review by the appeals court. Legal aid to the victim who might be revictimized due to the continued presence of corruption is required.

An anti-corruption or enforcement perspective in pre-trial investigations and trial procedures does not necessarily consider the links with the substantive human rights. Nor does it consider whether corruption decisively or to some degree influenced the guarantee of substantive rights.

3.3.2 Recommendations

With regard to correlation of human rights and corruption:

- Comprehensive research on the human rights adversely affected by corruption in the pre-trial investigation, trial and appeal stages is required, including the procedural guarantees such as the right to a fair trial and an effective remedy;
- Evidence of the substantial rights violations should be factored into corruption investigations, through available evidence and judgments;

⁷² CReDO, Comparative Analysis of Accountability, Transparency and Institutional Autonomy of the Law enforcements: Police, Prosecutor, Anticorruption Agency, 2016

- Comprehensive monitoring of fair trial guarantees where corruption factor has been identified should be carried out by a separate investigative body.

Regarding functional independence and autonomy:

- Budgetary autonomy implies an institution should be able to formulate its own budget with sufficient resources based on institutional objectives and plans, and any reduction should be prohibited by law.
- The law should establish effective mechanisms to protect the institutions' employees from unjustified influence from outside or within the institution. These mechanisms should include accessible procedures for denouncement of such cases.
- The integrity of the handling of the cases investigated and managed by the institution should be ensured. This should be facilitated by appropriate IT solutions to avoid corruption and internal reviews by an internal integrity protection unit which is responsible for maintaining conformity with legality and high standards of impartiality and effectiveness.

Regarding institutional transparency:

- Principal-agent relations should be created between policy formulating authority and implementation institutions, thus reducing political influence and intervention in the activities of the institution.
- The model of administrative subordination should be replaced by reporting on performance in the implementation of policy objectives, thus strengthening separation of policy making and policy implementation functions.

Additionally, we document an extensive list of UN /CoE expert and advisory bodies' recommendations below. While these are important, additional efforts are needed to implement an electronic case management platform to track progress of cases to ensure greater internal accountability and possibly external accountability.

Human Rights Advisory and Expert bodies recommendations:

	UN ICESCR	UN ICCPR	UN Human Rights Council
Right to defence (art.26)	(17) (a) Raise awareness among the general public and <u>government officials on the need to combat corruption, including bribery;</u> (b) Strengthen the enforcement of <u>anti-corruption laws and combat impunity for corruption,</u> particularly involving high-level officials; (c) Strengthen the capacity of the <u>judiciary to respond to corruption and ensure the effective protection of victims of corruption, their lawyers, anti-corruption activists, whistle-blowers,</u> and witnesses; (d) Improve public governance and ensure	Committee remains concerned at reports that <u>corruption remains endemic and systemic in the judiciary, thus</u> undermining the effective administration of justice in the State party	121.125 Ensure the independence and impartiality of the judiciary, in particular by <u>fighting corruption,</u> and enable victims to defend their rights in court, by taking measures to strengthen respect for the rights of the defence and transparency of judicial proceedings (France); 121.118 Implement reforms in the rule of law sphere to ensure fairness and due process, <u>combat corruption,</u> and improve transparency throughout the legal process (United States of America); 121.127 Carry out necessary reforms to strengthen the rule of law to prevent political interference in the justice system and to tackle corruption at all levels (Japan); 75.37. Continue efforts to strengthen the rule of law by ensuring greater effectiveness and transparency in the judicial system, <u>combating</u>

	transparency in the conduct of public affairs.		<u>corruption</u> , and investigating all reports of abuse and torture by police (United States)
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GRECO (2016) Recommendations corroborate with the above mentioned⁷³:

	Independence	Transparency	Ethics, disciplinary
Regarding judges	ix. - (i) that appropriate measures be taken, with due regard to <u>judicial independence</u> , to avoid the appointment and promotion to judicial positions of candidates presenting <u>integrity risks</u> ; (paragraph 102);	x. that additional steps be taken - (i) to ensure that cases are <u>adjudicated without unjustified delays</u> and (ii) to increase the <u>transparency and accessibility of information available to the public on judicial activity</u> (paragraph 111);	xi. (i) that the <u>Code of Professional Conduct and Ethics</u> be communicated effectively to all judges and complemented by further <u>written guidance on ethical questions</u> – including explanations, interpretative guidance, and practical examples; (paragraph 115); xiii. that the legal and operational framework for the <u>disciplinary liability of judges</u> be revised to strengthen its <u>objectivity, efficiency, and transparency</u> (paragraph 135);
Regarding prosecutors	xiv. (i) expressly notifying all prosecutors in writing that verbal instructions given to <u>hierarchically subordinate prosecutors are not binding</u> , unless they are confirmed in writing, including in such notifications the procedures to be followed in providing timely confirmations and (ii) ensuring that all hierarchical interventions regarding a case are properly documented in practice (paragraph 147);	xviii. that additional measures be taken to <u>strengthen the objectivity, efficiency, and transparency</u> of the legal and operational framework for the disciplinary liability of prosecutors (paragraph 186).	xvii. (i) that the <u>Code of Ethics and Conduct</u> be communicated effectively to all prosecutors and complemented by further written guidance on ethical questions – including explanations, interpretative guidance, and practical examples; (ii) that dedicated training of a practice-oriented nature and confidential counseling within the <u>prosecution service be provided for all prosecutors</u> (paragraph 164);

3.4 Right to education (art.35)

Review of available case information in our databases show 98 NAC (cases), 24 ANI cases, several complaints from the Ombudsman platform, two draft laws reviewed by Ombudsman, and one recommendation by UN expert body.

The NAC (cases) outline two procedural aspects surrounding the right to education: 1) the right to driving permit (theoretical, practical or medical certificates which may be obtained by way of bribery), 2) right to standard education processes, such as graduation, professional and university education and military certificate (where grades may be influenced by bribery). ANI contains four cases which involve the right to education: 3) a mayor's contracting out to firms with where he has an interest; 4) a mayor hiring relatives into senior positions within the education system; 5) the accumulation of elected and non-elected positions in education system. The Ombudsman platform contain two situations: 6) access to

⁷³ 4th Evaluation report. Prevention of corruption in respect of members of parliament, judges and prosecution (2016), <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168075bb45>

kindergarten; 7) unfair treatment at school. NAC situations do not overlap and are not connected to ANI or Ombudsman situations, however the ANI and Ombudsman cases are connected.

Table 3.4.1 Right to education: types of individual corruptions impacting human rights

right to education (art.35)	No RH violation, no individual but political corruption	No RH violation, others' rights violation, no individual but political corruption	RH violation, DB corruption
	2(ANI)	88(NAC)	10(NAC)+ 22(ANI)

As previously, duty-bearer corruption resulting in the violation of rights-holder rights cases require the application of the individual corruption framework for analysis, while the other two situations require systemic analysis. These cases indicate the existence of systematic tendencies of RH+DB corruption.

3.4.1 Assessment

On the above basis, we use both the individual assessment framework and systemic assessment framework with respect to the right to education and other procedural elements.

- *Human Rights standards*

The right to education is enshrined in art.13⁷⁴ of the ICESCR, and art.2 P1⁷⁵ of ECHR. General comment no.13 outlines that the right to education covers all forms of education, all age segments of the population, and also including processes outside traditional education such as technical and vocational study⁷⁶. Article 13(2) of the ICESCR sets out the State party obligations to respect, protect, and fulfil of the “essential features” of the right, i.e., availability (conditions), accessibility (non-discrimination, economic accessibility, physical accessibility), acceptability (substance), and adaptability (responding to needs). Not all aspects of the right to education relevant to corruption are found in the international standards.

Art. 35 of the Constitution includes not only primary, medium-high school education but also professional and tertiary education and as well as “other forms of education and improving skills”⁷⁷. The Constitutional Court also confirmed that pre-school, primary and secondary schools are free of charge and should not bear either official or unofficial payments. However, there is no official interpretation by the Constitutional Court⁷⁸ on this with the exception that it includes “any adult education”, therefore, for the purposes of our analysis

⁷⁴

[https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d\)GeneralCommentNo13Therighttoeducation\(article13\)\(1999\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d)GeneralCommentNo13Therighttoeducation(article13)(1999).aspx)

⁷⁵https://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf

⁷⁶UNESCO Convention on Technical and Vocational Education (1989), TVE consists of “all forms and levels of the educational process involving, in addition to general knowledge, the study of technologies and related sciences and the acquisition of practical skills, know-how, attitudes and understanding relating to occupations in the various sectors of economic and social life” (art. 1 (a)).

⁷⁷(1) Dreptul la învățătură este asigurat prin învățământul general obligatoriu, prin învățământul liceal și prin cel profesional, prin învățământul superior, precum și prin alte forme de instruire și de perfecționare. Comentariu, Curtea Constituțională, 2012, p.151

⁷⁸Constituația Republicii Moldova, Comentariu, Curtea Constituțională, 2012

we took an inclusive approach for military certificates and driving licenses/permits. These are particularly relevant as they impact people's personal and professional lives, including employment options.

- *Perception of corruption in education area*

The UN Committee on Economic, Social and Cultural Rights noted in relation to Moldova: (16) State party to combat corruption, the Committee remains concerned about the *prevalence of corruption in the public sector*, ... and the widespread practice of bribery to obtain public services, particularly in the *education sector*⁷⁹. It is also concerned that despite the increase in the number of cases reported and in the number of convictions, in most cases, *prosecutions for corruption* are limited to low-level public officials.

Several sociological surveys capture the public perception with regard to the right to preschool, primary, general and professional education. According to the 2019 NIAS Impact Monitoring Survey⁸⁰:

- 88% of the population and 94% of business agree that bribes being required for registration in educational institutions amounts to a violation of the right to education⁸¹;
- 9% of the population and 11% of the business considered educational institutions as being among the most corrupt⁸²;
- 89% of the population believed it was unacceptable to pay a teacher to increase the mark or to help with exam results⁸³;
- 15% of the population interacted with educational institutions over the past 12 months⁸⁴ of which 88% were satisfied with their interaction,⁸⁵ 10% acknowledged having made informal payments,⁸⁶ and 8% offered gifts⁸⁷;
- 3% of the population experienced that their child received a lower mark than he/she deserved because he/she refused to pay the teacher a bribe.⁸⁸

Further research (conducted in 2018) on informal payments in the education system⁸⁹ found:

- every 3rd parent was afraid that not making the payments requested by schools would have a negative developmental impact on their child;
- nearly half of the parents acknowledged that the payments made in school were financially burdensome;
- every 10th parent perceives additional payments in school as a means to advance academic favours for his/her child.

Despite the figures from the aforementioned surveys, the NAC data on cases of investigated, indicted, and adjudicated corruption in the education sector is limited. Even though

⁷⁹ E/C.12/MDA/CO/3

⁸⁰The National Integrity and Anticorruption Strategy Impact Monitoring Survey - Moldova 2019, commissioned by the UNDP Moldova, supported by the Norwegian Ministry of Foreign Affairs, conducted by CBS-Axa.

⁸¹*Ibidem*, figure 2.2 pag.37.

⁸²*Ibidem*, figure 2.17, pag.47.

⁸³*Ibidem*, figure 2.21, pag.50.

⁸⁴ *Ibidem*, figure 2.26, pag.53.

⁸⁵ *Ibidem*, figure 2.27, pag.54.

⁸⁶ *Ibidem*, figure 2.28, pag.55.

⁸⁷ *Ibidem*, figure 2.29, pag.57.

⁸⁸ *Ibidem*, figure 2.33, pag.61.

⁸⁹ Academic Ethics and Integrity in the General Educational System. Informal Payments in the Schools, Soros Foundation, IPP and CBS-Axa, pag.12.

education is generally perceived as a vulnerable-to-corruption area, we could not identify any criminal proceedings. We believe the reason for this is that the interests of the children are often at stake, making the reporting of issues by parents highly sensitive. Corruption can be initiated both by the parents, seeking increased attention and care for their child, but also by the school representatives (administration, teachers). As long as both parties are happy with the outcome, corruption cases do not find their way into official crime statistics. This also explains the latent nature of corruption crimes and why crime statistics are not an accurate indication of the prevalence of corruption in a given area. Education is one of the best examples to illustrate this: even if the parents refuse to pay money at the school, they believe their child does not require additional support in greasing the wheels in the school or they find the amount to be paid as being excessive – the probability of them reporting such cases is very limited, as compared to other sectors because they are afraid to expose their children to harassment. On the other hand, once the child is about to leave school after the final exams, thus reducing his/her further exposure to the school administration and teachers, their chances of reporting corruption related to the final graduation exam (BAC) increases.

