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DOI: <https://dx.doi.org/10.18820/24150517/JJS47.i1.3>

ISSN 0258-252X (Print)
ISSN 2415-0517 (Online)

Journal for
Juridical Science
2022:47(1):52-76

Date Published:
30 June 2022

RECONSIDERING CORRUPTION AS A VIOLATION OF THE RIGHTS TO EQUALITY AND NON-DISCRIMINATION BASED ON POVERTY IN SOUTH AFRICA

SUMMARY

Many international organisations and national institutions such as, for example, the United Nations (UN) Human Rights Council, Transparency International, and the Constitutional Court of South Africa have agreed that corruption has a negative impact on the realisation and enjoyment of human rights. Vulnerable and marginalised groups are disproportionately impacted when it comes to the realisation of their socio-economic rights. This is especially the case where corruption limits access to quality and affordable social services essential for the realisation of rights such as the rights to adequate housing, sanitation, education, and healthcare. This article argues that the criminal law approach, traditionally employed to fight corruption, is not sufficient to address the social harm caused by corrupt acts and omissions. It is argued that a human rights-based approach, grounded in the principles of accountability, empowerment, participation, and non-discrimination, must be employed to provide adequate remedies to the victims of corruption. This article specifically explores the possible violation of the rights to equality and non-discrimination, where corrupt acts or omissions result in limited access to social services for one of the most vulnerable and marginalised groups in society, the poor. This argument is based on the recent judgment by the Equality Court in *Social Justice Coalition v Minister of Police* 2019 (4) SA 82 (WCC), where the Court found that poverty constitutes an unspecified ground for discrimination, as envisioned by the *Promotion of Equality and Prevention of Unfair Discrimination Act 4* of 2000. It is found that the state's failure to adequately prevent corruption, particularly where corruption results in the limitation of access to quality and affordable social



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services such as education, housing, and healthcare, that are essential for the realisation of rights, impairs the fundamental human dignity of those living in poverty and adversely affects the realisation of their rights in a comparably serious manner. Thus, under a human rights-based approach, rights holders can hold the state accountable for violating duties, to which they are legally obliged under the human rights framework due to corrupt acts and omissions.

1. INTRODUCTION

Corruption is a scourge that undermines human and economic development in South Africa. As stated in a Corruption Watch (2019) report: “Our country’s story is that of a patient with a malignant illness who is fighting for survival but teetering on the edge of the abyss.”¹ The effect of systemic corruption not only on economic growth, but also on human well-being is significant. The following quote demonstrates the social harm of corruption: “The money stolen through corruption every year was enough to feed the world’s hungry 80 times over.”²

The effect of corruption on the poor is devastating. It has been recognised that poverty and corruption are deeply intertwined as “poverty invites corruption, while corruption deepens poverty”.³ Moreover, the World Bank has acknowledged the disproportionate impact of corruption on the poor, vulnerable, and marginalised by reducing access to quality and affordable social services such as housing, education, and healthcare. This comes as a result of a reduction in the funds available for government expenditure, due to, for instance, embezzlement, misappropriation of funds, and illicit financial flows.⁴ This, in turn, can impact the realisation of economic and social rights related to these services.⁵ This is a violation of the *Constitution of the Republic of South Africa*, 1996 (hereafter, the *Constitution*), which requires the state to effectively use its available resources to benefit all, based on the human rights principles of accountability and equality.⁶ As unequivocally stated by

1 Corruption Watch “1591 whistle-blowers”, <https://www.corruptionwatch.org.za/wp-content/uploads/2019/08/CORRUPTION-WATCH-ACT-REPORT-2019-OUT-DIGITAL-DBL-PAGE-AGENT-ORANGE-DESIGN-26082019-compressed1421.pdf> (accessed on 26 October 2020) at 6.

2 Hensgen, as cited in De Castro e Silva 2019:59.

3 Johnston “Poverty and corruption”, *Forbes*, https://www.forbes.com/2009/01/22/corruption-poverty-development-biz-corruption09-cx_mj_0122johnston.html#4c6505b1a56a (accessed on 26 October 2020).

4 World Bank “Combatting corruption”, <https://www.worldbank.org/en/topic/governance/brief/anti-corruption> (accessed on 26 October 2020). See also Mantzaris 2017:18-19.

5 Rose 2011:715.

6 Mantzaris 2017:19.

Pope Francis in 2014: “Corruption is paid for by the poor.”⁷ In South Africa, this can be noted in the disastrous effect that corruption in essential institutions such as Eskom, the Passenger Rail Agency of South Africa, and the South African Social Security Agency, has had on those living in poverty. The Zondo Commission⁸ also exposed the true depth of corruption in South Africa.

Criminal prosecution has been employed as the most popular anti-corruption strategy.⁹ However, criminal law does not provide sufficient remedies for the victims of corruption, as it perceives corruption as a “victimless phenomenon”.¹⁰ This perspective has resulted in “obscuring the effects and consequences of corruption on individuals or groups of people”.¹¹ Barkhouse *et al.* argue that the concept of ‘social harm’ should be employed in the fight against corruption. According to them,

[s]ocial harm is a concept recognised in human rights law, for it encompasses the social, economic, psychological and environmental injury or damage inflicted on society by the acts of individuals, organisations or governments (national or international). It has allowed an assessment of illegal and harmful acts beyond domestic criminal justice systems, by providing a bridge to international human rights law.¹²

Two aspects of the relationship between human rights and corruption can be identified. First, corruption can negatively impact the realisation of human rights, and secondly, corruption can directly or indirectly violate a specific human right or norm.¹³ In 2020, a statement by the Civil Society Working Group on State Capture pointed out that “[i]n South Africa, the struggle against State Capture and corruption remains part of the struggle for human rights and social justice”.¹⁴

This article calls for a human rights-based approach (HRBA) to corruption, according to which states will be held accountable for violating duties to which they are legally obliged under the human rights framework. The HRBA is based on the principles of empowerment, accountability, participation, and non-discrimination. It is argued that implementing these principles provides “the most effective means to fight corruption”.¹⁵

7 Transparency International 18 May 2018 “10 quotes about corruption and transparency to inspire you”, <https://voices.transparency.org/10-quotes-about-corruption-and-transparency-to-inspire-you-cd107d594148> (accessed on 16 October 2020).

8 See Commission of Inquiry into State Capture “The Judicial Commission of Inquiry into Allegations of State Capture”, <https://www.statecapture.org.za/>.

9 Olaniyan 2014:8.

10 Olaniyan 2014:345.

11 Olaniyan 2014:51.

12 As quoted in De Castro e Silva 2019:63.

13 Mubangizi & Sewpersadh 2017:70.

14 Pikoli “Zondo commission responds to civil society concerns: Hearings to resume on June 29”, *Daily Maverick*, <https://www.dailymaverick.co.za/article/2020-06-19-zondo-commission-responds-to-civil-society-concerns-hearings-to-resume-on-june-29/> (accessed on 16 October 2020).

15 Mubangizi & Sewpersadh 2017:87.

Corruption viewed in this way provides the basis for the most vulnerable to hold governments legally accountable for their failures and consequent violation of human rights. This can, in turn, impact their overall human well-being. According to the UN Convention against Corruption, “a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively”.¹⁶ Therefore, it is argued that a HRBA should be employed along with the traditional criminal approach to effectively challenge corruption.

Bearing in mind the disproportionate impact that corruption has on the poor, this article explores the possible violation of the rights to equality and non-discrimination on the ground of poverty, due to the failure of the state to adequately prevent corrupt acts or omissions. The aim is to demonstrate that, where the poor do not have equal access to social services, the government can be held accountable based on a violation of their duties under this right. It can even be argued that their level of access should go past that of being “equal”, as their vulnerable and marginalised status requires special attention to be paid in ensuring that their needs are met.

