

The implications of corruption for the enjoyment of the right to health in Africa

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Introduction

Corruption remains one of the biggest obstacles to development in many African countries. While there is no universally agreed definition of corruption, attempts have been made by scholars to explain what may constitute it. According to Bayley (1966), it can be defined as the 'misuse of authority as a result of consideration of personal gain, which need not be monetary'. Friedrich (1990) puts it thus:

Corruption may also arise where an individual who is granted power by society to perform certain public functions, undertakes, as a result of personal gain or reward, actions that may likely affect negatively the welfare of the society or even injure the public interest' (Friedrich 1990).

The negative impact of corruption can be felt in nearly every facet of human endeavor. Corruption manifests in different forms in Africa, from embezzlement, bribery, money laundering and misappropriation of funds to outright stealing of public money. Indeed, the situation is so bad that corruption has almost become a way of life on the continent. While it is agreed that corruption is not peculiar to Africa, the truth remains, however, that Africa is the region that has exhibited the greatest tolerance to corrupt practices (Durojaye 2010).

Africa has often been deridingly referred to as the 'dark continent' due to its underdevelopment, particularly stark poverty and appalling health situation. While this appellation is contestable, the truth remains that Africa, when compared with other regions, has made the slowest progress in terms of addressing poverty and preventable diseases. In 2000, leaders from the international community, including Africa, adopted the Millennium Declaration, which culminated in the eight Millennium Development Goals (MDGs).

A number of these are crucial for Africa's development, including eradication of poverty, increase in school attendance for girls, reduction of infant mortality rate, reduction of maternal mortality by 75% and reversing the spread of HIV/AIDS.

Although no country is immune from corruption, however, its impact can be very devastating for a region such as Africa, which is already grappling with other challenges such as conflict, diseases and lack of infrastructure. It

should be noted that Africa still bears the greatest burden of the HIV/AIDS pandemic, accounting for about 23 million out of the 34 million people said to be living with HIV worldwide (UNAIDS 2010). Generally, progress towards meeting the MDGs has been slow here and there are fears that many African countries may not achieve some of these goals. Corruption is one of the reasons why this is so (UN 2012).

This article examines the effects of corruption on the social and economic well-being of Africans. In particular, it examines the likely impact of corruption on the enjoyment of the right to health as guaranteed in international and regional human rights instruments. While it is noted that various actors, such as government officials, pharmaceutical companies, health providers and patients themselves, may be responsible for corruption in the health sector (Transparency International 2006), this article focusses on states' obligation to address it. It then assesses the effectiveness of measures taken by African governments and concludes that more still need to be done in order to eliminate the root causes of corruption in the region.

How rampant is corruption in Africa?

According to the 2010 report of Transparency International, Africa remains one of the most corrupt regions in the world. The report shows that six African countries are ranked among the ten most corrupt countries in the world: Somalia, Sudan, Chad, Burundi, Angola and Equatorial Guinea. Generally, countries are ranked on a 10-point scale with zero indicating the most corrupt countries, while six and above represent the least corrupt countries. Out of the 47 African countries ranked for 2010, about 44 of them scored less than five, indicating high degrees of corruption (Transparency International 2011). According to a 2002 study by Transparency International, corruption is said to have cost Africa a whopping US\$ 150 billion per year (Hanson 2011). The situation is better appreciated when one considers that in 2008 the region only received US\$ 22.5 billion in aid from developed countries (OECD 2009).

This clearly indicates that Africa does not need to rely on aid to address its myriad problems, but rather must pay more attention to the cankerworms known as corruption.

Hanson has noted that 'corruption in Africa ranges from high-level political graft on the scale of millions of dollars to low-level bribes to police officers or customs officials' (2011). Although political graft often imposes devastating financial costs on a country, the negative impact

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of petty bribes cannot be underestimated as they can have corrosive effects on the basic institutions and undermine public trust in the government. Africans have often had to pay bribes for services that were meant to be free. A 2009 East Africa Bribery Index compiled by Transparency International shows that over half of East Africans polled admitted to having paid bribes to access public services that would have been otherwise freely available (Transparency 2009).