1) right to education in lyceum graduation; educational grading, and military certificate

- *Individual corrupted act analysis*

NAC has ten relevant cases on the issue⁹⁰ where a direct bribe is requested by duty bearers, or requested through a private or associated intermediary. We also identified that the cases involving a graduation diploma also involved the influence of an intermediary. The judicial decisions do not contain certain details (such as whether students were entitled to graduate) and a more complex examination is needed to answer these questions.

Of the ten included in the NAC database, seven cases involve bribes intended to affect university grades. Four of which are passive (DB) corruption where the student (RH) is entitled to the right and Professors and teachers (DB) request bribes to issue grades. In each case identified, the Professors were prosecuted.

As previously, these cases also indicate the presence of systematic corruption where both parties (duty-bearers and rights-holders) are involved. Interestingly, in cases concerning an intermediated bribe, only the intermediary was prosecuted. We could not identify any cases involving an intermediary where the duty-bearers (DB) were prosecuted in our database.

Survey results suggest that the education sector is the second most affected area with respect to unofficial payments⁹¹ with some 45% of households paying around 833 MDL. Scaled up, this represents more than 80 million MDL. Another sociological survey⁹² found that more than half of all pupils are asked to make payments to improve grades, pass exams, or obtain a graduation diploma. More than 20% paid the cost if their household could afford it. Graduation bribes were identified in nine episodes where the bribe was facilitated by an

⁹⁰ 2 cases and several episodes identified in 2017

⁹¹ http://www.transparency.md/wp-content/uploads/2017/02/TI_Moldova_Coruptia_in_RM_perceptiile_si_experientele_proprii_ale_oamenilor_de_afaceri_si_gospodariilor_casnice.pdf

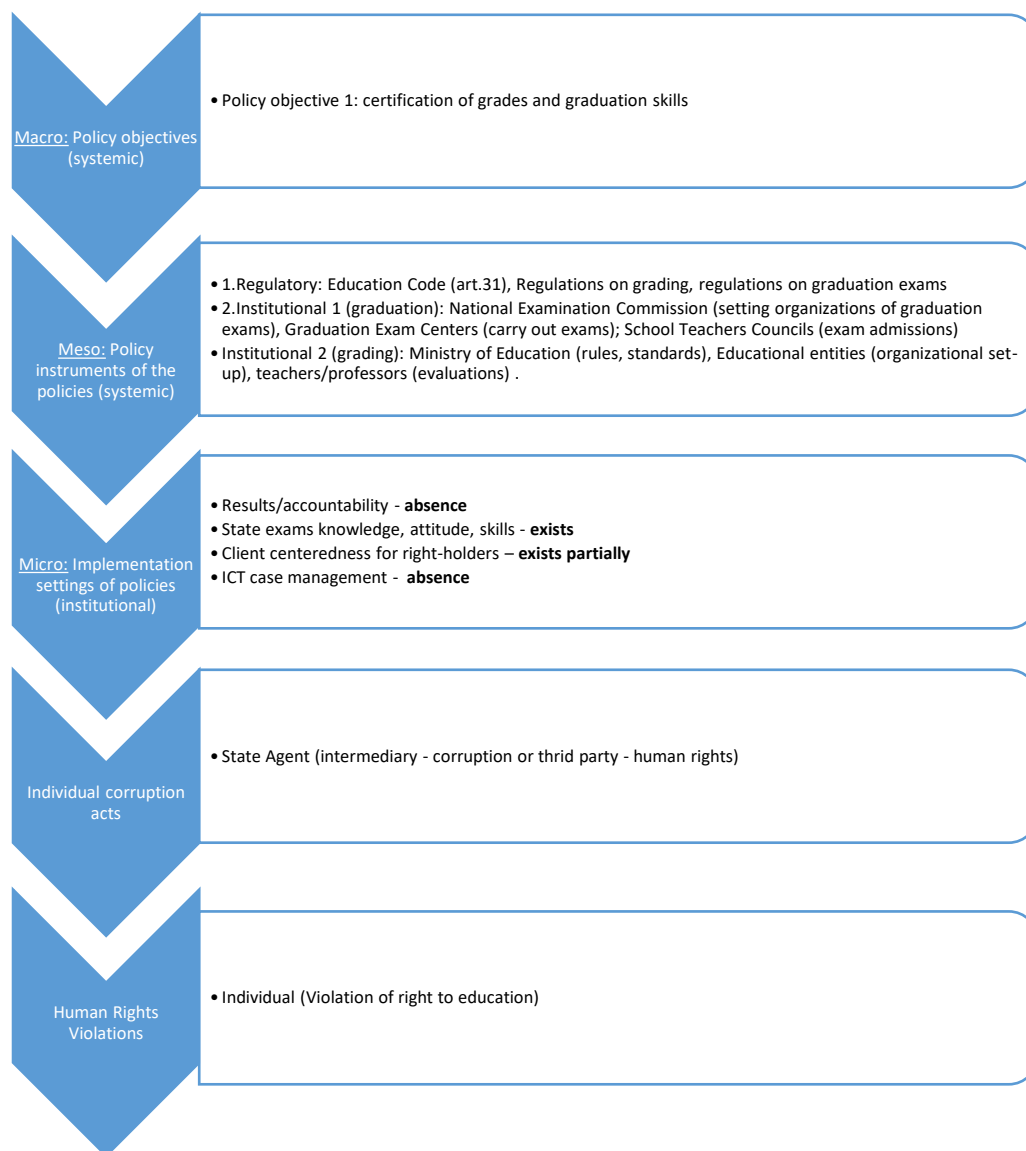
⁹² [7.-Etica-si-integritatea-academica.pdf \(ipp.md\)](#) p.30-35

intermediary at 6000-8000 MDL. College and University bribes paid directly to University staff (DB) ranged from 500-1000 MDL⁹³, while those paid for military certificates were 2000 MDL.

- *Systemic analysis*

Systemic analysis implies analysis of the educational institutional environment corruption vulnerabilities (micro-level), and consistency of the mix of the policies (meso-level).

Graph 3.4.2 Right to education: systemic analysis of grade bribe



In investigating the scenario where a bribe is paid to increase a grade, we found two overarching policy documents. 1. *Regulatory instrument*: 1.1 Law 131/2007 on education⁹⁴,

⁹³ One case involving foreign student

⁹⁴ [CP152/2014 \(legis.md\)](https://legis.md/CP152/2014)

1.2 Ministry of Education Decision 47/2018 on final exams⁹⁵ and grading⁹⁶, 1.3 Organization of graduation exams⁹⁷. 2. *Institutional instrument*: 2.1 Graduation Exam centers set by Ministry of Education, 2.2 School Teachers Councils set by Educational institutions or Organizational set up for the individual grading and evaluation.

Graduation exams are organized in three stages. Similarly to other rights, most individual corrupt acts occur at this point in the process as it employs wide discretion (such as in marking exams), has adequate transparency and tracking of decision making⁹⁸. The grading system in college or university establishments is another subject of the individual corruption cases captured in NAC cases⁹⁹. Here we found faults in the implementation of the regulatory policies and identify that responsibility lies with the educational facility. Additionally, regulatory instruments surrounding graduation include a process of several steps, each opening the opportunity for the exercise of discretion.

International best-practices¹⁰⁰ involve preventing personal contact and individual discretion at all stages from setting the educational appointment, to evaluation, criteria, and moving from verbal to written forms of evaluation, drawing recommendations are as follows:

- 1) Examination Procedures and Guidelines to ensure examination roles avoid conflicting interests,
- 2) Examination Security Mechanisms to include a combination of teacher and students' quality assurance and accountability,
- 3) Examination Technologies to use of e-mechanisms: testing, assessment, scheduling, tracking,
- 4) Interactive Examination Management System to set web and IT-based modalities for exams evaluations,
- 5) Examination Monitoring and Evaluation Tools to investigate and mitigate official or student-related corruption and complete re-evaluations where necessary.

Conclusion: Weaknesses in the design and organisation of examinations and grading processes suggest the existence of vulnerabilities in the education process which may be especially susceptible to corruption. We found that both individual corrupt acts and systemic corruption are responsible for the violations of human rights.

2) The right to education in relation to a driving permit (theoretical, practical, or medical certificates against bribe)

We examined the direct impact of corruption on the right to obtain a driving permit where the right-holder is entitled to receive a permit.¹⁰¹

- *Individual corrupt act analysis*

⁹⁵ [OMECC47/2018 \(legis.md\)](#)

⁹⁶

[ordinul nr. 1046 din 29.10.2015 regulamentul de organizare a studiilor in invatamintul superior in baza sistemului national de credite de studiu.pdf \(gov.md\)](#), [ome nr 234 din 25 martie 2016.pdf \(gov.md\)](#), [Anexa nr \(gov.md\)](#)

⁹⁷ [| Agentia Natională pentru Curriculum și Evaluare \(gov.md\)](#), [| Agentia Natională pentru Curriculum și Evaluare \(gov.md\)](#), [cb_sb19.pdf \(gov.md\)](#)

⁹⁸ Ministry of Education, Regulation on organization of graduation exam, nr.47/2018, art. 3.

⁹⁹ Ministry of Education, Decision 44/2016 on Grading evaluation, Section XV

¹⁰⁰ [Building Examination Integrity in Higher Education | QUALITY ASSURANCE DEPARTMENT \(uonbi.ac.ke\)](#), [424-EE005.pdf \(ijeeee.org\)](#), [ENHANCING ACADEMIC INTEGRITY AT THE UNIVERSITY OF WATERLOO \(uwaterloo.ca\)](#)

¹⁰¹ The possible negative effect of the unentitled receipt of the driving permit due to corruption act is not considered as does not satisfy condition of the immediate causal distance.

Cases in the NAC database (around 40 cases) describe the scenario with 3 actors involved: 1) a State agent (DB) that should certify (theoretical, practical or medical aspects) the existence of required skills to obtain a driving permit, 2) the rights-holder (RH) entitled to a driving permit, 3) an intermediary that may either be a private individual, or a representative that introduces the requirement of a bribe to the responsible State agent. We found no further relevant cases in other databases.

The Agency for Public Services is the competent agency required to process driving permits (art. 19 of law on-road security)¹⁰². To obtain a permit, an applicant must undertake professional training (academic and practical) with a licensed Auto Schools and upon graduation, comply with health requirements and pass both theoretical and practical examinations. The below diagram outlines the scenario where a direct violation of the right to education occurs, in the context of obtaining a driving permit.

This situation can manifest in two ways. Either a state official (DB) requests a bribe from an applicant and it is paid (obligation fulfilled (permit received), or the bribe is not paid and the permit is not issued (obligation not fulfilled (no permit), DB corruption). As with the other rights, the fact that state officials feel entitled to request a bribe for providing a public service indicates the systematic character of corruption.

There are 181 auto schools in Moldova. While there are no directly relevant cases in the database, the NAC internal research points to a systematic practice¹⁰³. We estimate that bribes paid as part of this scheme total between 500 to 900 euro, and taking into consideration that some 40% of the adult population have a driving license¹⁰⁴, a modest estimate of 10% of the scheme goes beyond 1 million euro. The affected right-holders are typically *young people who are seeking to enter the employment market*, where a driving permit is usually a prerequisite.