Section 2 of this article provides an overview of the definition of corruption, with a specific focus on the impact of corruption on human well-being and the protection and fulfilment of human rights. To make a case for the argument that corruption can constitute a violation of human rights, section 3 explores the nexus between human rights and corruption. Section 4 outlines the content of the rights to equality and non-discrimination. The subsequent section analyses the Equality Court case of *Social Justice Coalition & Others v Minister of Police & Others*,¹⁷ where the Court determined that poverty could constitute a ground for unfair discrimination. The final section outlines the defining characteristics of poverty and examines the impact of corruption on the well-being of the poor. It shows that their restricted access to quality social services constitutes a violation of the rights to equality and non-discrimination based on the unlisted ground of poverty.

2. CORRUPTION: DEFINITION AND CONSEQUENCES

2.1 Definition

The word ‘corruption’ is derived from the Latin word *corruptiō*, meaning “to spoil, pollute, abuse, or destroy”.¹⁸ However, there have been numerous debates on the term’s exact definition, due to the “discrete and differing social practices” underlying it.¹⁹ Many international organisations such as, for

16 UN Convention against Corruption (adopted on 9 December 2003 and entered into force on 14 December 2005); preamble. See also De Castro e Silva 2019:63.

17 *Social Justice Coalition & Others v Minister of Police & Others* 2019 (4) SA 82 (WCC).

18 Holmes 2015:1. See also Olaniyan 2014:39.

19 Caiden 2001:19-21; Bracking 2007:3-4; Arnone & Borlini 2014:1-6; Olaniyan 2014:25, 40.

example, Transparency International²⁰ and scholars have adopted the World Bank's definition of corruption as "the abuse of public office for private gains".²¹

Despite these complexities, some agreement has been reached on various acts or omissions that constitute corruption. These include "modern" corruption or "economic improprieties" such as wasteful expenditure, bribery, illicit financial flows, misappropriation of funds, trading in influence, and embezzlement, as well as "traditional" forms of corruption or "social improprieties" such as nepotism or favouritism.²²

The World Bank's definition has, however, been criticised for not taking account of corruption in the private sphere.²³ Moreover, it is argued that it does not give sufficient recognition to the impact of corruption on human well-being. To make a case for a connection between human rights violations and corruption (which is one of the central themes of this article), any proper definition should include a victim element.²⁴ It is, therefore, helpful to consider the following definition provided by Olaniyan:²⁵

[T]he deliberate, intentional mass stealing of public wealth and resources by senior state officials entrusted with its fair and honest management for the common good and achievement of human rights, whether carried out individually or collectively, but with the support, encouragement, or acquiescence of the state, combined with a refusal to genuinely, thoroughly and transparently investigate and/or prosecute the mass stealing and recover stolen assets, which *violates the human rights of the economically and socially vulnerable*. (My emphasis)

In order to address the impact of corruption on human well-being and to strengthen existing measures employed to fight corruption, it is argued that corruption should be defined not only in terms of the actions or omissions that constitute it, but it should also consider the harm caused by corrupt acts and omissions. Even though this definition only focuses on grand forms of corruption and does not consider petty corruption committed by high-ranking state officials, the importance that this definition places on the effects of corruption is of significance for this article.

2.2 Impact of corruption

UN Secretary-General, Kofi Annan, aptly summarised the far-reaching impact of corruption:

20 Transparency International "What is corruption", <https://www.transparency.org/en/what-is-corruption> (accessed on 17 June 2022).

21 World Bank "Helping countries combat corruption: The role of the World Bank", <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/coridx.htm> (accessed on 4 April 2022) 8. See, for example, Bracking 2007:3-44; Holmes 2015:2-3; Peters 2018:1254; Raoul Wallenberg Institute 2018:executive summary.

22 Caiden 2001:17; Langseth 2006:10-14; Boersma 2012:33-38; Olaniyan 2014:18-20; Holmes 2015:3; Raoul Wallenberg Institute 2018:executive summary.

23 Bracking 2007:4.

24 Olaniyan 2014:25, 51.

25 Olaniyan 2014:20.

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, *leads to violations of human rights*, distorts markets, erodes the quality of life, and allows organised crime, terrorism and other threats to human security to flourish (my emphasis).²⁶

Moreover, “[i]t diverts funds intended for investment in public services, ... distorts justice systems, interferes with political processes, and affects the delivery of public services. In other words, corruption bears human rights costs”.²⁷ Importantly, national economic growth is significantly impeded, as foreign investments and aid are discouraged.²⁸

The impact of corruption on human lives is of significance to the theme of this article. Corrupt acts and omissions can cause essential funds to be diverted away from social services, development, and the fulfilment of human rights.²⁹ The quality and provision of public services and infrastructures are also impacted.³⁰ This, in turn, exacerbates poverty, underdevelopment, and inequality.³¹ Furthermore, it has been found that corruption significantly impacts the most vulnerable in society, especially those who are already subject to discrimination and power imbalances.³²

In *S v Shaik & Others*,³³ the South African Constitutional Court found that corruption is “antithetical to the founding values [of the country’s] constitutional order”.³⁴ Similarly, the Supreme Court of Appeal emphasised that corruption negatively affects development and human rights.³⁵ The Court further confirmed that “corruption hinders the ability of states to combat poverty, which in turn effectively constrains them to deliver on their human rights commitments”.³⁶ A positive obligation on states to fight corruption can be inferred from this.³⁷ Moreover, according to sec. 39(1) of the Bill of Rights, this duty should align with international law, including international human rights law.³⁸ A similar positive obligation can also be noted in the various duties

26 UN ‘Secretary-General lauds adoption by General Assembly of United Nations Convention against Corruption’, <http://www.unis.unvienna.org/unis/en/pressrels/2003/sgsm8977.html> (accessed on 4 April 2020).

27 Raoul Wallenberg Institute 2018:executive summary. See also Olaniyan 2014:115; Hope 2016:3-31, 12; UN 2017.

28 Rose-Ackerman 1999:2-3; Bracking 2007:8; Holmes 2015:24.

29 Brown 2007:ix-xi; Søreide & Williams 2014:3; Holmes 2015:25; Mbaku 2016:33, 44-45.

30 UN Commission on Human Rights 2003:14-15; Fitzsimons 2007:57.

31 Hope 2000:17; Brown 2007:x. For a detailed discussion on corruption and the “inequality trap”, see Uslaner 2008.

32 Hall-Matthews 2007:77; Fitzsimons 2007:70; Boersma 2012:3; Olaniyan 2014:19.

33 *S v Shaik & Others* 2008 (5) SA 354 (CC).

34 *S v Shaik & Others*:par. 72.

35 *S v Shaik & Others* 2007 (1) SA 240 (SCA):par. 223. See also *South Africa Association of Personal Injury Lawyers v Heath* 2001 SA 883:par. 4; *Glenister v President of the Republic of South Africa & Others* 2011 (3) SA 347 (CC):paras. 176-177.

36 Olaniyan 2014:315.

37 Olaniyan 2014:315.

38 Olaniyan 2014:315.

outlined in the UN Convention Against Corruption³⁹ and the African Union Convention on Preventing and Combatting Corruption. This article focuses on the impact of corruption on the human rights of one of the most vulnerable groups in society, the poor and the realisation of their human rights. This link will be expanded upon below.