While Africa's economies are merely surviving and on life support, African leaders continued to taunt their people by displaying excessive opulence. For many years Africa was known as the breeding ground for despots. It would seem now that the region is becoming a fertile breeding ground for corrupt leaders. The few who have shown what true leadership is (such as Julius Nyerere of Tanzania, Nelson Mandela of South Africa and Botswana's Festus Mogae) are the exception; considerable numbers of African leaders are enmeshed in corruption. Mobutu Sese-Seko deserves a special mention. He remains one of the world's most corrupt leaders ever, having embezzled a whopping US\$ 5 billion between 1965 and 1979, when he ruled Zaire (now Democratic Republic of Congo (DRC)) (Infoplease 2011). On the list of the world's ten most corrupt leaders, he occupies third position. While he was busy looting his country's treasury, its economy and social development were paralysed.

Today, DRC remains one of the poorest countries in the region and social life is in disarray. The situation is exacerbated by the on-going internal conflict, which is characterised by the sexual abuse of women and the loss of lives. DRC used to be the pride of Central Africa but its 2012 Human Development Index (HDI) is 0.286, which gives it the lowest ranking out of 187 countries with comparable data (UNDP 2012). Unemployment is rife and basic amenities in all facets of human endeavour are lacking. The living conditions of many citizens of DRC have plummeted, access to health-care services remains a great challenge and life expectancy has fallen to an all-time low of 48 years (UNDP 2012).

It should be noted that efforts have been made at the international and regional levels to address corruption through the adoption of the UN Convention against Corruption (2003) and the African Union's Convention on Preventing and Combating Corruption (2003). These two instruments urge governments to take appropriate measures, including enactment of laws and establishment of

institutions or bodies, with a view to combating corruption. In addition, many African governments have enacted laws and established independent institutions or bodies to specifically deal with the issue of corruption. Despite these efforts, however, the challenge remains as a result of a lack of political will, political interference and weak judiciaries.

Nexus between corruption and the enjoyment of the right to health in Africa

In its 2006 report, Transparency International focusses on corruption in the health-care system. The report explains the different forms of corrupt practices that take place in the health-care system and how these affect the enjoyment of the right to health. It notes further that corruption in this sphere is likely to be less in a society where there is strict adherence to the rule of law, transparency and trust and where the public sector pays attention to codes and strong accountability mechanisms.

The report identifies two important factors as contributing to corruption in the health-care system: the involvement of private actors and the huge sums of money that are often allocated to this sector. Indeed, the report notes that about US\$ 3.1 trillion is spent each year on health care.

The negative effects of corruption in any society are varied and may include perpetuating poverty and underdevelopment. Indeed it has been argued that 'deep-rooted corruption in Africa is one of the most serious developmental challenges facing the continent' (Kidane 2007). Corruption also undermines democratic governance. Corruption may be described as the interface of political and economic elites at the global, regional and national scale (Fraser-Molekete 2009). The former UN Secretary-General Kofi Annan (2003) noted the impact of corruption on development as follows:

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism and other threats to human security to flourish ... Corruption hurts the poor disproportionately- by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign aids and investment. Corruption is a key element in economic underperformance, and a major obstacle to poverty alleviation and development.

Deaths and injuries arising from many health challenges are preventable. However, the problems have persisted in Africa due to poor allocation or misappropriation of resources. It has been noted that endemic corruption can contribute to poor spending on the health-care sector, lack of access to medicines and high infant and maternal mortality rates (Transparency International 2006).

Both infant and maternal mortality rates are particularly high in Africa compared with worldwide trends. According to the World Health Organization (2004), about

3.7 million children died within the first 28 days in 2004, of which 98% were in developing countries, particularly in Africa. While the neonatal mortality rate in developed countries is put at 3 in every 1 000, the equivalent for West and Central Africa is 45 in every 1000 births.

Surviving pregnancy and childbirth also remains a great challenge. It is estimated that 99% of the annual 358 000 maternal deaths worldwide occur in developing countries, particularly Africa and Asia (WHO et al 2010). Indeed, Sub-Saharan Africa bears the greatest burden of maternal mortality worldwide, accounting for nearly three-fifths of all deaths. Here, the possibility of a woman dying during pregnancy or childbirth is 1 in 31 compared with 1 in 4 300 in developed regions (WHO et al 2010). In some countries, such as Chad and Somalia, the risk is even higher, at 1 in 14. For every woman who dies during pregnancy or childbirth, 20 more are likely to suffer from life-long injuries (WHO 2005).