- *Systemic analysis*

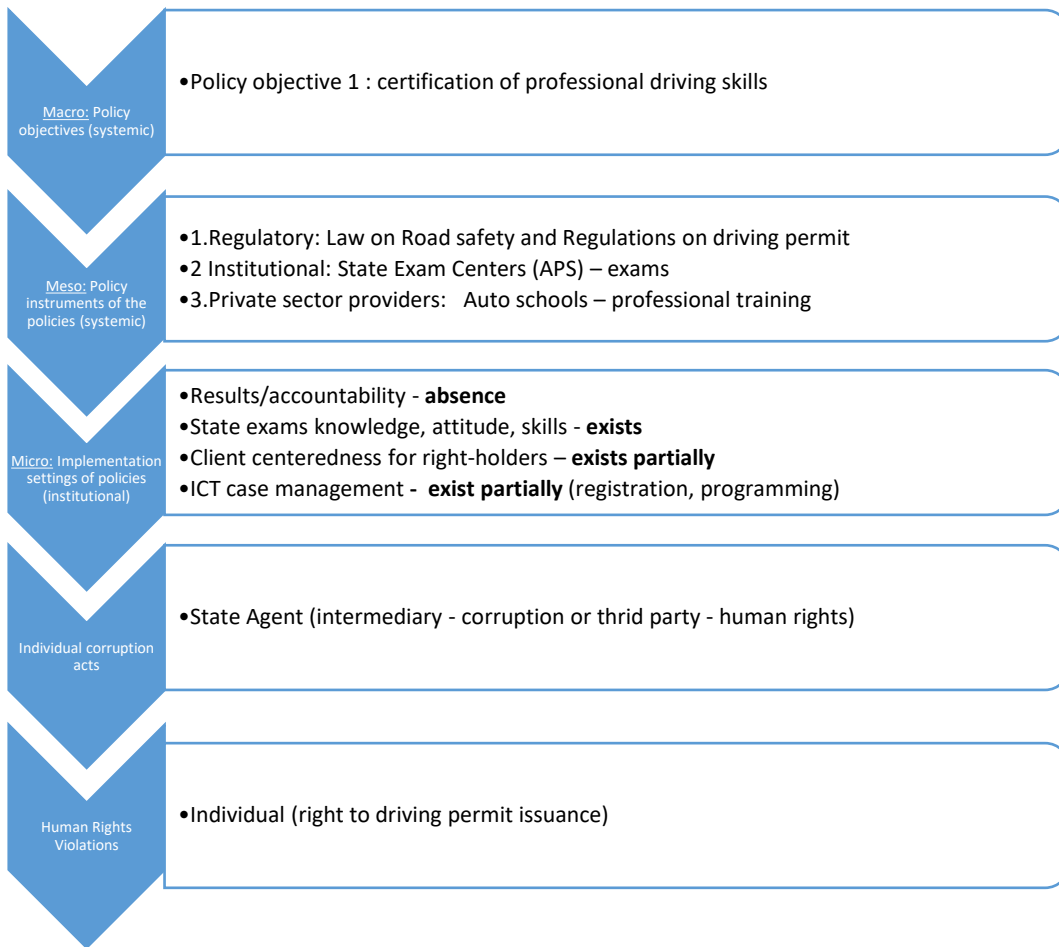
We outline above how individual corrupt acts indicate the existence of systemic corruption in the driving permit issuance process.

¹⁰² Government regulation https://www.legis.md/cautare/getResults?doc_id=91902&lang=ro

¹⁰³ <http://examenauto.md/stiri/2018/ianuarie/sunt-b%C4%83nui%C8%9Bi-de-eliberarea-ilegal%C4%83-a-pestre-600-de-permise-auto.html>, law on road security https://www.legis.md/cautare/getResults?doc_id=98583&lang=ro

¹⁰⁴ Number of cars adds up 20 thousand per year, number of driving licenses issues per year is unavailable, indirect sources point to 10-20 thousand per year in 12 state entities responsible. <http://viitorul.org/ro/content/ambuteiajele-sufoc%C4%83-chi%C8%99in%C4%83ul-interzicerea-vir%C4%83rii-la-st%C3%A2nga-%E2%80%93-una-dintre-solu%C8%9Bii>

Graph 3.4.3 Right to education: systemic analysis of driving permit issuance



We identified two phases in accessing of educational processes to obtain a driving permit: access to professional training (via private providers) and passing state exams (by a state provider). We also found that the cost of a private provider varies from 4000 to 7 000 MDL, while state exams cost around 500 MDL. With some 0.6 million of the population aged between 20-24 years, and an estimated 25% requesting a driving permit, the annual intake is around 25 000 trainees for 180 auto schools and a private market size of 150 million MDL.

We examined three types of policy instruments in assessing the regulatory response. 1. *Regulatory instruments*: 1.1 Law 131/2007 on road safety¹⁰⁵, 1.2 Gov. Decision 1452/2007 on driving permit¹⁰⁶, 1.3 Gov. Decision 616/2016 on Evaluation and accreditation of auto schools¹⁰⁷, and 1.4 Ministerial Decision on the organization of exams¹⁰⁸. 2. *Institutional instruments and actors*: 2.1 State Examination centres (14) within Agency for Public

¹⁰⁵ [LP131/2007 \(legis.md\)](#)

¹⁰⁶ [HG1452/2007 \(legis.md\)](#)

¹⁰⁷ [HG616/2016 \(legis.md\)](#)

¹⁰⁸ [instructiune_03_10-2013.pdf \(gov.md\)](#)

Services¹⁰⁹ (APS)¹¹⁰ that manage theoretical and practical stages of the testing, 2.2 Ministry of Education content developed for the educational programs, 2.3 Ministry of Economy¹¹¹ regulatory transport policy, 2.4 Ministry of Internal Affairs¹¹² responsible for road safety¹¹³ and a National Council for Road Safety which comprises of all relevant actors mentioned. 3. *Policy and process of private providers*: 3.1 Accredited and licensed Private auto schools (181) which are responsible for professional training in both theoretical and practical aspects of driving, initially accredited by ANACEC¹¹⁴ and licensed by APS. The right to education required to obtain a driving permit is part of the road safety policy, which we found to be fragmented – with the responsibility resting with several state entities at the policy level (3 ministries). This fragmentation introduces weaknesses in the process which may be susceptible to corruption. For instance, we found that in conducting examinations, the process of evaluation is based on a statistical assessment of conformity with standards as opposed to the trainees' actual skill.

We also identified that the broader road safety policy requires a systematic review, and that the driving permit training and state exams themselves are not in alignment with the state policy on road safety. However, we believe the critical point is the bottleneck created by 20 thousand requests for state exams for driving permits per year, processed through only 14 exam centers. Exam settings mean that they remain vulnerable to corruption risks, even though recent improvements in online scheduling and an online theoretical step in the examination process has been introduced. The most vulnerable part of the process is the practical assessment, which leans itself to a wide exercise of discretion in the examination.

Conclusion. Both individual corrupt acts and systemic corruption frameworks demonstrate that there may be human rights violations caused by corruption.

3) mayor's contracting out to firms violating conflict of interest

There are a number of ANI cases relating to the contracting out of public services to private firms where individuals involved have private interests. This practice not only reduces available financial resources for educational but also worsens the quality of education. At a country level, the finance available for educational processes is allocated on per-capita basis, and we therefore argue that the right to education is directly influenced.

4) mayor hiring relatives as school principal; hiring relatives in the school system; 5) accumulation of elected and non-elected positions

We identified some 24 cases where a conflict of interest arose in hiring or promotion processes. Secondary sources¹¹⁵ also indicate the presence of widespread conflicts of interest in the educational system under the administration of local authorities.

¹⁰⁹ [AGENȚIA SERVICIILOR PUBLICE \(gov.md\)](#)

¹¹⁰ [Programarea prealabilă la examen | AGENȚIA SERVICIILOR PUBLICE \(gov.md\)](#), [Examenul practic de obținere a permisului de conducere | PORTALUL SERVICIILOR ELECTRONICE \(e-services.md\)](#), [Ghid de la A la Z: Cum să obții permis de conducere auto - Locals](#)

¹¹¹ [INFRASTRUCTURA DE TRANSPORT | Ministerul Economiei și Infrastructurii \(gov.md\)](#)

¹¹² [Documente de politici | Ministerul Afacerilor Interne \(gov.md\)](#)

¹¹³ [HG39/2020 \(legis.md\)](#)

¹¹⁴ <http://www.anacip.md/>

¹¹⁵ Hotărârea nr. 48 din 28 octombrie 2020 cu privire la aprobarea Raportului auditului conformității salarizării în anul 2019 în unele instituții de învățământ preuniversitar din subordinea Autorităților Publice Locale [Hotărâri și Rapoarte \(ccrm.md\)](#)

6) Access to kindergarten; 7) unfair treatment at school (payments for renting manuals).

The Ombudsman registry contained several complaints over of the lack of available places in kindergarten¹¹⁶. Complaints do not provide any additional details into the specifics, for e.g. the use of electronic systems for registration, responses from the authorities and actions of authorities, and also do not include the age of the children (before 5 years or after). While administrative statistics and secondary sources reveal that less than 40% of children are enrolled in preschool education (including much lower levels in rural areas¹¹⁷) it is difficult to make a definitive assessment of the impact of corruption on access to kindergartens.

3.4.2 Recommendations

In the context of the right to education, we identified that the main issue in addressing corruption is the accessibility, transparency, and fragmentation of examination process. For individual rights holders, we believe the biggest concern is the economic accessibility of the right to education, given that bribery is a substantial cost to most households.

To encourage victims to report corruption in cases where personal outcomes are involved, strong protections of whistleblowers are required. While there is a Whistleblower's Protection Law in Moldova since 2018, its applicability has not yet established for parents and children in a schooling context, and arguably an ineffective mechanism as perpetrators are acting outside of the law in the first instance. The law itself protects employees of private and public institutions who disclose illegal practices which are contrary to public interest, and which does not extend to families in the educational context. We note at this stage that the 2019 NIAS Impact Monitoring Survey¹¹⁸ found that 24% of the population and 39% of businesses felt that they were prevented from reporting corruption as they believed there were no protections in place.

By way of conclusion, we identified the following recommendations¹¹⁹:

- With regard to formal education:
 - a. Protections: consider introducing protections for non-employees (parents or children in the educational context) in the Whistleblower's Protection Law.
 - b. Transparency and accessibility: redesign evaluation and assessment processes to be less oral-based and more paper or online based in order to improve the transparency and accessibility of results.
 - c. Accountability: educational establishments should follow the general technological standards in setting up accountability standards for the college, university academics, and professors, evaluating their performance against students' and pupils' knowledge and skills acquired.

- With regard to driving permits:

¹¹⁶ Ombudsman petition to Constitutional Court on the free of charge accessibility of kindergarten manuals has been declared unconstitutional.

¹¹⁷ [Raport DC ONU redactabil for WEB \(drepturilecopilului.md\)](#)

¹¹⁸ The National Integrity and Anticorruption Strategy Impact Monitoring Survey - Moldova 2019, commissioned by the UNDP Moldova, supported by the Norwegian Ministry of Foreign Affairs, conducted by CBS-Axa, figure 2.36, pag.63.

¹¹⁹ [PROGRAMME \(coe.int\)](#)

- a. Accountability: Redesign testing to ensure applicants are certified by state exam centres via tracking system which evaluates skills, as opposed to discretionary factors.
- b. Transparency: Improve transparency of the process for passing theoretical and practical exams, including video surveillance.
- c. Carry out a mix of preventive research and state investigations into methods of combating patterns of corruption in the driver licensing system.

3.5 Right to health (art.36)

For the right to health, our databases returned 50 NAC (cases), three EC cases, four ANI cases, several complaints from Ombudsman platform, two draft laws reviewed by the Ombudsman, and one recommendation by UN expert body.

The *Equality Council* case involved a waiting list of several months for medical services based on the health insurance details, where it was identified that the only way to reduce the wait time was to make a private contribution. In the ANI database, three cases involved situations where the principles of health entities hired relatives, which reduced efficiency and accountability for public performance and often resulted in negatives human rights outcomes.

Table 3.5.1 Right to health: types of individual corruptions impacting human rights

right to health (art.36)	No RH violation, no individual but political corruption H1B2	No RH violation, others' rights violation, no individual but political corruption H3B4	No RH violation, others' rights violation, RH corruption+ DB pay H1B2	RH violation, DB corruption H1B1	RH violation, other rights violation, DB corruption H2B1
	1(EC)	88(NAC)	0(NAC)	8(NAC)+ 1(EC)+ 3(ANI)	36(NAC)

As previously, duty-bearer driven corruption resulting in the violation of human rights requires the application of our individual corruption framework for analysis, while the other two situations require a systemic analysis. These cases indicate the existence of systematic tendencies of RH+DB corruption.

- *Perception of corruption in health*

Several sociological surveys capture public perception regarding the right to health. According to the 2019 NIAS Impact Monitoring Survey¹²⁰:

- 87% of the population and 89% of the business agree that doctors who request bribes for treatment violate the right to health¹²¹;
- 31% of the population and 27% of the business considered medical institutions as being among the most corrupt¹²²;
- 68% of the population believed it was unacceptable to be paying a doctor in order to get better care¹²³;
- 42% of the population interacted with medical institutions over the past 12 months¹²⁴, of which 85% were satisfied with this interaction¹²⁵, 13% acknowledged having made informal payments¹²⁶, and 3% offering gifts¹²⁷ in connection with their treatment received.