3. THE NEXUS BETWEEN CORRUPTION AND HUMAN RIGHTS

The aim of human rights norms and principles is to “regulat[e] the domestic relationship between governments and their nationals”.⁴⁰ These standards thus play an important role in combatting corruption, by explicitly setting out the obligations of states towards those within their jurisdiction. The UN Committee on Economic, Social and Cultural Rights (UNCESCR) has, in several reports, unequivocally stated that “corruption has a negative impact upon the (equal) enjoyment, implementation, realisation, or (full) exercise of economic, social and cultural rights”.⁴¹ The relationship between human rights and corruption has also been affirmed by various other international and regional organisations, including the UN Human Rights Council (UNHRC), Transparency International, the Inter-American Court on Human Rights, and the Court of Justice of the Economic Community of West African States.⁴² The latter was based on sec. 21 of the African Charter on Human and Peoples’ Rights,⁴³ which recognises the right of people to freely dispose of their natural wealth and resources. The African Union (AU) also stressed the undeniable connection between corruption and the fulfilment and protection of human rights.⁴⁴

As highlighted in section 2, corruption can impact the states’ ability to realise the human rights of all by impeding its various legally binding human rights obligations. According to the tripartite framework of obligations, as proposed by Eide, international and national human rights law can create either positive

39 UN Convention against Corruption (adopted on 9 December 2003 and entered into force on 14 December 2005).

40 Olaniyan 2014:291.

41 Boersma 2012:116-120. See also Peters 2018:1258; Raoul Wallenberg Institute 2018:1, 18.

42 See UN 31 October 2003; International Council on Human Rights Policy (ICHRP) & Transparency International 2009:34-45; Boersma 2012:116-120; Peters 2018:1258; Raoul Wallenberg Institute 2018:1, 18; *The Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v President of the Federal Republic of Nigeria & Another*, ECW/CCJ/APP/12/07, Court of Justice of the Economic Community of West African States (30 November 2010), http://www.chr.up.ac.za/images/files/documents/africancases/institution/ecowas/ecowas_right_to_education.pdf (accessed on 26 October 2020).

43 African Union 1981 “African Charter on Human and Peoples’ Rights”, <https://au.int/en/treaties/african-charter-human-and-peoples-rights> (accessed 22 June 2022).

44 See African Union 2018 “Fighting corruption and advancing human rights: Our collective responsibilities”, https://au.int/sites/default/files/pressreleases/35228-pr-commemoration_of_2018_africa_human_rights_day-.pdf (accessed 22 June 2022).

or negative duties for states.⁴⁵ First, the obligation to *respect* requires states to refrain from interfering in the enjoyment of human rights. Secondly, the obligation to *protect*. States must ensure that third parties do not threaten the enjoyment of rights and hold violators of human rights accountable. Thirdly, the obligation to *fulfil*, which is divided into two separate duties, namely the obligation to *facilitate* access to rights fulfilment by creating an environment conducive to the progressive realisation of rights or to “engage proactively in activities that would strengthen people’s ability to meet their own needs”, and the obligation to *provide* resources where an individual or group is unable, due to factors beyond their control, to realise the right for themselves.⁴⁶ According to Ngugi, “[c]orruption reduces the capacity of the government to respect, protect, and fulfill its human rights obligations”.⁴⁷ This will be elaborated on below.

Regarding the fight against corruption, specific duties incumbent on states can be identified under each obligation. Under the obligation to *respect*, it is essential that the right to political participation, for example, be upheld to provide citizens with the means of holding corrupt government officials accountable and monitoring government expenditure.⁴⁸ This right will be violated when individuals are denied the opportunity to take part in governance “on a fair and equal basis”, due to nepotism or the “buying” of votes by more powerful and wealthier government officials.⁴⁹

In terms of the obligation to *protect*, an example of a violation of this duty can be noted in light of the right to a fair trial. This right will be violated when prosecutors are bribed not to prosecute specific individuals, or the independence and impartiality of judges are compromised through bribery.⁵⁰ However, as a general duty, states must adopt legislation, policies, and practices that actively work towards preventing corruption by their agents and third parties, especially when it comes to the provision of social services.⁵¹ It is argued that, where a state fails to practise adequate due diligence over the use of state resources, and the resources are diverted to the pockets of the corrupt, it can be viewed as a violation of the state’s duty to protect the enjoyment of rights, specifically as they relate to social assistance programmes.⁵²

45 Darrow & Tomas 2005:529. For a detailed explanation of these obligations, see Eide 1984.

46 Darrow & Tomas 2005:529-530.

47 Ngugi 2010:246.

48 Olaniyan 2014:239, 241.

49 As cited in Boersma 2012:213, 215. See also ICHRP & Transparency International 2009:34-45; Olaniyan 2014:232.

50 ICHRP & Transparency International 2009:36-39; Boersma 2012:209-210; Olaniyan 2014:217-218.

51 International Commission of Jurists 1997 “Maastricht Guidelines on Violations of Economic, Social and Cultural Rights”, <https://www.refworld.org/docid/48abd5730.html> (accessed 22 June 2022); par. 14(g); Leckie 1998:106; UN Committee on ESCR 2000:par. 52; ICHRP & Transparency International 2009:54.

52 ICHRP & Transparency International 2009:25; Peters 2018:1259.

Moreover, as explicitly stated by the former Special Rapporteur on the Right to Food, Jean Ziegler,⁵³ the obligation to protect includes a duty to fight corruption that rests on states party to the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁵⁴ Leckie argues that this includes the duty to “develop targeted, legally consistent, and sufficiently progressive policies toward securing those rights”, which, in turn, includes the obligation to address regressive policies and harmful practices (such as corruption) that hamper the full realisation and enjoyment of rights.⁵⁵

A further component of the obligation to protect is the state’s duty to investigate alleged human rights violations and hold violators accountable.⁵⁶ Thus, states who fail to adequately investigate claims of corrupt acts or omissions that impede the realisation of rights will be in breach of their duty to protect. In *Glenister v President of the Republic of South Africa & Others*,⁵⁷ the Constitutional Court of South Africa found the Hawks (South Africa’s Directorate for Priority Crime Investigation with the mandate of investigating corruption) not to be sufficiently independent in its investigation of corruption. As a result, the Court found an infringement of several civil, political, and socio-economic rights (including the rights to equality, human dignity, healthcare, education, and housing) as a result of the state’s failure to protect the rights contained in the South African Bill of Rights, as required by sec. 7(2) of the *Constitution*.⁵⁸

The obligation to *fulfil* requires the proper and adequate management of state resources as essential to ensuring the fulfilment of rights in a manner that is available to (in terms of both quantity and quality), accessible (in terms of equal economic and physical access), and acceptable (according to local values, traditions, and customs) by rights holders in a manner that is adaptable to changing social and cultural circumstances.⁵⁹ As argued by Mubangizi and Sewpersadh, public procurement corruption that violates any of the “4-A criteria” will violate the right concerned.⁶⁰ This obligation is further qualified by sec. 2(1) of the ICESCR, which requires state parties

to *take steps*, individually and through international assistance and co-operation, especially economic and technical, to the *maximum of its available resources*, with a view to *achieving progressively the full realisation* of the rights recognised in the present Covenant by *all appropriate means*, including particularly the adoption of legislative measures. (My emphasis)

53 See UNCHR 2001:par. 28. See also Boersma 2012:157, 160-161.

54 UN General Assembly 1966, “International Covenant on Civil and Political Rights”, <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf> (accessed 22 June 2022).

55 Leckie 1998:93-94.

56 Leckie 1998:109; ICHRP & Transparency International 2009:42.

57 *Glenister v President of the Republic of South Africa & Others* 2011 (3) SA 347 (CC).