The right to health is guaranteed in numerous international and regional human rights instruments. Notable among these are:

- article 12 of the International Covenant on Economic Social and Cultural Rights;
- article 12 of the Convention on Elimination of All Forms of Discrimination against Women;
- article 24 of the Convention on the Rights of the Child;
- article 16 of the African Charter on Human and Peoples' Rights; and
- article 14 of the Protocol to the African Charter on the Rights of Women.

According to the UN Committee on Economic, Social and Cultural Rights (CESCR), the enjoyment of the right to health is dependent on other human rights, such as the rights to life, dignity, privacy and non-discrimination (CESCR 2000). Also, the right to health should be viewed as an inclusive right intersecting with other determinants of health such as potable water and sanitation, housing, nutritious food and access to health-related education and information. The CESCR reasons that the essential elements of the right to health include availability, accessibility, acceptability and quality. Although the CESCR does not clearly make the link between corruption and the right to health, it nonetheless explains that states have the obligation to judiciously utilise available resources to advance the right to health.

States' obligations in relation to the right to health

The CESCR has explained that the right to health, as guaranteed in numerous international and regional human rights instruments, requires governments to ensure that this right is respected, protected and fulfilled. Thus, African governments must ensure that their actions or omissions do not interfere with the enjoyment of the right to health. The obligation to respect the right to health requires African governments to ensure that they do not directly interfere with the enjoyment of the right. For instance, if non-

availability of health care services in the rural areas, due mainly to misallocation of resources or corrupt practices, leads to preventable losses of lives, then a state will be in breach of the obligation to respect the rights to health and life. A Transparency International report has shown that in countries where corruption is rampant, the poor and people who live in the rural areas tend to experience longer waiting times in public hospitals or when accessing other medical attention (Transparency International 2010). Further, if the absence of basic amenities in the health-care sector can be traced to acts of corruption or misappropriation of resources, then this amounts to a breach of the obligation to respect the right to health.

This obligation implies that the actions of a third party do not interfere with the enjoyment of this right. As a case in point, women and other disadvantaged people seeking treatment are frequently required by health-care providers to pay unauthorised fees before being attended to, as shown by studies in Zimbabwe, Rwanda and Nigeria. This amounts to a breach of the obligation to respect the right to health (Center for Reproductive Rights 2005; Center for Reproductive Rights and WARDC 2008). Such fees sometimes impede women's access to health-care services and therefore constitute a breach of these states' obligations.

The obligation to fulfill the right to health in the context of corruption implies that states must take positive steps, including administrative, legal, judicial and budgetary measures, to ensure the enjoyment of this right. A state must therefore enact appropriate laws and establish institutions or bodies to deal with corruption in general, and ensure that culprits of corrupt practices are appropriately dealt with. A government will be in breach of the obligation to fulfill the right to health if money earmarked for the procurements or supply of essential medicines, such as medicines for HIV/AIDS or tuberculosis, are embezzled or unaccounted for by government officials. For instance, the Global Fund was forced to suspend funds to Nigeria over allegations of embezzlement and mismanagement of earlier funds made available to the country (AVERT 2011). A similar incident has been reported in Mali, where half of the money meant to address tuberculosis and malaria was supposedly used for 'training events' (RIVERS 2012).

The major challenge to combating corruption in the region is the lack of political will. While many African countries have enacted laws and set up institutions to specifically address corruption, these measures have failed to yield positive results due to political interference, weak or compromised judiciaries or reluctance on the part of executives to prosecute 'high profile' culprits.

Conclusion

Africa continues to bear the brunt of the burden of deaths associated with HIV and childbirth. Money meant to address health challenges is often diverted into private accounts or even siphoned off to foreign banks. The ongoing loss of lives that is often due to a lack of access to basic health-care services is avoidable, but only if African governments take decisive steps to combat corruption in the

region. Efforts by African governments to combat corruption have not yielded positive results due to weak support institutions such as the judiciary, and a failure to punish culprits of corrupt practices. If African governments must meet the MDGs, particularly those that relate to health, then they must redouble their efforts at addressing the menace of corruption in the region.

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