¹²⁰ https://www.md.undp.org/content/moldova/en/home/library/effective_governance/studiu-de-evaluare-a-impactului-strategiei-naionale-de-integrita0.html

¹²¹ *Ibidem*, figure 2.2 pag.37.

¹²² *Ibidem*, figure 2.17, pag.47.

¹²³ *Ibidem*, figure 2.21, pag.50.

¹²⁴ *Ibidem*, figure 2.26, pag.53.

¹²⁵ *Ibidem*, figure 2.27, pag.54.

¹²⁶ *Ibidem*, figure 2.28, pag.55.

¹²⁷ *Ibidem*, figure 2.29, pag.57.

- 7% of the population experienced a scenario where either they or a family member could not receive necessary treatment because of a refusal to bribe a doctor. As a result, his/her health or that of the family member deteriorated¹²⁸.

Similar to the right to education, healthcare is another sensitive area where the reporting statistics do not reflect the reality on the ground due to the direct impact that reporting has on personal outcomes. We identified that it is only when a patient leaves the medical facility or when a patient has been mistreated leading to a lethal outcome – the relatives have been willing to report the crime.

3.5.1 Assessment

- *Human Rights standards*

The right to health¹²⁹ is enshrined in art.12 of ICESCR¹³⁰ and art. 8 and 3 of the ECHR^{131, 132}. Broadly speaking, we assessed the processes surrounding the right to health as including access to essential medicines, maternal and reproductive health, as well as equal and timely access to basic services such as individual services (diagnostic, treatment) and public consumption (preventive public programs). The exercise of the right to health includes non-discriminatory access to such services for vulnerable and marginalized groups, essential nutritional food, shelter and housing with adequate sanitation and safe water, and essential drugs. Additionally, in fulfilling this right the state has the obligation to protect persons subject to its jurisdiction from third party interventions obstructing the right to health¹³³.

Art. 36 of the Constitution provides that persons must have access to minimal medical insurance and non-discriminatory access to services, including for those with mental disabilities, and preventative actions put in place for epidemic diseases. Court jurisprudence on this particular article is limited. However, we did identify four generic situations relating to the right to health in our databases: 1) access to medical services, including for persons with disabilities (NAC, EC), 2) access and cost of treatments (NAC, NAC draft law nr.20, nr.121), 3) the quality of public food facilities (NAC), 4) the draining of financial resources from medical institutions (NAC, ANI).

1) access to medical services, including persons with disabilities

The NAC database contains two cases relating to access for persons with disabilities, and the EC database contains a further two cases involving discrimination in access to services, such as the insurance package provided by law.

- *Individual corrupted act analysis*

We identified two types of situations (NAC cases): 1) a case where medical staff as State agents (DB) have the obligation to provide medical services free of charge, however refuse

¹²⁸ *Ibidem*, figure 2.33, pag.61.

¹²⁹ “the right to the enjoyment of the highest attainable standard of physical and mental health (right to health)”

¹³⁰ <https://www.ohchr.org/documents/publications/factsheet31.pdf>

¹³¹ https://www.echr.coe.int/documents/fs_health_eng.pdf

¹³² https://www.echr.coe.int/Documents/Research_report_health.pdf

¹³³ Comment N° 14, Committee on Economic, Social and Cultural Rights, <https://www.refworld.org/pdfid/4538838d0.pdf>

provide them without being bribed, 2) a rights holder advances a bribe for preferential treatment to the detriment of others.

In the first situation, the patient is entitled to receive medical services based on their health insurance status, however medical staff request additional payments be made for the treatment. In this case, the patient is forced to pay.

Example: *On the 1st of July 2020 the gynecologist V.S. has been convicted for professional negligence causing the death of a new-born. While the aggrieved parents presented expertise proving the doctor's wrongdoing, the accused doctor presented alternative expertise proving that the death was not caused by his actions. The parents requested the appointment of international expertise on the cause of their child's death. To avoid the administration of such evidence on the case, the accused has bribed a total of 10 persons: 5 judges, 1 prosecutor, 1 defence counsel, 1 court assistant, 1 doctor, and 1 more accused on the case. All of them have been arrested, leading to an additional charge of corruption to the criminal case of the doctor. This is a relevant case to understand that a corruption case in the justice sector was generated by a criminal act in healthcare. While being contrary to the interests of justice and affecting the right of the aggrieved parents to a fair trial – impartial and independent – this corruption case also affects the right to life and physical integrity of future patients, who might also suffer from medical negligence of the indicted, should the latter managed to avoid criminal liability by corrupt means.*

In the second scenario, the patient (RH) was entitled to receive medical services, however the treatment provider (DB) proposed the patient pay to receive preferential time access. In this case the patient agreed to pay and preferential time access is granted, which negatively impacts the enjoyment of the right to health of others. The respective cases do not include any detail on the social or health consequences for the other patients, and as such we determined that these human and social costs cannot be estimated without proper medical evaluation.

The Equality Council database includes several cases that reinforce the existence of delays in treatment for those who are entitled to receive it. The Council also found instances of discrimination where insured patients are asked to pay so they may move up in priority for a delay that is potentially artificially created.

The above situations indicate manifestations of corruption implying systemic deficiencies in policy objectives and implementation settings that we seek to explore below. *The violation of the access right to health, violation of the non-discriminatory character of the right provision as well as the violation of the rights of others who also discriminated against or denied access to health services.*

We estimate that the corruption cost in the first scenario ranges from 500 to 7000 MDL. With as many as 40 occurrences, the overall cost could total 350 000 MDL. We further estimated that the corruption cost in the second ranges from 15 000 to 17 000 MDL, and the overall cost for some 5 occurrences being 75 000 MDL. It is difficult to estimate the impact on the realisation of the right to health for others without proper medical knowledge. Secondary sources such as specialized surveys indicate that the medical profession is one of the most affected areas of unofficial payments¹³⁴ with some 40% of households being request to pay a median sum of 1387 MDL and overall, more than 370 million MDL.

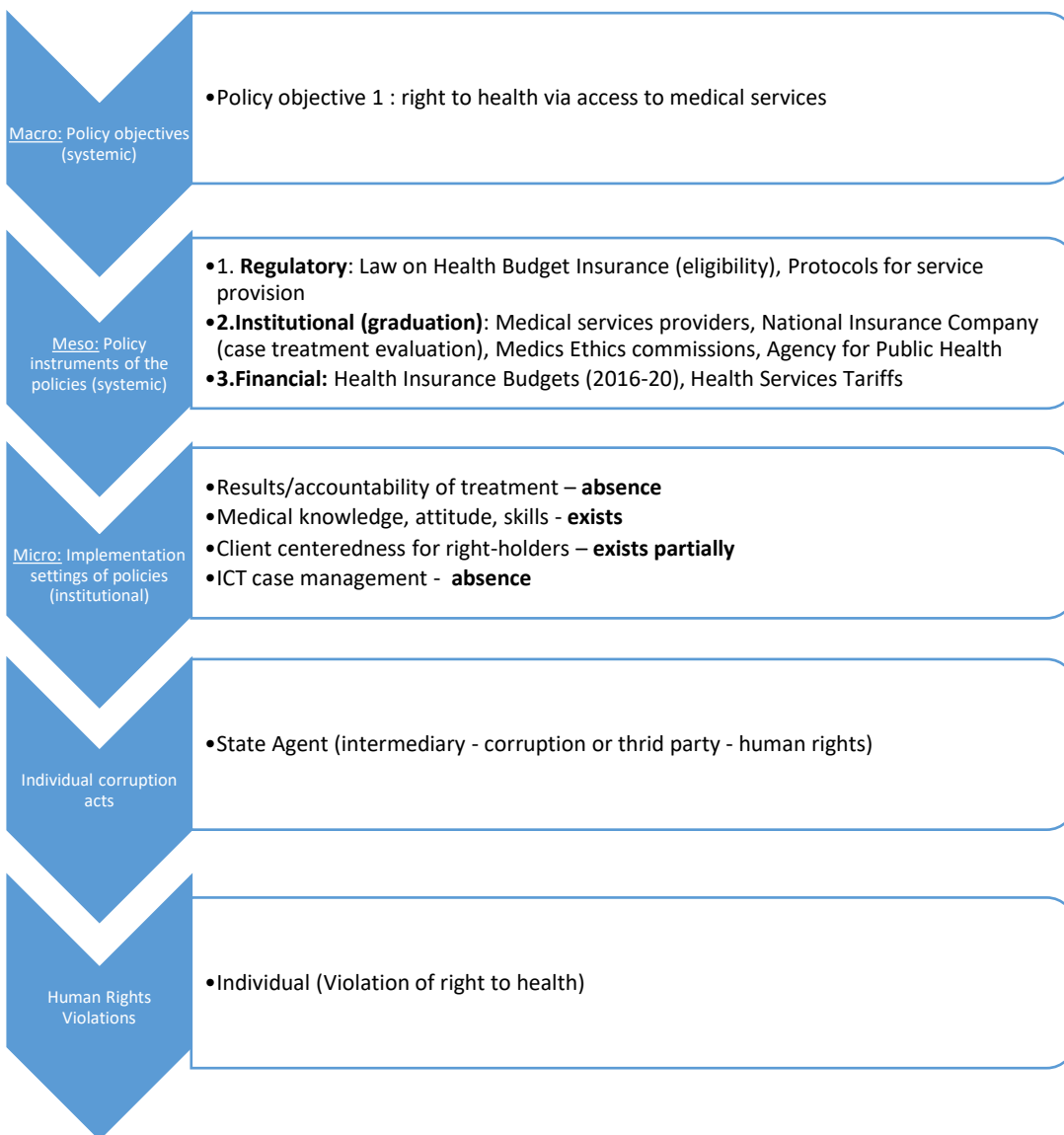
¹³⁴ http://www.transparency.md/wp-content/uploads/2017/02/TI_Moldova_Coruptia_in_RM_perceptiile_si_experientele_proprii_ale_oamenilor_de_afaceri_si_gospodariilor_casnice.pdf

Those most affected by these violations are typically those with certain health and social vulnerabilities, such as with disabilities. Drawing on the judicial information in the NAC database, one can conclude that complex medical interventions are needed for the elderly and persons with various forms of disability.

- *Systemic analysis*

We identified that the impacts on the right to health are systemic. We therefore propose to deploy our systemic assessment framework to better understand the relevant policy implementation deficiencies and flaws.

Graph 3.5.2 Right to health: systemic analysis of grade bribe



Our analysis identified three types of policy instrument: 1. *Regulatory instruments*: 1.1 Law on health 411/1995 on education¹³⁵, 552/2001 on evaluation and accreditation in health¹³⁶, 1593/2002 on medical insurance¹³⁷, 263/2005 on rights and obligations of patients¹³⁸, 264/2005 on the exercise of the profession of a doctor¹³⁹, Health protocols registry¹⁴⁰, 2. *Institutional instruments*: 2.1 Hospitals and Ambulatories as providers of medical services, 2.2 National Insurance Company¹⁴¹ that contracts hospitals and ambulatories for services payments based on insurance, 2.3 Health Accreditation and Evaluation Agency (CNEAS). *Financial instruments*: 3.1 1585/1998 on mandatory medical insurance¹⁴² and mandatory budgets (2016-20) and execution; 3.2 Individual contracts criteria¹⁴³.

Provision of medical services on the base of mandatory health insurance is the responsibility of the service provider (hospital or ambulatory). Medical service providers enter into contractual relationships with the respective Health Insurance Company to provide treatment and receive quotas of cases that are referred. These quotas form waiting lists for patients whose treatment is scheduled, prioritized by the policy allowances and eventually paid for by the insurance policy.

We identified that individual corrupt acts in this context may be the result of vulnerabilities or deficiencies at the policy implementation settings level: 1) the absence of case management and queue management, and processes for treatment, 2) bureaucratic procedures as part of the treatment process, from arrival at the medical provider to follow up scheduling, 3) internal accountability for wait list management and information on timing being provided to the patient. The managerial staff at treatment providers are directly responsible for the management deficiencies.