58 *Glenister v President of the Republic of South Africa & Others*:paras. 175-176, 198. Sec. 7(2) of the *Constitution* states that: “The state must respect, protect, promote and fulfil the rights in the Bill of Rights.”

59 ICHRP & Transparency International 2009:48, 58-60; 2010:59; Raoul Wallenberg Institute 2018:7.

60 Mubangizi & Sewpersadh 2017:72.

To the *maximum of its available resources* requires the equitable and effective use of all available resources towards realising economic, social, and cultural rights.⁶¹ Corrupt acts such as the misappropriation of funds and illicit financial flows, impede this obligation, as resources are diverted away from programmes aimed at realising socio-economic rights.⁶² Taking the right to food as an example, the right to fulfil will be violated if funds meant for food packages are embezzled or misappropriated, as allegedly happened during the current COVID-19 pandemic.⁶³

The duty of *progressive realisation* also imposes upon states the obligation to continuously work towards realising the economic, social, and cultural rights of all within its jurisdiction. According to General Comment 3 of the UNCESCR, this duty also prohibits state parties from taking deliberative retrogressive steps without compensation to those impacted by these measures.⁶⁴ Therefore, any unjustified decrease in public expenditure aimed at the fulfilment of economic, social, and cultural rights, which can happen, for instance, due to the misappropriation of funds, can be argued to violate this obligation.⁶⁵

This argument is supported by the Maastricht Guidelines, which states that the rights contained in the ICESCR will be violated through “the reduction or diversion of specific public expenditure when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone”.⁶⁶ The loss of state resources that could have been employed towards the realisation of socio-economic rights through, for example, embezzlement, would thus constitute a violation of rights, as envisioned by sec. 2(1) of the ICESCR.⁶⁷ Lastly, the duty of using *all appropriate means* includes adopting anti-corruption measures and legislation to combat the theft and mismanagement of state resources. This is also in line with the duty to protect, as mentioned earlier.⁶⁸

Only some examples of how corruption can violate human rights have been outlined above. International and regional charters and treaties on human rights can be interpreted creatively by the appropriate monitoring bodies to establish a link between corruption and the violation of one or more human rights to hold states accountable.⁶⁹ Authoritative interpretations of

61 UNCHR 1987:sec. 27; Boersma 2012:231; UN Committee on ESCR 2000:par. 52. See also UNCESCR 2007.

62 International Commission of Jurists 1997 “Maastricht Guidelines on Violations of Economic, Social and Cultural Rights”, <https://www.refworld.org/docid/48abd5730.html> (accessed 22 June 2022):par. 14(g); UN Committee on ESCR 2000:par. 52; ICHRP & Transparency International 2009:46; Ngugi 2010:246.

63 Boersma 2012:238. See also Leckie 1998:98.

64 UNCESCR 1990. See also Rose 2016:414.

65 Leckie 1998:107-108; Rose 2011:718-719; Boersma 2012:232-233.

66 International Commission of Jurists 1997 “Maastricht Guidelines on Violations of Economic, Social and Cultural Rights”, <https://www.refworld.org/docid/48abd5730.html> (accessed 22 June 2022):par. 14(g). See also Rose 2016:415.

67 Rose 2016:415.

68 UNHRC 1999:secs. 12, 19; Boersma 2012:228, 230, 233.

69 Olaniyan 2014:108, 196, 274.

the obligations set out above provide a detailed framework to keep states accountable and ensure the full enjoyment of human rights.

Moreover, corruption can directly violate a specific human right.⁷⁰ Some examples are the violation of the right to water if rights holders have to pay bribes to access water supplies and the right to education if resources meant for the procurement of educational materials are misappropriated.⁷¹ However, rights can also be violated indirectly. As argued by Ngugi, this happens when

a corrupt practice constitutes an essential contributing factor in a chain of events that eventually leads to a violation of a right, corruption can still be blamed for violating human rights. In this case the right is violated by an act that derives from a corrupt act. But the act of corruption constitutes a necessary condition for the violation.⁷²

4. THE RIGHTS TO EQUALITY AND NON-DISCRIMINATION

The *Constitution* is, among other values, grounded in the principle of equality.⁷³ Moreover, the rights to equality and non-discrimination are also recognised in sec. 9 of the *Constitution*:

(1) Everyone is equal before the law and has the right to equal protection and benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken. (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination. (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

The rights to equality and non-discrimination are also recognised in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the ICESCR, and the African Charter on Human and

70 Ngugi 2010:246; Mubangizi & Sewpersadh 2017:74.

71 Mubangizi & Sewpersadh 2017:74.

72 Bacio-Terracino 2010:243. See also Ngugi 2010:246.

73 See sec. 7 of the *Constitution*.

Peoples' Rights.⁷⁴ Its near-universal recognition highlights the significance of this right as the cornerstone of any democratic society.

Discrimination can hamper the fulfilment of economic, social, and cultural rights of all.⁷⁵ Under international law, state parties are, therefore, under an obligation to immediately adopt deliberate and targeted measures, including strategies, policies, and plans, to address formal and substantive discrimination and the harm caused as a result of such discrimination.⁷⁶ The UNCESCR defined discrimination as constituting

any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.⁷⁷

With reference to discrimination based on gender, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa defines discrimination against women as "any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life".⁷⁸ The rights to equality and non-discrimination go further and require states to put in place special measures to ensure the rights of the most vulnerable and marginalised are protected.⁷⁹ In the case of corruption, states are required to adopt strategies that curb corruption and address its impact on vulnerable groups, due to their inclusion in one of the specified groups.

74 See UN General Assembly 1948 "Universal Declaration of Human Rights", https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf (accessed 22 June 2022):arts. 2 and 7; UN General Assembly 1966 "International Covenant on Civil and Political Rights", <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf> (accessed 22 June 2022) :arts. 2(2) and 26; UN General Assembly 1966 "International Covenant on Economic, Social and Cultural Rights", <https://www.ohchr.org/sites/default/files/cescr.pdf> (accessed 22 June 2022):art. 2(2); African Union 1981 "African Charter on Human and Peoples' Rights", <https://au.int/en/treaties/african-charter-human-and-peoples-rights> (accessed 22 June 2022):art. 2.

75 UN Committee on ESCR 2009:par. 1.

76 UN Committee on ESCR 2009:paras. 8, 36, 38, 40.

77 UN Committee on ESCR 2009:par. 7.

78 African Union 2003 "Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa", <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/ProtocolontheRightsofWomen.pdf> (accessed 22 June 2022) :art. 1.