We identified more issues in the design of the policy instruments. One issue arose from the inadequate evaluation of the performance of the medical service providers against case treatment briefs, and inadequate tracking of how funds are spent on those patients. Another financial issue arose with the lack of tracking of payments made to medical staff and doctors, which is problematic as the salaries of the doctors and medical staff are around 4-6 000 MDL per month. Finally, external accountability and quality assurance for the provision of the medical service is likely to be ineffective.

The combination of corruption vulnerability factors described above create an environment conducive to systemic corruption, which may lead to both the direct and indirect violation of the right to health. Outcomes of systemic corruption such as the depletion of public resources are also likely to impede the progressive realisation of the right health as required by the ICESCR.

From a human rights perspective, the positive obligation to contribute to the right to health lies predominantly with medical personnel and related institutions.¹⁴⁴ Responsibility for the

¹³⁵https://www.legis.md/cautare/getResults?doc_id=119465&lang=ro

¹³⁶https://www.legis.md/cautare/getResults?doc_id=101302&lang=ro

¹³⁷https://www.legis.md/cautare/getResults?doc_id=120073&lang=ro

¹³⁸https://www.legis.md/cautare/getResults?doc_id=107308&lang=ro

¹³⁹https://www.legis.md/cautare/getResults?doc_id=110649&lang=ro

¹⁴⁰<http://89.32.227.76/public/info/Ghid/protocolls/>, <http://89.32.227.76/files/5656-CC.pdf>

¹⁴¹<http://www.cnam.md/>

¹⁴²https://www.legis.md/cautare/getResults?doc_id=113243&lang=ro

¹⁴³<http://www.cnam.md/httpdocs/editorDir/file/Legislatie/ordine/2020/Ordin%20Criterii%20contractare%202020.pdf>

¹⁴⁴ Overall, there is an obligation on the state to pass laws guaranteeing the right and regulating its implementation.

examination and investigation of allegations of violations of the right to health resides, depending on the situation, on the specialised medical commissions and specialised prosecutors. From an anticorruption perspective, the obligation to prevent corruption in the context of health rests predominantly with institutional leadership in the medical sector, while the responsibility for combating corruption in the exercise of the right to health lies directly with NAC and anti-corruption prosecution if required. Preventing corruption in the health sector requires increased collaboration between investigative bodies, and evaluating institutional integrity, systemic corruption vulnerabilities and measures adopted by the health leadership in terms of human rights outcomes.

Notably, investigations and examinations of allegations of a violation of the right to health by the respective authorities do not consider corruption factors. Similarly the investigations into allegations of corruption do not consider the exercise of the right to health.

2) Draining financial resources from medical institutions (NAC, ANI) and 2) cost of the medicaments (NAC, NAC draft law)

We identified several cases in the NAC database where a power imbalance was exploited in the public tender process for medicines purchased as part of publicly funded treatments. Additionally, ANI includes several cases where duty-holders or private interests advance tenders in order to distort the view of the market. Finally, the NAC draft law features two draft laws (nr.20, nr.121) that present favourable treatment for some companies that import and distribute medicine.

The judicial decisions did not include detail on individual medical costs, nor product categories, and it is therefore difficult to understand how corruption increased overall cost when benchmarked against market pricing. It is however clear that in an environment where financial resources are scarce, the price difference imposed on the medical institutions drains the system's ability to provide more services. ANI also dealt with several cases of conflict of interest within the medical profession, such as hiring practices or contracting out certain practices to associated entities. The NAC database contains two more cases where a state agent imposed an artificial pricing on a contractor that imports and distributes medicine, which results in an increased cost to those seeking treatment.

We found that these cases do not reveal a direct individual violation of the right to health but however are indicative of systemic corruption that may affect the fulfilment of the right to health. We suggest that further research focuses on certain institutions and policy settings whereby private interests interact with funding needed to realize human rights, however this investigation goes beyond the scope of our research.

3.5.2 Recommendations

We found the potential for corrupt actions to have an impact on the right to health due to the lack of accountability, lack of transparency, and wide discretion allocating patient procedures. Similar to the education sector, reporting corruption in such cases is difficult the interests of the patients are at stake, and therefore due protection of confidentiality is

required. The Whistleblower’s Protection Law identified earlier covers medical employees and those contracted to provide services, however, patients may not meet the legal definition of an employee. We would therefore firstly make one general recommendation: consider amending whistle-blower protections to include affected parties such as patients and their relatives.

Recommendations relevant in other specific areas include:

- Concerning the incorporation of human rights and corruption into reciprocal investigations and examinations:
 - a. Factor corruption considerations (legal changes, methodological guidelines, etc) into investigations against medical personnel and other health service providers in case of the failure to provide services,
 - b. Factor institutional integrity evaluation considerations into investigations of allegations of human rights violations as complementary evidence.
 - c. Consider the use of institutional integrity evaluations and systemic corruption vulnerability evaluations in human rights thematic reports, individual human rights examinations (human rights institutions) and investigations (prosecutor institutions).

- Concerning access to medical services:
 - a. (transparency) Establish an electronic wait list which provides patients with a specific financial support and time approximation; this should be accompanied by the publication and accessibility of protocol of management systems and related information on the cost;
 - b. (narrow discretion) The absence of information on the progress of the waiting list and its unclear modalities mean that medical staff are able manipulate the prioritization process. Therefore, both regulation and improved management of the case tracing are required;
 - c. (accountability) management of the access to the service, including complaints management appears to be absent. Medical institutions have a fiduciary responsibility to ensure the rights-holder is awareness of services that they are entitled to receive. There also seems to be no internal system of integrity to periodically check the progress in the waiting-list;

- Concerning access to medicines and drain on health resources:
 - a. (transparency) deploy a fully electronic tendering and purchasing process with all stages and quotes published, and allow participants from within and outside of the country in order to drive costs down;

- Concerning the general situation, relevant expert bodies recommendations state:

	CEDAW	ICESCR
Right to health (art.36)	(34) Widespread <u>corruption among medical and health personnel</u> in the State party, along with brain drain to third countries, owing to poor working conditions and low salaries; (35) Increase salaries and introduce incentives to <u>retain qualified medical and health personnel</u> in the State party, particularly in rural areas, and intensify efforts to combat corruption in medical and health services	(16) State party to combat corruption, the Committee remains concerned about the <u>prevalence of corruption in the public sector</u> , and the widespread practice of bribery to obtain public services, particularly in the <u>health-care and education sectors</u> .

3.6 Right to property (art.46)

We identified that the right to property is diverse and manifests in more than 15 different situations:

- NAC (cases) include four different situations: 1) The falsification of property testaments (5 cases); 2) Decisions regarding customs duties and taxes, including baggage (border transport, 35 cases); 3) Decisions by authorities and construction inspection staff on real estate certifications (81 cases); 4) Decisions affecting the movement of cash across the border (6 cases);
- Integrity Agency: included cases on the positive obligation to avoid preferential allocation of public construction licenses (5 cases),
- The Ombudsman has fiscal and tax complaints lodged by patent holders (6 cases).
- NAC (draft laws) cover numerous situations and procedural rights: the right to individual property on land in the process of amalgamation (nr.135); the right to solicit advanced individual fiscal solutions before the application of sanctions (nr.111); the right of the mayor to dispose and privatize real estate (nr.92); the increase the age of import buses from 10 to 15 years (nr.78); the right to obtain industrial stamps in less than 15 days (nr.52); the right to reclaim land for electrical networks (nr.49) and right to reclaim land for gas distribution networks (nr.48); simplification of the buying-selling procedures by using land registries (nr.14); the restrictions on the privatization of land with superior soil fertility under special conditions (nr.13).

As outlined in the below table, we observed that there are some cases where corruption directly impacts human rights (last 3 columns) and others where corruption may not result in a direct violation, but may impact the enjoyment of human rights by society at large.

Table 3.6.1 Right to property: types of individual corruptions impacting human rights

right to private property and its protection (art.46)	No RH violation, <u>others' rights violation</u> , no individual but political corruption	No RH violation, others' rights violation, RH corruption+ DB pay	RH violation, DB corruption	RH violation, other rights violation, DB corruption
	58(NAC)	16(NAC)	10(NAC)+ 5(ANI)	32(NAC)

As previously, we argue that RH violation + DB corruption cases require the application of the individual corruption framework for analysis, while others require the political/systemic framework of analysis. Firstly, RH violation + DB corruption cases signify only part of the phenomenon of direct or intermediated acts of corruption, and in some cases indicate the existence of systematic corruption and therefore there are a significantly higher number of cases caused by implementation deficiencies. These cases require the application of the political/systemic framework of analysis because we suspect they are caused by flaws in the policy design and objective.

We aim to examine several situations that contain the most frequent angles of individual corruption. We estimate that the cost of corruption varies from 500 MDL to 100 000 MDL. Extrapolated against the available data, this results in more than 2 million MDL in bribes.

3.6.1 Assessment

- *Human rights standards*

The right to own property is recognized at the universal level in the Universal Declaration for Human Rights (art.17) and the regional level in the European Convention on Human Rights (1P1)¹⁴⁵. The following are defined as “possessions” for the purposes of the European Convention: i) professional clientele, ii) business licenses for economic activity, iii) leases on the properties, as well as iv) social security benefits/pensions. State agents have a positive obligation to protect property from interference by private actors, carry out an effective investigation to determine if the right has been impacted, and put in place an effective remedy to protect and enforce the right to property. Art.46 of the Constitution sets the general framework for this in Moldova.

Decisions by authorities and construction inspection on real estate property, certifications (NAC) and related avoid preferential allocation of public construction licenses

As previously, there are 3 types of NAC cases: RH violation and passive corruption, RH violation with active corruption, and no RH violation while the rights of others are adversely impacted. For the right to own property, license cases provide matching data on the same problems: for instance, issuing of property licenses to related persons.

Systematic occurrence of the cases point to the need to complement individual cases with the systemic approach where the construction permits and license institutions implementation settings are primary target. Generic conclusions depict corruption vulnerabilities in the processing of the decisions.

3.6.2 Recommendations

From a corruption perspective, several similar *factors contribute to the occurrence of individual corruption which may affect the enjoyment of human rights*:

- Inadequate transparency: inadequate transparency in individual decisions regarding construction plots, permits, and a lack of accessibility (including mapping) of other interested parties in the process;
- Discretion in decision making process: the mostly paper-based process is not regulated clearly, electronic files are not used, personal factors impact decisions, especially where collegial bodies are involved.

There are two types of populations affected by corruption within the property industry, including individual and larger developers, and the beneficiaries of the flats and houses. There are also a considerable number of private individuals and dwellers seeking various construction documents that are subject to cumbersome and complex construction permit processes, and their social and economic cost most likely exceeds 3-4 times the cost of the original bribe. While the impact of individual corrupt decisions on the rights of others can be qualitatively established, the quantitative impact is difficult to estimate further.

¹⁴⁵ [Guide on Article 1 of Protocol No. 1 - Protection of property \(coe.int\)](#)

Based on the above two scenarios, we suggest the following policy recommendations:

- Improve the transparency of the decision-making process: introduce electronic casefiles for all stages and all types of construction permits that have associated financial incentive, and link the individual electronic file with a public portal so the public is across progress;
- Reduce the use of discretion: substantially reduce the discretion employed in individual decisions, and detail progress of relevant applications the same public platform.

4. Discussion, Policy Recommendations

This chapter contains an analysis based on the findings and conclusions of chapter 2 and 3.

4.1 Analysis of rights

In the previous chapter we examined five different rights from more than 15 different angles, and demonstrated the various ways that corruption can manifest to impact human rights – via influence patterns, weak policy implementation and weak governance mechanisms. As outlined earlier, our selection of rights to examine was based on the available information as explained in chapter 2. In table below we summarize our all findings with respect to individual rights examined the previous chapter.

For the *right to life*, we considered the situation of domestic violence. We demonstrated that situation includes dominant patterns of bribery interventions, where bribes are offered to police in order to reclassify claims as administrative as opposed to penal. As a result, the victim should be protected from domestic violence has to defend themselves. In this case, outcome is unpredictable and largely depends on the discretion exercised by police, as there are no tracking or transparency mechanisms available, meaning corruption has the potential to seriously affect enjoyment of the right to life. We note however that while corruption is one of the major causes of violations, other important factors still play a role. The human rights cost of corruption in this environment varies substantially: while the costs are hidden and are not substantial, they are likely to be systematic and widespread.