79 De Castro e Silva 2019:75.

5. VIOLATION OF THE RIGHTS TO EQUALITY AND NON-DISCRIMINATION BASED ON POVERTY UNDER SOUTH AFRICAN LAW

In *Social Justice Coalition & Others v Minister of Police & Others*,⁸⁰ the Equality Court of South Africa considered a case of alleged unfair indirect discrimination on the grounds of race and poverty against people in Black townships. The subject of the case was a neutral formula that was employed to calculate how police resources should be distributed. It was argued that the formula had an unintentional discriminatory impact on people living in Black townships. The Court specifically considered the provisions of the *Promotion of Equality and Prevention of Unfair Discrimination Act*⁸¹ (hereafter, the *Equality Act*) as the legislative expression of the rights to equality and non-discrimination as contained in the *Constitution*. Sec. 6 of the *Act* provides the general prohibition that “[n]either the state [n]or any person may unfairly discriminate against any person”. The *Equality Act* defines discrimination as “any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly (a) imposes burdens, obligations or disadvantages on; or (b) withholds benefits, opportunities or advantages from any person on one or more of the prohibited grounds”.⁸² The prohibited grounds include:⁸³

- a. race, gender, sex, pregnancy, marital status, ethnic or social origin, colour sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; or
- b. *any other ground* where discrimination based on that other ground
 - i. causes or perpetuates systemic disadvantage;
 - ii. undermines human dignity; or
 - iii. adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a). (My emphasis)

The Court recognised that unfair discrimination may be direct or indirect. It defined indirect discrimination as “differentiation [that] appears to be neutral but has the effect of discriminating on a prohibited ground, whether listed or unlisted”.⁸⁴ This is in line with the views of the UNCESCR, who defines indirect discrimination as “refer[ing] to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination”.⁸⁵

For a violation of the right to equality to occur, it has to be shown that the discrimination was unfair. The Court followed the two-prong test for unfair

80 *Social Justice Coalition & Others v Minister of Police & Others* 2019 (4) SA 82 (WCC).

81 *Promotion of Equality and Prevention of Unfair Discrimination Act* 4/2000.

82 *Equality Act*:sec. 1.

83 *Equality Act*:sec. 1.

84 *Social Justice Coalition & Others v Minister of Police & Others* 2019 (4) SA 82 (WCC);par. 36. See also *Pretoria City Council v Walker* 1998 (2) SA 363, where unfair indirect discrimination on the ground of race was found.

85 UN Committee on ESCR 2009:par. 10(b).

discrimination as set out in the case of *Harksen v Lane NO*.⁸⁶ Under the “two-stage analysis”, it must first be determined whether the differentiation amounts to “discrimination”, as defined above. According to the Court:⁸⁷

If [the differentiating treatment is based] on a specified ground, then discrimination will have been established. If it is not on a specified ground, then whether or not there is discrimination will depend upon whether, objectively, the ground is based on attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner.

Secondly, if discrimination is found, it must be considered whether the discrimination was unfair.⁸⁸ In this regard, the burden shifts to the respondent to show that the discrimination was fair, considering “(a) the position of the complainants in the society, (b) the impact of the discrimination and (c) the systemic nature of the discrimination”.⁸⁹

The most important consideration before the Court was whether poverty “qualifies as an unlisted ground in terms of paragraph (b) of the definition of prohibited ground”.⁹⁰ For poverty to be included as an unlisted ground, it must be tested whether it falls within the *Act’s* meaning of “any other ground”. According to the definition of “prohibited grounds”, poverty will qualify as an unlisted ground if it results in “undesirable consequences which (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyments of a person’s rights and freedoms in a serious manner that is comparable to discrimination on any of the prohibited grounds”.⁹¹

The applicants in the case relied on sec. 34(1) of the *Equality Act*, which states that

[i]n view of the overwhelming evidence of the importance, impact on society and link to systemic disadvantage and discrimination on the grounds of HIV/AIDS status, *socio-economic status*, nationality, family responsibility and family status (a) special consideration must be given to the inclusion of these grounds in paragraph (a) of the definition of “prohibited grounds” by the Minister. (My emphasis)

The *Equality Act* defines socio-economic status as “includ[ing] a socio or economic condition or perceived condition of a person who is disadvantaged by poverty, low employment status or lack of or low-level education qualification”.⁹² The applicants also relied on several academic writings which support the

86 *Harksen v Lane NO & others* 1998 (1) SA 300:par. 44.

87 *Social Justice Coalition & Others v Minister of Police & Others*:par. 38. See also *Harksen v Lane NO & others*:par. 44.

88 *Social Justice Coalition & Others v Minister of Police & Others*:par. 38. See also *Harksen v Lane NO & others*:par. 44.

89 *Social Justice Coalition & Others v Minister of Police & Others*:par. 78.

90 *Social Justice Coalition & Others v Minister of Police & Others*:par. 39.

91 *Social Justice Coalition & Others v Minister of Police & Others*:par. 57.

92 *Equality Act*:sec. 1.

argument that “poverty constitutes a prohibited ground of discrimination, either as an analogous ground or within the concept of ‘social origin’”.⁹³

The applicants further based their claim on the argument that poverty is a systemic problem that leaves those stuck in its clutches vulnerable and marginalised, living in circumstances that more often than not violate human dignity.⁹⁴ The Court agreed that discrimination based on poverty hampers the protection and fulfilment of the economic and social rights of all.⁹⁵ Therefore, the Court found unfair discrimination based on the unlisted ground of poverty.⁹⁶ The applicants’ submissions and the ultimate findings of the Court are also in line with the views of the UNCESCR. As succinctly stated by the Committee:⁹⁷

The nature of discrimination varies according to context and evolves over time. A flexible approach to the ground of “other status” is thus needed in order to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognised grounds. ... These additional grounds are commonly recognised when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalisation.

Concerning poverty, the Committee recognised that peoples’ economic or social status can make them vulnerable to discrimination, resulting in unequal access to the enjoyment of economic, social, and cultural rights.⁹⁸ Bearing this in mind, the following section explores whether corrupt acts or omissions can cause unfair discrimination based on the unlisted ground of poverty.

6. THE NEXUS BETWEEN CORRUPTION AND POVERTY

6.1 Defining poverty

It is argued that defining poverty is a “matter of social convention” and can be influenced by subjective views on “being” or “feeling” poor.⁹⁹ There is no standard definition of poverty but rather various indicative factors. As argued by Chetwynd *et al.*, poverty relates to the standard of living of a part of society and is usually determined in terms of economic capacity.¹⁰⁰ According to the World Bank, poverty is indicated by factors such as low income, low education, poor health, vulnerability, and powerlessness.¹⁰¹ Sen views poverty as caused by limited capabilities, with capabilities defined as “the freedoms

93 *Social Justice Coalition & Others v Minister of Police & Others*:par. 62. See Woolman & Bishop 2012:63 (chapter 35) (as specifically referred to by the Court in this instance).

94 *Social Justice Coalition & Others v Minister of Police & Others*:paras. 63 and 64.

95 *Social Justice Coalition & Others v Minister of Police & Others*:par. 65.

96 *Social Justice Coalition & Others v Minister of Police & Others*:par. 75.

97 UN Committee on ESCR 2009:par. 27.

98 UN Committee on ESCR 2009:par. 94.

99 Rahayu & Widodo 2012:1-2.

100 Chetwynd *et al.* 2003:5-6.

101 See World Bank 2001; Rahayu & Widodo 2012:2-3.

that people have to achieve the lifestyle that they have reason to value".¹⁰² The UN Development Programme's Human Development Index can also provide guidance in determining whether a part of society can be deemed "poor". The Index measures a country's level of development in terms of three criteria: life expectancy, education, and gross national income per capita.¹⁰³

Other notions of poverty include inadequate "access to and quality of public services vital to the poor such as health, education, water, infrastructures and sanitation";¹⁰⁴ "a lack of opportunities, lack of access to information, lack of voice and lack of representation";¹⁰⁵ "the inability to attain a minimal standard of living";¹⁰⁶ "the inability of an individual or a family to command sufficient resources to satisfy basic needs";¹⁰⁷ and "a state of deprivation".¹⁰⁸

6.2 Poverty and corruption

It is argued that poverty and power inequalities breed corruption. On the other hand, it is widely agreed that corruption in the public sector exasperates poverty due to impaired economic growth and governance.¹⁰⁹ However, this article focuses on the argument that corruption contributes to poverty and its negative impacts, as highlighted earlier, are disproportionately felt by the poor.

Scholars and international organisations agree that the consequences of corruption hit the most vulnerable and marginalised the hardest. This includes people living in poverty.¹¹⁰ As stated by former UN Secretary-General, Kofi Anan: "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 investment and aid. Corruption is a key element in economic under-performance, and

102 Frediani 2010:176. See Sen 1981.

103 UN Development Programme "Human Development Index", <http://hdr.undp.org/en/content/human-development-index-hdi> (accessed on 28 October 2020). See also Chetwynd *et al.* 2003:6.

104 Rahayu & Widodo 2012:3.

105 Rahayu & Widodo 2012:3.

106 Meier 1995:26.

107 Fields 1993:88.

108 Rahayu & Widodo 2012:4. See interpretations of poverty by South African courts in *Mahlangu & another v Minister of Labour & others* 2021 (1) BCLR 1 (CC):paras. 23, 39, 57, 104; *Mukuru Financial Services (Pty) Ltd & another v Department of Employment and Labour* (17474/20) [2022] ZAWCHC 14:paras. 18-19, 29.

109 Chetwynd *et al.* 2003:5; Transparency International "Corruption still rampant in 70 Countries, says corruption perceptions index 2005", <https://www.transparency.org/en/news/transparency-international-corruption-perceptions-index-2005> (accessed on 20 October 2020); Ndikumana 2006:2, 19; Negin *et al.* 2010.

110 De Castro e Silva 2019:74; Transparency International "Citizens speak out about corruption in Africa", <https://www.transparency.org/en/news/citizens-speak-out-about-corruption-in-africa> (accessed on 28 October 2020).

a major obstacle to poverty alleviation and development".¹¹¹ The harshest consequences for the poor are an increase in the cost of public services, a decrease in the quality of services, and limited access to these services.¹¹² Corruption perverts the allocation of public expenditure, as state resources are directed towards public investment projects that serve the interest of elites rather than poverty reduction and social assistance programmes that meet the needs of the poor.¹¹³ The World Bank summarised the impact of corruption on the poor as follows:¹¹⁴

The burden of petty corruption falls disproportionately on poor people ... For those without money and connections, petty corruption in public health or police services can have debilitating consequences. Corruption affects the lives of poor people through many other channels as well. It biases government spending away from socially valuable goods, such as education. It diverts public resources from infrastructure investments that could benefit poor people, such as health clinics, and tends to increase public spending on capital-intensive investments that offer more opportunities for kickbacks, such as defense contracts. It lowers the quality of infrastructure, since kickbacks are more lucrative on equipment purchases. Corruption also undermines public service delivery.

Corruption creates a vicious circle of poverty and inequality primarily due to vulnerability. The vulnerability of the poor is exploited as, in some instances, they have to make informal payments to access social services, which they, more often than not, cannot afford.¹¹⁵ The less access to health and education services the poor have due to corruption, the further behind they fall.

Bearing in mind the human rights of the poor, it is agreed that corruption and human rights have an intertwined relationship.¹¹⁶ Not only does corruption flourish in countries with poor human rights standards, as recognised above, but it can also affect the realisation and enjoyment of human rights, especially those related to public services. Although it was not consistently recognised in the past, it is now widely agreed that corruption has a detrimental impact

111 UN Secretary-General "Statement on the adoption by the general assembly of the United Nations Convention Against Corruption", <https://www.unodc.org/unodc/en/treaties/CAC/background/secretary-general-speech.html> (accessed on 28 October 2020). See also De Castro e Silva 2019:75.

112 Ndikumana 2006:16-17, 22-23; African Union 2009 "Stolen futures: The impact of corruption on children in Africa", https://au.int/sites/default/files/documents/36766-doc-the_impact_of_corruption_on_children_-_final_report.pdf (accessed 22 June 2022), 11, 32-35; Negin *et al.* 2010:1; Rahayu & Widodo 2012:4.

113 Chetwynd *et al.* 2003:7, 12; Ndikumana 2006:20-21; Rahayu & Widodo 2012:2-3, 5, 12.

114 World Bank 2001:201; Chetwynd *et al.* 2003:5.

115 African Union 2009 "Stolen futures: The impact of corruption on children in Africa", https://au.int/sites/default/files/documents/36766-doc-the_impact_of_corruption_on_children_-_final_report.pdf (accessed 22 June 2022), 21-28.

116 Raoul Wallenberg Institute 2018:executive summary. See also Olaniyan 2014:115; Hope 2016:3-31, 12; UN 2003.

on human rights. In line with the arguments raised in this article, these consequences are disproportionately felt by the poor.¹¹⁷

In this article, it is argued that corrupt acts such as embezzlement, which reduces the funds available for quality public services and impedes the equal enjoyment of rights, can violate the rights to equality and non-discrimination on the ground of poverty, as those living in poverty are disproportionately affected by the impact of corrupt acts or omissions.¹¹⁸ In the *Social Justice Coalition* case, the discriminatory conduct was the application of a neutral formula. In this article, the discriminatory conduct, or rather omission, is the failure of the state to adopt adequate strategies to curb corruption, which seems on the face of it as a neutral practice (in that it is harmful to society as a whole), but as shown earlier, can have a disproportionate impact on the poor and thereby constitute grounds for unfair indirect discrimination.

The indicative factors of poverty can be employed to determine whether a specific group in society can be deemed poor. Moreover, considering the vulnerability of these groups in society, the impact of corruption on their overall well-being and enjoyment of rights, and the systemic nature of corruption in South Africa, the government would be hard-pressed to show that the discrimination (resulting from corrupt acts or omissions) is fair. Furthermore, as argued by Mubangizi and Sewpersadh,¹¹⁹

[i]nequality and discrimination may also be perpetuated through the state's inability to distribute resources in an equitable way because of corruption. ... When public resources are mismanaged through corruption the ability of government to deliver public services is compromised, the realisation of socio-economic rights – particularly for the poor – is affected, and inequality is perpetuated.

Bearing in mind that one characteristic of poverty is the lack of a voice, a HRBA to corruption empowers the marginalised and the vulnerable to demand the fulfilment and protection of their rights and enables them to hold state actors accountable for their failures to fulfil human rights obligations.¹²⁰

7. CONCLUSION

This article aimed to examine whether corruption can constitute a violation of the rights to equality and non-discrimination based on the unspecified ground of poverty. The discussion commenced with an overview of the definition and general impact of corruption. It was argued that, in order to make a case for the relationship between corruption and human rights, any useful definition must include a victim element to demonstrate the social harm caused by corruption. It was also shown that corruption has a significant impact on people's well-being, including realising their socio-economic rights. Corruption exasperates

117 Raoul Wallenberg Institute 2018:executive summary. See also Olaniyan 2014:115; Hope 2016:3-31, 12; UN 2003.

118 Mubangizi & Sewpersadh 2017:73.

119 Mubangizi & Sewpersadh 2017:71.

120 De Castro e Silva 2019:77.

poverty, inequality, and underdevelopment. As a result, it disproportionately impacts the most vulnerable and marginalised in society, including those living in poverty.

Regarding the relationship between human rights and corruption, it was argued that the human rights framework explicitly sets out a framework of duties with which governments must comply in combatting corruption. It was further demonstrated that the South African government is responsible for protecting, respecting, and fulfilling the rights contained in the *Constitution* and the international and regional treaties they have adopted and ratified. It is well recognised that corruption negatively impacts the realisation of human rights. Moreover, it was shown that corrupt acts or omissions could directly violate these obligations and the rights contained in human rights treaties. Corruption can also violate rights indirectly, where it is an essential contributing factor in a series of events that ultimately lead to the violation of a right. Furthermore, corruption undermines the human rights principles of accountability and transparency.