In the case of the *right to defence*, we examined the influence of corruption over both procedural guarantees afforded by the accused, as well as substantial rights of the victim. We identified that a dominant pattern exists whereby transaction intermediaries almost define the role of fairness between duty-bearer and rights-holder in the context of criminal investigations (suspected, the victim, etc). For this right, we also identified hidden violations of the rights of others as a defining feature in the criminal investigations. They are particularly vulnerable given the lack of legal aid and proper standing afforded as part of the investigation and prosecution procedure. At scale, the corruption cost is substantial given the influence of corruption can be shown to systematic.

A similar dominant pattern emerges for the right to property as with the right to defence. We identified the prominent issue being rights-holder corruption when seeking preferential treatment, usually with unidentified indirect victims. Where there are direct victims of corruption, these usually include dwellers of the houses and flats or potential smaller developers that are locked out of the construction market and licensing procedures. Using our assessment model we identified that information captured only tells half the story – as excessive bureaucracy, opaqueness of individual decision making, and wide discretion creates a thriving environment for corruption with various hidden costs.

Table 4.1.1 Summary of findings on the impact of corruption on human rights

Individual rights (selected)	Individual and/or systemic corruption	Type of corruption	Vulnerable groups (direct victims)	Others' rights violations (indirect victims)	average bribe, number	Corruption direct	Human rights cost (qualitative)	Prevention policy	Prosecution policy
<u>Right to life, physical integrity (24):</u> - domestic violence, - humane conditions detention	Individual corrupt acts with systematic manifestation of violation type II and deficiencies' and flaws in systemic corruption (implementing settings and policy instruments) – violation type III	1)RH violations by DB corruption (direct and via an intermediary); 2) No RH violation, but violations of rights of others by RH+DB corruption and political corruption, 3) political/systemic pattern	Victims of domestic violence, Detainees	Persons dependent on victims of domestic violence (children, elderly)	3 000 MDL - average 15 cases available	2.4 mln MDL of <u>total industry projection</u>	-physical, health, and psychological recuperation (long-term) of direct victims, - health, psychological recuperation of indirect victims,	- build an administrative institutional internal accountability system - incorporate electronic files system tracking investigation decisions at all stages; - publish annual performance reports on cases and impact (indicators); - develop strategic files research to guide individual actions, targets;	- institutional guidelines on investigation tactics and qualification of facts; - introduce impact on children rights or elderly rights as aggravating element; - track others rights statistics;
<u>Right to defence, fair trial (26):</u> - influence decisions prosecutors, police - improper police investigation	Individual corrupt acts with systematic manifestation of violation type II. Systematic corruption not evaluated, yet, likely.	1)RH violations by DB corruption (direct and via an intermediary); 2) No RH violation, but violations of rights of others by RH+DB corruption and political corruption, 3) political/systemic pattern	Ordinary, socially disadvantaged	RH of right to physical integrity, property, liberty, and security,	60-100 thous MDL - average 150 cases available	Direct: 4.5 mln MDL	- procedural remedies, - sentenced errors, - assessment of the impact on the concrete rights of victims (indirect victims) of criminal cases dealt by justice (ignored)	on top of the previous: - improve functional independence, - improve functional and institutional accountability; - consolidate ethics, disciplinary measures; -	-elaboration of guidance on identification and evaluation of the indirect impact of corruption; -
<u>Right to education (35):</u> -driving permit; - graduation diploma,	Individual corrupt acts with systematic manifestation of violation type II and deficiencies' and flaws in systemic corruption	1)RH violations by DB corruption (direct and via an intermediary); 2) political/systemic pattern	Ordinary, large scale; Socially disadvantaged student;	no	-10-20 thous MDL - average 100 cases available	-6-7 mln MDL; - 70 000 MDL	-	- introduce accountability tracking system for private training firms and state evaluation centers centered on driver incidents stata; - redesign practical and theoretical exams technology	- introduce the system of license revocation and penalties for training centers with poor tracking record;

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- educational grade;	(implementing settings and policy instruments) – violation type III.				-6000-8000 MDL, 7 episodes, -500-1000 MDL, 10 cases			to record actions and depersonalize stages interactions; - pass regulation on conflict of interest in private training firms, - carry out sector-wide strategic file research; - parents and children in the Whistleblower’s Protection Law.	- carry out complete all aspects investigations rather than episode centered one party involved;
<u>Right to health (36):</u> - access to medical services, -quality of public food facility, -draining finance from the system	Individual corrupt acts with systematic manifestation of violation type II and deficiencies’ and flaws in systemic corruption (implementing settings and policy instruments) – violation type III.	1)RH violations by DB corruption (direct and via an intermediary); 2) RH violation, violations of rights of others by RH+DB corruption, 3) political/systemic pattern	Ordinary, Households with multiple health problems, persons with disabilities, elderly	Poor patients, persons with disabilities, the state ensured persons (elderly), dependent on costly medical interventions	-500-7000 MDL, 40 cases, -15-17 000 MDL, 5 cases,)	-350 000 MDL, 75 000 MDL	-loss of physical and health faculties; -complications resulted from delayed interventions; -	-electronic waiting lists, scheduled visibility; internal tracking, review; - patient electronic file tracking performance, interventions; - patients and their relatives in the Whistleblower’s Protection Law.	- carry out complete all aspects investigations rather than episode centered one party involved;
<u>Property right (46):</u> - construction decisions; -tax/fiscal decisions;	Individual corrupt acts with systematic manifestation of violation type II. Systematic corruption not evaluated, yet, likely.	1) RH violations and other rights violations by DB corruption (direct and via an intermediary); 2) political/systemic pattern	- small developers, individual dwellers, households;	-Individual low/middles income dwellers; -	500-100 000 MDL, 90 cases	>2 mln MDL	-economic loss due to inactivity; -housing rights;	- improve transparency of decisions by introducing electronic case-files; with individual electronic cabinet across departments; - reduce steps and narrowing terms of decisions; - develop module with the public interface for transparency of the decisions;	- carry out complete all aspects investigations rather than episode centered one party involved;

In the case of the *right to education*, the dominant pattern differs as no indirect third party is present. In this case, intermediaries play a substantial role together with DB corruption, and together drive corruption within the education sector. We believe that the manifestation of corruption is systematic and available cases only capture a fragment of the wider issue. The corruption costs are comparatively small, however are systemic and widespread.

In the case of the *right to health*, both the rights-holder and the duty-bearer are typically engaged in individual corrupt act, with the former requesting preferential treatment and the latter obliging. The defining feature for this right the substantial impact on the rights of the others, most notably the vulnerable who are delayed, underserved or excluded from the system given. It is impossible to capture the cost to indirect victims as the result of their right to health being limited, as they are silenced by the absence of transparency and accountability mechanisms. The corruption costs vary from small to very substantial, while the human rights costs cannot be accounted for.

Through this analysis we demonstrate that corruption adapts and takes different forms in impacting human rights. The patterns described are largely situational and right specific, however once articulated we obtain a much better understanding of the impact at large. We believe this is crucial as it results in more focused and targeted research, as well as the design of interventions and remedies. Of these, we believe that the legislative recommendation to include the presence of corruption or violations of human rights as aggravating elements to all manner of criminal procedures. In particular, the effectiveness of including aggravating factors as a sentencing policy has been discussed in detail – we believe this may also have a positive effect¹⁴⁶.

Victims of human rights violations affected by corruption

The impact of corruption is directly felt first and foremost by the rights-holders. However, our assessment model together with evidence detailed demonstrates that individual corrupt decisions also affect and violate the rights of others. We acknowledge that the human rights cost of corruption is a new concept and while we have identified it qualitatively in this research, we believe it requires a quantitative assessment in each case.

Vulnerable groups are mostly affected by the corruption, and research demonstrates the below connections from rights to related victims:

- Right to life: victims of domestic violence, detainees and also the rights of others' persons' dependent on victims of domestic violence (children, elderly);
- Right to defence: ordinary, socially disadvantaged and also the rights of others' RH of right to physical integrity, property, liberty, and security;
- Right to education: ordinary, large scale; socially disadvantaged student;
- Right to health: ordinary, households with multiple health problems, persons with disabilities, elderly;
- Right to property: small developers, individual dwellers, households; and also the rights of others: individual low/middles income dwellers;
- Right to social protection: persons with disabilities, veterans, children.

¹⁴⁶ <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/aggravating-and-mitigating-factors/>, <https://www.justia.com/criminal/aggravating-mitigating-factors/>, <https://www.unodc.org/e4j/en/organized-crime/module-10/key-issues/aggravating-and-mitigating-factors.html>

Victims of indirect corruption influence on their human rights are the following vulnerable groups:

- Right to life: Persons dependent on victims of domestic violence (children, elderly)
- Right to defence: RH of right to physical integrity, property, liberty, and security,
- Right to education: not identified
- Right to health: Poor patients, persons with disabilities, state ensured persons (elderly), dependent on costly medical interventions
- Property right: Individual low/middles income dwellers.

The remaining challenge is the practicalities of developing guidance for the identification of vulnerability in specific groups. This must be done on a group-by-group basis.

Correlation of work of human rights and anticorruption institutions

At present, collaboration between institutions responsible for the preventing and addressing violations of human rights, on one hand, and anti - corruption measures, on the other hand, is very limited. Our analysis identifies key opportunities to improve cooperation in order to maximize human rights protection by preventing, controlling, and reducing corruption.

Preventive anti-corruption measures and the prevention of human rights violations are, at their core, institutional responsibilities, and ultimately that of policy implementation and legislation teams. In practice, ex-ante corruption and human rights vulnerability assessments are carried out in the course of the legislative and policy drafting process. The NAC conducts this process in the context of corruption risks and partly for human rights risks, and the Ombudsman will occasionally undertake this process for human rights risks.

Where these assessments are conducted in isolation, we identify a clear opportunity for the development of a joint approach and joint methodology. As shown by our individual rights analysis, the respective methodology, when analyzing draft policy or law, should identify the individual patterns and systemic elements of corruption, identify the most affected groups, estimate potential monetary and non-monetary corruption costs as well as impacts on human rights. Based on the examples in our analysis, conclusions and recommendations should follow draft laws and policies to reduce corruption impact on human rights.

Further, the prevention of human rights violations could be strengthened by improving institutional integrity evaluation processes. Addressing DATI vulnerabilities at both their individual institutional level (including policy instrument and implementation settings) would work towards controlling systemic risks of corruption on human rights. Implementation of our improved methodology would require additional participation of the institutions themselves with the support from NAC and Ombudsman. This opportunity should be explored as a joint initiative of the relevant anti-corruption and human rights institutions responsible for preventative functions.

Responsibility for the prosecution of corruption lies with institutions responsible for prosecution procedures (NAC, anticorruption Prosecutor), human rights examinations (Ombudsman, Equality Council) and investigations (police and specialised Prosecutor). However, our analysis found the absence of a distinct legal framework in place to provide for institutional cooperation and complementarity action. This situation is not novel, however addressing the issue requires the introduction of legislative amendments designed to allow

institutions to consider corruption and human rights violations as aggravating factors at the pre-trial stage. At the same time, capacity building for the relevant investigative authorities is needed to give effect to the proposed amendments.

Failure of the state to fulfil its positive or negative obligations resulting in human rights violations may be examined by the Ombudsman or Equality Council, and later investigated by the specialised prosecutor (with the support of the police) even if corruption is not a factor. In such cases, evidence of either individual or systemic corruption factor should be presented to the courts in order for the judicial authorities to consider its influence. Similarly, investigations into allegations of corruption are carried out by NAC and continued by the anti-corruption prosecutor. Providing relevant evidence on the violation(s) of human rights caused by corruption enhances the sense of justice for the affected individuals, and allows the opportunity for victims to receive an effective remedy.

4.2 Estimation of corruption and human rights costs

This section discusses two aspects: corruption cost and human rights costs. Corruption cost has been well recognized and is quantifiable in terms of bribe amounts or fines imposed, or in some cases the cost of the administration of justice. However, we recognize that this is the direct corruption cost, and social and economic costs of the corruption are not evaluated. These require a separate exercise as they are relevant indicators of the influence of corruption on the fulfilment of human rights.

At the same time, the concept of human rights cost is not recognized. As we show in this study, the impact on the direct and indirect victims is real and therefore we propose the following approach in the identification and quantification of such costs¹⁴⁷.