In particular, corruption limits access to social services and can reduce the quality of services essential to realising economic and social rights. Where a particular group in society is disproportionately impeded from accessing quality and affordable social services, it is argued that this violates the rights to equality and non-discrimination. Section 3 provided an overview of the rights to equality and non-discrimination, as contained in the *Constitution* and international human rights law instruments.

This article analysed the Equality Court case of *Social Justice Coalition v Minister of Police*. The Court found that poverty can be included in the unlisted grounds for discrimination, as envisioned by the *Equality Act*. Even though it is widely agreed that corruption in the public sector exasperates poverty, due to impaired economic growth and governance, this article focused on the negative impacts of corruption that are disproportionately felt by the poor.

It is argued that corruption, specifically the limitation of access to quality and affordable social services such as education, housing, and healthcare that are essential for the realisation of rights, impairs the fundamental human dignity of those living in poverty and adversely affects the realisation of their rights in a comparably serious manner. This is in line with the view of the UNCESCR that peoples' economic or social status can make them vulnerable to discrimination, resulting in unequal access to the enjoyment of economic, social, and cultural rights.¹²¹

Bearing in mind that one characteristic of poverty is the lack of a voice, it is argued that, when corruption is viewed through a human rights lens, those living in poverty are empowered to demand the fulfilment and protection of their rights, as contained in international and national law, and can hold state actors accountable for their failures to fulfil human rights obligations as a result of corrupt acts or omissions.¹²²

121 UNCESCR 2009:par. 94.

122 De Castro e Silva 2019:77.

BIBLIOGRAPHY

AFRICAN UNION

1981. *African Charter on Human and Peoples' Rights*. <https://au.int/en/treaties/african-charter-human-and-peoples-rights> (accessed 22 June 2022).

2003. *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*. <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/ProtocolontheRightsofWomen.pdf> (accessed 22 June 2022),

2009. *Stolen futures: The impact of corruption on children in Africa*. https://au.int/sites/default/files/documents/36766-doc-the_impact_of_corruption_on_children_-_final_report.pdf (accessed 22 June 2022).

2018. *Fighting corruption and advancing human rights: Our collective responsibilities*. https://au.int/sites/default/files/pressreleases/35228-pr-commemoration_of_2018_africa_human_rights_day-.pdf (accessed 22 June 2022).

ARNONE M & BORLINI LS

2014. *Corruption: Economic analysis and international law*. Northampton: Edward Elgar. <https://doi.org/10.4337/9781781006139>

BACIO-TERRACINO J

2010. Linking corruption and human rights. *International Law in a Time of Change* 104:243-246. <https://doi.org/10.5305/procannmeetasil.104.0243>

BOERSMA M

2012. *Corruption: A violation of human rights and a crime under international law?* Antwerp: Intersentia Limited.

BRACKING S

2007. Political development and corruption: Why "right here, right now!?" In S Bracking (ed.) 2007:3-44. https://doi.org/10.1057/9780230590625_1

BRACKING S (ED.)

2007. *Corruption and development: The anti-corruption campaigns*. Hampshire: Palgrave Macmillan. <https://doi.org/10.1057/9780230590625>

BROWN DR

2007. Foreword. In S Bracking (ed.) 2007:ix-xi. <https://doi.org/10.1016/B978-012373979-7/50030-3>

CAIDEN GE

2001. Corruption and governance. In GE Caiden, OP Dwivedi and J Jabbra (eds.) 2001:15-37.

CAIDEN GE, DWIVEDI OP & JABBRA J (EDS.)

2001. *Where corruption lives*. Bloomfield: Kumarian Press.

COMMISSION OF INQUIRY INTO STATE CAPTURE

The Judicial Commission of Inquiry into Allegations of State Capture. <https://www.statecapture.org.za/>.

CHETWYND E, CHETWYND F & SPECTOR B

2003. *Corruption and poverty: A review of recent literature*. Washington: Management Systems International.

CORRUPTION WATCH

2019. 1591 whistle-blowers, <https://www.corruptionwatch.org.za/wp-content/uploads/2019/08/CORRUPTION-WATCH-ACT-REPORT-2019-OUT-DIGITAL-DBL-PAGE-AGENT-ORANGE-DESIGN-26082019-compressed1421.pdf> (accessed on 26 October 2020).

DARROW M & TOMAS A

2005. Power, capture, and conflict: A call for human rights accountability in development cooperation. *Human Rights Quarterly* 27(2):471-538. <https://doi.org/10.1353/hrq.2005.0015>

DE CASTRO E SILVA, B

2019. Humanizing (anti)corruption: The social-legal values of a human rights-based approach to corruption. *Kyiv-Mohyla Law & Politics Journal* 5:59-81. <https://doi.org/10.18523/kmlpj189985.2019-5.59-81>

EIDE A

1984. The international human rights system. In Eide *et al.* (eds.) 1984:162-174.

EIDE A, EIDE WB, GOONSTILAKE S, GUSSOW J & OMAWALE (EDS.)

1984. *Food as a human right*. Tokyo: United Nations University Press.

FIELDS GS

1993. Poverty and income distribution: Data for measuring poverty and inequality changes in the developing countries. *Journal of Development Economics* 44(1):87-102. [https://doi.org/10.1016/0304-3878\(94\)00007-7](https://doi.org/10.1016/0304-3878(94)00007-7)

FITZSIMONS VG

2007. Economic models of corruption. In S Bracking (ed.) 2007:46-74. https://doi.org/10.1057/9780230590625_3

FREDIANI AA

2010. Sen's capability approach as a framework to the practice of development. *Development in Practice* 20(2):173-187. <https://doi.org/10.1080/09614520903564181>

HALL-MATTHEWS D

2007. Tickling donors and tackling opponents: The anti-corruption campaign in Malawi. In S Bracking (ed.) 2007:77-102. https://doi.org/10.1057/9780230590625_4

HOLMES L

2015. *Corruption: A very short introduction*. Oxford: Oxford University Press. <https://doi.org/10.1093/actrade/9780199689699.001.0001>

HOPE KR SR

2000. Corruption and development in Africa. In KR Hope sr & BC Chikulo (eds.) 2000:17-39. https://doi.org/10.1057/9780333982440_2

2016. An analytical perspective on police corruption and police reforms in developing societies. In KR Hope sr (ed.) 2016:3-32. <https://doi.org/10.1201/b19181-3>

HOPE KR SR (ED.)

2016. *Police corruption and reforms in developing societies*. Boca Raton, FL: CRC Press. <https://doi.org/10.1201/b19181>

HOPE KR SR & CHIKULO BC (EDS.)

2000. *Corruption and development in Africa: Lessons from country case-studies*. Hampshire: Palgrave Macmillan. INTERNATIONAL COMMISSION OF JURISTS. <https://doi.org/10.1057/9780333982440>

1997. *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*. <https://www.refworld.org/docid/48abd5730.html> (accessed 22 June 2022).

INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY &
TRANSPARENCY INTERNATIONAL

2009. *Corruption and human rights: Making the connection*. Versoix: International Council on Human Rights Policy.

2010. *Integrating human rights in the anti-corruption agenda: Challenges, possibilities and opportunities*. Geneva: International Council on Human Rights Policy. <https://doi.org/10.2139/ssrn.1705396>

JOHNSTON M

2009. "Poverty and corruption" *Forbes*, https://www.forbes.com/2009/01/22/corruption-poverty-development-biz-corruption09-cx_mj_0122johnston.html#4c6505b1a56a (accessed on 26 October 2020).