Cost of corruption estimate

Based on our research, we found corruption impact of around 20 million MDL in the following cases only:

- *Right to life*: 45,000 MDL is the total impact calculated based on cases, official data, and 2.4 million MDL total impact based on the industry projection, 3,000 MDL average cost per case, 15 cases available for reference as a case study;
- *The right to defense*: 4.5 million MDL is the total impact calculated based on cases, official data; 60-100 thousand MDL on average per case, 150 cases available for reference as a case study;
- *The right to education*:
 - i) driving licenses: 6-7 million MDL is the total impact calculated based on the projection on the field; 70,000 MDL total impact calculated based on cases, official data, 10-20 thousand MDL on average per case, 100 cases available for reference as a case study;

¹⁴⁷ Detailed methodology presented in Annex 5.2

ii) academic grades: 6000-8000 MDL is the total impact calculated based on cases, official data; 500-1000 MDL on average per case, 10 cases available for reference as a case study;

- *The right to health, access to medical services:*

i) the medical staff, as a state agent has the obligation to provide medical services free of charge, but refuses to provide them on condition of illegal payment: 350,000 MDL is the total impact calculated based on cases, official data, 500-7,000 MDL on average per case, 40 cases available for reference as a case study,

ii) bribe for access and preferential treatment to the detriment of the rights of others: 75,000 MDL is the total impact calculated based on cases, official data, 15-17,000 MDL average per case; 5 cases available for reference as a case study;

- *The right to property:* 2 million MDL is the total impact calculated based on cases, official data; 500-100,000 MDL on average per case, 90 cases available for reference as a case study.

We recognize that it is not possible to make a reasonable projection of the impact of corruption in all cases, for instance in areas or policy domains where there are limited resources. However, it is possible to make an informed estimate in some instances. For instance, in case of the domestic violence, we find direct case-based corruption costs 45 000 MDL and 2.4 million MDL, and using our developed model to extrapolate industry cost, the larger figure is 60 times higher. In the case of the right to education, with respect to the driving permit, the overall industry estimate is some 130-140 million MDL per year. Similar exercises can be carried out with regard to other rights and scenarios.

Corruption cost to human rights

The cost and benefits to human rights resulting from corruption incidents should be explicitly recognized. While discussing individual rights we have intentionally pursued qualitative identification of the relevant human rights cost factors that should be subject to the monetary estimations¹⁴⁸. As such, we identified the human rights cost of corruption is relevant in the following scenarios:

- violation of a right should be identified and subsequently quantified for both the victim and society.
- indirect violation of the rights of others should be identified and subsequently quantified for both the victim and society.
- negative impacts on the public resources rights are fulfilled for those who are unentitled represents a quantifiable cost to the society;
- rehabilitation and care costs to remedy violations and the subsequent support;
- legal related costs for the enforcement of human rights;
- the diminishing of the legitimacy and reputation of public authorities also represents an identifiable cost to society.

¹⁴⁸ D.Weimer, A.Vining, Policy Analysis: Concepts and Practice, 4th edition, Pearson, Cost-benefit Analysis" Concepts and Practice, A.Boardman et al, 2004

4.3 Indicators: corruption impact on human rights

There are several approaches in setting indicators for the measuring of human rights violations. In doing so however, it is important to identify the scope¹⁴⁹. There are multiple sources on the measurable indicators to determine the impact of corruption on the fulfilment of human rights: for instance, the UN Office of the High Commissioner for Human Rights (OHCHR) framework outlines three categories of human rights indicators¹⁵⁰:

- i) *structural indicators* – institutional aspects necessary to facilitate the realization of human rights by the duty-bearers;
- ii) *process indicators* – efforts undertaken by duty bearers to fulfil general obligations to respect, protect, guarantee and promote human rights;
- iii) *outcome indicators* – types of end result (for instance, incidents, continuing prevalence), following the implementation of indicators, policies, processes or interventions.

Scientific literature on corruption refers to several approaches¹⁵¹: perception evaluations (surveyed based), expert opinions (or combination of both), quality of governance indices (inclusiveness, transparency, accountability), and state capacity indices (policies, their quality and evaluations, including ex-ante/ex-post evaluations). A practical approach in measuring corruption¹⁵² advocates for the contextualization of indicators to make them directly useful and applicable in the local area or country. This source groups measurement indicators by perceptions and beneficiaries' experiences, external assessments (ratings and scores), and administrative signs of progress. A more conceptual point of view¹⁵³ opts for a combination of impact measures on the public values (perceptions, victims-oriented, big-data). Finally, another source recommends measurement indicators based on the vulnerability, proxy government actions, expert-review methods¹⁵⁴. To our knowledge, none of the existing approaches to the measurement of the corruption on human rights have been presented publicly.

In this study we propose a comprehensive framework for measuring the impact of on human rights that encompasses the above recommendations within a framework which feeds into our theory of change approach. This framework outlines a number of possible indicators which should be put in place depending on the status of the theory of change¹⁵⁵. This proposed framework blends the human rights measurement approach with that traditionally used to identify corruption methods and targets the analysis towards the situation in Moldova.

¹⁴⁹ [Policy report corruption_LR.pdf \(universal-rights.org\)](#)

¹⁵⁰ S. Walker, The Future of Human Rights Impact Assessment of Trade Agreements, School of Human Rights Research Series, v.35

¹⁵¹ D.V. Malito, Measuring Corruption Indicators and Indices, [\(PDF\) Measuring Corruption Indicators and Indices \(researchgate.net\)](#), SSRN Electronic Journal, 2014

¹⁵² S.T. Trapnell, UNDP, User's Guide to measuring corruption and anti-corruption, 2015

¹⁵³ S. Hlatshwayo and et al, IMF Working paper, Measurement and Macro-relevance of corruption: A big Data Approach, 2018

¹⁵⁴ UNCAC, National Anti-Corruption Strategies: A Practical Guide for Development and Implementation, 2015

¹⁵⁵ [Unintended Consequence - an overview | ScienceDirect Topics](#)

Table 4.3.1 Framework of corruption indicators measuring corruption impact on human rights

Input (I)	Processes (P)	Outputs (O) (institutions, actors)	Outcomes/impact (OI) (rights-holders)
I1. Entities involved in investigation and assessment (resources), I2. Regulations, methodologies used; I3. Cases and situations screened for proceedings, evaluations, investigations	P1. Law-enforcement investigations (disaggregated per rights/corruption, number and type), P2. Policy/draft policies ex-ante/ex-post evaluations (desegregated per rights/corruption, number and quality), P3. Policy/decision-makers' engagement and critical embrace of the relevant actions; P4. Subject present on the public agenda and media engaged; P5. Types of cases screened, coped and considered priority.	O1. Law-enforcement condemnations proved with violations with human rights aggravated impact; O2. Law-enforcements proved human rights violations with corruption aggravated factors; O3. Human Rights saving costs resulted ex-ante corruption avoidance, O4. Ex-post evaluation recommendations considered and approved; O5. Perception of society and experts on the efforts; O6. Peer-reviewed and benchmark assessments rating across countries; O7. SDGs achieved, progressive improvements;	OI1. Policy changes to prevent and curb corruption impact on human rights; O2. Rights remedied and violations avoided; O3. Diminished patterns of human rights violations;
Based on administrative data	Based on administrative data	Based on institutional, administrative, qualitative evaluation data, surveys, peers reviews;	Based on secondary sources

The proposed framework above outlines efficiency and effectiveness measurements. Efficiency looks to compare cases and situations identified and compares to those that are finalized. Effectiveness measurements look to assess the processes against outcomes/impact indicators. For instance, an area identifies as priority included interventions to realize rights or produce remedies.

The choice of indicators depends on the relevant stage in the theory of change. At this stage, we recommend input, process, and output indicators. We recognize that the modalities for collecting indicator data is a separate exercise and should be agreed upon by interdisciplinary experts.

4.4 Recommendations

Section 2.3 contains generic recommendations to prevent systemic corruption impact on the fulfilment of human rights. Chapter 3 concludes with the individual rights specific recommendations. In this section we elaborate on recommendations targeted towards sectoral functions and agencies .

Preventing individual and systemic corruption impact on human rights:

- develop or adapt the methodology of ex-ante corruption impact on human rights fulfilment by strengthening cooperation of relevant institutions, and incorporating the findings and analysis contained in this study when assessing individual and systemic corruption (NAC and Ombudsman),
- apply the above methodology to the identified human rights based on a combined assessment of importance, impact and adverse effect on human rights (NAC, Ombudsman and Equality Council);
- improve institutional integrity evaluation methodology by incorporating human rights considerations and involving relevant institutions (NAC, Ombudsman and Equality Council);
- apply the above methodology to institutions and their relevant functions responsible for the protection and implementation of human rights (NAC and Ombudsman and respective institutions).

Prosecuting corruption impact on human rights:

- include corruption considerations in human rights examinations based on the presence of individual and systemic indicators in evidence provided (Ombudsman and Equality Council) and investigation of human rights violations (police, prosecutor);
- factor human rights impact considerations in investigations into allegations of corruption (NAC, anticorruption prosecutor);
- expand the joint role of anti-corruption and human rights institutions in examining and investigating human rights violations.

Amplifying synergy:

- develop guidance on the methodology for the examination of individual complaints containing human rights and corruption cases (NAC, Ombudsman and Equality Council);
- improve consistency of investigation procedures relating to human rights and corruption, and include additional consideration of the impact of corruption (NAC);
- improve categorisation of examined cases as per corruption criteria, and including additional emphasis on the impact of corruption (Ombudsman, Equality Council);
- carry out thematic rights-based evaluation of the impact of corruption on human rights (NAC, Ombudsman and Equality Council).

4.5 Theory of change policy

In this section, we propose a policy course with the recommendations from the *theory of change* with the aim of reducing the impact of corruption on the enjoyment of human rights in Moldova, over the mid-term period. Our theory of change over the mid-term (2021-25 years) time frame is presented in Table 4.4.1 below, and highlights the preconditions required for reducing corruption, and ultimately the human rights violations. We outline key barriers, underlying causes, and describe the mid-term vision for change deconstructed into a set of realistic objectives. This begins with the current state (base-line) and develops a roadmap of expected results for each specific objective as well as general measures needed

to achieve these objectives. The theory of change and recommendations are developed to take a systematic and theory based approach to reducing the impact of corruption on human rights and to break the established systemic patterns.

Currently in Moldova, we identify 3 major problems:

1. Fragmented understanding of the methodology used to estimate corruption and the resulting impact on the fulfilment of human rights. This is likely the result of relatively recent academic and practitioner developments in the area, and a lack of empirical verification of the evaluation methods in the country.
2. Lack of critical understanding of how to tackle corruption, as well as support for the expert community and policy staff from relevant state entities and decision makers.
3. Overall lack of awareness in society of the prevalence of the impact of corruption on human rights and an inability to assess anecdotal evidence when assessing its influence. This is especially relevant given the absence of clear public messaging.

These 3 major problems are framed in Table 4.4.1 as the objectives. We view this theory of change as the initial step for progression and identify the necessary elements required to move the issue forward. At this stage of the theory of change, we outline technical solutions and recommend that these solutions are built upon by the expert community and those driving the agenda within state entities. The next stage must be designed for a longer implementation period, should begin up where the successfully implemented mid-term theory ends, and should be designed to gradually implement targeted policy interventions for the benefit of rights holders in Moldova.