LANGSETH P

2006. Measuring corruption. In C Sampford *et al.* (eds.) 2006:7-44.

LECKIE S

1998. Another step towards indivisibility: Identifying the key features of violations of economic, social and cultural rights. *Human Rights Quarterly* 20:81-124. <https://doi.org/10.1353/hrq.1998.0008>

MANTZARIS EA

2017. Corruption as a violation of basic human rights in South Africa and Russia. *African Journal of Public Affairs* 9(8):15-30.

MBAKU JM

2016. Confronting police corruption in developing societies. In Hope KR sr (ed.) 2016:33-50. <https://doi.org/10.1201/b19181-4>

MEIER GM

1995. *Leading issues in economic development*. 6th edition. New York: Oxford University Press.

MUBANGIZI JC & SEWPERSADH P

2017. A human rights-based approach to combatting public procurement corruption in Africa. *African Journal of Legal Studies* 10:66-90. <https://doi.org/10.1163/17087384-12340015>

NDIKUMANA L

2006. Corruption and pro-poor growth outcomes: Evidence and lessons from African countries. *Political Economy Research Institute Working Paper Series 120*. <https://ideas.repec.org/p/uma/periwp/wp120.html> (accessed on 21 July 2020).

NEGIN V, RASHID ZBA & HESAM N

2010. The causal relationship between corruption and poverty: A panel data analysis. Munich Personal RePEc Archive paper no 24871. <https://mpra.ub.uni-muenchen.de/24871/> (accessed on 22 July 2020).

NGUGI JM

2010. Making the link between corruption and human rights: Promises and perils. *International Law in a Time of Change* 104:246-250. <https://doi.org/10.5305/procannmeetasil.104.0246>

OLANIYAN K

2014. *Corruption and human rights law in Africa*. London: Bloomsbury Publishing.

PETERS A

2018. Corruption as a violation of international human rights. *The European Journal of International Law* 29(4):1251-1287. <https://doi.org/10.1093/ejil/chy070>

PIKOLI Z

2020. "Zondo commission responds to civil society concerns: Hearings to resume on June 29" *Daily Maverick*, <https://www.dailymaverick.co.za/article/2020-06-19-zondo-commission-responds-to-civil-society-concerns-hearings-to-resume-on-june-29/> (accessed on 16 October 2020).

RAHAYU IP & WIDODO T

2012. The causal relationship between corruption and poverty in ASEAN: A general method of moments/dynamic panel data analysis. Munich Personal RePEc Archive paper no 78328. <https://mpra.ub.uni-muenchen.de/78328/> (accessed on 20 July 2020).

RAOUL WALLENBERG INSTITUTE

2018. *The nexus between anti-corruption and human rights: A review by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law*. Lund: Raoul Wallenberg Institute of Human Rights and Humanitarian Law.

ROSE C

2011. The application of human rights law to private sector complicity in governmental corruption. *Leiden Journal of International Law* 24(3):715-740. <https://doi.org/10.1017/S0922156511000306>

2016. The limitations of a human rights approach to corruption. *International Comparative Law Quarterly* 65(2):405-438. <https://doi.org/10.1017/S0020589316000038>

ROSE-ACKERMAN S

1999. *Corruption and government: Causes, consequences, and reform*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9781139175098>

SAMPFORD C ET AL. (EDS.)

2006. *Measuring corruption*. Aldershot: Ashgate.

SEN AK

1981. *Poverty and famines: An essay on entitlement and deprivation*. Oxford: Oxford University Press.

SØREIDE T & WILLIAMS A (EDS.)

2014. *Corruption, grabbing and development: Real world challenges*. Northampton: Edward Elgar Publishing. <https://doi.org/10.4337/9781782544418>

TRANSPARENCY INTERNATIONAL

18 May 2018. 10 quotes about corruption and transparency to inspire you. <https://voices.transparency.org/10-quotes-about-corruption-and-transparency-to-inspire-you-cd107d594148> (accessed on 16 October 2020).

What is corruption? <https://www.transparency.org/en/what-is-corruption> (accessed on 17 June 2022).

2005. Corruption still rampant in 70 countries, says corruption perceptions index 2005, <https://www.transparency.org/en/news/transparency-international-corruption-perceptions-index-2005> (accessed on 20 October 2020).

2019. Citizens speak out about corruption in Africa, <https://www.transparency.org/en/news/citizens-speak-out-about-corruption-in-africa> (accessed on 28 October 2020).

UN (United Nations)

2003. Secretary-General lauds adoption by General Assembly of United Nations Convention against Corruption, <http://www.unis.unvienna.org/unis/en/pressrel2003/sgsm8977.html> (accessed on 4 April 2020).

2017. *The negative impact of corruption on the enjoyment of human rights*. A/HRC/RES/35/25 23 vol 11925.

UNITED NATIONS COMMISSION ON HUMAN RIGHTS

1987. *Note verbale, dated 5 December 1986, from the Permanent Mission of The Netherlands to the United Nations Office at Geneva, addressed to the Centre for Human Rights*. E/CN.4/1987/17.

2001. *Report of the Special Rapporteur on the Right to Food, Economic and Social Council*. UN Doc E/CN.4/2001/53.

2003. *Economic, social and cultural rights: Corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights*. Working paper submitted by Ms Christy Mbonu in accordance with sub-commission decision 2002/106. UN Doc E/CN.4/Sub.2/2003/18.

UNCESCR (UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS)

1990. *General Comment 3: The nature of states parties' obligations (Art 2, Para 1, of the Covenant)*. E/1991/23.

2000. *General Comment 14: The right to the highest attainable standard of health (art 12)*. UN Doc E/C.12/2000/4.

2007. *An evaluation of the obligation to take steps to the "maximum of available resources under an Optional Protocol to the Covenant"*. UN Doc E/C.12/2007/1.

2009. *General Comment 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights)*. E/C.12/GC/20.

UNITED NATIONS DEVELOPMENT PROGRAMME

Human Development Index, <http://hdr.undp.org/en/content/human-development-index-hdi> (accessed on 28 October 2020).

UNITED NATIONS GENERAL ASSEMBLY

1948. *Universal Declaration of Human Rights*. https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf (accessed 22 June 2022).

1966. *International Covenant on Civil and Political Rights*. <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf> (accessed 22 June 2022).

1966. *International Covenant on Economic, Social and Cultural Rights*. <https://www.ohchr.org/sites/default/files/cescr.pdf> (accessed 22 June 2022).

UNHRC (UNITED NATIONS HUMAN RIGHTS COMMITTEE)

1999. *General Comment 27: Article 12 (Freedom of Movement)*. CCPR/C/21/Rev.1/Add.9.

UNITED NATIONS SECRETARY-GENERAL

2003. Statement on the adoption by the general assembly of the United Nations Convention Against Corruption, <https://www.unodc.org/unodc/en/treaties/CAC/background/secretary-general-speech.html> (accessed on 28 October 2020).

USLANER EM

2008. *Corruption, inequality, and the rule of law*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9780511510410>

WOOLMAN S & BISHOP M

2012. *Constitutional law of South Africa*. 2nd edition, volume 2, chapter 35. Cape Town: Juta & Company (Pty) Ltd.

WORLD BANK

2001. *World development report for 2000/01: Attacking poverty*. New York: Oxford University Press.

2007. Helping countries combat corruption: The role of the World Bank, <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/coridx.htm> (accessed on 4 April 2022).

2020. Combating corruption, <https://www.worldbank.org/en/topic/governance/brief/anti-corruption> (accessed on 26 October 2020).