Table 4.4.1 Theory of change recommendations for the mid-term period in Moldova

Goal	Prevent and contain corruption factors impact on human rights fulfilment in Moldova: 2021-25		
Specific objectives	Objective 1: Promote evidence-based research and understanding of corruption impact on human-rights fulfillment	Objective 2: Build capacity of the relevant institutions, opinion-makers and expert community regarding methodology and evaluations	Objective 3: Raising awareness of society and decision-makers based on evidence on corruption impact of human rights
Base-line	Working methodology on human rights corruption impact based on available information drafted and piloted regarding 5 rights and peer-reviewed.	Intuitive knowledge of the causality of corruption impact on human rights with favorable perception to engage into these	Absence of the critical understanding of decision-makers and educated opinion as mostly it is anecdotic-based knowledge
Expected results (target groups)	Fine-tuned methodology consolidated, validated and applied to extended cases. <u>Indicators:</u> I1-1. Validated by peers and evidence methodology; I1-2. Handbooks and institutional regulations elaborated	Evidence-based understanding of corruption impact on human rights, institutional roles in preventing and combating understanding; expert community support for the change; <u>Indicators:</u> 2-1 Prevailing national expert community and implementers embrace and understanding, I2-2 Shared joint understanding of the decision and implementing communities on way forward	Corruption induced human rights violations preserve on public agenda, <u>Indicators:</u> 3-1 Media materials and publications systematically refer, I3-2 Public perception related corruption to human rights violations informed
Measures to achieve expected results	1.1. Fine-tuning of working methodology and application of these instruments, 1.2 Evaluation of the corruption impact on SDGs and related development rights, 1.3 Elaboration of the accessible straightforward handbook, regulations and cases-studies for the application of the methodology by the relevant institutions (NAC, Ombudsman, Equality Council, Court of Accounts, etc), 1.4 Application of the validated methodology to 15 rights-areas/sectors with ex-ante and ex-post focus.	2.1 Mapping relevant state entities (ex-ante/ex-post roes as prevention and improving, investigation and findings as law-enforcements, etc) and their roles and responsibilities in preventing and curbing corruption impact on human rights (research report), 2.2 Mapping societal actors of change along the policy-change cycle to engage in the across the society effort, 2.3 Organization of capacity-building and training activities for ex-ante/ex-post evaluation civil servants and experts and 2.4 Comprehensive evaluation of the relevant rights-relevant policies and institutional implementation settings related to the corruption with specific recommendations 2.5 Adapting of the methodologies to each state entity and institution setting	3.1 Elaboration of the accessible rights and areas-based information on the cost of human rights impact by corruption; 3.2 Wide dissemination of the materials and engaged discussion on public agenda about the topic and findings; 3.3 Developing support actions for the specialized organisations to carry out ad support law-enforcements strategic litigation aiming at corruption impact on human rights thus building legal normative causality practice 3.4 Annual monitoring of the progress of the corruption factors impact on human rights fulfillment
Preconditions and assumptions	Availability of the information from the state entities	Availability of the state entities and institutions to participate in the capacity-building activities	Availability of the state entities and institutions to participate in the capacity-building activities

5. Annexes

5.1 Source data per agency

[5.1.1 Equality Council \(EC\) cases file](#)

- Excel file DB4_EC - contains systemized information based on Equality Council (EC) decisions found on EC website,
- Word file with treatment of individual cases.

[5.1.2 Integrity Agency \(ANI\) cases file](#)

- Excel file DB5_ANI - contains systemized information based on ANI individual decisions,
- Word file with treatment of individual cases.

[5.1.3 Ombudsman cases file](#)

- Excel file DB1_Ombudsman - contains systemized information based on Ombudsman platform and Ombudsman initiated Constitutional decisions,
- Word file with treatment of individual cases.

[5.1.4 National Anticorruption Agency \(NAC\) cases and draft laws files](#)

- Excel file DB2_CNA - contains systemized information based on NAC initiated corruption related court decisions, Excel file DB6_CNA - contains systemized information based on NAC draft laws reviews,
- Word file with treatment of individual cases and situations

5.2 Corruption impact costs estimation

Corruption's impact on human rights has several components. The study explains the impact: 1) on the individual corruption act level, 2) on the repeated or systematic individual manifestation of the individual act corruption, and 3) systemic level. The study explains the notion of the corruption impact cost estimation at different levels and via several means, namely the costs incurred by human-rights holders (direct and indirect), the state and society at large¹⁵⁶. Initially the corruption cost is identified non-monetary impact and subsequently, where possible and if this is provided in the study, the monetary tag of costs is assigned¹⁵⁷.

The most complete exercise of the corruption impact costs should include costs incurred by the involved parties and society at large, including opportunity loss. The most conservative approach in cost estimation is to calculate the quantifiable monetised monetary costs based

¹⁵⁶W.Aceves, Cost-Benefit Analysis and Human Rights, 2018, CWSL Scholarly Commons

¹⁵⁷A.Boardman et al, Cost-Benefit Analysis: Concepts and Practice, Cambridge University Press, 2018, 5th edition

on the available data and use certain approaches of the factorization of the related human rights costs.

The more comprehensive exercise is carried out through the cost-benefit estimation of the policy proposals to prevent and combat corruption's impact on human rights. This requires the estimation of the benefits of the adoption of the respective policies and consequently compare the current policy (default policy) with the existing costs with the proposed policy with the forecasted benefits, therefore deriving the net social benefit of the proposed policies. This approach lays outside of the current research. The monetization method for each identified cost is different for each cost, is dependent on the context, and is explained in the text.

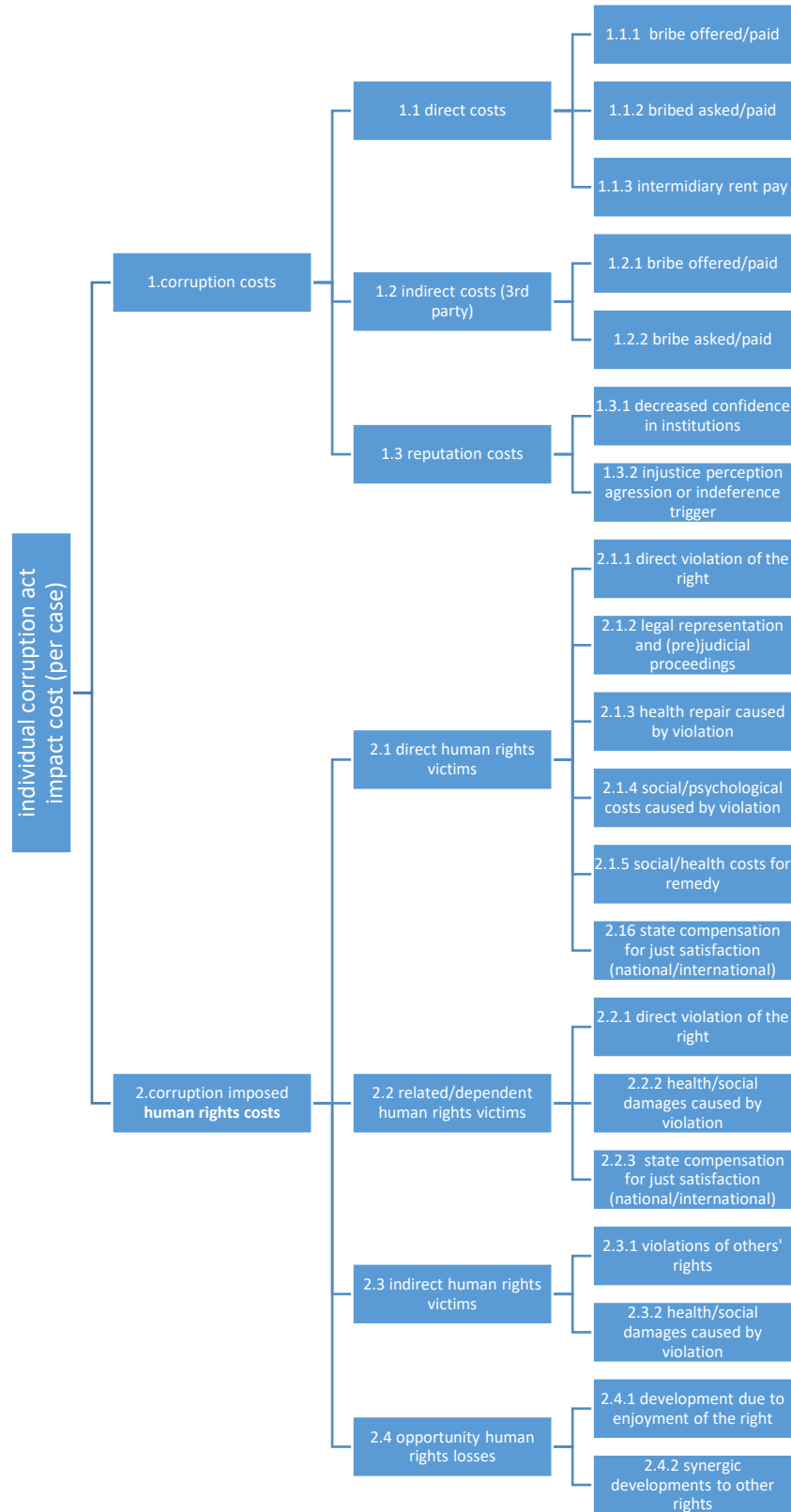
Below we elaborate and produce 2 of 3 graphs and that encapsulates these approaches in the application with the body of collected evidence and selected individual rights:

- Step 1: Individual corruption acts costs (graph 1.1) resulting in either “average cost per case” or “range of cost per case” (lower and upper limits and consequently weighted average cost per case);
- Step 2: Sector/industry approximation of individual acts costs (graph 1.2) based on graph 1.1;
- Systemic corruption costs impact human rights (graph 1.3) – demonstrated impact, but not estimated impact.

Step 1 estimation (cost of individual corruption act):

Based on graph 1.1 below, we identify relevant costs centres (from 1.1.1 to 2.4.2). In reality, some cost centres are not applicable to some rights. Subsequently, we attach the monetary tag to each cost centre and finally sum up the monetary costs of all cost centres. In the case of the spread of the monetary tags per cost centres, a weighted average of the minimum and maximum values could be indicated. Care should be given to the number of episodes associated with the individual corruption acts that exceed the number of cases. Those cost centres that could not be attached a price tag are recognised and mentioned as the non-monetary cost.

Graph 1.1: Individual corruption act cost



The result of step 1 is the corruption cost average or range in MDL plus non-monetized costs recognised.

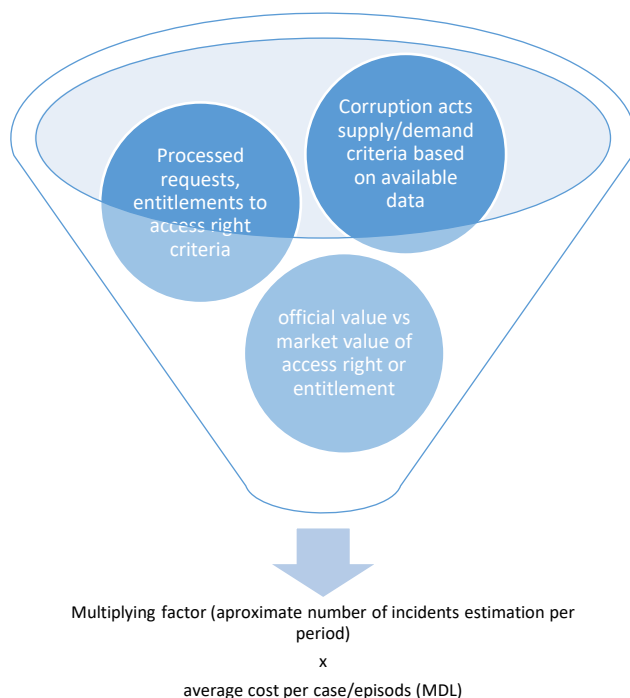
Step 2 Sectoral estimation (sector-wider cost of corruption):

Approximation of the cost of corruption to the sector-wide requires an in-depth understanding of the sector, namely DATI considerations for the evolved institutions, individual cases decision-making processes, different roles of the relevant institutions, involved private parties. It also depends on the conclusion on the patterns of the correlations between corruption and human rights violations developed in the study. If the conclusion is that the correlation has a systematic nature (see the study), and not an isolated number of cases, we shall proceed with the sector-wider estimation presented below.

The wealth of contextual understanding is analysed through standard problem analysis approaches as administrative processes/decisions flow of cases, demand and supply for the rights/entitlements, official and market value to access and value the right/entitlement, DATI considerations for the involved state institutions, the structure of the private entities participating, etc. The developed model allows estimation of the multiplying factor or the approximate number of incidents per referred period.

The multiplying factor is a qualitative notion that provides an understanding of the scale or magnitude of the problem. The multiplying factor is an approximate quantitative estimation helpful for the visualization of the problem and its possible systematic nature. As is shown below in the graph, once the multiplying factor is established, its product and the average cost per case expressed in MDL renders the cost per sector for the referred period.

Graph 1.2: Sector systematic individual corruption act costs



The result of step 2 is the corruption cost estimate and range expressed in MDL per sector for the referred period.

Step 3 estimation (Systemic corruption cost):

Not performed in this study. Qualitatively demonstrated impact, but not estimated.

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